



THOMAS J. VILSACK
GOVERNOR

OFFICE OF THE GOVERNOR

SALLY J. PEDERSON
LT. GOVERNOR

April 28, 2005

The Honorable Chester Culver
Secretary of State
State Capitol Building
L O C A L

Dear Mr. Secretary:

I hereby transmit:

Senate File 57, an Act authorizing the appointment of a nine-member city zoning board of adjustment.

Senate File 321, an Act relating to the use of moneys deposited into the inmate labor fund.

Senate File 323, an Act establishing a uniform mediation act.

Senate File 330, an Act relating to family law provisions including dissolution of marriage and domestic relations and termination of parental rights provisions.

Senate File 360, 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.

The above Senate Files are hereby approved this date.

Sincerely,



Thomas J. Vilsack
Governor

TJV:jmc

cc: Secretary of the Senate
Chief Clerk of the House



SENATE FILE 360

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. § 1 et seq., or any similar good, article, service, right, or

interest that is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than two days after the date the contract is entered into, including, but not limited to, a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or a combination of them or option on any of them. "Forward contract" does not include a commodity contract.

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

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

NEW SUBSECTION. 15A. "Repurchase agreement" means an agreement, including related terms, that provides for the transfer of certificates of deposit, eligible bankers' acceptances, or securities that are direct obligations of, or that are fully guaranteed as to principal and interest by, the United States or an agency of the United States against the transfer of funds by the transferee of the certificates of deposit, eligible bankers' acceptances or securities, with a simultaneous agreement by the transferee to transfer to the transferor certificates of deposit, eligible bankers' acceptances, or securities as described above, at a date certain not later than one year after the transfers or on

demand against the transfer of funds. For the purposes of this definition, the items that may be subject to a repurchase agreement include, but are not limited to, mortgage-related securities, a mortgage loan, and an interest in a mortgage loan, but shall not include any participation in a commercial mortgage loan, unless the commissioner determines by rule, resolution, or order to include the participation within the meaning of the term. Repurchase agreement also applies to a reverse repurchase agreement.

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

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

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

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

a. A contractual right to terminate, liquidate, or close out any netting agreement or qualified financial contract with an insurer because of any of the following:

(1) The insolvency, financial condition, or default of the insurer at any time, provided that the right is enforceable under applicable law other than this chapter.

(2) The commencement of a formal delinquency proceeding under this chapter.

b. Any right under a pledge, security, collateral, or guarantee agreement or any other similar security arrangement or credit support document relating to a netting agreement or qualified financial contract.

c. Subject to any provision of section 507C.30, subsection 2, any right to set off or net out any termination value, payment amount, or other transfer obligation arising under or in connection with a netting agreement or qualified financial contract where the counterparty or its guarantor is organized under the laws of the United States or a state or foreign jurisdiction approved by the securities valuation office or the national association of insurance commissioners as eligible for netting.

2. Upon termination of a netting agreement, the net or settlement amount, if any, owed by a nondefaulting party to an insurer against which an application or petition has been filed under this chapter shall be transferred to or on the order of the receiver for the insurer, even if the insurer is the defaulting party, notwithstanding any provision in the netting agreement that may provide that the nondefaulting party is not required to pay any net or settlement amount due to the defaulting party upon termination. Any limited two-way payment provision in a netting agreement with an insurer that has defaulted shall be deemed to be a full two-way payment provision as against the defaulting insurer. Any such amount shall, except to the extent it is subject to one or more secondary liens or encumbrances, be a general asset of the insurer.

3. In making any transfer of a netting agreement or qualified financial contract of an insurer subject to a proceeding under this chapter, the receiver shall do either of the following:

a. Transfer to one party, other than an insurer subject to a proceeding under this chapter, all netting agreements and qualified financial contracts between a counterparty or any affiliate of the counterparty and the insurer that is the subject of the proceeding, including all of the following:

(1) All rights and obligations of each party under each such netting agreement and qualified financial contract.

(2) All property, including any guarantees or credit support documents, securing any claims of each party under each such netting agreement and qualified financial contract.

b. Transfer none of the netting agreements, qualified financial contracts, rights, obligations, or property referred to in paragraph "a" with respect to the counterparty and any affiliate of the counterparty.

4. If a receiver for an insurer makes a transfer of one or more netting agreements or qualified financial contracts, the receiver shall use the receiver's best efforts to notify any person who is a party to the netting agreements or qualified financial contracts of the transfer by noon of the receiver's local time on the business day following the transfer. For purposes of this subsection, "business day" means a day other than a Saturday, Sunday, or any day on which either the New York stock exchange or the federal reserve bank of New York is closed.

5. Notwithstanding any other provision of this chapter to the contrary, a receiver shall not avoid a transfer of money or other property arising under or in connection with a netting agreement or qualified financial contract, or any pledge security, collateral, or guarantee agreement or any other similar security arrangement or credit support document relating to a netting agreement or qualified financial contract, that is made before the commencement of a formal delinquency proceeding under this chapter. However, a transfer may be avoided under section 507C.28 if the transfer was made with actual intent to hinder, delay, or defraud the insurer, a receiver appointed for the insurer, or existing or future creditors.

6. In exercising any of its powers under this chapter to disaffirm or repudiate a netting agreement or qualified financial contract, the receiver must take action with respect to each netting agreement or qualified financial contract and all transactions entered into in connection therewith, in its entirety. Notwithstanding any other provision of this chapter to the contrary, any claim of a counterparty against the estate arising from the receiver's disaffirmance or repudiation of a netting agreement or qualified financial

contract that has not been previously affirmed in the liquidation or in the immediately preceding rehabilitation case shall be determined and shall be allowed or disallowed as if the claim had arisen before the date of the filing of the petition for liquidation or, if a rehabilitation proceeding is converted to a liquidation proceeding, as if the claim had arisen before the date of filing the petition for rehabilitation. The amount of the claim shall be the actual direct compensatory damages determined as of the date of the disaffirmance or repudiation of the netting agreement or qualified financial contract. The term "actual direct compensatory damages" does not include punitive or exemplary damages, damages for lost profit or lost opportunity, or damages for pain and suffering, but does include normal and reasonable costs of cover or other reasonable measures of damages utilized in the derivatives market for the contract and agreement claims.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NEW SUBSECTION. 7. An individual who has coverage as a dependent under a basic or standard health benefit plan may, when that individual is no longer a dependent under such coverage, elect to continue coverage under the basic or standard health benefit plan if the individual so elects immediately upon termination of the coverage under which the individual was covered as a dependent.

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

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

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

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

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

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

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

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

Sec. 16. Section 514E.2, subsection 7, Code 2005, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. For purposes of this subsection, "total health insurance premiums" and "payments for subscriber contracts" include, without limitation, premiums or other amounts paid to or received by a member for individual and group health plan care coverage provided under any chapter of the Code or Acts, and "paid losses" includes, without limitation, claims paid by a member operating on a self-funded basis for individual and group health plan care coverage provided under any chapter of the Code or Acts. For purposes of calculating and conducting the assessment, the association shall have the express authority to require members to report on an annual basis each member's total health insurance premiums and payments for subscriber contracts and paid losses. A member is liable for its share of the assessment calculated in accordance with this section regardless of whether it participates in the individual insurance market.

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

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

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

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

1. An association policy shall contain provisions under which the association is obligated to renew the coverage for an individual until the day the individual becomes eligible for Medicare coverage based on age, provided that any individual who is covered by an association policy and is eligible for Medicare coverage based on age prior to January 1, 2005, may continue to renew the coverage under the association policy.

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

CONCEALMENT -- FRAUD. This entire policy shall be void if, whether before or after a loss, the an insured has willfully

concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of ~~the~~ an insured therein, or in case of any fraud or false swearing by ~~the~~ an insured relating thereto.

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

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

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

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

a. While the hazard is created or increased by any means within the control or knowledge of ~~the~~ an insured ~~or~~.

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

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

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

(7) That would otherwise be a covered claim, but is an obligation to or on behalf of a person who has a net worth ~~on the date of the occurrence giving rise to the claim~~ greater

than that allowed by the guarantee fund law of the state of residence of the claimant, and which state has denied coverage to that claimant on that basis.

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

515B.17 TIMELY FILING OF CLAIMS.

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

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

2. The committee shall consist of seven members ~~7-one-of whom.~~

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

~~a-~~ (1) American insurance association.

~~b-~~ (2) ~~Alliance-of-American-insurers~~ Property casualty insurers association of America.

~~c--National-association-of-independent-insurers-~~

~~d-~~ (3) Iowa insurance institute.

~~e-~~ (4) Mutual insurance association of Iowa.

~~f-~~ (5) Independent insurance agents of Iowa.

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

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

516E.1 DEFINITIONS.

For the purposes of this chapter:

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

~~1-~~ 2. "Commissioner" means the commissioner of insurance as provided in section 505.1 ~~or-the-deputy-administrator appointed-under-section-502-601.~~

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

~~2-~~ 4. "Mechanical breakdown insurance" means a policy, contract, or agreement that undertakes to perform or provide repair or replacement service, or indemnification for that

service, for the operational or structural failure of a motor vehicle due to a defect in materials or skill of work or normal wear and tear, and that is issued by an insurance company authorized to do business in this state.

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

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

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

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

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

8. "Reimbursement insurance policy" means a policy of insurance issued to a service company and pursuant to which the insurer agrees, for the benefit of the service contract holders, to discharge all of the obligations and liabilities of the service company under the terms of service contracts issued by the service company in the event of nonperformance by the service company. For the purposes of this definition, "all obligations and liabilities" include, but are not limited

to, failure of the service company to perform under the service contract and the return of the unearned service company fee in the event of the service company's unwillingness or inability to reimburse the unearned service company fee in the event of termination of a service contract.

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

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

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

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

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

516E.2 INSURANCE-REQUIRED REQUIREMENTS FOR DOING BUSINESS.

~~1. A motor-vehicle service contract shall not be issued, sold, or offered for sale in this state unless the provider-of the-service-contract-is-insured-under-a-motor-vehicle-service contract-reimbursement-insurance-policy-issued-by-an-insurer authorized-to-do-business-in-this-state.~~ service company does all of the following:

a. Provides a receipt for the purchase of the service contract to the service contract holder.

b. Provides a copy of the service contract to the service contract holder within a reasonable period of time after the date of purchase of the service contract.

~~2. The-issuer-of-a-reimbursement-insurance-policy-shall not-cancel-a-reimbursement-insurance-policy-unless-a-written~~

~~notice has been received by the commissioner and by each applicable provider, including automobile dealers and third-party administrators. The notice shall fix the date of cancellation at a date no earlier than ten days after receipt of the notice by the commissioner and by the applicable provider. The notice may be made in person or by mail and a post-office department receipt of certified or registered mailing shall be deemed proof of receipt of the notice.~~ A service company shall not issue a service contract or arrange to perform services pursuant to a service contract unless the service company is registered with the commissioner. A service company shall file a registration with the commissioner annually, on a form prescribed by the commissioner, accompanied by a registration fee in the amount of five hundred dollars.

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

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

a. The registration is incomplete in any material respect or contains any statement which, in light of the circumstances under which the registration was made, is determined by the commissioner to be false or misleading with respect to any material fact.

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

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

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

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

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

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

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

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

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

516E.3 FILING AND FEE REQUIREMENTS.

1. SERVICE COMPANIES.

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

~~2. b. In-addition-to-any-other-required-filings, an accurate-copy-of-the-service-contract-and-the-provider's reimbursement-insurance-policy, the~~ A service company shall file a consent to service of process on the commissioner, and such other information as the commissioner requires shall be filed annually with the commissioner no later than the first day of August. If the first day of August falls on a weekend or a holiday, the date for filing shall be the next business day. In addition to the annual filing, the ~~provider~~ service company shall promptly file copies of any amended documents if material amendments have been made in the materials on file with the commissioner. If an annual filing is made after the first of August and sales have occurred during the period when the ~~provider~~ service company was in noncompliance with this section, the commissioner shall assess an additional filing fee that is two times the amount normally required for an annual filing. A fee shall not be charged for interim filings made to keep the materials filed with the division current and

accurate. The annual filing shall be accompanied by a filing fee determined by the commissioner which shall be sufficient to defray the costs of administering this chapter.

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

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

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

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

2. PROVIDERS.

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

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

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

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

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

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

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

516E.4 REIMBURSEMENT INSURANCE POLICY REQUIREMENTS.

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

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

3. INDEMNIFICATION OR SUBROGATION. This section does not prevent or limit the right of an insurer that issued a reimbursement insurance policy to seek indemnification from or subrogation against a service company if the insurer pays or is obligated to pay a service contract holder sums that the service company was obligated to pay pursuant to the provisions of a service contract or pursuant to a contractual agreement.

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

516E.5 DISCLOSURE TO SERVICE CONTRACT HOLDERS -- CONTRACT PROVISIONS.

1. A ~~motor-vehicle~~ service contract shall not be issued, sold, or offered for sale in this state unless the contract conspicuously states that the obligations of the ~~provider~~ service company to the service contract holder are guaranteed under ~~the-service-contract~~ a reimbursement insurance policy, ~~and-unless-the~~ including a statement in substantially the following form: "Obligations of the service company under this service contract are guaranteed under a reimbursement insurance policy. If the service company fails to pay or provide service on a claim within sixty days after proof of loss has been filed with the service company, the service contract holder is entitled to make a claim directly against the reimbursement insurance policy." A claim against a reimbursement insurance policy shall also include a claim for return of the unearned consideration paid for the service contract in excess of the premium paid. A service contract shall conspicuously ~~states~~ state the name and address of the issuer of the reimbursement insurance policy for that service contract.

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

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

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

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

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

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

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

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

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

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

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

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

l. States the name and address of the commissioner.

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

n. Permits the service contract holder to cancel and return the service contract within at least twenty days of the date of mailing the service contract to the service contract holder or within at least ten days after delivery of the service contract if the service contract is delivered at the time of sale of the service contract, or within a longer period of time as permitted under the service contract. If no claim has been made under the service contract prior to its return, the service contract is void and the full purchase price of the service contract shall be refunded to the service contract holder. A ten percent penalty shall be added each

month to a refund that is not paid to a service contract holder within thirty days of the return of the service contract to the service company. The applicable time period for cancellation of a service contract shall apply only to the original service contract holder that purchased the service contract.

3. A complete copy of the terms of the ~~motor-vehicle~~ service contract shall be delivered to the prospective service contract holder at or before the time that the prospective service contract holder makes application for the service contract. If there is no separate application procedure, then a complete copy of the ~~motor-vehicle~~ service contract shall be delivered to the service contract holder at or before the time the service contract holder becomes bound under the contract.

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

516E.6 COMMISSIONER MAY PROHIBIT CERTAIN SALES --
INJUNCTION.

The commissioner shall issue an order instructing the a provider, service company, or third-party administrator to cease and desist from selling or offering for sale ~~motor vehicle~~ service contracts if the commissioner determines that the provider, service company, or third-party administrator has failed to comply with a provision of this chapter. Upon the failure of a ~~motor-vehicle~~ provider, service contract provider company, or third-party administrator to obey a cease and desist order issued by the commissioner, the commissioner may give notice in writing of the failure to the attorney general, who shall immediately commence an action against the provider, service company, or third-party administrator to enjoin the provider, service company, or third-party administrator from selling or offering for sale ~~motor-vehicle~~ service contracts until the provider, service company, or third-party administrator complies with the provisions of this chapter and the district court may issue the injunction.

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

516E.7 RULES.

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

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

516E.8 EXEMPTION.

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

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

516E.9 MISREPRESENTATIONS OF STATE APPROVAL.

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

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

516E.10 PROHIBITED ACTS -- UNFAIR OR DECEPTIVE TRADE PRACTICES.

1. MISREPRESENTATIONS, FALSE ADVERTISING, AND UNFAIR PRACTICES.

a. Unless licensed as an insurance company, a ~~motor vehicle~~ service contract-provider company shall not use in its name, contracts, or literature, the words "insurance", "casualty", "surety", "mutual", or any other words descriptive of the insurance, casualty, or surety business or deceptively similar to the name or description of any insurance or surety corporation, or any other ~~motor-vehicle~~ service contract provider company.

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

c. A ~~motor-vehicle~~ provider, service contract-provider company, or third-party administrator shall not make, permit,

or cause a false or misleading statement, either oral or written, in connection with the sale, offer to sell, or advertisement of a ~~motor-vehicle~~ service contract.

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

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

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

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

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

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

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

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

5. FALSE ENTRIES. A ~~motor-vehicle~~ provider, service contract-provider company, or third-party administrator shall not knowingly make a false entry of a material fact in a book, report, or statement of a person or knowingly fail to make a true entry of a material fact pertaining to the business of the person in a book, report, or statement of the person.

6. USED OR REBUILT PARTS. A ~~motor-vehicle~~ service contract-provider company shall not repair a motor vehicle covered by a ~~motor-vehicle~~ service contract with any of the following:

a. Used parts, unless the provider service company receives prior written authorization by the vehicle owner.

b. Rebuilt parts, unless the parts are rebuilt according to national standards recognized by the insurance division.

7. MARKETING. A provider, service company, or third-party administrator shall not market, advertise, offer to sell, or sell a service contract by using personal information obtained in violation of the federal Driver's Privacy Protection Act, 18 U.S.C. § 2721 et seq.

~~7.~~ 8. VIOLATIONS OF SECTION 714.16.

a. A violation of this chapter or rules adopted by the commissioner pursuant to this chapter is an unfair practice as defined in section 714.16.

b. An enforcement agreement between the commissioner and a ~~motor-vehicle provider, service contract-provider company, or third-party administrator~~ does not bar the attorney general from bringing an action against the provider, service company, or third-party administrator under section 714.16 as to allegations that a violation of this chapter constitutes a violation of section 714.16.

Sec. 35. Section 516E.11, Code 2005, is amended to read as follows:

516E.11 RECORDS -- EXPLANATION OF REASONS FOR DENIAL OF CLAIMS.

1. A ~~motor-vehicle provider, service contract-provider company, or third-party administrator~~ shall keep accurate records concerning transactions regulated under this chapter.

~~a. A-motor-vehicle-service-contract-provider's-records~~
Records of a provider, service company, or third-party administrator shall include all of the following:

(1) Copies of ~~all-service-contracts~~ each type of service contract issued or sold.

(2) The name and address of each service contract holder.

(3) ~~The~~ Claim files which shall contain, at a minimum, the dates, amounts, and descriptions of all receipts, claims, and expenditures related to service contracts.

(4) Copies of all materials relating to claims which have been denied.

b. A ~~motor-vehicle provider, service contract-provider company, or third-party administrator~~ shall retain all required records pertaining to a service contract holder for at least two years after the specified period of coverage has expired. A provider, service company, or third-party administrator discontinuing business in this state shall maintain its records until the provider, service company, or

third-party administrator furnishes the commissioner satisfactory proof that the provider, service company, or third-party administrator has discharged all obligations to contract holders in this state.

c. ~~Motor-vehicle-service-contract-providers~~ Providers, service companies, or third-party administrators shall make all records concerning transactions regulated under the chapter available to the commissioner for the purpose of examination.

d. A provider, service company, or third-party administrator may keep all records required under this chapter in an electronic form. If an administrator maintains records in a form other than a printed copy, the records shall be accessible from a computer terminal available to the commissioner and shall be capable of duplication to a legible printed copy.

2. A motor-vehicle-service-contract provider, service company, or third-party administrator shall promptly deliver a written explanation to the service contract holder, describing the reasons for denying a claim or for the offer of a compromise settlement, based on all relevant facts or legal requirements and referring to applicable provisions of the service contract.

3. A provider, service company, or third-party administrator shall keep accurate records concerning transactions regulated under this chapter, including a list of the locations where service contracts are marketed, sold, offered for sale, or performed.

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

516E.12 SERVICE OF PROCESS.

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

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

Upon the commissioner's determination that a provider, service company, or third-party administrator has engaged, is engaging, or is about to engage in any act or practice constituting a violation of this chapter or a rule adopted

pursuant to this chapter, the commissioner may issue a summary order directing the person to cease and desist from engaging in the act or practice resulting in the violation or to take other affirmative action as in the judgment of the commissioner is necessary to comply with the requirements of this chapter.

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

516E.14 AUDITS.

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

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

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

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

2. If the commissioner believes that grounds exist for the criminal prosecution of a motor-vehicle provider, service contract-provider company, or third-party administrator for

violating this chapter or any other law of this state, the commissioner may forward to the attorney general or the county attorney the grounds for the belief, including all evidence in the commissioner's possession for action deemed appropriate by the attorney general or county attorney. At the request of the attorney general, the county attorney shall appear and prosecute the action when brought in the county served by the county attorney.

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

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

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

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

c. Such other relief as may be appropriate.

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

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

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

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

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

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

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

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

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

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

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

a. UNITED STATES GOVERNMENT OBLIGATIONS. Obligations Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, or by an any agency or instrumentality of the United States of America, include investments in an open-end management investment company registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a) and operated in accordance with 17 C.F.R. § 270.2a-7, the portfolio of which is limited to the United States obligations described in this paragraph, and which are

included in the national association of insurance commissioners' securities valuation office's United States direct obligation - full faith and credit list.

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

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

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

520.19 ANNUAL TAX -- FEES.

In lieu of all other taxes, licenses, charges, and fees whatsoever, such attorney shall annually pay to the commissioner the same fees as are paid by mutual companies transacting the same kind of business, and an annual tax of ~~two-percent, if a domestic reciprocal organization, and two percent, if a foreign reciprocal organization,~~ based upon the applicable percentage stated in section 432.1, subsection 4, calculated upon the gross premiums or deposits collected from subscribers in this state during the preceding calendar year, after deducting therefrom returns, or cancellations, and all amounts returned to subscribers or credited to their accounts as savings, and the amount returned upon canceled policies and rejected applications covering property situated or on business done within this state.

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

522B.17 PENALTY.

An insurer or insurance producer who, after hearing, is found to have violated this chapter may be ordered to cease and desist from engaging in the conduct resulting in the

violation and may be assessed a civil penalty pursuant to chapter 507B.

A person ~~found~~ who, after hearing, is found to have acted violated this chapter by acting as an agent of an insurer or otherwise selling, soliciting, or negotiating insurance in this state, or offering to the public advice, counsel, or services with regard to insurance, who is not properly licensed ~~is-subject-to~~ may be ordered to cease and desist from engaging in the conduct resulting in the violation and may be assessed a civil penalty according to the provisions of chapter 507A.

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

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

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

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

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

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

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

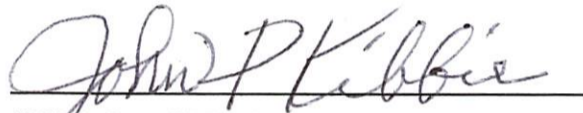
6. If the court finds that the person is in violation of section 522B.2 and enjoins the person from selling, soliciting, or negotiating insurance in violation of that section, the court's findings of fact and law, and the judgment and decree, when final, shall be admissible in any proceeding initiated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

Sec. 50. Section 523A.402, subsection 6, paragraph c, Code 2005, is amended to read as follows:

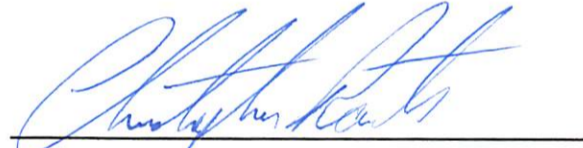
c. The annuity shall not be contestable, or limit death benefits in the case of suicide, with respect to that portion of the face amount of the annuity which is required by paragraph "b". The annuity shall not refer to physical examination, or otherwise operate as an exclusion, limitation, or condition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

Sec. 51. EFFECTIVE AND RETROACTIVE APPLICABILITY DATES. This section and the sections of this Act amending sections 513C.6 and 514E.2, and amending section 514E.7, subsection 1,

by enacting paragraph "e", being deemed of immediate importance, take effect upon enactment. The section of the Act amending section 513C.6 is retroactively applicable to January 1, 2005, and is applicable on and after that date. The sections of the Act amending section 514E.2 are retroactively applicable to July 1, 1986, and are applicable on and after that date. The portion of the section of the Act amending section 514E.7, subsection 1, by enacting paragraph "e" is retroactively applicable to January 1, 2005, and is applicable on and after that date.



JOHN P. KIBBIE
President of the Senate



CHRISTOPHER C. RANTS
Speaker of the House

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



MICHAEL E. MARSHALL
Secretary of the Senate

Approved April 28, 2005



THOMAS J. VILSACK
Governor