

FEB 4 1972

HOUSE FILE 1141

Commerce, Pass 2/10/72

By ELLSWORTH, HANSEN, SORG,
KENNEDY, PRIEBE, and WIRTZ
(Griffin, Sr.)

Passed House, Date 2-24-72 Passed Senate, Date 3-14-72

Vote: Ayes 91 Nays 3 Vote: Ayes 47 Nays 0

Approved _____

*Passed House as amended by Senate
3-14-72
aye 82 Nays 0*

A BILL FOR

1 An Act relating to unfair trade practices in the business
2 of insurance and providing a penalty.

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

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1 Section 1. Section five hundred seven B point two (507B.2),
2 Code 1971, is amended to read as follows:

3 507B.2 DEFINITIONS. When used in this chapter:

4 1. "Person" shall mean any individual, corporation, as-
5 sociation, partnership, reciprocal exchange, interinsurer,
6 fraternal beneficiary association, and any other legal en-
7 tity engaged in the business of insurance, including agents,
8 brokers and adjusters. "Person" shall also mean any corpora-
9 tion operating under the provisions of chapter 514 and any
10 benevolent association as defined and operated under chapter
11 512A. For purposes of this Act, corporations operating un-
12 der the provisions of chapter 514 and chapter 512A shall be
13 deemed to be engaged in the business of insurance.

14 2. "Commissioner" shall mean the commissioner of insur-
15 ance of this state.

16 3. "Insurance policy" or "insurance contract" shall mean
17 any contract of insurance, indemnity, subscription, member-
18 ship, suretyship, or annuity issued, proposed for issuance,
19 or intended for issuance by any person.

20 Sec. 2. Section five hundred seven B point three (507B.3),
21 Code 1971, is amended to read as follows:

22 507B.3 UNFAIR COMPETITION ~~OR~~ AND UNFAIR AND DECEPTIVE
23 ACTS OR PRACTICES PROHIBITED. No person shall engage in this
24 state in any trade practice which is defined in this chapter
25 as, or determined pursuant to section 507B.6 of this chapter
26 to be, an unfair method of competition, or an unfair or de-
27 ceptive act or practice in the business of insurance.

28 The commissioner shall have power to examine and investi-
29 gate into the affairs of every person engaged in the business
30 of insurance in this state in order to determine whether such
31 person has been or is engaged in any unfair method of compe-
32 tion or in any unfair or deceptive act or practice prohib-
33 ited by this section.

34 Sec. 3. Section five hundred seven B point four (507B.4),
35 Code 1971, is amended by striking the section and inserting

1 in lieu thereof the following:

2 507B.4 UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEP-
3 TIVE ACTS OR PRACTICES DEFINED. The following are hereby
4 defined as unfair methods of competition and unfair or decep-
5 tive acts or practices in the business of insurance:

6 1. MISREPRESENTATIONS AND FALSE ADVERTISING OF INSURANCE
7 POLICIES. Making, issuing, circulating, or causing to be
8 made, issued or circulated, any estimate, illustrations, cir-
9 cular statement, sales presentation, omission, or comparison
10 which does any of the following:

11 a. Misrepresents the benefits, advantages, conditions,
12 or terms of any insurance policy.

13 b. Misrepresents the dividends or share of the surplus
14 to be received on any insurance policy.

15 c. Makes any false or misleading statements as to the
16 dividends or share of surplus previously paid on any insur-
17 ance policy.

18 d. Is misleading or is a misrepresentation as to the fi-
19 nancial condition of any person, or as to the legal reserve
20 system upon which any life insurer operates.

21 e. Uses any name or title of any insurance policy or class
22 of insurance policies misrepresenting the true nature thereof.

23 f. Is a misrepresentation for the purpose of inducing
24 or tending to induce the lapse, forfeiture, exchange, conver-
25 sion, or surrender of any insurance policy.

26 g. Is a misrepresentation for the purpose of effecting
27 a pledge or assignment of or effecting a loan against any
28 insurance policy.

29 h. Misrepresents any insurance policy as being shares
30 of stock.

31 2. FALSE INFORMATION AND ADVERTISING GENERALLY. Making,
32 publishing, disseminating, circulating or placing before the
33 public, or causing, directly or indirectly, to be made, pub-
34 lished, disseminated, circulated, or placed before the public
35 in a newspaper, magazine or other publication, or in the form

1 of a notice, circular, pamphlet, letter or poster, or over
2 any radio or television station, or in any other way, an ad-
3 vertisement, announcement or statement containing any asser-
4 tion, representation, or statement with respect to the busi-
5 ness of insurance or with respect to any person in the conduct
6 of his insurance business, which is untrue, deceptive or mis-
7 leading.

8 3. DEFAMATION. Making, publishing, disseminating, or
9 circulating, directly or indirectly, or aiding, abetting or
10 encouraging the making, publishing, disseminating, or circu-
11 lating of any oral or written statement or any pamphlet, cir-
12 cular, article or literature which is false, or maliciously
13 critical of or derogatory to the financial condition of any
14 person, and which is calculated to injure such person.

15 4. BOYCOTT, COERCION AND INTIMIDATION. Entering into
16 any agreement to commit, or by any concerted action commit-
17 ting, any act of boycott, coercion or intimidation resulting
18 in or tending to result in unreasonable restraint of, or
19 monopoly in, the business of insurance.

20 5. FALSE STATEMENTS AND ENTRIES.

21 a. Knowingly filing with any supervisory or other public
22 official, or knowingly making, publishing, disseminating,
23 circulating or delivering to any person, or placing before
24 the public, or knowingly causing directly or indirectly, to
25 be made, published, disseminated, circulated, delivered to
26 any person, or placed before the public, any false material
27 statement of fact as to the financial condition of a person.

28 b. Knowingly making any false entry of a material fact
29 in any book, report or statement of any person, or knowingly
30 omitting to make a true entry of any material fact pertain-
31 ing to the business of such person in any book, report or
32 statement of such person.

33 6. STOCK OPERATIONS AND ADVISORY BOARD CONTRACTS. Issu-
34 ing or delivering or permitting agents, officers or employees
35 to issue or deliver, agency company stock or other capital

1 stock, or benefit certificates or shares in any common law
2 corporation, or securities or any special or advisory board
3 contracts or other contracts of any kind promising returns
4 and profits as an inducement to insurance.

5 7. UNFAIR DISCRIMINATION.

6 a. Making or permitting any unfair discrimination between
7 individuals of the same class and equal expectation of life
8 in the rates charged for any contract of life insurance or
9 of life annuity or in the dividends or other benefits payable
10 thereon, or in any other of the terms and conditions of such
11 contract.

12 b. Making or permitting any unfair discrimination between
13 insureds of the same class for essentially the same hazard
14 in the amount of premium, policy fees, or rates charged for
15 any policy or contract of insurance other than life or in
16 the benefits payable thereunder, or in any of the terms or
17 conditions of such contract, or in any other manner whatever.

18 8. REBATES.

19 a. Except as otherwise expressly provided by law, know-
20 ingly permitting or offering to make or making any contract
21 of life insurance, life annuity or accident and health insur-
22 ance, or agreement as to such contract other than as plainly
23 expressed in the contract issued thereon, or paying or allow-
24 ing, or giving or offering to pay, allow, or give, directly
25 or indirectly, as inducement to such insurance, or annuity,
26 any rebate of premiums payable on the contract, or any spe-
27 cial favor or advantage in the dividends or other benefits
28 thereon, or any valuable consideration or inducement whatever
29 not specified in the contract; or giving, or selling, or pur-
30 chasing or offering to give, sell, or purchase as inducement
31 to such insurance or annuity or in connection therewith, any
32 stocks, bonds, or other securities of any insurance company
33 or other corporation, association, or partnership, or any
34 dividends or profits accrued thereon, or any thing of value
35 whatsoever not specified in the contract.

1 b. Nothing in subsection seven (7) or paragraph a of this
2 subsection shall be construed as including within the defini-
3 tion of discrimination or rebates any of the following prac-
4 tices:

5 (1) In the case of any contract of life insurance or life
6 annuity, paying bonuses to policyholders or otherwise rebating
7 their premiums in whole or in part out of surplus accumulated
8 from nonparticipating insurance, provided that any such bonuses
9 or rebatement of premiums shall be fair and equitable to
10 policyholders and for the best interests of the company and
11 its policyholders.

12 (2) In the case of life insurance policies issued on the
13 industrial debit plan, making allowance to policyholders who
14 have continuously for a specified period made premium payments
15 directly to an office of the insurer in an amount which fairly
16 represents the saving in collection expenses.

17 (3) Readjustment of the rate of premium for a group insur-
18 ance policy based on the loss or expense experienced
19 thereunder, at the end of the first or any subsequent policy
20 year of insurance thereunder, which may be made retroactive
21 only for such policy year.

22 9. UNFAIR CLAIM SETTLEMENT PRACTICES. Committing or per-
23 forming with such frequency as to indicate a general business
24 practice any of the following:

25 a. Misrepresenting pertinent facts or insurance policy
26 provisions relating to coverages of issue.

27 b. Failing to acknowledge and act reasonably promptly
28 upon communications with respect to claims arising under in-
29 surance policies.

30 c. Failing to adopt and implement reasonable standards
31 for the prompt investigation of claims arising under insur-
32 ance policies.

33 d. Refusing to pay claims without conducting a reasonable
34 investigation based upon all available information.

35 e. Failing to affirm or deny coverage of claims within

1 a reasonable time after proof of loss statements have been
2 completed.

3 f. Not attempting in good faith to effectuate prompt,
4 fair and equitable settlements of claims in which liability
5 has become reasonably clear.

6 g. Compelling insureds to institute litigation to recover
7 amounts due under an insurance policy by offering substantially
8 less than the amounts ultimately recovered in actions brought
9 by such insureds.

10 h. Attempting to settle a claim for less than the amount
11 to which a reasonable man would have believed he was entitled
12 by reference to written or printed advertising material accom-
13 panying or made part of an application.

14 i. Attempting to settle claims on the basis of an appli-
15 cation which was altered without notice to, or knowledge or
16 consent of the insured.

17 j. Making claims payments to insureds or beneficiaries
18 not accompanied by a statement setting forth the coverage
19 under which payments are being made.

20 k. Making known to insureds or claimants a policy of ap-
21 pealing from arbitration awards in favor of insureds or claim-
22 ants for the purpose of compelling them to accept settlements
23 or compromises less than the amount awarded in arbitration.

24 l. Delaying the investigation or payment of claims by
25 requiring an insured, claimant, or the physician of either
26 to submit a preliminary claim report and then requiring the
27 subsequent submission of formal proof of loss forms, both
28 of which submissions contain substantially the same informa-
29 tion.

30 m. Failing to promptly settle claims, where liability
31 has become reasonably clear, under one portion of the insur-
32 ance policy coverage in order to influence settlements under
33 other portions of the insurance policy coverage.

34 n. Failing to promptly provide a reasonable explanation
35 of the basis in the insurance policy in relation to the facts

1 or applicable law for denial of a claim or for the offer of
2 a compromise settlement.

3 10. MISREPRESENTATION IN INSURANCE APPLICATIONS. Making
4 false or fraudulent statements or representations on or rela-
5 tive to an application for an insurance policy, for the pur-
6 pose of obtaining a fee, commission, money, or other benefit
7 from any insurer, agent, broker, or individual.

8 11. Any violation of section five hundred fifteen A point
9 sixteen (515A.16) of the Code.

10 Sec. 4. Section five hundred seven B point five (507B.5),
11 Code 1971, is amended by striking the section and inserting
12 in lieu thereof the following:

13 507B.5 FAVORED AGENT OR INSURER--COERCION OF DEBTORS.

14 1. No person may do any of the following:

15 a. Require, as a condition precedent to the lending of
16 money or extension of credit, or any renewal thereof, that
17 the person to whom such money or credit is extended or whose
18 obligation the creditor is to acquire or finance, negotiate
19 any policy or contract of insurance through a particular in-
20 surer or group of insurers or agent or broker or group of
21 agents or brokers.

22 b. Unreasonably disapprove the insurance policy provided
23 by a borrower for the protection of the property securing
24 the credit or lien.

25 c. Require directly or indirectly that any borrower, mort-
26 gager, purchaser, insurer, broker, or agent pay a separate
27 charge, in connection with the handling of any insurance po-
28 licy required as security for a loan on real estate, or pay
29 a separate charge to substitute the insurance policy of one
30 insurer for that of another.

31 d. Use or disclose information resulting from a require-
32 ment that a borrower, mortgagor or purchaser furnish insur-
33 ance of any kind on real property being conveyed or used as
34 collateral security to a loan, when such information is to
35 the advantage of the mortgagee, vendor, or lender, or is to

1 the detriment of the borrower, mortgagor, purchaser, insurer,
2 or the agent or broker complying with such a requirement.

3 2. Subsection one (1), paragraph c of this section does
4 not include the interest which may be charged on premium loans
5 or premium advancements in accordance with the security in-
6 strument.

7 3. For purposes of subsection one (1), paragraph b of
8 this section, such disapproval shall be deemed unreasonable
9 if it is not based solely on reasonable standards uniformly
10 applied, relating to the extent of coverage required and the
11 financial soundness and the services of an insurer. Such
12 standards shall not discriminate against any particular type
13 of insurer, nor shall such standards call for the disapproval
14 of an insurance policy because such policy contains coverage
15 in addition to that required.

16 4. The commissioner may investigate the affairs of any
17 person to whom this subsection applies to determine whether
18 such person has violated this subsection. If a violation
19 of this subsection is found, the person in violation shall
20 be subject to the same procedures and penalties as are ap-
21 plicable to other provisions of this chapter.

22 5. For purposes of this section, "person" includes any
23 individual, corporation, association, partnership, or other
24 legal entity.

25 Sec. 5. Section five hundred seven B point six (507B.6),
26 subsection one (1), Code 1971, is amended to read as follows:

27 1. Whenever the commissioner shall have reason to believe
28 that any such person has been engaged or is engaging in this
29 state in any unfair method of competition or any unfair or
30 deceptive act or practice whether or not defined in section
31 507B.4 or 507B.5, and that a proceeding by him in respect
32 thereto would be to the interest of the public, he shall is-
33 sue and serve upon such person a statement of the charges
34 in that respect and a notice of a hearing thereon to be held
35 at a time and place fixed in the notice, which shall not be

1 less than ten days after the date of the service thereof.

2 Sec. 6. Section five hundred seven B point seven (507B.7),
3 subsection one (1), Code 1971, is amended to read as follows:

4 1. If, after such hearing, the commissioner shall deter-
5 mine that the person charged has engaged in an unfair method
6 of competition or the act or practice in question is defined
7 in section 507B.4 and that the person complained of has en-
8 gaged in such method of competition, act or practice in vio-
9 lation of this chapter or an unfair or deceptive act or
10 practice, he shall reduce his findings to writing and shall
11 issue and cause to be served upon the person charged with
12 the violation a copy of such findings, an order requiring
13 such person to cease and desist from engaging in such method
14 of competition, act or practice and if the act or practice
15 is a violation of section 507B.4 or 507B.5, the commissioner
16 may at his discretion order any one or more of the following:

17 a. Payment of a monetary penalty of not more than one
18 thousand dollars for each and every act or violation, but
19 not to exceed an aggregate of ten thousand dollars, unless
20 the person knew or reasonably should have known he was in
21 violation of this chapter, in which case the penalty shall
22 be not more than five thousand dollars for each and every
23 act or violation, but not to exceed an aggregate penalty of
24 fifty thousand dollars in any one six month period.

25 b. Suspension or revocation of the person's license if
26 he knew or reasonably should have known he was in violation
27 of this chapter.

28 Sec. 7. Section five hundred seven B point eight (507B.8),
29 subsections one (1) and three (3), Code 1971, are amended
30 to read as follows:

31 1. Any person required by subject to an order of the com-
32 missioner under section 507B.7 to cease and desist from en-
33 gaging in any unfair method of competition or any unfair or
34 deceptive act or practice defined in sections 507B.3 and
35 507B.4 hereof, or section 507B.11 may obtain a review of such

1 order by filing in the district court of Polk county, within
2 ten days from the date of the service of such order, a written
3 petition, duly sworn to, praying that the order of the
4 commissioner be set aside, and stating the specific grounds
5 thereof. If the court shall find that the grounds thus stated,
6 if true, might reasonably justify the modification of the
7 commissioner's order, it shall direct that a copy of such
8 petition be forthwith served upon the commissioner and
9 thereupon the commissioner forthwith shall certify and file
10 in such court a transcript of the entire record in the
11 proceeding, including all the evidence taken and the report
12 and order of the commissioner. Upon such filing of the
13 petition and transcript such court shall have jurisdiction
14 of the proceeding and of the question determined therein,
15 shall determine whether the filing of such petition shall
16 operate as a stay of such order of the commissioner, and shall
17 have power to make and enter upon the pleadings, evidence,
18 and proceedings set forth in such transcript a decree modi-
19 fying, affirming or reversing the order of the commissioner,
20 in whole or in part. The findings of the commissioner as
21 to the facts, if supported by reasonable evidence, shall be
22 conclusive.

23 3. ~~A-cess-and-desist~~ An order issued by the commissioner
24 under section 507B.7 shall become final:

25 a. Upon the expiration of the time allowed for filing
26 a petition for review if no such petition has been duly filed
27 within such time; except that the commissioner may thereafter
28 modify or set aside his order to the extent provided in sec-
29 tion 507B.7, subsection 2; or

30 b. Upon the final decision of the court if the court di-
31 rects that the order of the commissioner be affirmed or the
32 petition for review dismissed.

33 Sec. 8. Section five hundred seven B point ten (507B.10),
34 Code 1971, is amended to read as follows:

35 507B.10 JUDICIAL REVIEW BY INTERVENOR. If after any hear-

1 ing under section 507B.7 or section 507B.11 the report of
2 the commissioner does not charge a violation of this chapter,
3 then any intervenor in the proceedings may within ten days
4 after the service of such report, cause a petition for writ
5 of certiorari to be filed in the district court of Polk county
6 for a review of such report. Upon such review, the court
7 shall have authority to issue appropriate orders and decrees
8 in connection therewith, including, if the court finds that
9 it is to the interest of the public, orders enjoining and
10 restraining the continuance of any method of competition,
11 act or practice which it finds, notwithstanding such report
12 of the commissioner, constitutes a violation of this chapter
13 and containing penalties pursuant to section 507B.8.

14 Sec. 9. Section five hundred seven B point eleven
15 (507B.11), Code 1971, is amended by striking the section and
16 inserting in lieu thereof the following:

17 507B.11 PENALTY. Any person who violates a cease and
18 desist order of the commissioner under section five hundred
19 seven B point seven (507B.7) of the Code, and while such order
20 is in effect, may after notice and hearing and upon order
21 of the commissioner be subject at the discretion of the
22 commissioner to any one or more of the following:

- 23 1. A monetary penalty of not more than ten thousand dol-
24 lars for each and every act or violation.
25 2. Suspension or revocation of such person's license.

26 Sec. 10. Section five hundred seven B point twelve
27 (507B.12), Code 1971, is amended by striking the section and
28 inserting in lieu thereof the following:

29 507B.12 REGULATIONS. The commissioner may, after notice
30 and hearing, promulgate reasonable rules and regulations
31 as are necessary or proper to identify specific methods of
32 competition or acts or practices which are prohibited by sec-
33 tion five hundred seven B point four (507B.4) or five hun-
34 dred seven B point five (507B.5) of the Code, but the regu-
35 lations shall not enlarge upon or extend the provisions of

1 such sections. Such regulations shall be subject to review
2 in accordance with chapter seventeen A (17A) of the Code.

3 The powers vested in the commissioner by this chapter shall
4 be additional to any other powers to enforce any penalties,
5 fines or forfeitures authorized by law with respect to the
6 methods, acts and practices hereby declared to be unfair or
7 deceptive.

8 Sec. 11. Section five hundred seven B point nine (507B.9),
9 Code 1971, is repealed.

10 EXPLANATION

11 This bill updates the uniform trade practices act relating
12 to the insurance business. It adds a provision to cover un-
13 fair claim settlement practices and coercion of debtors through
14 favored agent or insurer arrangements. Penalties for viola-
15 tions of cease and desist orders have been increased from
16 not more than fifty dollars to not more than ten thousand
17 dollars or suspension or revocation of the person's license.

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LSB 3291
jd/jw/3

House 6
March 15, 1972

SENATE AMENDMENT TO HOUSE FILE 1141

1 Amend House File 1141, as amended and passed by the House
2 as follows:
3 1. Page 9, line 17, by striking the word "subsection" and
4 inserting in lieu thereof the word "section".
5 2. Page 10, line 20, by striking the words "such violation
6 was willful", and inserting in lieu thereof the following:
7 "the person knew or reasonably should have known he was in
8 violation of section five hundred seven B point four (507B.4)
9 or five hundred seven B point five (507B.5) of the Code".
10 3. Page 10, by inserting after the period in line 23 the
11 following: "The commissioner shall, if he finds the violations
12 of sections five hundred seven B point four (507B.4) or five
13 hundred seven B point five (507B.5) of the Code were directed,
14 encouraged, condoned, ignored, or ratified by the employer of
15 such person, assess such fine to the employer and not such
16 person."

Received from the Senate
March 14, 1972

House 7
March 15, 1972

SENATE AMENDMENT TO HOUSE FILE 1141

1 Amend House File 1141, as amended and passed by the House
2 as follows:
3 1. Page 9, line 17, by striking the word "subsection" and
4 inserting in lieu thereof the word "section".
5 2. Page 10, line 20, by striking the words "such violation
6 was willful", and inserting in lieu thereof the following:
7 "the person knew or reasonably should have known he was in
8 violation of section five hundred seven B point four (507B.4)
9 or five hundred seven B point five (507B.5) of the Code".
10 3. Page 10, by inserting after the period in line 23 the
11 following: "The commissioner shall, if he finds the violations
12 of sections five hundred seven B point four (507B.4) or five
13 hundred seven B point five (507B.5) of the Code were directed,
14 encouraged, condoned, ignored, or ratified by the employer of
15 such person, assess such fine to the employer and not such
16 person."

Received from the Senate and adopted
March 14, 1972

Lower concurred 3/14/72 (1111)

1 Amend House File 1141 as follows:
2 1. Page 9 by striking line 16 through
3 line 18 and inserting in lieu thereof the words
4 "4. If a violation".
5 2. Page 10 by striking line 20 and in
6 line 21 the words "violation of this chapter", and
7 inserting in lieu thereof the word "such violation
8 was willful".
9 3. Page 10 by striking line 25 through
10 line 27 and inserting in lieu thereof the following:
11 b. Suspension or revocation of the
12 license of a person as defined in section five
13 hundred seven B point two (507B.2), subsection one
14 (1) of the Code, if he knew or reasonably should
15 have known he was in violation of section five
16 hundred seven B point four (507B.4) or section
17 five hundred seven B point five (507B.5) of the
18 Code.
19 4. Page 12, line 13, by striking the
20 figures 507B.8 and inserting in lieu thereof the
21 figures "507B.7".

Adopted 2-24 (702)
February 17, 1972

By ELLSWORTH of Dubuque

1 Amend House File 1141, as amended and passed by the
2 House, page 10, line 20, by striking the words "such violation
3 was willful", and insert in lieu thereof the following:
4 "the person knew or reasonably should have known he was
5 in violation of section five hundred seven B point four (507B.4)
6 or five hundred seven B point five (507B.5) of the Code".

Filed - Adopted 3/14/72 (866)
March 7, 1972

By GRIFFIN

1 Amend House File 1141, as amended and passed by the
2 House, page 9, line 19, by striking the word "subsection"
3 and inserting in lieu thereof the word "section".

Filed - adopted (866) 3/14/72
March 7, 1972

By GRIFFIN

1 Amend House File 1141, as amended and passed by the House
2 Page 10, by inserting after the period in line 23 the following:
3 "The commissioner shall, if he finds the violations of sections
4 five hundred seven B point four (507B.4) or five hundred seven
5 B point five (507B.5) of the Code were directed, encouraged,
6 condoned, ignored, or ratified by the employer of such person,
7 assess such fine to the employer and not such person."

Filed - adopted 3-14-72 (866)
March 9, 1972

By KENNEDY and GAUDINEER