

FEB 21 1990

HOUSE FILE 2516  
BY COMMITTEE ON SMALL  
BUSINESS AND COMMERCE

Place On Calendar

(SUCCESSOR TO HSB 562)

Passed House, Date 3/1/90 (p. 776) Passed Senate, Date 3/19/90 (p. 1183)  
Vote: Ayes 92 Nays 0 Vote: Ayes 42 Nays 1  
Approved April 4, 1990

*Repassed House as amended  
by Senate 3/21/90 (p. 1283)  
96-0*

A BILL FOR

1 An Act regulating certain motor vehicle service contracts and  
2 establishing an annual fee.

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

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HF 2516

1 Section 1. Section 321I.1, subsection 1, Code 1989, is  
2 amended to read as follows:

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

14 Sec. 2. Section 321I.2, Code 1989, is amended to read as  
15 follows:

16 321I.2 INSURANCE REQUIRED.

17 1. A motor vehicle service contract shall not be issued,  
18 sold, or offered for sale in this state unless the provider of  
19 the service contract is insured under a motor vehicle service  
20 contract reimbursement insurance policy issued by an insurer  
21 authorized to do business in this state.

22 2. The issuer of a reimbursement insurance policy shall  
23 not cancel a reimbursement insurance policy unless a written  
24 notice has been received by the insurance division and by each  
25 applicable provider, including automobile dealers and third-  
26 party administrators, which notice shall fix the date of  
27 cancellation at a date no earlier than ten days after receipt  
28 of the notice by the insurance division and by the applicable  
29 provider. The notice may be made in person or by mail and a  
30 post office department receipt of certified or registered  
31 mailing shall be deemed proof of receipt of the notice.

32 Sec. 3. Section 321I.3, Code 1989, is amended to read as  
33 follows:

34 321I.3 FILING AND FEE REQUIREMENTS.

35 1. A motor vehicle service contract shall not be issued,

1 sold, or offered for sale in this state unless a true and  
2 correct copy of the service contract and the provider's  
3 reimbursement insurance policy have been filed with the  
4 commissioner.

5 2. In addition to any other required filings, a true and  
6 correct copy of the service contract and the provider's  
7 reimbursement insurance policy, the consent to service of  
8 process on the commissioner, and such other information as the  
9 commissioner requires, shall be filed annually no later than  
10 the first day of August. If the first day of August falls on  
11 a weekend or a holiday, the date for filing shall be the next  
12 business day. The annual filing shall be accompanied by a  
13 filing fee determined by the commissioner which shall be  
14 sufficient to defray the costs of administering this chapter.

15 Sec. 4. Section 321I.5, Code 1989, is amended to read as  
16 follows:

17 321I.5 DISCLOSURE TO SERVICE CONTRACT HOLDERS -- CONTRACT  
18 PROVISIONS.

19 1. A motor vehicle service contract shall not be issued,  
20 sold, or offered for sale in this state unless the contract  
21 conspicuously states that the obligations of the provider to  
22 the service contract holder are guaranteed under the service  
23 contract reimbursement policy, and unless the contract  
24 conspicuously states the name and address of the issuer of the  
25 reimbursement policy.

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

31 a. Clearly and conspicuously states that the obligations  
32 of the provider to the service contract holder are guaranteed  
33 under a service contract reimbursement insurance policy.

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

1 c. Identifies the motor vehicle service contract provider,  
2 the seller of the motor vehicle, and the service contract  
3 holder.

4 d. Sets forth the total purchase price and the terms under  
5 which the purchase price is to be paid.

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

8 f. Clearly and conspicuously states the existence of a  
9 deductible amount, if any.

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

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

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

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

23 k. Describes or references any and all applicable  
24 provisions of the Iowa consumer credit code, chapter 531.

25 l. States the name and address of the commissioner.

26 m. Sets forth any and all conditions on which the service  
27 contract may be canceled and any and all terms and conditions  
28 for the refund of any portion of the purchase price.

29 Sec. 5. Section 321I.8, Code 1989, is amended to read as  
30 follows:

31 321I.8 EXEMPTION.

32 This chapter does not apply to a motor vehicle service  
33 contracts contract issued by a-motor-vehiele the manufacturer  
34 or importer of the motor vehicle covered by the service  
35 contract or to any third-party administrator acting on the

1 manufacturer's behalf in connection with that service  
2 contract.

3 Sec. 6. NEW SECTION. 321I.9 ADMINISTRATION.

4 The commissioner or the deputy administrator shall  
5 administer this chapter. In the absence of the commissioner,  
6 due to a vacancy in office, absence, physical disability, or  
7 other cause, the deputy administrator appointed under section  
8 502.601 shall be the acting administrator and shall, for the  
9 time being, have and exercise the authority conferred upon the  
10 commissioner. The commissioner may from time to time delegate  
11 to the deputy administrator any or all of the functions  
12 assigned to the commissioner.

13 Sec. 7. NEW SECTION. 321I.10 MISREPRESENTATIONS OF STATE  
14 APPROVAL.

15 It is unlawful for any motor vehicle service contract  
16 provider to represent or imply in any manner that the provider  
17 has been sponsored, recommended, or approved or that the  
18 provider's abilities or qualifications have in any respect  
19 been passed upon by the securities department, the insurance  
20 division, or the state of Iowa.

21 Sec. 8. NEW SECTION. 321I.11 PROHIBITED ACTS -- UNFAIR  
22 OR DECEPTIVE TRADE PRACTICES. CA

23 1. MISREPRESENTATIONS, FALSE ADVERTISING, AND UNFAIR  
24 PRACTICES.

25 a. Unless licensed as an insurance company, a motor  
26 vehicle service contract provider shall not use in its name,  
27 contracts, or literature, the words "insurance", "casualty",  
28 "surety", "mutual", or any other words descriptive of the  
29 insurance, casualty, or surety business or deceptively similar  
30 to the name or description of any insurance or surety  
31 corporation, or any other motor vehicle service contract  
32 provider.

33 b. A motor vehicle service contract provider shall not,  
34 without the written consent of the purchaser, knowingly charge  
35 a purchaser for duplication of coverage or duties required by

1 state or federal law, a warranty expressly issued by a  
2 manufacturer or seller of a product, or an implied warranty  
3 enforceable against the lessor, seller, or manufacturer of a  
4 product.

5 c. A motor vehicle service contract provider shall not  
6 make, permit, or cause a false or misleading statement, either  
7 oral or written, in connection with the sale, offer to sell,  
8 or advertisement of a motor vehicle service contract.

9 d. A motor vehicle service contract provider shall not  
10 permit or cause the omission of a material statement in  
11 connection with the sale, offer to sell, or advertisement of a  
12 motor vehicle service contract, which under the circumstances  
13 should have been made in order to make the statement not  
14 misleading.

15 e. A motor vehicle service contract provider shall not  
16 make, permit, or cause to be made a false or misleading  
17 statement, either oral or written, about the benefits or  
18 services available under the motor vehicle service contract.

19 f. A motor vehicle service contract provider shall not  
20 make, permit, or cause to be made a statement of practice  
21 which has the effect of creating or maintaining a fraud.

22 g. A motor vehicle service contract provider shall not  
23 make, publish, disseminate, circulate, or place before the  
24 public, or cause, directly or indirectly, to be made,  
25 published, disseminated, circulated, or placed before the  
26 public in a newspaper, magazine, or other publication, or in  
27 the form of a notice, circular, pamphlet, letter, or poster,  
28 or over a radio or television station or in any other way, an  
29 advertisement, announcement, or statement containing an  
30 assertion, representation, or statement with respect to the  
31 motor vehicle service contract industry or with respect to a  
32 motor vehicle service contract provider which is untrue,  
33 deceptive, or misleading.

34 h. A bank, savings and loan association, credit union,  
35 insurance company, or other lending institution shall not

1 require the purchase of a motor vehicle service contract as a  
2 condition of a loan.

3 2. DEFAMATION. A motor vehicle service contract provider  
4 shall not make, publish, disseminate, or circulate, directly  
5 or indirectly, or aid, abet, or encourage the making,  
6 publishing, disseminating, or circulating of an oral or  
7 written statement or a pamphlet, circular, article, or  
8 literature which is false or maliciously critical of or  
9 derogatory to the financial condition of a person, and which  
10 is calculated to injure the person.

11 3. BOYCOTT, COERCION, AND INTIMIDATION. A motor vehicle  
12 service contract provider shall not enter into an agreement to  
13 commit, or by a concerted action commit, an act of boycott,  
14 coercion, or intimidation resulting in or tending to result in  
15 unreasonable restraint of, or monopoly in, the service  
16 contract industry.

17 4. FALSE STATEMENTS. A motor vehicle service contract  
18 provider shall not knowingly file with a supervisory or other  
19 public official, or knowingly make, publish, disseminate,  
20 circulate, or deliver to a person, or place before the public,  
21 or knowingly cause directly or indirectly to be made,  
22 published, disseminated, circulated, delivered to a person, or  
23 placed before the public, a false material statement of fact  
24 as to the financial condition of a person.

25 5. FALSE ENTRIES. A motor vehicle service contract  
26 provider shall not knowingly make a false entry of a material  
27 fact in a book, report, or statement of a person or knowingly  
28 fail to make a true entry of a material fact pertaining to the  
29 business of the person in a book, report, or statement of the  
30 person.

31 6. VIOLATIONS OF SECTION 714.16.

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

35 b. An enforcement agreement between the commissioner and a

1 motor vehicle service contract provider does not bar the  
2 attorney general from bringing an action against the provider  
3 under section 714.16 as to allegations that a violation of  
4 this chapter constitutes a violation of section 714.16.

5 Sec. 9. NEW SECTION. 321I.12 RECORDS.

6 A motor vehicle service contract provider shall keep  
7 accurate accounts, books, and records concerning transactions  
8 regulated under this chapter.

9 1. A motor vehicle service contract provider's accounts,  
10 books, and records shall include all of the following:

- 11 a. Copies of all service contracts.
- 12 b. The name and address of each service contract holder.
- 13 c. The dates, amounts, and descriptions of all receipts,  
14 claims, and expenditures related to service contracts.

15 2. A motor vehicle service contract provider shall retain  
16 all required accounts, books, and records pertaining to a  
17 service contract holder for at least two years after the  
18 specified period of coverage has expired. A provider  
19 discontinuing business in this state shall maintain its  
20 records until the provider furnishes the commissioner  
21 satisfactory proof that the provider has discharged all  
22 obligations to contract holders in this state.

23 3. Motor vehicle service contract providers shall make all  
24 accounts, books, and records concerning transactions regulated  
25 under the chapter available to the commissioner for the  
26 purpose of examination.

27 Sec. 10. NEW SECTION. 321I.13 SERVICE OF PROCESS.

28 The commissioner shall be the agent for service of process  
29 upon a motor vehicle service contract provider and an issuer  
30 of a reimbursement insurance policy.

31 Sec. 11. NEW SECTION. 321I.14 ORDERS, INVESTIGATIONS,  
32 EXAMINATIONS, AND SUBPOENAS.

33 1. The administrator of this chapter may take actions  
34 which are necessary or appropriate for the protection of  
35 service contract holders or to administer this chapter. The



1 administrator may make private and public investigations and  
2 examinations as the administrator deems necessary to determine  
3 whether any person has violated or is about to violate this  
4 chapter or a rule or order adopted or issued pursuant to this  
5 chapter.

6 2. For the purpose of an investigation or proceeding under  
7 this chapter, the administrator or any officer designated by  
8 the administrator may administer oaths and affirmations,  
9 subpoena witnesses and compel their attendance, take evidence,  
10 and require the production of books, papers, correspondence,  
11 memoranda, agreements, or other documents or records which the  
12 administrator deems relevant or material to an inquiry.

13 3. A person is not excused from attending and testifying  
14 or from producing a document or record before the  
15 administrator or in obedience to a subpoena of the  
16 administrator or an officer designated by the administrator,  
17 or in a proceeding instituted by the administrator, on the  
18 grounds that the testimony or evidence, documentary or  
19 otherwise, required of the person may tend to incriminate or  
20 subject the person to a penalty or forfeiture. However, a  
21 person shall not be prosecuted or subjected to any penalty or  
22 forfeiture due to a transaction or matter about which the  
23 person is compelled, after claiming privilege against self-  
24 incrimination, to testify or produce evidence, documentary or  
25 otherwise. The person testifying, however, is not exempt from  
26 prosecution and punishment for perjury or contempt committed  
27 while testifying.

28 Sec. 12. NEW SECTION. 321I.15 AUDITS.

29 The commissioner may examine or cause to be examined the  
30 books, papers, records, memoranda, or documents of a motor  
31 vehicle service contract provider for the purpose of verifying  
32 compliance with this chapter. The commissioner may require,  
33 by a subpoena, the attendance of the provider, or the  
34 provider's representative, and any other witness whom the  
35 commissioner deems necessary or expedient, and the production

1 of books, papers, records, memoranda, or documents relating in  
2 any manner to compliance with this chapter if a provider or  
3 witness fails or refuses to produce the documents for  
4 examination when requested by the commissioner.

5 EXPLANATION

6 This bill regulates certain motor vehicle service  
7 contracts.

8 Section 1 excludes from a motor vehicle service contract,  
9 vehicles under a certain gross vehicle weight rating, and  
10 excludes maintenance agreements for repairs and services  
11 provided for leased vehicles.

12 Section 2 requires a service contract provider to be  
13 insured and provides for cancellation of insurance following  
14 notice to the division of insurance and the provider.

15 Section 3 requires an additional annual filing of the  
16 provider's service contract and reimbursement insurance policy  
17 and imposes a filing fee.

18 Section 4 mandates the information which must be included  
19 in a motor vehicle service contract.

20 Section 5 exempts from regulation motor vehicle service  
21 contracts issued by a manufacturer or importer of motor  
22 vehicles or any third-party administrator acting on the  
23 manufacturer's behalf in connection with a motor vehicle  
24 manufactured or imported by the manufacturer or importer.

25 Section 6 provides for the chapter to be administered by  
26 the commissioner of insurance or the appointed deputy of the  
27 securities department.

28 Section 7 prohibits the misrepresentation of state approval  
29 of a service contract.

30 Section 8 outlines prohibited acts and unfair or deceptive  
31 trade practices, including misrepresentation, false  
32 advertising, defamation, coercion, intimidation, false  
33 statements, and unfair practices.

34 Section 9 requires motor vehicle service contract providers  
35 to maintain accurate accounts, books and records in regard to

1 transactions under this chapter.

2 Section 10 provides for the commissioner of insurance to be  
3 the agent for service of process upon a provider of a motor  
4 vehicle service contract or an issuer of a reimbursement  
5 insurance policy.

6 Section 11 allows for investigations, examinations of  
7 documents, and subpoenas to be issued by the commissioner or  
8 administrator to determine whether or not there is a violation  
9 of any provision of this chapter.

10 Section 12 allows the commissioner or administrator to  
11 examine or audit books, records, or documents of a motor  
12 vehicle service contract provider.

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HOUSE FILE 2516

S-5492

1 Amend House File 2516, as passed by the House, as  
2 follows:

3 1. Page 9, by inserting after line 4 the fol-  
4 lowing:

5 "Sec. \_\_\_\_ . Section 537B.2, subsection 2, as  
6 enacted by 1990 Iowa Acts, Senate File 81, is amended  
7 to read as follows:

8 2. "Motor vehicle" means a motor vehicle as  
9 defined in section 321.1 which is subject to  
10 registration. However, "motor vehicle" does not  
11 include a motor vehicle, as defined in section 321.1,  
12 with a registered gross vehicle weight rating of more  
13 than twelve thousand pounds.

14 Sec. \_\_\_\_ . Section 537B.4, subsection 1, paragraph  
15 b, as enacted by 1990 Iowa Acts, Senate File 81, is  
16 amended to read as follows:

17 b. "Motor vehicle" means a motor vehicle as  
18 defined in section 321.1 which is subject to  
19 registration."

20 2. Title page, line 1, by inserting after the  
21 word "regulating" the following: "motor vehicle  
22 service and repair and".

23 3. By renumbering as necessary.

By WILLIAM D. PALMER

S-5492 FILED MARCH 14, 1990

*Adopted 3/19 (p. 1153)*

SENATE AMENDMENT TO HOUSE FILE 2516

H-5766

1 Amend House File 2516, as passed by the House, as  
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4 lowing:

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RECEIVED FROM THE SENATE

H-5766 FILED MARCH 20, 1990

*House concurred 3/21 (p.1283)*

HSB 562

SMALL BUSINESS AND COMMERCE

Now

HOUSE FILE 2516

BY (PROPOSED DEPARTMENT OF  
COMMERCE/INSURANCE  
DIVISION BILL)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Approved \_\_\_\_\_

**A BILL FOR**

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

23 k. Describes or references any and all applicable  
24 provisions of the Iowa consumer credit code, chapter 531.

25 l. States the name and address of the commissioner.

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S.F. \_\_\_\_\_ H.F. \_\_\_\_\_

1 manufacturer or seller of a product, or an implied warranty  
2 enforceable against the lessor, seller, or manufacturer of a  
3 product.

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6 oral or written, in connection with the sale, offer to sell,  
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21 g. A motor vehicle service contract provider shall not  
22 make, publish, disseminate, circulate, or place before the  
23 public, or cause, directly or indirectly, to be made,  
24 published, disseminated, circulated, or placed before the  
25 public in a newspaper, magazine, or other publication, or in  
26 the form of a notice, circular, pamphlet, letter, or poster,  
27 or over a radio or television station or in any other way, a  
28 advertisement, announcement, or statement containing an  
29 assertion, representation, or statement with respect to the  
30 motor vehicle service contract industry or with respect to  
31 motor vehicle service contract provider which is untrue,  
32 deceptive, or misleading.

33 h. A bank, savings and loan association, credit uni  
34 insurance company, or other lending institution shall  
35 require the purchase of a motor vehicle service contr

1 condition of a loan.

2 2. DEFAMATION. A motor vehicle service contract provider  
3 shall not make, publish, disseminate, or circulate, directly  
4 or indirectly, or aid, abet, or encourage the making,  
5 publishing, disseminating, or circulating of an oral or  
6 written statement or a pamphlet, circular, article, or  
7 literature which is false or maliciously critical of or  
8 derogatory to the financial condition of a person, and which  
9 is calculated to injure the person.

10 3. BOYCOTT, COERCION, AND INTIMIDATION. A motor vehicle  
11 service contract provider shall not enter into an agreement to  
12 commit, or by a concerted action commit, an act of boycott,  
13 coercion, or intimidation resulting in or tending to result in  
14 unreasonable restraint of, or monopoly in, the service  
15 contract industry.

16 4. FALSE STATEMENTS. A motor vehicle service contract  
17 provider shall not knowingly file with a supervisory or other  
18 public official, or knowingly make, publish, disseminate,  
19 circulate, or deliver to a person, or place before the public,  
20 or knowingly cause directly or indirectly to be made,  
21 published, disseminated, circulated, delivered to a person, or  
22 placed before the public, a false material statement of fact  
23 as to the financial condition of a person.

24 5. FALSE ENTRIES. A motor vehicle service contract  
25 provider shall not knowingly make a false entry of a material  
26 fact in a book, report, or statement of a person or knowingly  
27 fail to make a true entry of a material fact pertaining to the  
28 business of the person in a book, report, or statement of the  
29 person.

30 6. UNFAIR DISCRIMINATION OR PRACTICES. A motor vehicle  
31 service contract provider shall not make or permit an unfair  
32 discrimination between individuals of the same class in the  
33 rates charged for a contract or in the benefits received under  
34 a contract, or in a term or condition of the contract, or in  
35 any other manner.

1     Sec. 9.   NEW SECTION.   321I.12   RECORDS.

2     A motor vehicle service contract provider shall keep  
3 accurate accounts, books, and records concerning transactions  
4 regulated under this chapter.

5     1.   A motor vehicle service contract provider's accounts,  
6 books, and records shall include all of the following:

7       a.   Copies of all service contracts.

8       b.   The name and address of each service contract holder.

9       c.   The dates, amounts, and descriptions of all receipts,  
10 claims, and expenditures related to service contracts.

11    2.   A motor vehicle service contract provider shall retain  
12 all required accounts, books, and records pertaining to a  
13 service contract holder for at least two years after the  
14 specified period of coverage has expired. A provider  
15 discontinuing business in this state shall maintain its  
16 records until the provider furnishes the commissioner  
17 satisfactory proof that the provider has discharged all  
18 obligations to contract holders in this state.

19    3.   Motor vehicle service contract providers shall make all  
20 accounts, books, and records concerning transactions regulated  
21 under the chapter available to the commissioner for the  
22 purpose of examination.

23    Sec. 10. NEW SECTION.   321I.13   SERVICE OF PROCESS.

24    The commissioner shall be the agent for service of process  
25 upon a motor vehicle service contract provider and an issuer  
26 of a reimbursement insurance policy.

27    Sec. 11. NEW SECTION.   321I.14   ORDERS, INVESTIGATIONS,  
28 EXAMINATIONS, AND SUBPOENAS.

29    1.   The administrator of this chapter may take actions  
30 which are necessary or appropriate for the protection of  
31 service contract holders or to administer this chapter. The  
32 administrator may make private and public investigations and  
33 examinations as the administrator deems necessary to determine  
34 whether any person has violated or is about to violate this  
35 chapter or a rule or order adopted or issued pursuant to this

1 chapter.

2 2. For the purpose of an investigation or proceeding under  
3 this chapter, the administrator or any officer designated by  
4 the administrator may administer oaths and affirmations,  
5 subpoena witnesses and compel their attendance, take evidence,  
6 and require the production of books, papers, correspondence,  
7 memoranda, agreements, or other documents or records which the  
8 administrator deems relevant or material to an inquiry.

9 3. A person is not excused from attending and testifying  
10 or from producing a document or record before the  
11 administrator or in obedience to a subpoena of the  
12 administrator or an officer designated by the administrator,  
13 or in a proceeding instituted by the administrator, on the  
14 grounds that the testimony or evidence, documentary or  
15 otherwise, required of the person may tend to incriminate or  
16 subject the person to a penalty or forfeiture. However, a  
17 person shall not be prosecuted or subjected to any penalty or  
18 forfeiture due to a transaction or matter about which the  
19 person is compelled, after claiming privilege against self-  
20 incrimination, to testify or produce evidence, documentary or  
21 otherwise. The person testifying, however, is not exempt from  
22 prosecution and punishment for perjury or contempt committed  
23 while testifying.

24 Sec. 12. NEW SECTION. 321I.15 AUDITS.

25 The commissioner may examine or cause to be examined the  
26 books, papers, records, memoranda, or documents of a motor  
27 vehicle service contract provider for the purpose of verifying  
28 compliance with this chapter. The commissioner may require,  
29 by a subpoena, the attendance of the provider, or the  
30 provider's representative, and any other witness whom the  
31 commissioner deems necessary or expedient, and the production  
32 of books, papers, records, memoranda, or documents relating in  
33 any manner to compliance with this chapter if a provider or  
34 witness fails or refuses to produce the documents for  
35 examination when requested by the commissioner.

EXPLANATION

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2 This bill regulates certain motor vehicle service  
3 contracts.

4 Section 1 excludes from a motor vehicle service contract,  
5 maintenance agreements for repairs and services provided at  
6 least once per month.

7 Section 2 requires a service contract provider to be  
8 insured and provides for cancellation of insurance following  
9 notice to the division of insurance and the provider.

10 Section 3 requires an additional annual filing of the  
11 provider's service contract and establishes a reimbursement  
12 insurance policy and filing fee.

13 Section 4 establishes the information to be included in a  
14 motor vehicle service contract.

15 Section 5 exempts from regulation motor vehicle service  
16 contracts issued by a manufacturer or importer of motor  
17 vehicles covered by other service contracts or any third-party  
18 administrator acting on the manufacturer's or importer's  
19 behalf.

20 Section 6 provides for the chapter to be administered by  
21 the commissioner of insurance or the appointed deputy of the  
22 securities department.

23 Section 7 prohibits the misrepresentation of state approval  
24 of a service contract.

25 Section 8 outlines prohibited acts and unfair or deceptive  
26 trade practices, including misrepresentation, false  
27 advertising, defamation, coercion, intimidation, false  
28 statements, and unfair discrimination.

29 Section 9 requires motor vehicle service contract providers  
30 to maintain accurate accounts, books and records in regard to  
31 transactions under this chapter.

32 Section 10 provides for the commissioner of insurance to be  
33 the agent for service of process upon a provider of a motor  
34 vehicle service contract or an issuer of a reimbursement  
35 insurance policy.

1 Section 11 allows for investigations, examinations of  
2 documents, and subpoenas to be issued by the commissioner or  
3 administrator to determine whether or not there is a violation  
4 of any provision of this chapter.

5 Section 12 allows the commissioner or administrator to  
6 examine or audit books, records, or documents of a motor  
7 vehicle service contract provider.

8 BACKGROUND STATEMENT

9 SUBMITTED BY THE AGENCY

10 This bill is intended to provide better enforcement powers,  
11 clarify questions of interpretation, and provide greater  
12 assurance of statutory compliance. This bill relates to motor  
13 vehicle service contracts, excludes maintenance agreements by  
14 definition, requires a ten-day notice of cancellation of a  
15 reimbursement insurance policy, requires an annual filing with  
16 the insurance division, authorizes a filing fee, requires  
17 appointment of the commissioner as agent for service of  
18 process, establishes disclosure requirements for service  
19 contracts, prohibits misrepresentations of government approval  
20 and other unfair or deceptive trade practices, specifies  
21 required recordkeeping, and establishes enforcement provisions  
22 concerning orders, investigations, examinations, subpoenas,  
23 and audits.

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HOUSE FILE 2516

AN ACT

REGULATING MOTOR VEHICLE SERVICE AND REPAIR AND CERTAIN MOTOR  
VEHICLE SERVICE CONTRACTS AND ESTABLISHING AN ANNUAL FEE.

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

Section 1. Section 321I.1, subsection 1, Code 1989, is amended to read as follows:

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

Sec. 2. Section 321I.2, Code 1989, is amended to read as follows:

321I.2 INSURANCE REQUIRED.

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

2. The issuer of a reimbursement insurance policy shall not cancel a reimbursement insurance policy unless a written notice has been received by the insurance division and by each applicable provider, including automobile dealers and third-party administrators, which notice shall fix the date of cancellation at a date no earlier than ten days after receipt of the notice by the insurance division and by the applicable provider. The notice may be made in person or by mail and a post office department receipt of certified or registered mailing shall be deemed proof of receipt of the notice.

Sec. 3. Section 321I.3, Code 1989, is amended to read as follows:

321I.3 FILING AND FEE REQUIREMENTS.

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

2. In addition to any other required filings, a true and correct copy of the service contract and the provider's reimbursement insurance policy, the consent to service of process on the commissioner, and such other information as the commissioner requires, shall be filed annually no later than the first day of August. If the first day of August falls on a weekend or a holiday, the date for filing shall be the next business day. The annual filing shall be accompanied by a filing fee determined by the commissioner which shall be sufficient to defray the costs of administering this chapter.

Sec. 4. Section 321I.5, Code 1989, is amended to read as follows:

321I.5 DISCLOSURE TO SERVICE CONTRACT HOLDERS -- CONTRACT PROVISIONS.

1. A motor vehicle service contract shall not be issued, sold, or offered for sale in this state unless the contract conspicuously states that the obligations of the provider to the service contract holder are guaranteed under the service contract reimbursement policy, and unless the contract conspicuously states the name and address of the issuer of the reimbursement policy.

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

a. Clearly and conspicuously states that the obligations of the provider to the service contract holder are guaranteed under a service contract reimbursement insurance policy.

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

c. Identifies the motor vehicle service contract provider, the seller of the motor vehicle, and the service contract holder.

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

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

f. Clearly and conspicuously states the existence of a deductible amount, if any.

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

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

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

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

k. Describes or references any and all applicable provisions of the Iowa consumer credit code, chapter 531.

l. States the name and address of the commissioner.

m. Sets forth any and all conditions on which the service contract may be canceled and any and all terms and conditions for the refund of any portion of the purchase price.

Sec. 5. Section 321I.8, Code 1989, is amended to read as follows:

321I.8 EXEMPTION.

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

Sec. 6. NEW SECTION. 321I.9 ADMINISTRATION.

The commissioner or the deputy administrator shall administer this chapter. In the absence of the commissioner, due to a vacancy in office, absence, physical disability, or other cause, the deputy administrator appointed under section 502.601 shall be the acting administrator and shall, for the time being, have and exercise the authority conferred upon the commissioner. The commissioner may from time to time delegate to the deputy administrator any or all of the functions assigned to the commissioner.

Sec. 7. NEW SECTION. 321I.10 MISREPRESENTATIONS OF STATE APPROVAL.

It is unlawful for any motor vehicle service contract provider to represent or imply in any manner that the provider has been sponsored, recommended, or approved or that the provider's abilities or qualifications have in any respect been passed upon by the securities department, the insurance division, or the state of Iowa.

Sec. 8. NEW SECTION. 321I.11 PROHIBITED ACTS -- UNFAIR OR DECEPTIVE TRADE PRACTICES.

1. MISREPRESENTATIONS, FALSE ADVERTISING, AND UNFAIR PRACTICES.

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

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

c. A motor vehicle service contract provider shall not make, permit, or cause a false or misleading statement, either oral or written, in connection with the sale, offer to sell, or advertisement of a motor vehicle service contract.

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

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

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

g. A motor vehicle service contract provider shall not make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over a radio or television station or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with respect to the motor vehicle service contract industry or with respect to a motor vehicle service contract provider which is untrue, deceptive, or misleading.

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

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

3. BOYCOTT, COERCION, AND INTIMIDATION. A motor vehicle service contract provider shall not enter into an agreement to commit, or by a concerted action commit, an act of boycott, coercion, or intimidation resulting in or tending to result in

unreasonable restraint of, or monopoly in, the service contract industry.

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

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

6. VIOLATIONS OF SECTION 714.16.

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

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

Sec. 9. NEW SECTION. 321I.12 RECORDS.

A motor vehicle service contract provider shall keep accurate accounts, books, and records concerning transactions regulated under this chapter.

1. A motor vehicle service contract provider's accounts, books, and records shall include all of the following:
  - a. Copies of all service contracts.
  - b. The name and address of each service contract holder.
  - c. The dates, amounts, and descriptions of all receipts, claims, and expenditures related to service contracts.

2. A motor vehicle service contract provider shall retain all required accounts, books, and records pertaining to a service contract holder for at least two years after the specified period of coverage has expired. A provider discontinuing business in this state shall maintain its records until the provider furnishes the commissioner satisfactory proof that the provider has discharged all obligations to contract holders in this state.

3. Motor vehicle service contract providers shall make all accounts, books, and records concerning transactions regulated under the chapter available to the commissioner for the purpose of examination.

Sec. 10. NEW SECTION. 321I.13 SERVICE OF PROCESS.

The commissioner shall be the agent for service of process upon a motor vehicle service contract provider and an issuer of a reimbursement insurance policy.

Sec. 11. NEW SECTION. 321I.14 ORDERS, INVESTIGATIONS, EXAMINATIONS, AND SUBPOENAS.

1. The administrator of this chapter may take actions which are necessary or appropriate for the protection of service contract holders or to administer this chapter. The administrator may make private and public investigations and examinations as the administrator deems necessary to determine whether any person has violated or is about to violate this chapter or a rule or order adopted or issued pursuant to this chapter.

2. For the purpose of an investigation or proceeding under this chapter, the administrator or any officer designated by the administrator may administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of books, papers, correspondence, memoranda, agreements, or other documents or records which the administrator deems relevant or material to an inquiry.

3. A person is not excused from attending and testifying or from producing a document or record before the

administrator or in obedience to a subpoena of the administrator or an officer designated by the administrator, or in a proceeding instituted by the administrator, on the grounds that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate or subject the person to a penalty or forfeiture. However, a person shall not be prosecuted or subjected to any penalty or forfeiture due to a transaction or matter about which the person is compelled, after claiming privilege against self-incrimination, to testify or produce evidence, documentary or otherwise. The person testifying, however, is not exempt from prosecution and punishment for perjury or contempt committed while testifying.

Sec. 12. **NEW SECTION. 321I.15 AUDITS.**

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

Sec. 13. Section 537B.2, subsection 2, as enacted by 1990 Iowa Acts, Senate File 81, is amended to read as follows:

2. "Motor vehicle" means a motor vehicle as defined in section 321.1 which is subject to registration. However, "motor vehicle" does not include a motor vehicle, as defined in section 321.1, with a registered gross vehicle weight rating of more than twelve thousand pounds.

Sec. 14. Section 537B.4, subsection 1, paragraph b, as enacted by 1990 Iowa Acts, Senate File 81, is amended to read as follows:

b. "Motor vehicle" means a motor vehicle as defined in section 321.1 which is subject to registration.

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DONALD D. AVENSON  
Speaker of the House

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JO ANN ZIMMERMAN  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2516, Seventy-third General Assembly.

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JOSEPH O'HERN  
Chief Clerk of the House

Approved April 4, 1990

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TERRY E. BRANSTAD  
Governor