

Senate File 360 - Enrolled

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SENATE FILE 360

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AN ACT
RELATING TO VARIOUS PROVISIONS ADMINISTERED BY THE INSURANCE
DIVISION OF THE DEPARTMENT OF COMMERCE CONCERNING PREMIUM
TAX REFUNDS, THE INTERSTATE INSURANCE COMPACT, INSURER
INSOLVENCY PROCEEDINGS, INDIVIDUAL HEALTH INSURANCE, THE
SMALL EMPLOYER CARRIER REINSURANCE PROGRAM, INSURANCE
APPLICATIONS, THE IOWA COMPREHENSIVE HEALTH ASSOCIATION,
FIRE INSURANCE POLICIES, THE IOWA INSURANCE GUARANTY
ASSOCIATION, THE FAIR PLAN, MOTOR VEHICLE SERVICE CONTRACTS,
INVESTMENTS BY COUNTY AND STATE MUTUAL ASSOCIATIONS,
RECIPROCAL OR INTERINSURANCE CONTRACT PREMIUM RATES,
UNAUTHORIZED ACTIVITY OF INSURANCE PRODUCERS, AND ANNUITY
CONTRACTS FOR CEMETERY AND FUNERAL MERCHANDISE AND FUNERAL
SERVICES, AND MAKING FEES AND PENALTIES APPLICABLE AND
PROVIDING EFFECTIVE AND RETROACTIVE APPLICABILITY DATES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 322.19, subsection 2, paragraph a, Code
2005, is amended to read as follows:

a. A ~~motor vehicle~~ service contract as defined in section
516E.1.

Sec. 2. Section 432.1, subsection 6, paragraph d, Code
2005, is amended to read as follows:

d. The sums prepaid by a company or association under this
subsection shall be allowed as credits against its premium tax
liability for the calendar year during which the payments are
made. If a prepayment made under this subsection exceeds the
annual premium tax liability, the excess shall be allowed as a
credit against subsequent prepayment or tax liabilities. The

commissioner of insurance shall authorize the department of
revenue to make a cash refund to an insurer, in lieu of a
credit against subsequent prepayment or tax liabilities, if
the insurer demonstrates the inability to recoup the funds
paid via a credit. The commissioner shall adopt rules
establishing eligibility criteria for such a refund and a
refund process. The commissioner may suspend or revoke the
license of a company or association that fails to make a
prepayment on or before the due date.

Sec. 3. Section 505A.1, Article II, section 8, Code 2005,
is amended to read as follows:

8. "Member" means the person chosen by a compacting state
as its representative to the commission, or the person's
designee. The commissioner of insurance shall be the
representative member of the compact for the state of Iowa.

Sec. 4. Section 507C.2, Code 2005, is amended by adding
the following new subsections:

NEW SUBSECTION. 01. "Affiliate" of or "affiliated" with a
specific person, means a person that directly or indirectly,
through one or more intermediaries, controls or is controlled
by, or is under common control with, the person specified.

NEW SUBSECTION. 2A. "Commodity contract" means any of the
following:

a. A contract for the purchase or sale of a commodity for
future delivery on, or subject to the rules of, a board of
trade designated as a contract market by the commodity futures
trading commission under the federal Commodity Exchange Act, 7
U.S.C. } 1 et seq., or a board of trade outside the United
States.

b. An agreement that is subject to regulation under
section 19 of the federal Commodity Exchange Act, 7 U.S.C. } 1
et seq., and that is commonly known to the commodities trade
as a margin account, margin contract, leverage account, or
leverage contract.

c. An agreement or transaction that is subject to
regulation under section 4c(b) of the federal Commodity
Exchange Act, 7 U.S.C. } 1 et seq., and that is commonly known
to the commodities trade as a commodity option.

NEW SUBSECTION. 2B. "Control" means the same as defined
in section 521A.1, subsection 3.

NEW SUBSECTION. 8A. "Forward contract" means a contract
for the purchase, sale, or transfer of a commodity, as defined
in section 1 of the federal Commodity Exchange Act, 7 U.S.C. }

3 6 l et seq., or any similar good, article, service, right, or
3 7 interest that is presently or in the future becomes the
3 8 subject of dealing in the forward contract trade, or product
3 9 or byproduct thereof, with a maturity date more than two days
3 10 after the date the contract is entered into, including, but
3 11 not limited to, a repurchase transaction, reverse repurchase
3 12 transaction, consignment, lease, swap, hedge transaction,
3 13 deposit, loan, option, allocated transaction, unallocated
3 14 transaction, or a combination of them or option on any of
3 15 them. "Forward contract" does not include a commodity
3 16 contract.

3 17 NEW SUBSECTION. 12A. "Netting agreement" means an
3 18 agreement, including terms and conditions incorporated by
3 19 reference therein, including a master agreement, which master
3 20 agreement, together with all schedules, confirmations,
3 21 definitions, and addenda thereto and transactions under any
3 22 thereof, shall be treated as one netting agreement, that
3 23 documents one or more transactions between parties to the
3 24 agreement for or involving one or more qualified financial
3 25 contracts and that provides for the netting or liquidation of
3 26 qualified financial contracts or present or future payment
3 27 obligations or payment entitlements thereunder, including
3 28 liquidation or closeout values relating to such obligations or
3 29 entitlements among the parties to the netting agreement.

3 30 NEW SUBSECTION. 13A. "Qualified financial contract" means
3 31 a commodity contract, forward contract, repurchase agreement,
3 32 securities contract, swap agreement, and any similar agreement
3 33 that the commissioner determines by regulation, resolution, or
3 34 order to be a qualified financial contract for the purposes of
3 35 this chapter.

4 1 NEW SUBSECTION. 15A. "Repurchase agreement" means an
4 2 agreement, including related terms, that provides for the
4 3 transfer of certificates of deposit, eligible bankers'
4 4 acceptances, or securities that are direct obligations of, or
4 5 that are fully guaranteed as to principal and interest by, the
4 6 United States or an agency of the United States against the
4 7 transfer of funds by the transferee of the certificates of
4 8 deposit, eligible bankers' acceptances or securities, with a
4 9 simultaneous agreement by the transferee to transfer to the
4 10 transferor certificates of deposit, eligible bankers'
4 11 acceptances, or securities as described above, at a date
4 12 certain not later than one year after the transfers or on
4 13 demand against the transfer of funds. For the purposes of
4 14 this definition, the items that may be subject to a repurchase
4 15 agreement include, but are not limited to, mortgage-related
4 16 securities, a mortgage loan, and an interest in a mortgage
4 17 loan, but shall not include any participation in a commercial
4 18 mortgage loan, unless the commissioner determines by rule,
4 19 resolution, or order to include the participation within the
4 20 meaning of the term. Repurchase agreement also applies to a
4 21 reverse repurchase agreement.

4 22 NEW SUBSECTION. 16A. "Securities contract" means a
4 23 contract for the purchase, sale, or loan of a security,
4 24 including an option for the repurchase or sale of a security,
4 25 certificate of deposit, or group or index of securities,
4 26 including an interest therein or based on the value thereof,
4 27 or an option entered into on a national securities exchange
4 28 relating to foreign currencies, or the guarantee of a
4 29 settlement of cash or securities by or to a securities
4 30 clearing agency. For the purposes of this definition, the
4 31 term "security" includes a mortgage loan, mortgage-related
4 32 securities, and an interest in any mortgage loan or mortgage=
4 33 related security.

4 34 NEW SUBSECTION. 18A. "Swap agreement" means an agreement,
4 35 including the terms and conditions incorporated by reference
5 1 in an agreement, that is a rate swap agreement, basis swap,
5 2 commodity swap, forward rate agreement, interest rate future,
5 3 interest rate option, forward foreign exchange agreement, spot
5 4 foreign exchange agreement, rate cap agreement, rate floor
5 5 agreement, rate collar agreement, currency swap agreement,
5 6 cross-currency rate swap agreement, currency future, or
5 7 currency option or any other similar agreement, and includes
5 8 any combination of agreements and an option to enter into an
5 9 agreement.

5 10 Sec. 5. NEW SECTION. 507C.28A QUALIFIED FINANCIAL
5 11 CONTRACTS.

5 12 1. Notwithstanding any other provision of this chapter to
5 13 the contrary, including any other provision of this chapter
5 14 permitting the modification of contracts, or other law of a
5 15 state, a person shall not be stayed or prohibited from
5 16 exercising any of the following:

5 17 a. A contractual right to terminate, liquidate, or close
5 18 out any netting agreement or qualified financial contract with
5 19 an insurer because of any of the following:
5 20 (1) The insolvency, financial condition, or default of the
5 21 insurer at any time, provided that the right is enforceable
5 22 under applicable law other than this chapter.
5 23 (2) The commencement of a formal delinquency proceeding
5 24 under this chapter.
5 25 b. Any right under a pledge, security, collateral, or
5 26 guarantee agreement or any other similar security arrangement
5 27 or credit support document relating to a netting agreement or
5 28 qualified financial contract.
5 29 c. Subject to any provision of section 507C.30, subsection
5 30 2, any right to set off or net out any termination value,
5 31 payment amount, or other transfer obligation arising under or
5 32 in connection with a netting agreement or qualified financial
5 33 contract where the counterparty or its guarantor is organized
5 34 under the laws of the United States or a state or foreign
5 35 jurisdiction approved by the securities valuation office or
6 1 the national association of insurance commissioners as
6 2 eligible for netting.
6 3 2. Upon termination of a netting agreement, the net or
6 4 settlement amount, if any, owed by a nondefaulting party to an
6 5 insurer against which an application or petition has been
6 6 filed under this chapter shall be transferred to or on the
6 7 order of the receiver for the insurer, even if the insurer is
6 8 the defaulting party, notwithstanding any provision in the
6 9 netting agreement that may provide that the nondefaulting
6 10 party is not required to pay any net or settlement amount due
6 11 to the defaulting party upon termination. Any limited two=
6 12 way payment provision in a netting agreement with an insurer
6 13 that has defaulted shall be deemed to be a full two-way
6 14 payment provision as against the defaulting insurer. Any such
6 15 amount shall, except to the extent it is subject to one or
6 16 more secondary liens or encumbrances, be a general asset of
6 17 the insurer.
6 18 3. In making any transfer of a netting agreement or
6 19 qualified financial contract of an insurer subject to a
6 20 proceeding under this chapter, the receiver shall do either of
6 21 the following:
6 22 a. Transfer to one party, other than an insurer subject to
6 23 a proceeding under this chapter, all netting agreements and
6 24 qualified financial contracts between a counterparty or any
6 25 affiliate of the counterparty and the insurer that is the
6 26 subject of the proceeding, including all of the following:
6 27 (1) All rights and obligations of each party under each
6 28 such netting agreement and qualified financial contract.
6 29 (2) All property, including any guarantees or credit
6 30 support documents, securing any claims of each party under
6 31 each such netting agreement and qualified financial contract.
6 32 b. Transfer none of the netting agreements, qualified
6 33 financial contracts, rights, obligations, or property referred
6 34 to in paragraph "a" with respect to the counterparty and any
6 35 affiliate of the counterparty.
7 1 4. If a receiver for an insurer makes a transfer of one or
7 2 more netting agreements or qualified financial contracts, the
7 3 receiver shall use the receiver's best efforts to notify any
7 4 person who is a party to the netting agreements or qualified
7 5 financial contracts of the transfer by noon of the receiver's
7 6 local time on the business day following the transfer. For
7 7 purposes of this subsection, "business day" means a day other
7 8 than a Saturday, Sunday, or any day on which either the New
7 9 York stock exchange or the federal reserve bank of New York is
7 10 closed.
7 11 5. Notwithstanding any other provision of this chapter to
7 12 the contrary, a receiver shall not avoid a transfer of money
7 13 or other property arising under or in connection with a
7 14 netting agreement or qualified financial contract, or any
7 15 pledge security, collateral, or guarantee agreement or any
7 16 other similar security arrangement or credit support document
7 17 relating to a netting agreement or qualified financial
7 18 contract, that is made before the commencement of a formal
7 19 delinquency proceeding under this chapter. However, a
7 20 transfer may be avoided under section 507C.28 if the transfer
7 21 was made with actual intent to hinder, delay, or defraud the
7 22 insurer, a receiver appointed for the insurer, or existing or
7 23 future creditors.
7 24 6. In exercising any of its powers under this chapter to
7 25 disaffirm or repudiate a netting agreement or qualified
7 26 financial contract, the receiver must take action with respect
7 27 to each netting agreement or qualified financial contract and

7 28 all transactions entered into in connection therewith, in its
7 29 entirety. Notwithstanding any other provision of this chapter
7 30 to the contrary, any claim of a counterparty against the
7 31 estate arising from the receiver's disaffirmance or
7 32 repudiation of a netting agreement or qualified financial
7 33 contract that has not been previously affirmed in the
7 34 liquidation or in the immediately preceding rehabilitation
7 35 case shall be determined and shall be allowed or disallowed as
8 1 if the claim had arisen before the date of the filing of the
8 2 petition for liquidation or, if a rehabilitation proceeding is
8 3 converted to a liquidation proceeding, as if the claim had
8 4 arisen before the date of filing the petition for
8 5 rehabilitation. The amount of the claim shall be the actual
8 6 direct compensatory damages determined as of the date of the
8 7 disaffirmance or repudiation of the netting agreement or
8 8 qualified financial contract. The term "actual direct
8 9 compensatory damages" does not include punitive or exemplary
8 10 damages, damages for lost profit or lost opportunity, or
8 11 damages for pain and suffering, but does include normal and
8 12 reasonable costs of cover or other reasonable measures of
8 13 damages utilized in the derivatives market for the contract
8 14 and agreement claims.

8 15 7. The term "contractual right" as used in this section
8 16 includes any right, whether or not evidenced in writing,
8 17 arising under statutory or common law, a rule or bylaw of a
8 18 national securities exchange, national securities clearing
8 19 organization or securities clearing agency, a rule or bylaw,
8 20 or a resolution of the governing body of a contract market or
8 21 its clearing organization, or under law merchant.

8 22 8. This section shall not apply to persons who are
8 23 affiliates of the insurer that is the subject of the
8 24 proceeding.

8 25 9. All rights of a counterparty under this chapter shall
8 26 apply to netting agreements and qualified financial contracts
8 27 entered into on behalf of the general account or separate
8 28 accounts, provided that the assets of each separate account
8 29 are available only to counterparties to netting agreements and
8 30 qualified financial contracts entered into on behalf of that
8 31 separate account.

8 32 Sec. 6. Section 507C.30, subsection 2, paragraph a,
8 33 subparagraphs (4) and (5), Code 2005, are amended to read as
8 34 follows:

8 35 (4) The obligation of the person is owed to the affiliate
9 1 of the insurer, or any other entity or association other than
9 2 the insurer.

9 3 ~~(4)~~ (5) The obligation of the person is to pay an
9 4 assessment levied against the members or subscribers of the
9 5 insurer, or is to pay a balance upon a subscription to the
9 6 capital stock of the insurer, or is in any other way in the
9 7 nature of a capital contribution.

9 8 ~~(5)~~ (6) The obligation of the person is to pay earned
9 9 premiums to the insurer.

9 10 Sec. 7. Section 509.3, subsection 1, Code 2005, is amended
9 11 to read as follows:

9 12 1. The policy shall have a provision that a copy of the
9 13 application, if any, of the policyholder shall be attached to
9 14 the policy when issued or shall be furnished to the
9 15 policyholder within thirty days after the policy is issued,
9 16 that all statements made by the policyholder or by the persons
9 17 insured shall be deemed representations and not warranties,
9 18 and that no statement made by any person insured shall be used
9 19 in any contest unless a copy of the instrument containing the
9 20 statement is or has been furnished to such person.

9 21 Sec. 8. Section 513B.12, Code 2005, is amended by adding
9 22 the following new subsection:

9 23 NEW SUBSECTION. 6. During the period of time that the
9 24 operation of the small employer carrier reinsurance program is
9 25 suspended pursuant to section 513B.13, subsection 14, a small
9 26 employer carrier is not required to make an application to
9 27 become a risk=assuming carrier pursuant to this section.

9 28 Sec. 9. Section 513B.13, subsection 3, Code 2005, is
9 29 amended by adding the following new paragraph:

9 30 NEW PARAGRAPH. e. During the period of time that the
9 31 program is suspended pursuant to subsection 14, the size of
9 32 the board may be reduced with the approval of the
9 33 commissioner.

9 34 Sec. 10. Section 513B.17, subsection 4, Code 2005, is
9 35 amended by striking the subsection.

10 1 Sec. 11. Section 513C.6, Code 2005, is amended by adding
10 2 the following new subsection:

10 3 NEW SUBSECTION. 7. An individual who has coverage as a

10 4 dependent under a basic or standard health benefit plan may,
10 5 when that individual is no longer a dependent under such
10 6 coverage, elect to continue coverage under the basic or
10 7 standard health benefit plan if the individual so elects
10 8 immediately upon termination of the coverage under which the
10 9 individual was covered as a dependent.

10 10 Sec. 12. Section 514A.5, subsection 1, Code 2005, is
10 11 amended to read as follows:

10 12 1. The insured shall not be bound by any statement made in
10 13 an application for a policy unless a copy of such application
10 14 is ~~attached to or~~ endorsed on the policy when issued as a part
10 15 thereof or is furnished to the policyholder within thirty days
10 16 after the policy is issued. If any such policy delivered or
10 17 issued for delivery to any person in this state shall be
10 18 reinstated or renewed, and the insured or the beneficiary or
10 19 assignee of such policy shall make written request to the
10 20 insurer for a copy of the application, if any, for such
10 21 reinstatement or renewal, the insurer shall within fifteen
10 22 days after the receipt of such request at its home office or
10 23 any branch office of the insurer, deliver or mail to the
10 24 person making such request, a copy of such application. If
10 25 such copy shall not be so delivered or mailed, the insurer
10 26 shall be precluded from introducing such application as
10 27 evidence in any action or proceeding based upon or involving
10 28 such policy or its reinstatement or renewal.

10 29 Sec. 13. Section 514B.13, unnumbered paragraph 2, Code
10 30 2005, is amended to read as follows:

10 31 Health maintenance organizations providing services
10 32 exclusively on a group contract basis may limit the open
10 33 enrollment provided for in this section to all members of the
10 34 group covered by the contract, including those members of the
10 35 group who previously waived coverage.

11 1 Sec. 14. Section 514E.2, subsection 1, paragraph a, Code
11 2 2005, is amended to read as follows:

11 3 a. All carriers and all organized delivery systems
11 4 licensed by the director of public health providing health
11 5 insurance or health care services in Iowa, whether on an
11 6 individual or group basis, and all other insurers designated
11 7 by the association's board of directors and approved by the
11 8 commissioner shall be members of the association.

11 9 Sec. 15. Section 514E.2, subsection 5, paragraph 1, Code
11 10 2005, is amended to read as follows:

11 11 1. Develop a method of advising applicants of the
11 12 availability of other coverages outside the association, ~~and~~
11 13 ~~shall promulgate a list of health conditions the existence of~~
11 14 ~~which would make an applicant eligible without demonstrating a~~
11 15 ~~rejection of coverage by one carrier.~~

11 16 Sec. 16. Section 514E.2, subsection 7, Code 2005, is
11 17 amended by adding the following new unnumbered paragraph:
11 18 NEW UNNUMBERED PARAGRAPH. For purposes of this subsection,
11 19 "total health insurance premiums" and "payments for subscriber
11 20 contracts" include, without limitation, premiums or other
11 21 amounts paid to or received by a member for individual and
11 22 group health plan care coverage provided under any chapter of
11 23 the Code or Acts, and "paid losses" includes, without
11 24 limitation, claims paid by a member operating on a self-funded
11 25 basis for individual and group health plan care coverage
11 26 provided under any chapter of the Code or Acts. For purposes
11 27 of calculating and conducting the assessment, the association
11 28 shall have the express authority to require members to report
11 29 on an annual basis each member's total health insurance
11 30 premiums and payments for subscriber contracts and paid
11 31 losses. A member is liable for its share of the assessment
11 32 calculated in accordance with this section regardless of
11 33 whether it participates in the individual insurance market.

11 34 Sec. 17. Section 514E.7, subsection 1, Code 2005, is
11 35 amended by adding the following new paragraphs:

12 1 NEW PARAGRAPH. d. That the individual has a health
12 2 condition that is established by the association's board of
12 3 directors, with the approval of the commissioner, to be
12 4 eligible for plan coverage.

12 5 NEW PARAGRAPH. e. That the individual has coverage under
12 6 a basic or standard health benefit plan under chapter 513C.

12 7 Sec. 18. Section 514E.8, subsection 1, Code 2005, is
12 8 amended to read as follows:

12 9 1. An association policy shall contain provisions under
12 10 which the association is obligated to renew the coverage for
12 11 an individual until the day the individual becomes eligible
12 12 for Medicare coverage based on age, provided that any
12 13 individual who is covered by an association policy and is
12 14 eligible for Medicare coverage based on age prior to January

12 15 1. 2005, may continue to renew the coverage under the
12 16 association policy.

12 17 Sec. 19. Section 515.138, sixth subsection, paragraph
12 18 entitled concealment == fraud, Code 2005, is amended to read
12 19 as follows:

12 20 CONCEALMENT == FRAUD. This entire policy shall be void if,
12 21 whether before or after a loss, ~~the an~~ insured has willfully
12 22 concealed or misrepresented any material fact or circumstance
12 23 concerning this insurance or the subject thereof, or the
12 24 interest of ~~the an~~ insured therein, or in case of any fraud or
12 25 false swearing by ~~the an~~ insured relating thereto.

12 26 Sec. 20. Section 515.138, sixth subsection, paragraph
12 27 entitled perils not included, Code 2005, is amended to read as
12 28 follows:

12 29 PERILS NOT INCLUDED. This company shall not be liable for
12 30 loss by fire or other perils insured against in this policy
12 31 caused, directly or indirectly, by: (a) Enemy attack by armed
12 32 forces, including action taken by military, naval or air
12 33 forces in resisting an actual or an immediately impending
12 34 enemy attack; (b) invasion; (c) insurrection; (d) rebellion;
12 35 (e) revolution; (f) civil war; (g) usurped power; (h) order of
13 1 any civil authority except acts of destruction at the time of
13 2 and for the purpose of preventing the spread of fire, provided
13 3 that such fire did not originate from any of the perils
13 4 excluded by this policy; (i) neglect of ~~the an~~ insured to use
13 5 all reasonable means to save and preserve the property at and
13 6 after a loss, or when the property is endangered by fire in
13 7 neighboring premises; (j) nor shall this company be liable for
13 8 loss by theft.

13 9 Sec. 21. Section 515.138, sixth subsection, paragraph
13 10 entitled conditions suspending or restricting insurance, Code
13 11 2005, is amended to read as follows:

13 12 CONDITIONS SUSPENDING OR RESTRICTING INSURANCE. Unless
13 13 otherwise provided in writing added hereto this company shall
13 14 not be liable for loss occurring under any of the following
13 15 circumstances:

13 16 a. While the hazard is created or increased by any means
13 17 within the control or knowledge of ~~the an~~ insured; ~~or,~~

13 18 b. While a described building, whether intended for
13 19 occupancy by owner or tenant, is vacant or unoccupied beyond a
13 20 period of sixty consecutive days; ~~or,~~

13 21 c. As a result of explosion or riot, unless fire ensue,
13 22 and in that event for loss by fire only.

13 23 Sec. 22. Section 515B.2, subsection 4, paragraph b,
13 24 subparagraph (7), Code 2005, is amended to read as follows:

13 25 (7) That would otherwise be a covered claim, but is an
13 26 obligation to or on behalf of a person who has a net worth, ~~or~~
13 27 ~~the date of the occurrence giving rise to the claim, greater~~
13 28 than that allowed by the guarantee fund law of the state of
13 29 residence of the claimant, and which state has denied coverage
13 30 to that claimant on that basis.

13 31 Sec. 23. Section 515B.17, Code 2005, is amended to read as
13 32 follows:

13 33 515B.17 TIMELY FILING OF CLAIMS.

13 34 Notwithstanding any other provision of this chapter, a
13 35 covered claim shall not include any claim filed with the
14 1 association after twenty-four months from the date of the
14 2 order of liquidation or after the final date set by the court
14 3 for the filing of claims against the insolvent insurer or its
14 4 receiver, whichever occurs first.

14 5 Sec. 24. Section 515F.36, subsection 2, Code 2005, is
14 6 amended to read as follows:

14 7 2. The committee shall consist of seven members, ~~one of~~
14 8 ~~whom.~~

14 9 a. Five of the members shall be elected by to the
14 10 committee, with one member from each of the following:

14 11 a- (1) American insurance association.

14 12 b- (2) Alliance of American insurers Property casualty
14 13 insurers association of America.

14 14 c. ~~National association of independent insurers.~~

14 15 d- (3) Iowa insurance institute.

14 16 e- (4) Mutual insurance association of Iowa.

14 17 f- (5) Independent insurance agents of Iowa.

14 18 g- b. All other insurers Two of the members shall be
14 19 elected to the committee by other insurer members of the plan.

14 20 Sec. 25. Section 516E.1, Code 2005, is amended to read as
14 21 follows:

14 22 516E.1 DEFINITIONS.

14 23 For the purposes of this chapter:

14 24 1. "Administrator" means the deputy administrator
14 25 appointed pursuant to section 502.601.

14 26 ~~1-~~ 2. "Commissioner" means the commissioner of insurance
14 27 as provided in section 505.1 ~~or the deputy administrator~~
~~14 28 appointed under section 502.601.~~

14 29 3. "Maintenance agreement" means a contract of limited
14 30 duration that provides for scheduled maintenance only.

14 31 ~~2-~~ 4. "Mechanical breakdown insurance" means a policy,
14 32 contract, or agreement that undertakes to perform or provide
14 33 repair or replacement service, or indemnification for that
14 34 service, for the operational or structural failure of a motor
14 35 vehicle due to a defect in materials or skill of work or
15 1 normal wear and tear, and that is issued by an insurance
15 2 company authorized to do business in this state.

15 3 ~~3-~~ 5. "Motor vehicle" means any self-propelled vehicle
15 4 subject to registration under chapter 321.

15 5 ~~4.~~ "Motor vehicle service contract" or "service contract"
15 6 means a contract or agreement given for consideration over and
15 7 above the lease or purchase price of a new or used motor
15 8 vehicle having a gross vehicle weight rating of less than
15 9 sixteen thousand pounds that undertakes to perform or provide
15 10 repair or replacement service, or indemnification for that
15 11 service, for the operational or structural failure of a motor
15 12 vehicle due to a defect in materials or skill of work or
15 13 normal wear and tear, but does not include mechanical
15 14 breakdown insurance or maintenance agreements providing
15 15 scheduled repair and maintenance services for leased vehicles.

15 16 ~~5-~~ 6. "Motor vehicle service contract provider" or
15 17 "provider" "Provider" means a person who issues, makes,
15 18 provides, sells, or offers to sell a motor vehicle service
15 19 contract.

15 20 ~~6.~~ "Motor vehicle service contract reimbursement insurance
15 21 policy" or "reimbursement insurance policy" means a policy of
15 22 insurance providing coverage for all obligations and
15 23 liabilities incurred by a motor vehicle service contract
15 24 provider under the terms of motor vehicle service contracts
15 25 issued by the provider.

15 26 7. "Record" means information stored or preserved in any
15 27 medium, including in an electronic or paper format. A record
15 28 includes but is not limited to documents, books, publications,
15 29 accounts, correspondence, memoranda, agreements, computer
15 30 files, film, microfilm, photographs, and audio or visual
15 31 tapes.

15 32 8. "Reimbursement insurance policy" means a policy of
15 33 insurance issued to a service company and pursuant to which
15 34 the insurer agrees, for the benefit of the service contract
15 35 holders, to discharge all of the obligations and liabilities
16 1 of the service company under the terms of service contracts
16 2 issued by the service company in the event of nonperformance
16 3 by the service company. For the purposes of this definition,
16 4 "all obligations and liabilities" include, but are not limited
16 5 to, failure of the service company to perform under the
16 6 service contract and the return of the unearned service
16 7 company fee in the event of the service company's
16 8 unwillingness or inability to reimburse the unearned service
16 9 company fee in the event of termination of a service contract.

16 10 9. "Service company" means a person who issues and is
16 11 obligated to perform, or arrange for the performance of,
16 12 services pursuant to a service contract.

16 13 10. "Service contract" means a contract or agreement given
16 14 for consideration over and above the lease or purchase price
16 15 of a new or used motor vehicle having a gross vehicle weight
16 16 rating of less than sixteen thousand pounds, that undertakes
16 17 to perform or provide repair or replacement service, or
16 18 indemnification for that service, for the operation or
16 19 structural failure of a motor vehicle due to a defect in
16 20 materials or skill of work or normal wear and tear, but does
16 21 not include mechanical breakdown insurance or maintenance
16 22 agreements.

16 23 ~~8-~~ 11. "Service contract holder" means a person who
16 24 purchases a motor vehicle service contract.

16 25 12. "Third-party administrator" means a person who
16 26 contracts with a service company to be responsible for the
16 27 administration of the service company's service contracts,
16 28 including processing and adjudicating claims pursuant to a
16 29 service contract.

16 30 Sec. 26. Section 516E.2, Code 2005, is amended to read as
16 31 follows:

16 32 516E.2 ~~INSURANCE REQUIRED~~ REQUIREMENTS FOR DOING BUSINESS.

16 33 1. A motor vehicle service contract shall not be issued,
16 34 sold, or offered for sale in this state unless the provider of
16 35 the service contract is insured under a motor vehicle service
17 1 contract reimbursement insurance policy issued by an insurer

~~17 2 authorized to do business in this state. service company does~~
~~17 3 all of the following:~~

~~17 4 a. Provides a receipt for the purchase of the service~~
~~17 5 contract to the service contract holder.~~
~~17 6 b. Provides a copy of the service contract to the service~~
~~17 7 contract holder within a reasonable period of time after the~~
~~17 8 date of purchase of the service contract.~~

~~17 9 2. The issuer of a reimbursement insurance policy shall~~
~~17 10 not cancel a reimbursement insurance policy unless a written~~
~~17 11 notice has been received by the commissioner and by each~~
~~17 12 applicable provider, including automobile dealers and third-~~
~~17 13 party administrators. The notice shall fix the date of~~
~~17 14 cancellation at a date no earlier than ten days after receipt~~
~~17 15 of the notice by the commissioner and by the applicable~~
~~17 16 provider. The notice may be made in person or by mail and a~~
~~17 17 post office department receipt of certified or registered~~
~~17 18 mailing shall be deemed proof of receipt of the notice. A~~
~~17 19 service company shall not issue a service contract or arrange~~
~~17 20 to perform services pursuant to a service contract unless the~~
~~17 21 service company is registered with the commissioner. A~~
~~17 22 service company shall file a registration with the~~
~~17 23 commissioner annually, on a form prescribed by the~~
~~17 24 commissioner, accompanied by a registration fee in the amount~~
~~17 25 of five hundred dollars.~~

~~17 26 3. In order to assure the faithful performance of a~~
~~17 27 service company's obligations to its service contract holders,~~
~~17 28 the administrator may by rule require financial responsibility~~
~~17 29 standards.~~

~~17 30 4. The commissioner may issue an order denying,~~
~~17 31 suspending, or revoking any registration if the commissioner~~
~~17 32 finds that the order is in the public interest and finds any~~
~~17 33 of the following:~~

~~17 34 a. The registration is incomplete in any material respect~~
~~17 35 or contains any statement which, in light of the circumstances~~
~~18 1 under which the registration was made, is determined by the~~
~~18 2 commissioner to be false or misleading with respect to any~~
~~18 3 material fact.~~

~~18 4 b. A provision of this chapter or a rule, order, or~~
~~18 5 condition lawfully imposed under this chapter, has been~~
~~18 6 willfully violated in connection with the sale of service~~
~~18 7 contracts by any of the following persons:~~

~~18 8 (1) The person filing the registration, but only if the~~
~~18 9 person filing the registration is directly or indirectly~~
~~18 10 controlled by or acting for the service company.~~

~~18 11 (2) The service company, any partner, officer, or director~~
~~18 12 of the service company or any person occupying a similar~~
~~18 13 status or performing similar functions for the service~~
~~18 14 company, or any person directly or indirectly controlling or~~
~~18 15 controlled by the service company.~~

~~18 16 c. The service company has not filed a document or~~
~~18 17 information required under this chapter.~~

~~18 18 d. The service company's literature or advertising is~~
~~18 19 misleading, incorrect, incomplete, or deceptive.~~

~~18 20 e. The service company has failed to pay the proper filing~~
~~18 21 fee. However, the commissioner shall vacate an order issued~~
~~18 22 pursuant to this paragraph when the proper fee has been paid.~~

~~18 23 f. The service company does not have the minimum net~~
~~18 24 worth, as determined in accordance with generally accepted~~
~~18 25 accounting principles, required under this chapter.~~

~~18 26 The commissioner may vacate or modify an order issued under~~
~~18 27 this subsection if the commissioner finds that the conditions~~
~~18 28 which prompted the entry of the order have changed or that it~~
~~18 29 is otherwise in the public interest to do so.~~

~~18 30 Sec. 27. Section 516E.3, Code 2005, is amended to read as~~
~~18 31 follows:~~

~~18 32 516E.3 FILING AND FEE REQUIREMENTS.~~

~~18 33 1. SERVICE COMPANIES.~~

~~18 34 a. A motor vehicle service contract shall not be issued,~~
~~18 35 sold, or offered for sale in this state unless a true and~~
~~19 1 correct copy of the service contract, and the provider's~~
~~19 2 service company's reimbursement insurance policy have been~~
~~19 3 filed with the commissioner by the service company.~~

~~19 4 2. b. In addition to any other required filings, an~~
~~19 5 accurate copy of the service contract and the provider's~~
~~19 6 reimbursement insurance policy, the A service company shall~~
~~19 7 file a consent to service of process on the commissioner, and~~
~~19 8 such other information as the commissioner requires shall be~~
~~19 9 filed annually with the commissioner no later than the first~~
~~19 10 day of August. If the first day of August falls on a weekend~~
~~19 11 or a holiday, the date for filing shall be the next business~~
~~19 12 day. In addition to the annual filing, the provider service~~

19 13 company shall promptly file copies of any amended documents if
19 14 material amendments have been made in the materials on file
19 15 with the commissioner. If an annual filing is made after the
19 16 first of August and sales have occurred during the period when
19 17 the ~~provider service company~~ was in noncompliance with this
19 18 section, the commissioner shall assess an additional filing
19 19 fee that is two times the amount normally required for an
19 20 annual filing. A fee shall not be charged for interim filings
19 21 made to keep the materials filed with the division current and
19 22 accurate. The annual filing shall be accompanied by a filing
19 23 fee determined by the commissioner which shall be sufficient
19 24 to defray the costs of administering this chapter.

19 25 ~~3. a. c. A motor vehicle service contract provider~~
19 26 ~~service company shall promptly file the following information~~
19 27 ~~with the insurance commissioner:~~

19 28 (1) A change in the name or ownership of the ~~provider~~
19 29 ~~service company.~~

19 30 (2) The termination of the ~~provider's service company's~~
19 31 ~~business.~~

19 32 ~~b. (3) The provider service company is not required to~~
19 33 ~~submit a fee as part of this filing.~~

19 34 2. PROVIDERS.

19 35 a. A service contract shall not be sold or offered for
20 1 sale in this state unless a true and correct copy of the
20 2 service contract has been filed with the commissioner by the
20 3 provider.

20 4 b. A provider shall file a consent to service of process
20 5 on the commissioner and such other information as the
20 6 commissioner requires annually with the commissioner no later
20 7 than August 1. If August 1 falls on a weekend or a holiday,
20 8 the date for filing shall be the next business day. In
20 9 addition to the annual filing, the provider shall promptly
20 10 file copies of any amended documents if material amendments
20 11 have been made in the materials on file with the commissioner.
20 12 If an annual filing is made after August 1 and sales have
20 13 occurred during the period when the provider was in
20 14 noncompliance with this section, the commissioner shall assess
20 15 an additional filing fee that is two times the amount normally
20 16 required for an annual filing. A fee shall not be charged for
20 17 interim filings made to keep the materials filed with the
20 18 division current and accurate. The annual filing shall be
20 19 accompanied by a filing fee in the amount of one hundred
20 20 dollars.

20 21 c. A provider shall promptly file the following
20 22 information with the commissioner:

20 23 (1) A change in the name or ownership of the provider.

20 24 (2) The termination of the provider's business.

20 25 (3) A provider is not required to submit a fee as part of
20 26 this filing.

20 27 Sec. 28. Section 516E.4, Code 2005, is amended by striking
20 28 the section and inserting in lieu thereof the following:

20 29 516E.4 REIMBURSEMENT INSURANCE POLICY REQUIREMENTS.

20 30 1. REQUIRED DISCLOSURES. A reimbursement insurance policy
20 31 insuring a service contract issued, sold, or offered for sale
20 32 in this state shall conspicuously state that, upon failure of
20 33 the service company to perform under the contract, including
20 34 but not limited to a failure to return the unearned
20 35 consideration paid for a service contract in excess of the
21 1 premium, the insurer that issued the policy shall pay on
21 2 behalf of the service company any amount that is owed to the
21 3 service contract holder by the service company to satisfy the
21 4 service company's obligations under a service contract issued
21 5 or sold by the service company.

21 6 2. TERMINATION. As applicable, an insurer that issued a
21 7 reimbursement insurance policy shall not terminate the policy
21 8 unless a written notice has been received by the commissioner
21 9 and by each applicable provider, service company, or third=
21 10 party administrator. The notice shall fix the date of
21 11 termination at a date no earlier than ten days after receipt
21 12 of the notice by the commissioner and by the applicable
21 13 provider, service company, or third-party administrator. The
21 14 notice may be delivered in person or sent by mail, and a
21 15 restricted certified mail return receipt shall be deemed proof
21 16 of receipt of notice. The termination of a reimbursement
21 17 insurance policy shall not reduce the issuer's responsibility
21 18 for a service contract issued by a service company prior to
21 19 the date of termination.

21 20 3. INDEMNIFICATION OR SUBROGATION. This section does not
21 21 prevent or limit the right of an insurer that issued a
21 22 reimbursement insurance policy to seek indemnification from or
21 23 subrogation against a service company if the insurer pays or

21 24 is obligated to pay a service contract holder sums that the
21 25 service company was obligated to pay pursuant to the
21 26 provisions of a service contract or pursuant to a contractual
21 27 agreement.

21 28 Sec. 29. Section 516E.5, Code 2005, is amended to read as
21 29 follows:

21 30 516E.5 DISCLOSURE TO SERVICE CONTRACT HOLDERS == CONTRACT
21 31 PROVISIONS.

21 32 1. A ~~motor vehicle~~ service contract shall not be issued,
21 33 sold, or offered for sale in this state unless the contract
21 34 conspicuously states that the obligations of the ~~provider~~
21 35 service company to the service contract holder are guaranteed
22 1 under the service contract a reimbursement insurance policy,
22 2 and unless the including a statement in substantially the
22 3 following form: "Obligations of the service company under
22 4 this service contract are guaranteed under a reimbursement
22 5 insurance policy. If the service company fails to pay or
22 6 provide service on a claim within sixty days after proof of
22 7 loss has been filed with the service company, the service
22 8 contract holder is entitled to make a claim directly against
22 9 the reimbursement insurance policy." A claim against a
22 10 reimbursement insurance policy shall also include a claim for
22 11 return of the unearned consideration paid for the service
22 12 contract in excess of the premium paid. A service contract
22 13 shall conspicuously states state the name and address of the
22 14 issuer of the reimbursement insurance policy for that service
22 15 contract.

22 16 2. A ~~motor vehicle~~ service contract shall be written in
22 17 clear, understandable language and the entire contract shall
22 18 be printed or typed in easy-to-read type, size, and style, and
22 19 shall not be issued, sold, or offered for sale in this state
22 20 unless the contract does all of the following:

22 21 a. Clearly and conspicuously states the name and address
22 22 of the service company, describes the service company's
22 23 obligations to perform services or to arrange for the
22 24 performance of services under the service contract, and states
22 25 that the obligations of the provider service company to the
22 26 service contract holder are guaranteed under a service
22 27 contract reimbursement insurance policy.

22 28 b. Clearly and conspicuously states the name and address
22 29 of the issuer of the reimbursement insurance policy.

22 30 c. Identifies the ~~motor vehicle~~ service contract provider,
22 31 the seller of the motor vehicle company obligated to perform
22 32 the service under the service contract, any third-party
22 33 administrator, and the service contract holder to the extent
22 34 that the name and address of the service contract holder has
22 35 been furnished by the service contract holder.

23 1 d. Sets forth the total purchase price of the service
23 2 contract and the terms under which the purchase price of the
23 3 service contract is to be paid.

23 4 e. Sets forth the procedure for making a claim, including
23 5 a telephone number.

23 6 f. Clearly and conspicuously states the dates that
23 7 coverage starts and ends and the existence, terms, and
23 8 conditions of a deductible amount, if any.

23 9 g. Specifies the merchandise or services, or both, to be
23 10 provided and clearly states any and all limitations,
23 11 exceptions, or exclusions.

23 12 h. Sets forth the conditions on which substitution of
23 13 services will be allowed.

23 14 i. Sets forth all of the obligations and duties of the
23 15 service contract holder, including but not limited to the duty
23 16 to protect against any further damage to the motor vehicle,
23 17 and the obligation to notify the ~~provider~~ service company in
23 18 advance of any repair, if any.

23 19 j. Sets forth any and all terms, restrictions, or
23 20 conditions governing transferability of the service contract,
23 21 if any.

23 22 k. Describes or references any and all applicable
23 23 provisions of the Iowa consumer credit code, chapter 537.

23 24 l. States the name and address of the commissioner.

23 25 m. Sets forth any and all conditions on which the service
23 26 contract may be canceled, the terms and conditions for the
23 27 refund of any portion of the purchase price, the identity of
23 28 the person primarily liable to provide any refund, and the
23 29 identity of any other person liable to provide any portion of
23 30 the refund. If the service contract holder cancels the
23 31 service contract, the service company shall mail a written
23 32 notice of termination to the service contract holder within
23 33 fifteen days of the date of the termination.

23 34 n. Permits the service contract holder to cancel and

23 35 return the service contract within at least twenty days of the
24 1 date of mailing the service contract to the service contract
24 2 holder or within at least ten days after delivery of the
24 3 service contract if the service contract is delivered at the
24 4 time of sale of the service contract, or within a longer
24 5 period of time as permitted under the service contract. If no
24 6 claim has been made under the service contract prior to its
24 7 return, the service contract is void and the full purchase
24 8 price of the service contract shall be refunded to the service
24 9 contract holder. A ten percent penalty shall be added each
24 10 month to a refund that is not paid to a service contract
24 11 holder within thirty days of the return of the service
24 12 contract to the service company. The applicable time period
24 13 for cancellation of a service contract shall apply only to the
24 14 original service contract holder that purchased the service
24 15 contract.

24 16 3. A complete copy of the terms of the ~~motor vehicle~~
24 17 service contract shall be delivered to the prospective service
24 18 contract holder at or before the time that the prospective
24 19 service contract holder makes application for the service
24 20 contract. If there is no separate application procedure, then
24 21 a complete copy of the ~~motor vehicle~~ service contract shall be
24 22 delivered to the service contract holder at or before the time
24 23 the service contract holder becomes bound under the contract.

24 24 Sec. 30. Section 516E.6, Code 2005, is amended to read as
24 25 follows:

24 26 516E.6 COMMISSIONER MAY PROHIBIT CERTAIN SALES ==
24 27 INJUNCTION.

24 28 The commissioner shall issue an order instructing ~~the a~~
24 29 ~~provider, service company, or third-party administrator~~ to
24 30 cease and desist from selling or offering for sale ~~motor~~
24 31 ~~vehicle~~ service contracts if the commissioner determines that
24 32 the ~~provider, service company, or third-party administrator~~
24 33 has failed to comply with a provision of this chapter. Upon
24 34 the failure of a ~~motor vehicle provider, service contract~~
24 35 ~~provider company, or third-party administrator~~ to obey a cease
25 1 and desist order issued by the commissioner, the commissioner
25 2 may give notice in writing of the failure to the attorney
25 3 general, who shall immediately commence an action against the
25 4 ~~provider, service company, or third-party administrator~~ to
25 5 enjoin the ~~provider, service company, or third-party~~
25 6 ~~administrator~~ from selling or offering for sale ~~motor vehicle~~
25 7 service contracts until the ~~provider, service company, or~~
25 8 ~~third-party administrator~~ complies with the provisions of this
25 9 chapter and the district court may issue the injunction.

25 10 Sec. 31. Section 516E.7, Code 2005, is amended to read as
25 11 follows:

25 12 516E.7 RULES.

25 13 The commissioner may adopt rules as provided in chapter 17A
25 14 to administer and enforce the provisions of this chapter and
25 15 to establish minimum standards for disclosure of ~~motor vehicle~~
25 16 service contract coverage limitations and exclusions.

25 17 Sec. 32. Section 516E.8, Code 2005, is amended to read as
25 18 follows:

25 19 516E.8 EXEMPTION.

25 20 This chapter does not apply to a ~~motor vehicle~~ service
25 21 contract issued by the manufacturer or importer of the motor
25 22 vehicle covered by the service contract or to any third party
25 23 acting in an administrative capacity on the manufacturer's
25 24 behalf in connection with that service contract.

25 25 Sec. 33. Section 516E.9, Code 2005, is amended to read as
25 26 follows:

25 27 516E.9 MISREPRESENTATIONS OF STATE APPROVAL.

25 28 A ~~motor vehicle~~ service contract ~~provider company~~ shall not
25 29 represent or imply in any manner that the ~~provider service~~
25 30 ~~company~~ has been sponsored, recommended, or approved or that
25 31 the ~~provider's service company's~~ abilities or qualifications
25 32 have in any respect been passed upon by the state of Iowa,
25 33 including the commissioner, the insurance division, or the
25 34 division's securities bureau.

25 35 Sec. 34. Section 516E.10, Code 2005, is amended to read as
26 1 follows:

26 2 516E.10 PROHIBITED ACTS == UNFAIR OR DECEPTIVE TRADE
26 3 PRACTICES.

26 4 1. MISREPRESENTATIONS, FALSE ADVERTISING, AND UNFAIR
26 5 PRACTICES.

26 6 a. Unless licensed as an insurance company, a ~~motor~~
26 7 ~~vehicle~~ service contract ~~provider company~~ shall not use in its
26 8 name, contracts, or literature, the words "insurance",
26 9 "casualty", "surety", "mutual", or any other words descriptive
26 10 of the insurance, casualty, or surety business or deceptively

26 11 similar to the name or description of any insurance or surety
26 12 corporation, or any other ~~motor vehicle service contract~~
~~26 13 provider company.~~

26 14 b. A ~~motor vehicle service contract provider company~~ shall
26 15 not, without the written consent of the purchaser, knowingly
26 16 charge a purchaser for duplication of coverage or duties
26 17 required by state or federal law, a warranty expressly issued
26 18 by a manufacturer or seller of a product, or an implied
26 19 warranty enforceable against the lessor, seller, or
26 20 manufacturer of a product.

26 21 c. A ~~motor vehicle provider, service contract provider~~
26 22 ~~company, or third-party administrator~~ shall not make, permit,
26 23 or cause a false or misleading statement, either oral or
26 24 written, in connection with the sale, offer to sell, or
26 25 advertisement of a ~~motor vehicle service contract.~~

26 26 d. A ~~motor vehicle provider, service contract provider~~
26 27 ~~company, or third-party administrator~~ shall not permit or
26 28 cause the omission of a material statement in connection with
26 29 the sale, offer to sell, or advertisement of a ~~motor vehicle~~
26 30 service contract, which under the circumstances should have
26 31 been made in order to make the statement not misleading.

26 32 e. A ~~motor vehicle provider, service contract provider~~
26 33 ~~company, or third-party administrator~~ shall not make, permit,
26 34 or cause to be made a false or misleading statement, either
26 35 oral or written, about the benefits or services available
27 1 under the ~~motor vehicle service contract.~~

27 2 f. A ~~motor vehicle provider, service contract provider~~
27 3 ~~company, or third-party administrator~~ shall not make, permit,
27 4 or cause to be made a statement of practice which has the
27 5 effect of creating or maintaining a fraud.

27 6 g. A ~~motor vehicle provider, service contract provider~~
27 7 ~~company, or third-party administrator~~ shall not make, publish,
27 8 disseminate, circulate, or place before the public, or cause,
27 9 directly or indirectly, to be made, published, disseminated,
27 10 circulated, or placed before the public in a newspaper,
27 11 magazine, or other publication, or in the form of a notice,
27 12 circular, pamphlet, letter, or poster, or over a radio or
27 13 television station, or in any other way, an advertisement,
27 14 announcement, or statement containing an assertion,
27 15 representation, or statement with respect to the ~~motor vehicle~~
27 16 service contract industry or with respect to a ~~motor vehicle~~
27 17 ~~provider, service contract provider company, or third-party~~
27 18 ~~administrator~~ which is untrue, deceptive, or misleading. It
27 19 is deceptive or misleading to use any combination of words,
27 20 symbols, or physical materials which by their content,
27 21 phraseology, shape, color, or other characteristics are so
27 22 similar to a combination of words, symbols, or physical
27 23 materials used by a manufacturer or of such a nature that the
27 24 use would tend to mislead a person into believing that the
27 25 solicitation is in some manner connected with the
27 26 manufacturer, unless actually authorized or issued by the
27 27 manufacturer.

27 28 h. A bank, savings and loan association, credit union,
27 29 insurance company, or other lending institution shall not
27 30 require the purchase of a ~~motor vehicle service contract~~ as a
27 31 condition of a loan.

27 32 2. DEFAMATION. A ~~motor vehicle provider, service contract~~
27 33 ~~provider company, or third-party administrator~~ shall not make,
27 34 publish, disseminate, or circulate, directly or indirectly, or
27 35 aid, abet, or encourage the making, publishing, disseminating,
28 1 or circulating of an oral or written statement or a pamphlet,
28 2 circular, article, or literature which is false or maliciously
28 3 critical of or derogatory to the financial condition of a
28 4 person, and which is calculated to injure the person.

28 5 3. BOYCOTT, COERCION, AND INTIMIDATION. A ~~motor vehicle~~
28 6 ~~provider, service contract provider~~ shall not enter into an
28 7 ~~company, or third-party administrator~~ agreement to commit, or
28 8 by a concerted action commit, an act of boycott, coercion, or
28 9 intimidation resulting in or tending to result in unreasonable
28 10 restraint of, or monopoly in, the service contract industry.

28 11 4. FALSE STATEMENTS. A ~~motor vehicle provider, service~~
28 12 ~~contract provider company, or third-party administrator~~ shall
28 13 not knowingly file with a supervisory or other public
28 14 official, or knowingly make, publish, disseminate, circulate,
28 15 or deliver to a person, or place before the public, or
28 16 knowingly cause directly or indirectly to be made, published,
28 17 disseminated, circulated, delivered to a person, or placed
28 18 before the public, a false material statement of fact as to
28 19 the financial condition of a person.

28 20 5. FALSE ENTRIES. A ~~motor vehicle provider, service~~
28 21 ~~contract provider company, or third-party administrator~~ shall

28 22 not knowingly make a false entry of a material fact in a book,
28 23 report, or statement of a person or knowingly fail to make a
28 24 true entry of a material fact pertaining to the business of
28 25 the person in a book, report, or statement of the person.
28 26 6. ~~USED OR REBUILT PARTS.~~ A ~~motor vehicle~~ service
28 27 ~~contract provider company~~ shall not repair a motor vehicle
28 28 covered by a ~~motor vehicle~~ service contract with any of the
28 29 following:
28 30 a. Used parts, unless the ~~provider service company~~
28 31 receives prior written authorization by the vehicle owner.
28 32 b. Rebuilt parts, unless the parts are rebuilt according
28 33 to national standards recognized by the insurance division.
28 34 7. MARKETING. A provider, service company, or third-party
28 35 administrator shall not market, advertise, offer to sell, or
29 1 sell a service contract by using personal information obtained
29 2 in violation of the federal Driver's Privacy Protection Act,
29 3 18 U.S.C. } 2721 et seq.
29 4 ~~7.~~ 8. VIOLATIONS OF SECTION 714.16.
29 5 a. A violation of this chapter or rules adopted by the
29 6 commissioner pursuant to this chapter is an unfair practice as
29 7 defined in section 714.16.
29 8 b. An enforcement agreement between the commissioner and a
29 9 ~~motor vehicle provider, service contract provider company, or~~
29 10 ~~third-party administrator~~ does not bar the attorney general
29 11 from bringing an action against the provider, service company,
29 12 or third-party administrator under section 714.16 as to
29 13 allegations that a violation of this chapter constitutes a
29 14 violation of section 714.16.
29 15 Sec. 35. Section 516E.11, Code 2005, is amended to read as
29 16 follows:
29 17 516E.11 RECORDS == EXPLANATION OF REASONS FOR DENIAL OF
29 18 CLAIMS.
29 19 1. A ~~motor vehicle provider, service contract provider~~
29 20 ~~company, or third-party administrator~~ shall keep accurate
29 21 records concerning transactions regulated under this chapter.
29 22 a. ~~A motor vehicle service contract provider's records~~
29 23 ~~Records of a provider, service company, or third-party~~
29 24 ~~administrator~~ shall include all of the following:
29 25 (1) Copies of all service contracts each type of service
29 26 contract issued or sold.
29 27 (2) The name and address of each service contract holder.
29 28 (3) ~~The Claim files which shall contain, at a minimum, the~~
29 29 dates, amounts, and descriptions of all receipts, claims, and
29 30 expenditures related to service contracts.
29 31 (4) Copies of all materials relating to claims which have
29 32 been denied.
29 33 b. A ~~motor vehicle provider, service contract provider~~
29 34 ~~company, or third-party administrator~~ shall retain all
29 35 required records pertaining to a service contract holder for
30 1 at least two years after the specified period of coverage has
30 2 expired. A provider, service company, or third-party
30 3 administrator discontinuing business in this state shall
30 4 maintain its records until the provider, service company, or
30 5 third-party administrator furnishes the commissioner
30 6 satisfactory proof that the provider, service company, or
30 7 third-party administrator has discharged all obligations to
30 8 contract holders in this state.
30 9 c. ~~Motor vehicle service contract providers~~ Providers,
30 10 service companies, or third-party administrators shall make
30 11 all records concerning transactions regulated under the
30 12 chapter available to the commissioner for the purpose of
30 13 examination.
30 14 d. A provider, service company, or third-party
30 15 administrator may keep all records required under this chapter
30 16 in an electronic form. If an administrator maintains records
30 17 in a form other than a printed copy, the records shall be
30 18 accessible from a computer terminal available to the
30 19 commissioner and shall be capable of duplication to a legible
30 20 printed copy.
30 21 2. A ~~motor vehicle service contract provider, service~~
30 22 ~~company, or third-party administrator~~ shall promptly deliver a
30 23 written explanation to the service contract holder, describing
30 24 the reasons for denying a claim or for the offer of a
30 25 compromise settlement, based on all relevant facts or legal
30 26 requirements and referring to applicable provisions of the
30 27 service contract.
30 28 3. A provider, service company, or third-party
30 29 administrator shall keep accurate records concerning
30 30 transactions regulated under this chapter, including a list of
30 31 the locations where service contracts are marketed, sold,
30 32 offered for sale, or performed.

30 33 Sec. 36. Section 516E.12, Code 2005, is amended to read as
30 34 follows:

30 35 516E.12 SERVICE OF PROCESS.

31 1 The commissioner shall be the agent for service of process
31 2 upon a ~~motor vehicle provider, service contract provider~~
31 3 ~~company, or third-party administrator~~ and an issuer of a
31 4 reimbursement insurance policy.

31 5 Sec. 37. Section 516E.13, subsection 4, unnumbered
31 6 paragraph 1, Code 2005, is amended to read as follows:

31 7 Upon the commissioner's determination that a provider,
31 8 ~~service company, or third-party administrator~~ has engaged, is
31 9 engaging, or is about to engage in any act or practice
31 10 constituting a violation of this chapter or a rule adopted
31 11 pursuant to this chapter, the commissioner may issue a summary
31 12 order directing the person to cease and desist from engaging
31 13 in the act or practice resulting in the violation or to take
31 14 other affirmative action as in the judgment of the
31 15 commissioner is necessary to comply with the requirements of
31 16 this chapter.

31 17 Sec. 38. Section 516E.14, Code 2005, is amended to read as
31 18 follows:

31 19 516E.14 AUDITS.

31 20 The commissioner may examine or cause to be examined the
31 21 records of a ~~motor vehicle provider, service contract provider~~
31 22 ~~company, or third-party administrator~~ for the purpose of
31 23 verifying compliance with this chapter. The commissioner may
31 24 require, by a subpoena, the attendance of the provider,
31 25 ~~service company, or third-party administrator, or the~~
31 26 ~~provider's~~ a representative thereof, and any other witness
31 27 whom the commissioner deems necessary or expedient, and the
31 28 production of records relating in any manner to compliance
31 29 with this chapter if a provider, ~~service company, third-party~~
31 30 ~~administrator,~~ or witness fails or refuses to produce the
31 31 documents for examination when requested by the commissioner.

31 32 Sec. 39. Section 516E.15, subsection 1, paragraph b, Code
31 33 2005, is amended to read as follows:

31 34 b. A ~~motor vehicle provider, service contract provider who~~
31 35 ~~company, or third-party administrator that~~ fails to file
32 1 documents and information with the commissioner as required
32 2 pursuant to section 516E.3 may be subject to a civil penalty.
32 3 The amount of the civil penalty shall not be more than four
32 4 hundred dollars plus two dollars for each ~~motor vehicle~~
32 5 service contract that the person executed prior to satisfying
32 6 the filing requirement. However, a person who fails to file
32 7 information regarding a change in the ~~provider's~~ name or the
32 8 termination of the ~~provider's~~ business of a provider, ~~service~~
32 9 ~~company, or third-party administrator~~ as required pursuant to
32 10 section 516E.3 is subject to a civil penalty of not more than
32 11 five hundred dollars.

32 12 Sec. 40. Section 516E.15, subsection 2, Code 2005, is
32 13 amended to read as follows:

32 14 2. If the commissioner believes that grounds exist for the
32 15 criminal prosecution of a ~~motor vehicle provider, service~~
32 16 ~~contract provider company, or third-party administrator~~ for
32 17 violating this chapter or any other law of this state, the
32 18 commissioner may forward to the attorney general or the county
32 19 attorney the grounds for the belief, including all evidence in
32 20 the commissioner's possession for action deemed appropriate by
32 21 the attorney general or county attorney. At the request of
32 22 the attorney general, the county attorney shall appear and
32 23 prosecute the action when brought in the county served by the
32 24 county attorney.

32 25 Sec. 41. NEW SECTION. 516E.16 COURT ACTION FOR FAILURE
32 26 TO COOPERATE.

32 27 1. If a person fails or refuses to file a statement or
32 28 report or to produce any books, accounts, papers,
32 29 correspondence, memoranda, purchase agreements, files, or
32 30 other documents or records, or to obey a subpoena issued by
32 31 the commissioner, the commissioner may refer the matter to the
32 32 attorney general, who may apply to a district court to enforce
32 33 compliance. The court may order any of the following:

32 34 a. Injunctive relief restricting or prohibiting the offer
32 35 or sale of service contracts.

33 1 b. Production of documents or records including but not
33 2 limited to books, accounts, papers, correspondence, memoranda,
33 3 purchase agreements, files, or other documents or records.

33 4 c. Such other relief as may be appropriate.

33 5 2. A court order issued pursuant to subsection 1 is
33 6 effective until the person who is subject to the order files
33 7 the statement or report, produces the documents requested, or
33 8 obeys the subpoena.

33 9 Sec. 42. NEW SECTION. 516E.17 NET WORTH REQUIREMENT.

33 10 A service company that has issued or renewed in the
33 11 aggregate one thousand or fewer service contracts during the
33 12 preceding calendar year shall maintain a minimum net worth of
33 13 forty thousand dollars. The minimum net worth to be
33 14 maintained shall be increased by an additional twenty thousand
33 15 dollars for each additional five hundred contracts or fraction
33 16 thereof issued or renewed, up to a maximum required net worth
33 17 of four hundred thousand dollars. At least twenty thousand
33 18 dollars of net worth shall consist of paid-in capital.

33 19 Sec. 43. NEW SECTION. 516E.18 PUBLIC ACCESS TO RECORDS.

33 20 1. The administrator shall keep a register of all filings
33 21 and orders which have been entered. The register shall be
33 22 open for public inspection.

33 23 2. Upon request and for a reasonable fee, the
33 24 administrator shall furnish to any person copies of any
33 25 register entry or any document which is a matter of public
33 26 record and not confidential. Copies shall be available during
33 27 normal business hours and may be certified upon request. In
33 28 any administrative, civil, or criminal proceeding, a certified
33 29 copy is prima facie evidence of the contents of the document
33 30 certified.

33 31 3. Pursuant to chapter 22, the administrator may maintain
33 32 the confidentiality of information obtained during an
33 33 investigation or audit.

33 34 Sec. 44. NEW SECTION. 516E.19 ADMINISTRATION.

33 35 1. This chapter shall be administered by the commissioner.
34 1 The deputy administrator appointed pursuant to section 502.601
34 2 shall be the principal operations officer responsible to the
34 3 commissioner for the routine administration of this chapter
34 4 and management of the administrative staff. In the absence of
34 5 the commissioner, whether because of vacancy in the office, by
34 6 reason of absence, physical disability, or other cause, the
34 7 deputy administrator shall be the acting administrator and
34 8 shall, for the time being, have and exercise the authority
34 9 conferred upon the commissioner. The commissioner may from
34 10 time to time delegate to the deputy administrator any or all
34 11 of the functions assigned to the commissioner in this chapter.
34 12 The deputy administrator shall employ officers, attorneys,
34 13 accountants, auditors, investigators, and other employees as
34 14 shall be needed for the administration of this chapter.

34 15 2. Upon request, the commissioner may honor requests from
34 16 interested persons for interpretive opinions.

34 17 Sec. 45. Section 518.14, subsection 4, paragraph a, Code
34 18 2005, is amended to read as follows:

34 19 a. UNITED STATES GOVERNMENT OBLIGATIONS. ~~Obligations~~
34 20 ~~Bonds or other evidences of indebtedness issued, assumed, or~~
34 21 ~~guaranteed by the United States of America, or by any~~
34 22 ~~agency or instrumentality of the United States of America,~~
34 23 ~~include investments in an open-end management investment~~
34 24 ~~company registered with the federal securities and exchange~~
34 25 ~~commission under the federal Investment Company Act of 1940,~~
34 26 ~~15 U.S.C. } 80(a) and operated in accordance with 17 C.F.R. }~~
34 27 ~~270.2a=7, the portfolio of which is limited to the United~~
34 28 ~~States obligations described in this paragraph, and which are~~
34 29 ~~included in the national association of insurance~~
34 30 ~~commissioners' securities valuation office's United States~~
34 31 ~~direct obligation = full faith and credit list.~~

34 32 Sec. 46. Section 518A.12, subsection 4, paragraph a, Code
34 33 2005, is amended to read as follows:

34 34 a. UNITED STATES GOVERNMENT OBLIGATIONS. ~~Obligations~~
34 35 ~~Bonds or other evidences of indebtedness issued, assumed, or~~
35 1 ~~guaranteed by the United States of America, or by any~~
35 2 ~~agency or instrumentality of the United States of America,~~
35 3 ~~include investments in an open-end management investment~~
35 4 ~~company registered with the federal securities and exchange~~
35 5 ~~commission under the federal Investment Company Act of 1940,~~
35 6 ~~15 U.S.C. } 80(a) and operated in accordance with 17 C.F.R. }~~
35 7 ~~270.2a=7, the portfolio of which is limited to the United~~
35 8 ~~States obligations described in this paragraph, and which are~~
35 9 ~~included in the national association of insurance~~
35 10 ~~commissioners' securities valuation office's United States~~
35 11 ~~direct obligation = full faith and credit list.~~

35 12 Sec. 47. Section 520.19, Code 2005, is amended to read as
35 13 follows:

35 14 520.19 ANNUAL TAX == FEES.

35 15 In lieu of all other taxes, licenses, charges, and fees
35 16 whatsoever, such attorney shall annually pay to the
35 17 commissioner the same fees as are paid by mutual companies
35 18 transacting the same kind of business, and an annual tax of
35 19 two percent, if a domestic reciprocal organization, and two

~~35 20 percent, if a foreign reciprocal organization, based upon the~~
~~35 21 applicable percentage stated in section 432.1, subsection 4,~~
35 22 calculated upon the gross premiums or deposits collected from
35 23 subscribers in this state during the preceding calendar year,
35 24 after deducting therefrom returns, or cancellations, and all
35 25 amounts returned to subscribers or credited to their accounts
35 26 as savings, and the amount returned upon canceled policies and
35 27 rejected applications covering property situated or on
35 28 business done within this state.

35 29 Sec. 48. Section 522B.17, Code 2005, is amended to read as
35 30 follows:

35 31 522B.17 PENALTY.

35 32 An insurer or insurance producer who, after hearing, is
35 33 found to have violated this chapter may be ordered to cease
35 34 and desist from engaging in the conduct resulting in the
35 35 violation and may be assessed a civil penalty pursuant to

36 1 chapter 507B.

36 2 A person ~~found who~~, after hearing, is found to have ~~acted~~
36 3 violated this chapter by acting as an agent of an insurer or
36 4 otherwise selling, soliciting, or negotiating insurance in
36 5 this state, or offering to the public advice, counsel, or
36 6 services with regard to insurance, who is not properly
36 7 licensed ~~is subject to may be ordered to cease and desist from~~
36 8 engaging in the conduct resulting in the violation and may be
36 9 assessed a civil penalty according to the provisions of

36 10 chapter 507A.

36 11 If a person does not comply with an order issued pursuant
36 12 to this section, the commissioner may petition a court of
36 13 competent jurisdiction to enforce the order. The court shall
36 14 not require the commissioner to post a bond in an action or
36 15 proceeding under this section. If the court finds, after
36 16 notice and opportunity for hearing, that the person is not in
36 17 compliance with an order, the court may adjudge the person to
36 18 be in civil contempt of the order. The court may impose a
36 19 civil penalty against the person for contempt in an amount not
36 20 less than three thousand dollars but not greater than ten
36 21 thousand dollars for each violation and may grant any other
36 22 relief that the court determines is just and proper in the
36 23 circumstances.

36 24 Sec. 49. NEW SECTION. 522B.17A INJUNCTIVE RELIEF.

36 25 1. An association with at least twenty-five insurance
36 26 producer members may bring an action in district court to
36 27 enjoin a person from selling, soliciting, or negotiating
36 28 insurance in violation of section 522B.2. However, before
36 29 bringing an action in district court to enjoin a person
36 30 pursuant to this section, an association shall file a
36 31 complaint with the insurance division alleging that the person
36 32 is selling, soliciting, or negotiating insurance in violation
36 33 of section 522B.2.

36 34 2. If the division makes a determination to proceed
36 35 administratively against the person for a violation of section
37 1 522B.2, the complainant shall not bring an action in district
37 2 court against the person pursuant to this section based upon
37 3 the allegations contained in the complaint filed with the
37 4 division.

37 5 3. If the division does not make a determination to
37 6 proceed administratively against the person for a violation of
37 7 section 522B.2, the division shall issue, on or before ninety
37 8 days from the date of filing of the complaint, a release to
37 9 the complainant that permits the complainant to bring an
37 10 action in district court pursuant to this section.

37 11 4. The filing of a complaint with the division pursuant to
37 12 this section tolls the statute of limitations pursuant to
37 13 section 614.1 as to the alleged violation for a period of one
37 14 hundred twenty days from the date of filing the complaint.

37 15 5. Any action brought in district court by a complainant
37 16 against a person pursuant to this section, based upon the
37 17 allegations contained in the complaint filed with the
37 18 division, shall be brought within one year after the ninety=
37 19 day period following the filing of the complaint with the
37 20 division, or the date of the issuance of a release by the
37 21 division, whichever is earlier.

37 22 6. If the court finds that the person is in violation of
37 23 section 522B.2 and enjoins the person from selling,
37 24 soliciting, or negotiating insurance in violation of that
37 25 section, the court's findings of fact and law, and the
37 26 judgment and decree, when final, shall be admissible in any
37 27 proceeding initiated pursuant to section 522B.17 by the
37 28 commissioner against the person enjoined and the person
37 29 enjoined shall be precluded from contesting in that proceeding
37 30 the court's determination that the person sold, solicited, or

37 31 negotiated insurance in violation of section 522B.2.
37 32 Sec. 50. Section 523A.402, subsection 6, paragraph c, Code
37 33 2005, is amended to read as follows:
37 34 c. The annuity shall not be contestable, or limit death
37 35 benefits in the case of suicide, with respect to that portion
38 1 of the face amount of the annuity which is required by
38 2 paragraph "b". The annuity shall not refer to physical
38 3 examination, or otherwise operate as an exclusion, limitation,
38 4 or condition other than requiring submission of proof of death
38 5 or surrender of the annuity at the time the prepaid purchase
38 6 agreement is funded, matures, or is canceled, as the case may
38 7 be.

38 8 Sec. 51. EFFECTIVE AND RETROACTIVE APPLICABILITY DATES.
38 9 This section and the sections of this Act amending sections
38 10 513C.6 and 514E.2, and amending section 514E.7, subsection 1,
38 11 by enacting paragraph "e", being deemed of immediate
38 12 importance, take effect upon enactment. The section of the
38 13 Act amending section 513C.6 is retroactively applicable to
38 14 January 1, 2005, and is applicable on and after that date.
38 15 The sections of the Act amending section 514E.2 are
38 16 retroactively applicable to July 1, 1986, and are applicable
38 17 on and after that date. The portion of the section of the Act
38 18 amending section 514E.7, subsection 1, by enacting paragraph
38 19 "e" is retroactively applicable to January 1, 2005, and is
38 20 applicable on and after that date.

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38 24 _____
38 25 JOHN P. KIBBIE
38 26 President of the Senate

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38 29 _____
38 30 CHRISTOPHER C. RANTS
38 31 Speaker of the House

38 32 I hereby certify that this bill originated in the Senate and
38 33 is known as Senate File 360, Eighty-first General Assembly.
38 34

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39 2 _____
39 3 MICHAEL E. MARSHALL
39 4 Secretary of the Senate

39 4 Approved _____, 2005

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39 7 _____
39 8 THOMAS J. VILSACK
39 9 Governor