

Reprinted 4/7/83

MAR 11 1983

HOUSE FILE 448

Place On Calendar

BY COMMITTEE ON SMALL BUSINESS AND COMMERCE

(Formerly Study Bill 207)

Passed House, Date 4-5-83 (p.1069) Passed Senate, Date _____

Vote: Ayes 94 Nays 4 Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act providing for the regulation of residential maintenance
2 service companies by the commissioner of insurance, and pro-
3 viding penalties.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
HOUSE FILE 448

H-3349

1 Amend House File 448 as follows:

2 1. Page 8, by striking line 31 through page 9,
3 line 2 and inserting in lieu thereof the following:

4 "2. A service contract, guarantee or warranty
5 between a residential customer and a service company
6 which will perform the work itself and not through
7 subcontractors for the service, repair or replacement
8 of appliances or electrical, plumbing, heating,
9 cooling or air conditioning systems."

BY SWARTZ of Marshall

SCHROEDER of Pottawattamie

H-3349 FILED MARCH 22, 1983

Place out of order 4/5/83 (p.1069)

HOUSE FILE 448

H-3445

1 Amend House File 448 as follows:

2 1. Page 1, line 6, by striking the words "in which
3 a person" and inserting in lieu thereof the words
4 "between a residential customer and a service company
5 which".

6 2. Page 8, by striking line 31 through page 9,
7 line 2 and inserting in lieu thereof the following:

8 "2. A service contract, guarantee or warranty
9 between a residential customer and a service company
10 which will perform the work itself and not through
11 subcontractors for the service, repair or replacement
12 of appliances or electrical, plumbing, heating, cooling
13 or air conditioning systems."

BY SWARTZ of Marshall

SCHROEDER of Pottawattamie

H-3445 FILED MARCH 29, 1983

Adopted 4/5 (p.1069)

1 Section 1. Sections 2 through 17 of this Act shall be
2 codified as one new chapter.

3 Sec. 2. NEW SECTION. DEFINITIONS. As used in this Act,
4 unless the context otherwise requires:

5 1. "Residential service contract" means a contract or
6 agreement in which a person undertakes, for a predetermined
7 fee and for a specified period of time, to maintain, repair,
8 or replace all or any part of the structural components,
9 appliances, or electrical, plumbing, heating, cooling, or
10 air-conditioning systems of residential property containing
11 not more than four dwelling units.

12 2. "Service company" means a person who issues and
13 performs, or arranges to perform, services pursuant to a
14 residential service contract.

15 3. "Licensed service company" means a service company
16 which is licensed by the commission pursuant to this Act.

17 4. "Commissioner" means the commissioner of insurance.

18 Sec. 3. NEW SECTION. LICENSE REQUIRED. A person shall
19 not issue a residential service contract or undertake or
20 arrange to perform services pursuant to a residential service
21 contract unless the person is a corporation and is a licensed
22 service company.

23 Sec. 4. NEW SECTION. APPLICATION FOR LICENSE.

24 1. Application for a license as a service company shall
25 be made to and filed with the commissioner on forms approved
26 by the commissioner and shall include all of the following
27 information:

- 28 a. The name and principal address of the applicant.
29 b. The state of incorporation of the applicant.
30 c. The name and address of the applicant's registered
31 agent for service of process within Iowa.

32 2. The application shall be accompanied by all of the
33 following:

- 34 a. A certificate of good standing for the applicant issued
35 by the secretary of state and dated not more than thirty days

1 prior to the date of the application.

2 b. A surety bond as provided in section 6 of this Act.

3 c. A copy of the most recent financial statement, including
4 balance sheets and related statements of income, of the
5 applicant, prepared in accordance with generally accepted
6 accounting principles, audited by a certified public accountant
7 and dated not more than twelve months prior to the date of
8 the application.

9 d. An affidavit of an authorized officer of the service
10 company stating the number of contracts issued by the service
11 company in the preceding calendar year, and stating that the
12 net worth of the service company satisfies the requirements
13 of section 7 of this Act.

14 e. A license fee in the amount of five hundred dollars.

15 3. If the application contains the required information
16 and is accompanied by the items set forth in subsection 2,
17 and if the net worth requirements of section 7 of this Act
18 are satisfied, as evidenced by the audited financial
19 statements, the commissioner shall issue the license. If
20 the form of application is not properly completed or if the
21 required accompanying documents are not furnished or in proper
22 form, the commissioner shall not issue the license and shall
23 give the applicant written notice of the grounds for not
24 issuing the license. A notice of license denial shall be
25 accompanied by a refund of fifty percent of the fee submitted
26 with the application.

27 Sec. 5. NEW SECTION. LICENSE EXPIRATION AND RENEWAL.

28 Each license issued under this Act shall expire on June 30
29 next following the date of issuance. If the service company
30 maintains in force the surety bond described in section 6
31 of this Act and if its license is not subject to or under
32 suspension or revocation under section 10 of this Act, its
33 license shall be renewed by the commissioner upon receipt
34 by the commissioner on or before the expiration date of a
35 renewal application accompanied by the items required by

1 section 4, subsection 2, paragraphs b, c, d, and e, and section
2 15 of this Act. If the commissioner denies renewal of the
3 license, the denial shall be in writing setting forth the
4 grounds for denial and shall be accompanied by a refund of
5 fifty percent of the license renewal fee.

6 Sec. 6. NEW SECTION. REQUIRED BOND. To assure the
7 faithful performance of obligations under residential service
8 contracts issued and outstanding in this state, a service
9 company shall, prior to the issuance or renewal of a license,
10 file with the commissioner a surety bond in the amount of
11 one hundred thousand dollars, which has been issued by an
12 authorized surety company and approved by the commissioner
13 as to issuer, form, and contents. The bond shall not be
14 canceled or be subject to cancellation unless thirty days'
15 advance notice in writing is filed with the commissioner.
16 Notwithstanding the provisions of chapter 17A, if a bond is
17 canceled for any reason and a new bond in the required amount
18 is not received by the commissioner on or before the effective
19 date of cancellation, the license of the service company is
20 automatically revoked as of the date the bond ceases to be
21 in effect. A service company whose license is revoked under
22 this section may file an application for a new license pursuant
23 to section 4 of this Act.

24 The bond posted by a service company pursuant to this
25 section shall be for the benefit of, and subject to recovery
26 thereon by any residential service contract holder sustaining
27 actionable injury due to the failure of the service company
28 to faithfully perform its obligations under a residential
29 service contract because of insolvency of the service company.

30 If a service company ceases to do business in this state
31 and furnishes to the commissioner satisfactory proof that
32 it has discharged all obligations to contract holders, the
33 surety bond shall be released.

34 Sec. 7. NEW SECTION. NET WORTH REQUIREMENT. A service
35 company that has issued or renewed in the aggregate one

1 thousand or less residential service contracts during the
2 preceding calendar year shall maintain a minimum net worth
3 of forty thousand dollars, and the minimum net worth to be
4 maintained shall be increased by an additional twenty thousand
5 dollars for each additional five hundred contracts or fraction
6 thereof issued or renewed, up to a maximum required net worth
7 of four hundred thousand dollars.

8 For purposes of this Act, "net worth" means the excess
9 of all assets over all liabilities including required reserves,
10 computed in accordance with generally accepted accounting
11 principles. At least twenty thousand dollars of net worth
12 shall consist of paid-in capital.

13 Sec. 8. NEW SECTION. FILING OF FORMS OF CONTRACT.

14 1. A residential service contract shall not be issued
15 or used in this state unless it has been filed with and
16 approved by the commissioner. If the commissioner fails to
17 inform the service company of objections to the form of the
18 residential service contract within thirty days after filing,
19 the residential contract shall be deemed to have been approved
20 by the commissioner provided it otherwise complies with this
21 section.

22 2. Residential service contracts shall:

23 a. Be written in nontechnical, readily understood language,
24 using words with common and everyday meanings.

25 b. Clearly, conspicuously, and plainly specify all of
26 the following:

27 (1) The services to be performed by the service company,
28 and the terms and conditions of performance.

29 (2) The fee, if any, to be charged for a service call.

30 (3) Each of the systems, appliances, and components covered
31 by the contract.

32 (4) Any exclusions and limitations respecting the extent
33 of coverage.

34 (5) The period during which the contract will remain in
35 effect.

1 (6) All limitations respecting the performance of services,
2 including any restrictions as to the time periods when services
3 may be requested or will be performed.

4 (7) The following statement: "The issuer of this contract
5 is subject to regulation by the insurance department of the
6 state of Iowa. Complaints which are not settled by the issuer
7 may be sent to the Iowa insurance department."

8 c. Provide for the performance of services only. A
9 residential service contract shall not provide for a payment
10 to, or reimbursement or indemnification of the holder of the
11 contract.

12 d. Provide for the performance of services upon a request
13 by telephone to the service company without a requirement
14 that claim forms or applications be filed prior to the
15 rendition of services.

16 e. Provide for the initiation of services by or under
17 the direction of the service company within forty-eight hours
18 of the request for the services by the holder of the contract.

19 3. Any application for a residential service contract
20 shall notify the purchaser that the person submitting the
21 application to the service company for the purchaser is acting
22 as the representative of the service company and not of the
23 purchaser in that transaction.

24 Sec. 9. NEW SECTION. REBATES AND COMMISSIONS. A service
25 company shall not pay a person who is acting as the agent,
26 representative, attorney, or employee of the owner or
27 prospective owner of residential property, a commission or
28 any other consideration, either directly or indirectly, as
29 an inducement or compensation for the issuance, purchase,
30 or acquisition of a residential service contract. As used
31 in this section, the phrase "commission or any other
32 consideration" does not include bona fide payments or
33 reimbursements for any of the following:

34 1. Goods or facilities actually furnished or services
35 actually performed, if the payments or reimbursements are

1 reasonably related to the value of the goods, facilities,
2 or services furnished.

3 2. Inspection fees, if an inspection of the property to
4 be the subject of a residential service contract is required
5 by a service company and if the inspection fee is reasonably
6 related to the services performed.

7 3. Advertising, marketing, and educational expenses
8 actually incurred in the sale of the service company's service
9 contracts which are applicable on a similar and essentially
10 equal basis to all its customers and the agents of its
11 customers.

12 4. Reasonable expenses for food, beverage, and similar
13 items if furnished within the context of a service company's
14 customary business, educational, or promotional practices.

15 Sec. 10. NEW SECTION. SUSPENSION OR REVOCATION OF LICENSE.

16 1. In addition to the license revocation provisions of
17 section 6 of this Act, the commissioner may suspend or revoke
18 or refuse to renew the license of a service company for any
19 of the following grounds:

20 a. The service company violated a lawful order of the
21 commission or any provision of this Act.

22 b. The service company failed to pay any final judgment
23 rendered against it in this state within sixty days after
24 the judgment became final.

25 c. The service company has without just cause refused
26 to perform or negligently or incompetently performed services
27 required to be performed under its residential service
28 contracts and the refusal, or negligent or incompetent
29 performance has occurred with such frequency, as the
30 commissioner determines, as to indicate the general business
31 practices of the service company.

32 d. The service company violated section 14 of this Act.

33 e. The service company failed to maintain the net worth
34 required by section 7 of this Act.

35 f. The service company failed to maintain the reserve

1 account required by section 12 of this Act.

2 g. The service company failed to maintain its corporate
3 certificate of good standing with the secretary of state.

4 2. If the license of a service company is terminated under
5 section 6 of this Act because of failure to maintain bond,
6 the commissioner shall give written notice of termination
7 to the service company. The notice shall include the effective
8 date of the termination.

9 Sec. 11. NEW SECTION. RULES. The commissioner may adopt
10 rules under chapter 17A to implement this Act.

11 Sec. 12. NEW SECTION. RESERVE ACCOUNT.

12 1. A service company shall maintain in an independent
13 depository a reserve account containing cash or marketable
14 securities in an amount equal to fifty percent of aggregate
15 annual fees collected on residential service contracts issued
16 in this state, if any, and for actual expenditures for services
17 rendered under those contracts.

18 2. The depository shall make its records concerning the
19 service company reserve accounts available to the commissioner
20 or a designee for inspection on the premises of the depository.

21 3. The service company shall submit with each license
22 renewal application an affidavit by an authorized officer
23 of the depository attesting to the balance in the reserve
24 account and that the reserve account is being maintained in
25 accordance with this Act.

26 Sec. 13. NEW SECTION. OPTIONAL EXAMINATION. The
27 commissioner or a designee of the commissioner may make an
28 examination of the books and records of a service company
29 and verify its assets, liabilities, and reserves. The actual
30 costs of the examination shall be borne by the service company.

31 Sec. 14. NEW SECTION. DECEPTIVE ACTS OR PRACTICES--
32 PENALTY. The commissioner shall adopt rules which regulate
33 residential service contracts to prohibit misrepresentation,
34 false advertising, defamation, boycotts, coercion,
35 intimidation, false statements and entries and unfair

1 discrimination or practices. If the commissioner finds that
2 a person has violated the rules adopted under this section,
3 the commissioner shall issue an order to that person to cease
4 and desist and may order any or all of the following:

5 1. Payment of a civil penalty of not more than one thousand
6 dollars for each and every act or violation, but not to exceed
7 an aggregate of ten thousand dollars, unless the person knew
8 or reasonably should have known the person was in violation
9 of this section, in which case the penalty shall be not more
10 than five thousand dollars for each and every act or violation,
11 but not to exceed an aggregate penalty of fifty thousand
12 dollars in any one six-month period. The commissioner shall,
13 if it finds the violations of this section were directed,
14 encouraged, condoned, ignored, or ratified by the employer
15 of such person, assess such fine to the employer and not such
16 person.

17 2. Suspension or revocation of the license of a person,
18 if the person knew or reasonably should have known the person
19 was in violation of this section.

20 Sec. 15. NEW SECTION. ANNUAL REPORT. A licensed service
21 company shall submit to the commissioner each year a statement
22 disclosing the revenues from and expenses related to service
23 contracts issued in this state during the previous calendar
24 year.

25 Sec. 16. NEW SECTION. EXCLUSIONS. This Act does not
26 apply to any of the following:

27 1. A performance guarantee given by a builder of a
28 residence or the manufacturer or seller or lessor of
29 residential property if no identifiable charge is made for
30 the guarantee.

31 2. A service contract, guarantee, or warranty, guaranteeing
32 or warranting the repair or service of an appliance, system,
33 or component, if the service contract, guarantee, or warranty
34 is issued by a person who is not the service company that
35 sold, serviced, or repaired the appliance, system, or component

1 prior to the issuance of the service contract, guarantee,
2 or warranty.

3 3. A contract between a service company and a person who
4 actually performs the maintenance, repairs, or replacements
5 of structural components, or appliances, or electrical,
6 plumbing, heating, cooling, or air-conditioning systems, if
7 someone other than the service company actually performs these
8 functions.

9 Sec. 17. NEW SECTION. LENDING INSTITUTION. A bank,
10 savings and loan association, insurance company or other
11 lending institution shall not require the purchase of a
12 residential service contract as a condition of a loan. A
13 lending institution shall not sell a residential service
14 contract to a borrower unless the borrower signs an affidavit
15 acknowledging that the purchase is not required. Violation
16 of this section is punishable as provided in section 14 of
17 this Act.

18 EXPLANATION

19 This bill provides for the licensing and regulation of
20 persons who sell contracts for the repair, maintenance, or
21 servicing of the structural components of homes or the
22 electrical, plumbing, heating, or cooling systems in homes.

23 The commissioner of insurance would be the licensing agency.
24 In order to obtain a license a person would have to be a
25 corporation, have a net worth equal to forty thousand dollars
26 or more, depending upon the number of service contracts
27 outstanding, pay a license fee of five hundred dollars, and
28 maintain a surety bond of one hundred thousand dollars which
29 would be payable by the surety in the event of the insolvency
30 of the corporation.

31 The contract forms used by the service company would be
32 subject to the approval of the commissioner, and rules,
33 procedures, and penalties relating to unfair and deceptive
34 acts and practices would apply to service companies and service
35 contracts. That chapter provides for fines of up to ten

1 thousand dollars for violations.

2 The commissioner could revoke a license if the service
3 company fails to pay judgments rendered against it, or if
4 the service company exhibits a pattern of negligent or
5 incompetent performance of contracts or refusal to perform
6 contracts.

7 Service companies also would be required to maintain
8 reserves in the amount of fifty percent of revenues.

9 The commissioner would have the option to examine the books
10 and records of service companies to verify assets, liabilities,
11 and reserves.

12 Certain types of contracts are excluded from the bill.

13 The bill would not apply to service contracts for residences
14 containing more than four dwelling units.

15 The bill would take effect July 1 following enactment.

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HOUSE FILE 448

FISCAL NOTE

REQUESTED BY REPRESENTATIVE CHIODO

In compliance with a written request received March 11, 1983, there is hereby submitted a Fiscal Note for House File 448 pursuant to Joint Rule 17. Background information used in developing this Fiscal Note is available from the Legislative Fiscal Bureau, to members of the Legislature upon request.

House File 448 provides for the licensing and regulation of persons who sell contracts for the repair, maintenance, or servicing of the structural components of homes or the electrical, plumbing, heating, or cooling systems in homes. Residences containing more than four dwelling units are not covered. The commissioner of insurance is the licensing agency. Only corporations that meet standards of financial worth, pay a fee of \$500, and maintain a surety bond of \$100,000 can be licensed.

The contract forms used by the service companies are subject to the approval of the insurance commissioner, and regulations concerning unfair and deceptive acts and practices apply. Violations are punished by fines, and the commissioner could revoke a license upon specified grounds. Service companies would be required to maintain reserves in the amount of fifty percent of revenues.

The number of applicants and licensees is unknown. The cost of administering the provisions of this bill depends upon the number of applicants and licensees. The insurance commissioner estimates that up to eight new staff would be required to administer the provisions of this bill; this would cost \$114,000. In addition, there would be staff support costs of \$11,000. Revenues would be \$250 per application and \$250 per license.

The estimated fiscal effect of this bill is a maximum increase in expenditures of \$125,000 each year, and unknown increase in revenues.
(706N, 83-367, JMN)

SOURCE: INSURANCE COMMISSIONER
FILED MARCH 24, 1983

BY DENNIS PROUTY, FISCAL DIRECTOR

HOUSE FILE 448

-REVISED- FISCAL NOTE

REQUESTED BY REPRESENTATIVE CHIODO

In compliance with a written request received March 11, 1983, there is hereby submitted a Fiscal Note for House File 448 pursuant to Joint Rule 17. Background information used in developing this Fiscal Note is available from the Legislative Fiscal Bureau, to members of the Legislature upon request.

House File 448 provides for the licensing and regulation of persons who sell contracts for the repair, maintenance, or servicing of the structural components of homes or the electrical, plumbing, heating, or cooling systems in homes. Residences containing more than four dwelling units are not covered. The commissioner of insurance is the licensing agency. Only corporations that meet standards of financial worth, pay a fee, and maintain a surety bond of \$100,000 can be licensed. The contract forms used by the service companies are subject to the approval of the insurance commissioner, and regulations concerning unfair and deceptive acts and practices apply. Service companies are required to maintain reserves in the amount of fifty percent of revenues.

The number of service companies in the state is estimated to be between three and ten. The insurance commissioner estimates that regulation of these companies requires eight new staff (\$125,000 including related support). However, based upon analysis of the workload of current insurance department staff, it is estimated that one professional staff, one clerical staff, and \$3,000 in support would be needed (if there are more service companies, more staff may be needed). This would require an expenditure of approximately \$30,000 each year. Revenues would be \$500 per licensed company.

The estimated fiscal effect of this bill is an increase in expenditures of \$30,000 each year, and an unknown increase in revenues.

SOURCE- INSURANCE COMMISSIONER
FILED MARCH 29, 1983

(706H, 83-367, JMN)

BY DENNIS PROUTY, FISCAL DIRECTOR

HOUSE FILE 448

S-3465

- 1 Amend House File 448 as amended, passed and
- 2 reprinted by the House as follows:
- 3 1. Page 2, line 15, by striking the words "five
- 4 hundred" and inserting in lieu thereof the words "two
- 5 hundred fifty".

S-3465 FILED
APRIL 7, 1983

Adopted 4/11/83 (p. 1188)

BY COMMITTEE ON SMALL BUSINESS
AND ECONOMIC DEVELOPMENT
EMIL J. HUSAK, CHAIR

HOUSE FILE 448

S-3467

- 1 Amend House File 448 as amended, passed and reprint-
- 2 ed by the House as follows:
- 3 1. Page 9, by inserting after line 7 the following:
- 4 "4. A service contract, guarantee or warranty issued
- 5 by a retail merchant to a retail customer, guaranteeing
- 6 or warranting the repair, service or replacement of
- 7 appliances or electrical, plumbing, heating, cooling or
- 8 air conditioning systems sold by said retail merchant."

S-3467 FILED
APRIL 7, 1983

Adopted 4/11 (p. 1188)

BY BILL HUTCHINS

S-3456

1 Amend House File 448 as amended and passed by the
2 House, as follows:

3 1. Page 8, by inserting after line 19 the
4 following:

5 "Sec. 15. NEW SECTION. RATE REVIEW. Using the
6 information obtained in the annual reports and any
7 additional information requested by the commissioner,
8 the commissioner shall evaluate the fees charged for
9 the residential service contract to determine if they
10 are reasonable in relation to the value of the claims
11 made. The commissioner may order an adjustment of
12 the fees if the commissioner determines that the
13 contract purchasers in the aggregate cannot expect
14 to receive at least sixty percent of the fees paid
15 in the form of service provided."

16 2. Page 8, by striking lines 20 through 24 and
17 inserting in lieu thereof the following:

18 "Sec. 16. NEW SECTION. ANNUAL REPORT. A licensed
19 service company shall file with the commissioner an
20 annual report within ninety days of the close of its
21 fiscal year. The annual report shall be in a form
22 prescribed by the commissioner and contain all of
23 the following:

24 1. A current financial statement including a
25 balance sheet and statement of operations prepared
26 in accordance with generally accepted accounting
27 principles and certified by an independent certified
28 public accountant.

29 2. The number of residential service contracts
30 issued during the preceding fiscal year, the number
31 canceled or expired during the year, the number in
32 effect at year end and the amount of residential
33 service contract fees received.

34 3. Any other information relating to the
35 performance and solvency of the residential service
36 company required by the commissioner."

37 3. Renumber to conform with this amendment.

S-3456 FILED

APRIL 6, 1983

W/D 4/11/83 (J. 1185)

BY CHARLES BRUNER

SENATE AMENDMENT TO HOUSE FILE 448

H-3711

1 Amend House File 448 as amended, passed and
2 reprinted by the House as follows:

3 1. Page 2, line 15, by striking the words "five
4 hundred" and inserting in lieu thereof the words "two
5 hundred fifty".

6 2. Page 8, by inserting after line 20 the
7 following:

8 "Sec. 15. NEW SECTION. RATE REVIEW. Using the
9 information obtained in the annual reports and any
10 additional information requested by the commissioner,
11 the commissioner shall evaluate the fees charged for
12 the residential service contract to determine if they
13 are reasonable in relation to the value of the claims
14 made. The commissioner may order an adjustment of
15 the fees if the commissioner determines that the fees
16 are not reasonable in relation to the value of the
17 claims made."

18 3. Page 8, by striking lines 21 through 25 and
19 inserting in lieu thereof the following:

20 "Sec. 16. NEW SECTION. ANNUAL REPORT. A licensed
21 service company shall file with the commissioner an
22 annual report within ninety days of the close of its
23 fiscal year. The annual report shall be in a form
24 prescribed by the commissioner and contain all of
25 the following:

26 1. A current financial statement including a
27 balance sheet and statement of operations prepared
28 in accordance with generally accepted accounting
29 principles and certified by an independent certified
30 public accountant.

31 2. The number of residential service contracts
32 issued during the preceding fiscal year, the number
33 canceled or expired during the year, the number in
34 effect at year end and the amount of residential
35 service contract fees received.

36 3. Any other information relating to the
37 performance and solvency of the residential service
38 company required by the commissioner."

39 4. Page 9, by inserting after line 7 the following:

40 "4. A service contract, guarantee or warranty
41 issued by a retail merchant to a retail customer,
42 guaranteeing or warranting the repair, service or
43 replacement of appliances or electrical, plumbing,
44 heating, cooling or air conditioning systems sold
45 by said retail merchant."

46 5. Renumber to conform with this amendment.

H-3711 FILED APRIL 13, 1983

RECEIVED FROM THE SENATE

House concurred 4/13/83 (p. 1373)

S-3485

1 Amend House File 448 as amended, passed and
2 reprinted by the House, as follows:

3 1. Page 8, by inserting after line 20 the
4 following:

5 "Sec. 15. NEW SECTION. RATE REVIEW. Using the
6 information obtained in the annual reports and any
7 additional information requested by the commissioner,
8 the commissioner shall evaluate the fees charged for
9 the residential service contract to determine if they
10 are reasonable in relation to the value of the claims
11 made. The commissioner may order an adjustment of
12 the fees if the commissioner determines that the
13 contract purchasers in the aggregate cannot expect
14 to receive at least sixty percent of the fees paid
15 in the form of service provided."

16 2. Page 8, by striking lines 21 through 25 and
17 inserting in lieu thereof the following:

18 "Sec. 16. NEW SECTION. ANNUAL REPORT. A licensed
19 service company shall file with the commissioner an
20 annual report within ninety days of the close of its
21 fiscal year. The annual report shall be in a form
22 prescribed by the commissioner and contain all of
23 the following:

24 1. A current financial statement including a
25 balance sheet and statement of operations prepared
26 in accordance with generally accepted accounting
27 principles and certified by an independent certified
28 public accountant.

29 2. The number of residential service contracts
30 issued during the preceding fiscal year, the number
31 canceled or expired during the year, the number in
32 effect at year end and the amount of residential
33 service contract fees received.

34 3. Any other information relating to the
35 performance and solvency of the residential service
36 company required by the commissioner."

37 3. Renumber to conform with this amendment.

S-3485 FILED

BY CHARLES BRUNER

APRIL 11, 1983

ADOPTED AS AMENDED *By 3492 (p. 1189)*

S-3490

1 Amend the amendment S-3485 to House File 448 as
2 amended, passed and reprinted by the House as follows:

3 1. Page 1, by striking lines 11 through 15 and
4 inserting in lieu thereof the word "made."

S-3490 FILED & WITHDRAWN

BY BILL HUTCHINS

APRIL 11, 1983 *(p. 1182)*

S-3492

1 Amend the amendment S-3485 to House File 448 as
2 amended, passed and reprinted by the House as follows:

3 1. Page 1, by striking lines 13 through 15 and
4 inserting in lieu thereof the words "fees are not
5 reasonable in relation to the value of the claims made."

S-3492 FILED & ADOPTED

BY CHARLES BRUNER

APRIL 11, 1983 *(p. 1189)*

See Small Business 4/6/83 No Bill per 2465
HOUSE FILE 448 - 4/7/83 (p. 1197)

Small Business & Economic Development
Hutchins Chair
Taylor
A. Miller

HOUSE FILE 448

BY COMMITTEE ON SMALL BUSINESS
AND COMMERCE

(As Amended and Passed by the House)

Passed House, Date 4-18-83 (p. 1373) Passed Senate, Date 4-11-83 (p. 1188)

Vote: Ayes 95 Nays 1 Vote: Ayes 34 Nays 6

Approved May 6, 1983 (p. 1914)

A BILL FOR

1 An Act providing for the regulation of residential maintenance
2 service companies by the commissioner of insurance, and pro-
3 viding penalties.

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

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House Amendments _____

1 Section 1. Sections 2 through 17 of this Act shall be
2 codified as one new chapter.

3 Sec. 2. NEW SECTION. DEFINITIONS. As used in this Act,
4 unless the context otherwise requires:

5 1. "Residential service contract" means a contract or
6 agreement between a residential customer and a service company
7 which undertakes, for a predetermined fee and for a specified
8 period of time, to maintain, repair, or replace all or any
9 part of the structural components, appliances, or electrical,
10 plumbing, heating, cooling, or air-conditioning systems of
11 residential property containing not more than four dwelling
12 units.

13 2. "Service company" means a person who issues and
14 performs, or arranges to perform, services pursuant to a
15 residential service contract.

16 3. "Licensed service company" means a service company
17 which is licensed by the commission pursuant to this Act.

18 4. "Commissioner" means the commissioner of insurance.

19 Sec. 3. NEW SECTION. LICENSE REQUIRED. A person shall
20 not issue a residential service contract or undertake or
21 arrange to perform services pursuant to a residential service
22 contract unless the person is a corporation and is a licensed
23 service company.

24 Sec. 4. NEW SECTION. APPLICATION FOR LICENSE.

25 1. Application for a license as a service company shall
26 be made to and filed with the commissioner on forms approved
27 by the commissioner and shall include all of the following
28 information:

- 29 a. The name and principal address of the applicant.
- 30 b. The state of incorporation of the applicant.
- 31 c. The name and address of the applicant's registered
32 agent for service of process within Iowa.

33 2. The application shall be accompanied by all of the
34 following:

- 35 a. A certificate of good standing for the applicant issued

1 by the secretary of state and dated not more than thirty days
2 prior to the date of the application.

3 b. A surety bond as provided in section 6 of this Act.

4 c. A copy of the most recent financial statement, including
5 balance sheets and related statements of income, of the
6 applicant, prepared in accordance with generally accepted
7 accounting principles, audited by a certified public accountant
8 and dated not more than twelve months prior to the date of
9 the application.

10 d. An affidavit of an authorized officer of the service
11 company stating the number of contracts issued by the service
12 company in the preceding calendar year, and stating that the
13 net worth of the service company satisfies the requirements
14 of section 7 of this Act.

15 e. A license fee in the amount of five hundred dollars.

16 3. If the application contains the required information
17 and is accompanied by the items set forth in subsection 2,
18 and if the net worth requirements of section 7 of this Act
19 are satisfied, as evidenced by the audited financial
20 statements, the commissioner shall issue the license. If
21 the form of application is not properly completed or if the
22 required accompanying documents are not furnished or in proper
23 form, the commissioner shall not issue the license and shall
24 give the applicant written notice of the grounds for not
25 issuing the license. A notice of license denial shall be
26 accompanied by a refund of fifty percent of the fee submitted
27 with the application.

28 Sec. 5. NEW SECTION. LICENSE EXPIRATION AND RENEWAL.

29 Each license issued under this Act shall expire on June 30
30 next following the date of issuance. If the service company
31 maintains in force the surety bond described in section 6
32 of this Act and if its license is not subject to or under
33 suspension or revocation under section 10 of this Act, its
34 license shall be renewed by the commissioner upon receipt
35 by the commissioner on or before the expiration date of a

1 renewal application accompanied by the items required by
2 section 4, subsection 2, paragraphs b, c, d, and e, and section
3 15 of this Act. If the commissioner denies renewal of the
4 license, the denial shall be in writing setting forth the
5 grounds for denial and shall be accompanied by a refund of
6 fifty percent of the license renewal fee.

7 Sec. 6. NEW SECTION. REQUIRED BOND. To assure the
8 faithful performance of obligations under residential service
9 contracts issued and outstanding in this state, a service
10 company shall, prior to the issuance or renewal of a license,
11 file with the commissioner a surety bond in the amount of
12 one hundred thousand dollars, which has been issued by an
13 authorized surety company and approved by the commissioner
14 as to issuer, form, and contents. The bond shall not be
15 canceled or be subject to cancellation unless thirty days'
16 advance notice in writing is filed with the commissioner.
17 Notwithstanding the provisions of chapter 17A, if a bond is
18 canceled for any reason and a new bond in the required amount
19 is not received by the commissioner on or before the effective
20 date of cancellation, the license of the service company is
21 automatically revoked as of the date the bond ceases to be
22 in effect. A service company whose license is revoked under
23 this section may file an application for a new license pursuant
24 to section 4 of this Act.

25 The bond posted by a service company pursuant to this
26 section shall be for the benefit of, and subject to recovery
27 thereon by any residential service contract holder sustaining
28 actionable injury due to the failure of the service company
29 to faithfully perform its obligations under a residential
30 service contract because of insolvency of the service company.

31 If a service company ceases to do business in this state
32 and furnishes to the commissioner satisfactory proof that
33 it has discharged all obligations to contract holders, the
34 surety bond shall be released.

35 Sec. 7. NEW SECTION. NET WORTH REQUIREMENT. A service

1 company that has issued or renewed in the aggregate one
2 thousand or less residential service contracts during the
3 preceding calendar year shall maintain a minimum net worth
4 of forty thousand dollars, and the minimum net worth to be
5 maintained shall be increased by an additional twenty thousand
6 dollars for each additional five hundred contracts or fraction
7 thereof issued or renewed, up to a maximum required net worth
8 of four hundred thousand dollars.

9 For purposes of this Act, "net worth" means the excess
10 of all assets over all liabilities including required reserves,
11 computed in accordance with generally accepted accounting
12 principles. At least twenty thousand dollars of net worth
13 shall consist of paid-in capital.

14 Sec. 8. NEW SECTION. FILING OF FORMS OF CONTRACT.

15 1. A residential service contract shall not be issued
16 or used in this state unless it has been filed with and
17 approved by the commissioner. If the commissioner fails to
18 inform the service company of objections to the form of the
19 residential service contract within thirty days after filing,
20 the residential contract shall be deemed to have been approved
21 by the commissioner provided it otherwise complies with this
22 section.

23 2. Residential service contracts shall:

24 a. Be written in nontechnical, readily understood language,
25 using words with common and everyday meanings.

26 b. Clearly, conspicuously, and plainly specify all of
27 the following:

28 (1) The services to be performed by the service company,
29 and the terms and conditions of performance.

30 (2) The fee, if any, to be charged for a service call.

31 (3) Each of the systems, appliances, and components covered
32 by the contract.

33 (4) Any exclusions and limitations respecting the extent
34 of coverage.

35 (5) The period during which the contract will remain in

1 effect.

2 (6) All limitations respecting the performance of services,
3 including any restrictions as to the time periods when services
4 may be requested or will be performed.

5 (7) The following statement: "The issuer of this contract
6 is subject to regulation by the insurance department of the
7 state of Iowa. Complaints which are not settled by the issuer
8 may be sent to the Iowa insurance department."

9 c. Provide for the performance of services only. A
10 residential service contract shall not provide for a payment
11 to, or reimbursement or indemnification of the holder of the
12 contract.

13 d. Provide for the performance of services upon a request
14 by telephone to the service company without a requirement
15 that claim forms or applications be filed prior to the
16 rendition of services.

17 e. Provide for the initiation of services by or under
18 the direction of the service company within forty-eight hours
19 of the request for the services by the holder of the contract.

20 3. Any application for a residential service contract
21 shall notify the purchaser that the person submitting the
22 application to the service company for the purchaser is acting
23 as the representative of the service company and not of the
24 purchaser in that transaction.

25 Sec. 9. NEW SECTION. REBATES AND COMMISSIONS. A service
26 company shall not pay a person who is acting as the agent,
27 representative, attorney, or employee of the owner or
28 prospective owner of residential property, a commission or
29 any other consideration, either directly or indirectly, as
30 an inducement or compensation for the issuance, purchase,
31 or acquisition of a residential service contract. As used
32 in this section, the phrase "commission or any other
33 consideration" does not include bona fide payments or
34 reimbursements for any of the following:

35 1. Goods or facilities actually furnished or services

1 actually performed, if the payments or reimbursements are
2 reasonably related to the value of the goods, facilities,
3 or services furnished.

4 2. Inspection fees, if an inspection of the property to
5 be the subject of a residential service contract is required
6 by a service company and if the inspection fee is reasonably
7 related to the services performed.

8 3. Advertising, marketing, and educational expenses
9 actually incurred in the sale of the service company's service
10 contracts which are applicable on a similar and essentially
11 equal basis to all its customers and the agents of its
12 customers.

13 4. Reasonable expenses for food, beverage, and similar
14 items if furnished within the context of a service company's
15 customary business, educational, or promotional practices.

16 Sec. 10. NEW SECTION. SUSPENSION OR REVOCATION OF LICENSE.

17 1. In addition to the license revocation provisions of
18 section 6 of this Act, the commissioner may suspend or revoke
19 or refuse to renew the license of a service company for any
20 of the following grounds:

21 a. The service company violated a lawful order of the
22 commission or any provision of this Act.

23 b. The service company failed to pay any final judgment
24 rendered against it in this state within sixty days after
25 the judgment became final.

26 c. The service company has without just cause refused
27 to perform or negligently or incompetently performed services
28 required to be performed under its residential service
29 contracts and the refusal, or negligent or incompetent
30 performance has occurred with such frequency, as the
31 commissioner determines, as to indicate the general business
32 practices of the service company.

33 d. The service company violated section 14 of this Act.

34 e. The service company failed to maintain the net worth
35 required by section 7 of this Act.

1 f. The service company failed to maintain the reserve
2 account required by section 12 of this Act.

3 g. The service company failed to maintain its corporate
4 certificate of good standing with the secretary of state.

5 2. If the license of a service company is terminated under
6 section 6 of this Act because of failure to maintain bond,
7 the commissioner shall give written notice of termination
8 to the service company. The notice shall include the effective
9 date of the termination.

10 Sec. 11. NEW SECTION. RULES. The commissioner may adopt
11 rules under chapter 17A to implement this Act.

12 Sec. 12. NEW SECTION. RESERVE ACCOUNT.

13 1. A service company shall maintain in an independent
14 depository a reserve account containing cash or marketable
15 securities in an amount equal to fifty percent of aggregate
16 annual fees collected on residential service contracts issued
17 in this state, if any, and for actual expenditures for services
18 rendered under those contracts.

19 2. The depository shall make its records concerning the
20 service company reserve accounts available to the commissioner
21 or a designee for inspection on the premises of the depository.

22 3. The service company shall submit with each license
23 renewal application an affidavit by an authorized officer
24 of the depository attesting to the balance in the reserve
25 account and that the reserve account is being maintained in
26 accordance with this Act.

27 Sec. 13. NEW SECTION. OPTIONAL EXAMINATION. The
28 commissioner or a designee of the commissioner may make an
29 examination of the books and records of a service company
30 and verify its assets, liabilities, and reserves. The actual
31 costs of the examination shall be borne by the service company.

32 Sec. 14. NEW SECTION. DECEPTIVE ACTS OR PRACTICES--
33 PENALTY. The commissioner shall adopt rules which regulate
34 residential service contracts to prohibit misrepresentation,
35 false advertising, defamation, boycotts, coercion,

1 intimidation, false statements and entries and unfair
2 discrimination or practices. If the commissioner finds that
3 a person has violated the rules adopted under this section,
4 the commissioner shall issue an order to that person to cease
5 and desist and may order any or all of the following:

6 1. Payment of a civil penalty of not more than one thousand
7 dollars for each and every act or violation, but not to exceed
8 an aggregate of ten thousand dollars, unless the person knew
9 or reasonably should have known the person was in violation
10 of this section, in which case the penalty shall be not more
11 than five thousand dollars for each and every act or violation,
12 but not to exceed an aggregate penalty of fifty thousand
13 dollars in any one six-month period. The commissioner shall,
14 if it finds the violations of this section were directed,
15 encouraged, condoned, ignored, or ratified by the employer
16 of such person, assess such fine to the employer and not such
17 person.

18 2. Suspension or revocation of the license of a person,
19 if the person knew or reasonably should have known the person
20 was in violation of this section.

21 Sec. 15. NEW SECTION. ANNUAL REPORT. A licensed service
22 company shall submit to the commissioner each year a statement
23 disclosing the revenues from and expenses related to service
24 contracts issued in this state during the previous calendar
25 year.

26 Sec. 16. NEW SECTION. EXCLUSIONS. This Act does not
27 apply to any of the following:

28 1. A performance guarantee given by a builder of a
29 residence or the manufacturer or seller or lessor of
30 residential property if no identifiable charge is made for
31 the guarantee.

32 2. A service contract, guarantee or warranty between a
33 residential customer and a service company which will perform
34 the work itself and not through subcontractors for the service,
35 repair or replacement of appliances or electrical, plumbing,

1 heating, cooling or air conditioning systems.

2 3. A contract between a service company and a person who
3 actually performs the maintenance, repairs, or replacements
4 of structural components, or appliances, or electrical,
5 plumbing, heating, cooling, or air-conditioning systems, if
6 someone other than the service company actually performs these
7 functions.

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8 Sec. 17. NEW SECTION. LENDING INSTITUTION. A bank,
9 savings and loan association, insurance company or other
10 lending institution shall not require the purchase of a
11 residential service contract as a condition of a loan. A
12 lending institution shall not sell a residential service
13 contract to a borrower unless the borrower signs an affidavit
14 acknowledging that the purchase is not required. Violation
15 of this section is punishable as provided in section 14 of
16 this Act.

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HOUSE FILE 448

AN ACT
PROVIDING FOR THE REGULATION OF RESIDENTIAL MAINTENANCE
SERVICE COMPANIES BY THE COMMISSIONER OF INSURANCE, AND
PROVIDING PENALTIES.

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

Section 1. Sections 2 through 18 of this Act shall be codified as one new chapter.

Sec. 2. NEW SECTION. DEFINITIONS. As used in this Act, unless the context otherwise requires:

1. "Residential service contract" means a contract or agreement between a residential customer and a service company which undertakes, for a predetermined fee and for a specified period of time, to maintain, repair, or replace all or any part of the structural components, appliances, or electrical, plumbing, heating, cooling, or air-conditioning systems of residential property containing not more than four dwelling units.

2. "Service company" means a person who issues and performs, or arranges to perform, services pursuant to a residential service contract.

3. "Licensed service company" means a service company which is licensed by the commission pursuant to this Act.

4. "Commissioner" means the commissioner of insurance.

Sec. 3. NEW SECTION. LICENSE REQUIRED. A person shall not issue a residential service contract or undertake or arrange to perform services pursuant to a residential service contract unless the person is a corporation and is a licensed service company.

Sec. 4. NEW SECTION. APPLICATION FOR LICENSE.

1. Application for a license as a service company shall be made to and filed with the commissioner on forms approved

by the commissioner and shall include all of the following information:

- a. The name and principal address of the applicant.
 - b. The state of incorporation of the applicant.
 - c. The name and address of the applicant's registered agent for service of process within Iowa.
2. The application shall be accompanied by all of the following:
- a. A certificate of good standing for the applicant issued by the secretary of state and dated not more than thirty days prior to the date of the application.
 - b. A surety bond as provided in section 6 of this Act.
 - c. A copy of the most recent financial statement, including balance sheets and related statements of income, of the applicant, prepared in accordance with generally accepted accounting principles, audited by a certified public accountant and dated not more than twelve months prior to the date of the application.
 - d. An affidavit of an authorized officer of the service company stating the number of contracts issued by the service company in the preceding calendar year, and stating that the net worth of the service company satisfies the requirements of section 7 of this Act.
 - e. A license fee in the amount of two hundred fifty dollars.
3. If the application contains the required information and is accompanied by the items set forth in subsection 2, and if the net worth requirements of section 7 of this Act are satisfied, as evidenced by the audited financial statements, the commissioner shall issue the license. If the form of application is not properly completed or if the required accompanying documents are not furnished or in proper form, the commissioner shall not issue the license and shall give the applicant written notice of the grounds for not issuing the license. A notice of license denial shall be accompanied by a refund of fifty percent of the fee submitted with the application.

Sec. 5. NEW SECTION. LICENSE EXPIRATION AND RENEWAL.

Each license issued under this Act shall expire on June 30 next following the date of issuance. If the service company maintains in force the surety bond described in section 6 of this Act and if its license is not subject to or under suspension or revocation under section 10 of this Act, its license shall be renewed by the commissioner upon receipt by the commissioner on or before the expiration date of a renewal application accompanied by the items required by section 4, subsection 2, paragraphs b, c, d, and e, and section 16 of this Act. If the commissioner denies renewal of the license, the denial shall be in writing setting forth the grounds for denial and shall be accompanied by a refund of fifty percent of the license renewal fee.

Sec. 6. NEW SECTION. REQUIRED BOND. To assure the faithful performance of obligations under residential service contracts issued and outstanding in this state, a service company shall, prior to the issuance or renewal of a license, file with the commissioner a surety bond in the amount of one hundred thousand dollars, which has been issued by an authorized surety company and approved by the commissioner as to issuer, form, and contents. The bond shall not be canceled or be subject to cancellation unless thirty days' advance notice in writing is filed with the commissioner. Notwithstanding the provisions of chapter 17A, if a bond is canceled for any reason and a new bond in the required amount is not received by the commissioner on or before the effective date of cancellation, the license of the service company is automatically revoked as of the date the bond ceases to be in effect. A service company whose license is revoked under this section may file an application for a new license pursuant to section 4 of this Act.

The bond posted by a service company pursuant to this section shall be for the benefit of, and subject to recovery thereon by any residential service contract holder sustaining actionable injury due to the failure of the service company

to faithfully perform its obligations under a residential service contract because of insolvency of the service company.

If a service company ceases to do business in this state and furnishes to the commissioner satisfactory proof that it has discharged all obligations to contract holders, the surety bond shall be released.

Sec. 7. NEW SECTION. NET WORTH REQUIREMENT. A service company that has issued or renewed in the aggregate one thousand or less residential service contracts during the preceding calendar year shall maintain a minimum net worth of forty thousand dollars, and 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.

For purposes of this Act, "net worth" means the excess of all assets over all liabilities including required reserves, computed in accordance with generally accepted accounting principles. At least twenty thousand dollars of net worth shall consist of paid-in capital.

Sec. 8. NEW SECTION. FILING OF FORMS OF CONTRACT.

1. A residential service contract shall not be issued or used in this state unless it has been filed with and approved by the commissioner. If the commissioner fails to inform the service company of objections to the form of the residential service contract within thirty days after filing, the residential contract shall be deemed to have been approved by the commissioner provided it otherwise complies with this section.

2. Residential service contracts shall:

a. Be written in nontechnical, readily understood language, using words with common and everyday meanings.

b. Clearly, conspicuously, and plainly specify all of the following:

(1) The services to be performed by the service company, and the terms and conditions of performance.

(2) The fee, if any, to be charged for a service call.

(3) Each of the systems, appliances, and components covered by the contract.

(4) Any exclusions and limitations respecting the extent of coverage.

(5) The period during which the contract will remain in effect.

(6) All limitations respecting the performance of services, including any restrictions as to the time periods when services may be requested or will be performed.

(7) The following statement: "The issuer of this contract is subject to regulation by the insurance department of the state of Iowa. Complaints which are not settled by the issuer may be sent to the Iowa insurance department."

c. Provide for the performance of services only. A residential service contract shall not provide for a payment to, or reimbursement or indemnification of the holder of the contract.

d. Provide for the performance of services upon a request by telephone to the service company without a requirement that claim forms or applications be filed prior to the rendition of services.

e. Provide for the initiation of services by or under the direction of the service company within forty-eight hours of the request for the services by the holder of the contract.

3. Any application for a residential service contract shall notify the purchaser that the person submitting the application to the service company for the purchaser is acting as the representative of the service company and not of the purchaser in that transaction.

Sec. 9. NEW SECTION. REBATES AND COMMISSIONS. A service company shall not pay a person who is acting as the agent, representative, attorney, or employee of the owner or prospective owner of residential property, a commission or any other consideration, either directly or indirectly, as an inducement or compensation for the issuance, purchase, or acquisition of a residential service contract. As used

in this section, the phrase "commission or any other consideration" does not include bona fide payments or reimbursements for any of the following:

1. Goods or facilities actually furnished or services actually performed, if the payments or reimbursements are reasonably related to the value of the goods, facilities, or services furnished.

2. Inspection fees, if an inspection of the property to be the subject of a residential service contract is required by a service company and if the inspection fee is reasonably related to the services performed.

3. Advertising, marketing, and educational expenses actually incurred in the sale of the service company's service contracts which are applicable on a similar and essentially equal basis to all its customers and the agents of its customers.

4. Reasonable expenses for food, beverage, and similar items if furnished within the context of a service company's customary business, educational, or promotional practices.

Sec. 10. NEW SECTION. SUSPENSION OR REVOCATION OF LICENSE.

1. In addition to the license revocation provisions of section 6 of this Act, the commissioner may suspend or revoke or refuse to renew the license of a service company for any of the following grounds:

a. The service company violated a lawful order of the commission or any provision of this Act.

b. The service company failed to pay any final judgment rendered against it in this state within sixty days after the judgment became final.

c. The service company has without just cause refused to perform or negligently or incompetently performed services required to be performed under its residential service contracts and the refusal, or negligent or incompetent performance has occurred with such frequency, as the commissioner determines, as to indicate the general business practices of the service company.

d. The service company violated section 14 of this Act.

e. The service company failed to maintain the net worth required by section 7 of this Act.

f. The service company failed to maintain the reserve account required by section 12 of this Act.

g. The service company failed to maintain its corporate certificate of good standing with the secretary of state.

2. If the license of a service company is terminated under section 6 of this Act because of failure to maintain bond, the commissioner shall give written notice of termination to the service company. The notice shall include the effective date of the termination.

Sec. 11. NEW SECTION. RULES. The commissioner may adopt rules under chapter 17A to implement this Act.

Sec. 12. NEW SECTION. RESERVE ACCOUNT.

1. A service company shall maintain in an independent depository a reserve account containing cash or marketable securities in an amount equal to fifty percent of aggregate annual fees collected on residential service contracts issued in this state, if any, and for actual expenditures for services rendered under those contracts.

2. The depository shall make its records concerning the service company reserve accounts available to the commissioner or a designee for inspection on the premises of the depository.

3. The service company shall submit with each license renewal application an affidavit by an authorized officer of the depository attesting to the balance in the reserve account and that the reserve account is being maintained in accordance with this Act.

Sec. 13. NEW SECTION. OPTIONAL EXAMINATION. The commissioner or a designee of the commissioner may make an examination of the books and records of a service company and verify its assets, liabilities, and reserves. The actual costs of the examination shall be borne by the service company.

Sec. 14. NEW SECTION. DECEPTIVE ACTS OR PRACTICES--PENALTY. The commissioner shall adopt rules which regulate residential service contracts to prohibit misrepresentation,

false advertising, defamation, boycotts, coercion, intimidation, false statements and entries and unfair discrimination or practices. If the commissioner finds that a person has violated the rules adopted under this section, the commissioner shall issue an order to that person to cease and desist and may order any or all of the following:

1. Payment of a civil penalty of not more than one thousand dollars for each and every act or violation, but not to exceed an aggregate of ten thousand dollars, unless the person knew or reasonably should have known the person was in violation of this section, in which case the penalty shall be not more than five thousand dollars for each and every act or violation, but not to exceed an aggregate penalty of fifty thousand dollars in any one six-month period. The commissioner shall, if it finds the violations of this section were directed, encouraged, condoned, ignored, or ratified by the employer of such person, assess such fine to the employer and not such person.

2. Suspension or revocation of the license of a person, if the person knew or reasonably should have known the person was in violation of this section.

Sec. 15. NEW SECTION. RATE REVIEW. Using the information obtained in the annual reports and any additional information requested by the commissioner, the commissioner shall evaluate the fees charged for the residential service contract to determine if they are reasonable in relation to the value of the claims made. The commissioner may order an adjustment of the fees if the commissioner determines that the fees are not reasonable in relation to the value of the claims made.

Sec. 16. NEW SECTION. ANNUAL REPORT. A licensed service company shall file with the commissioner an annual report within ninety days of the close of its fiscal year. The annual report shall be in a form prescribed by the commissioner and contain all of the following:

1. A current financial statement including a balance sheet and statement of operations prepared in accordance with

generally accepted accounting principles and certified by an independent certified public accountant.

2. The number of residential service contracts issued during the preceding fiscal year, the number canceled or expired during the year, the number in effect at year end and the amount of residential service contract fees received.

3. Any other information relating to the performance and solvency of the residential service company required by the commissioner.

Sec. 17. NEW SECTION. EXCLUSIONS. This Act does not apply to any of the following:

1. A performance guarantee given by a builder of a residence or the manufacturer or seller or lessor of residential property if no identifiable charge is made for the guarantee.

2. A service contract, guarantee or warranty between a residential customer and a service company which will perform the work itself and not through subcontractors for the service, repair or replacement of appliances or electrical, plumbing, heating, cooling or air-conditioning systems.

3. A contract between a service company and a person who actually performs the maintenance, repairs, or replacements of structural components, or appliances, or electrical, plumbing, heating, cooling, or air-conditioning systems, if someone other than the service company actually performs these functions.

4. A service contract, guarantee or warranty issued by a retail merchant to a retail customer, guaranteeing or warranting the repair, service or replacement of appliances or electrical, plumbing, heating, cooling or air-conditioning systems sold by said retail merchant.

Sec. 18. NEW SECTION. LENDING INSTITUTION. A bank, savings and loan association, insurance company or other lending institution shall not require the purchase of a residential service contract as a condition of a loan. A lending institution shall not sell a residential service

contract to a borrower unless the borrower signs an affidavit acknowledging that the purchase is not required. Violation of this section is punishable as provided in section 14 of this Act.

DONALD D. AVENSON
Speaker of the House

ROBERT T. ANDERSON
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 448, Seventieth General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved _____, 1983

TERRY E. BRANSTAD
Governor