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FILED FEB 22 1989

SENATE FILE 272
BY COMMITTEE ON
COMMERCE

(SUCCESSOR TO SSB 168)

Passed Senate, Date 3/3/89 (p.611) Passed House, Date 4/24/89 (P.1798)
Vote: Ayes 43 Nays 0 Vote: Ayes 95 Nays 0
Approved May 26, 1989

A BILL FOR

1 An Act relating to insurance by providing for notice and review
2 of contracts between insurers and managing general agents and
3 providing for regulation of third-party administrators.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SENATE FILE 272

S-3127

- 1 Amend Senate File 272 as follows:
- 2 1. Page 2, lines 33 and 34, by striking the words
- 3 "within two years".
- 4 2. Page 3, by striking lines 15 through 17.
- 5 3. Page 3, line 18, by inserting after the word
- 6 "union" the following: "or association".
- 7 4. By renumbering as necessary.

By PAUL PATE

S-3127 FILED FEBRUARY 28, 1989 Adopted 3-3-89 (p.611)

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1 DIVISION I

2 Section 1. NEW SECTION. 515.161 DEFINITIONS.

3 For purposes of this subchapter, unless the context
4 requires otherwise:

5 "Managing general agent" means a person, acting as an
6 independent contractor with respect to a domestic insurer, who
7 performs an underwriting or claims function for the insurer,
8 but does not include any of the following:

9 1. A licensed attorney retained for the defense of an
10 insured, as required or allowed by the policy of insurance
11 issued by the domestic insurer.

12 2. A licensed insurance agent who is extended settlement
13 authority by an insurer as an incidental part of the agent's
14 duties as an agent.

15 3. An independent claims adjuster who receives periodic
16 assignments of claims from an insurer.

17 4. A person retained for the purpose of obtaining
18 photographs, diagrams, or otherwise verifying information
19 submitted on applications for insurance, and who does not
20 perform any other claim or underwriting services for the
21 insurer.

22 Sec. 2. NEW SECTION. 515.162 CONTRACTS WITH MANAGING
23 GENERAL AGENTS.

24 A domestic insurer shall not enter into a contract with a
25 managing general agent unless the domestic insurer notifies
26 the commissioner in writing of its intention to enter into the
27 contract at least thirty days prior to entering into the
28 contract or within a shorter time permitted by the
29 commissioner and the commissioner has not disapproved of the
30 contracts within the time period. The commissioner shall not
31 approve the contracts if the commissioner finds any of the
32 following:

33 1. The service or management charges in the contract are
34 based upon criteria unrelated either to the insurer's profits
35 or to the reasonable, customary, and usual charges for such

1 services to the company.

2 2. Management personnel or other employees of the
3 insurance company are to be performing management functions
4 and receiving any remuneration for those management functions
5 through the contract in addition to the compensation received
6 directly from the insurance company for their services.

7 3. The contract would transfer substantial control of the
8 insurer or any of the powers vested in the board of directors,
9 by statute, articles of incorporation, or bylaws, or
10 substantially all of the basic functions of the insurer's
11 management to the managing general agent.

12 4. The contract contains provisions which would be clearly
13 detrimental to the best interest of policyholders,
14 stockholders, or members of the company.

15 5. The officers and directors of the managing general
16 agent firm are of known bad character or have been affiliated,
17 directly or indirectly, through ownership, control,
18 management, reinsurance transactions, or other insurance or
19 business relations with any person known to have been involved
20 in the improper manipulation of assets, accounts, or
21 reinsurance.

22 If the commissioner disapproves of a contract, notice of
23 the disapproval shall be given to the insurer, specifying the
24 reasons in writing. The commissioner shall grant any party to
25 the contract a hearing on the disapproval upon request
26 pursuant to chapter 17A.

27 Sec. 3. NEW SECTION. 515.163 LIABILITY OF MANAGING
28 GENERAL AGENTS.

312729 Notwithstanding any obligation of a director or officer of
30 an insolvent insurer to the liquidator of the insolvent
31 insurer, a managing general agent of a domestic insurer
32 against whom an order of liquidation has been entered is
33 liable for fees paid to the managing general agent within two
34 years prior to the entry of the order of liquidation upon a
35 finding that the rendering of services, or failure to render

1 services to the company.

2 2. Management personnel or other employees of the
3 insurance company are to be performing management functions
4 and receiving any remuneration for those management functions
5 through the contract in addition to the compensation received
6 directly from the insurance company for their services.

7 3. The contract would transfer substantial control of the
8 insurer or any of the powers vested in the board of directors,
9 by statute, articles of incorporation, or bylaws, or
10 substantially all of the basic functions of the insurer's
11 management to the managing general agent.

12 4. The contract contains provisions which would be clearly
13 detrimental to the best interest of policyholders,
14 stockholders, or members of the company.

15 5. The officers and directors of the managing general
16 agent firm are of known bad character or have been affiliated,
17 directly or indirectly, through ownership, control,
18 management, reinsurance transactions, or other insurance or
19 business relations with any person known to have been involved
20 in the improper manipulation of assets, accounts, or
21 reinsurance.

22 If the commissioner disapproves of a contract, notice of
23 the disapproval shall be given to the insurer, specifying the
24 reasons in writing. The commissioner shall grant any party to
25 the contract a hearing on the disapproval upon request
26 pursuant to chapter 17A.

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28 GENERAL AGENTS.

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30 an insolvent insurer to the liquidator of the insolvent
31 insurer, a managing general agent of a domestic insurer
32 against whom an order of liquidation has been entered is
33 liable for fees paid to the managing general agent within two
34 years prior to the entry of the order of liquidation upon a
35 finding that the rendering of services, or failure to render

1 h. A trust exempt from taxation under section 501(a) of
2 the Internal Revenue Code, its trustees, and employees acting
3 under the trust.

4 i. A custodian, its agents, and employees acting pursuant
5 to a custodian account which meets the requirements of section
6 401(f) of the Internal Revenue Code.

7 j. A bank, credit union, or other financial institution
8 which is subject to supervision or examination by federal or
9 state banking authorities.

10 k. A credit card issuing company which advances for and
11 collects premiums or charges from its credit card holders who
12 have authorized it to do so, if the company does not adjust or
13 settle claims.

14 l. A person who adjusts or settles claims in the normal
15 course of the person's practice or employment as an attorney-
16 at-law, and who does not collect charges or premiums in
17 connection with life or health insurance coverage or
18 annuities.

19 2. "Life or health insurance" includes, but is not limited
20 to, the following:

21 a. Individual or group accident and sickness insurance
22 providing coverage on an expense-incurred basis.

23 b. An individual or group hospital or medical service
24 contract issued pursuant to chapter 509, 514, or 514A.

25 c. An individual or group health maintenance organization
26 contract regulated under chapter 514B.

27 d. An individual or group Medicare supplemental policy.

28 e. A long-term care policy.

29 f. An individual or group life insurance policy or annuity
30 issued pursuant to chapter 508, 508A, or 509A.

31 Sec. 5. NEW SECTION. 515.167 WRITTEN AGREEMENT
32 NECESSARY.

33 A person shall not act as an administrator without a
34 written agreement between the administrator and the insurer,
35 and the written agreement shall be retained as part of the

1 official records of both the insurer and the administrator for
2 the duration of the agreement plus five years. The written
3 agreement shall contain provisions which include the
4 requirements of sections 515.166 through 515.171, except
5 insofar as those requirements do not apply to the functions
6 performed by the administrator.

7 When a policy is issued to a trustee, a copy of the trust
8 agreement and any amendments to the trust agreement shall be
9 furnished to the insurer by the administrator and shall be
10 retained as part of the official records of both the insurer
11 and the administrator for the duration of the policy plus five
12 years.

13 Sec. 6. NEW SECTION. 515.168 PAYMENT TO ADMINISTRATOR.

14 If an insurer uses the services of an administrator under
15 the terms of a written contract as required in section
16 515.167, payment to the administrator of any premiums or
17 charges for insurance by or on behalf of the insured shall be
18 deemed to have been received by the insurer, and the payment
19 of return premiums or claims by the insurer to the
20 administrator shall not be deemed payment to the insured or
21 claimant until the payments are received by the insured or
22 claimant. This section does not limit any right of the
23 insurer against the administrator resulting from the
24 administrator's failure to make payments to the insurer,
25 insureds, or claimants.

26 Sec. 7. NEW SECTION. 515.169 MAINTENANCE OF INFORMATION.

27 An administrator shall maintain at its principal
28 administrative office for the duration of the written
29 agreement referred to in section 515.167 plus five years,
30 adequate books and records of all transactions between it,
31 insurers, and insured persons. The administrator's books and
32 records shall be maintained in accordance with prudent
33 standards of insurance recordkeeping. The commissioner shall
34 have access to such books and records for the purpose of
35 examination, audit, and inspection. Trade secrets contained

1 in an administrator's books and records, including but not
2 limited to the identity and addresses of policyholders and
3 certificate holders, shall be confidential, except the
4 commissioner may use trade secret information in any
5 proceeding instituted against the administrator. The insurer
6 retains the right to continuing access to the administrator's
7 books and records sufficient to permit the insurer to fulfill
8 all of its contractual obligations to insured persons, subject
9 to any restrictions in the written agreement between the
10 insurer and administrator on the proprietary rights of the
11 parties in the administrator's books and records.

12 Sec. 8. NEW SECTION. 515.170 APPROVAL OF ADVERTISING.

13 An administrator may use only such advertising pertaining
14 to the business underwritten by an insurer as has been
15 approved by the insurer in advance of its use.

16 Sec. 9. NEW SECTION. 515.171 UNDERWRITING PROVISION.

17 The agreement shall provide for the underwriting or other
18 standards pertaining to the business underwritten by the
19 insurer.

20 Sec. 10. NEW SECTION. 515.172 PREMIUM COLLECTION.

21 1. All insurance charges or premiums collected by an
22 administrator on behalf of or for an insurer, and return
23 premiums received from the insurer, shall be held by the
24 administrator in a fiduciary capacity. Such funds shall be
25 immediately remitted to the person or persons entitled to
26 them, or shall be deposited promptly in a fiduciary bank
27 account established and maintained by the administrator. If
28 charges or premiums so deposited have been collected on behalf
29 of or for more than one insurer, the administrator shall cause
30 the bank in which the fiduciary account is maintained to keep
31 records clearly recording the deposits in and withdrawals from
32 the account on behalf of or for each insurer. The
33 administrator shall promptly obtain and keep copies of all
34 such records and, upon request of an insurer, shall furnish
35 the insurer with copies of the records pertaining to deposits

1 and withdrawals on behalf of or for that insurer.

2 2. The administrator shall not pay a claim by withdrawal
3 from the fiduciary account. Withdrawals from the fiduciary
4 account shall be made, as provided in the written agreement
5 between the administrator and the insurer, for any of the
6 following:

7 a. Remittance to an insurer entitled thereto.

8 b. Deposit in an account maintained in the name of the
9 insurer.

10 c. Transfer to and deposit in a claims-paying account,
11 with claims to be paid as provided in section 515.173.

12 d. Payment to a group policyholder for remittance to the
13 insurer entitled thereto.

14 e. Payment to the administrator of its commission, fees,
15 or charges.

16 f. Remittance of return premiums to the persons entitled
17 thereto.

18 Sec. 11. NEW SECTION. 515.173 PAYMENT OF CLAIMS.

19 A claim paid by the administrator from funds collected on
20 behalf of the insurer shall be paid only on a draft of and as
21 authorized by the insurer.

22 Sec. 12. NEW SECTION. 515.174 CLAIM ADJUSTMENT AND
23 SETTLEMENT.

24 The compensation paid to an administrator shall not be
25 contingent on claim experience on policies for which the
26 administrator adjusts or settles claims. This section does
27 not prevent the compensation of an administrator from being
28 based on premiums or charges collected or number of claims
29 paid or processed.

30 Sec. 13. NEW SECTION. 515.175 NOTIFICATION REQUIRED.

31 When the services of an administrator are used, the
32 administrator shall provide a written notice, approved by the
33 insurer, to insured individuals, advising them of the identity
34 of and relationship among the administrator, the policyholder,
35 and the insurer. When an administrator collects funds, it

1 must identify and state separately in writing to the person
2 paying to the administrator any charge or premium for
3 insurance coverage the amount of any such charge or premium
4 specified by the insurer for such insurance coverage.

5 Sec. 14. NEW SECTION. 515.176 CERTIFICATE OF
6 REGISTRATION REQUIRED.

7 A person shall not act as or represent oneself to be an
8 administrator in this state, other than an adjuster licensed
9 in this state for the kinds of business for which the person
10 is acting as an administrator, unless the person holds a
11 current certificate of registration as an administrator issued
12 by the commissioner of insurance. A certificate of
13 registration as an administrator is renewable every three
14 years. Failure to hold a certificate subjects the
15 administrator to the sanctions set out in section 507B.7. The
16 certificate shall be issued by the commissioner to an
17 administrator unless the commissioner, after due notice and
18 hearing, determines that the administrator is not competent,
19 trustworthy, financially responsible, or of good personal and
20 business reputation, or has had a previous application for an
21 insurance license denied for cause within the preceding five
22 years.

23 An application for registration shall be accompanied by a
24 filing fee of one hundred dollars. After notice and hearing,
25 the commissioner may impose any or all of the sanctions set
26 out in section 507B.7, upon finding that either the
27 administrator violated any of the requirements of section
28 515.134 and sections 515.161 through 515.176, or the
29 administrator is not competent, trustworthy, financially
30 responsible, or of good personal and business reputation.

31 Sec. 15. NEW SECTION. 515.177 WAIVING OF REQUIREMENTS.

32 The commissioner may waive the requirements of section
33 515.176 for any person or class of persons. The factors taken
34 into account in granting a waiver shall include, but are not
35 limited to whether:

1 1. The person acting as an administrator is primarily in a
2 business other than that of administrator.

3 2. The financial strength and history of the organization
4 indicates stability in its continuity of doing business.

5 3. The regular duties being performed as an administrator
6 are such that the covered persons are not likely to be injured
7 by a waiver of such requirements.

8 EXPLANATION

9 Sections 1 through 3 regulate the practice of "managing
10 general agents" whereby on a contract basis a person performs
11 certain duties normally performed by the insurer's own
12 officers or employees. The sections permit the commissioner
13 to review the fairness of the contracts and impose liability
14 upon the managing general agent if the insurer becomes
15 insolvent under certain conditions.

16 Sections 4 through 15 adopt the national association of
17 insurance commissioners' model third-party administrator bill.
18 These sections extend the commissioner's authority to regulate
19 insurers to their third-party administrators.

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HOUSE BILL 4000
DO PASS 4-5-89 (P.1297)

SENATE FILE 272
BY COMMITTEE ON
COMMERCE

(SUCCESSOR TO SSB 168)

(AS AMENDED AND PASSED BY THE SENATE MARCH 3, 1989)

- _____ - New Language by the Senate
- * - Language Stricken by the Senate

Re Passed Senate, Date 4-28-89 (p.1747) Passed House, Date 4-24-89 (p.1798)
 Vote: Ayes 42 Nays 0 Vote: Ayes 95 Nays 0
 Approved May 26, 1989

A BILL FOR

1 An Act relating to insurance by providing for notice and review
 2 of contracts between insurers and managing general agents and
 3 providing for regulation of third-party administrators.
 4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

SENATE FILE 272

H-4052

1 Amend Senate File 272, as amended, passed, and
 2 reprinted by the Senate, as follows:
 3 1. Page 1, line 6, by inserting after the word
 4 "insurer," the following: "except a county mutual
 5 association that operates only within a given county
 6 and counties contiguous to that county,".
 By SCHNEKLOTH of Scott

H-4052 FILED APRIL 17, 1989

Adopted 4-24-89 (p.1798)

HOUSE AMENDMENT TO
SENATE FILE 272

S-3896

1 Amend Senate File 272, as amended, passed, and
 2 reprinted by the Senate, as follows:
 3 1. Page 1, line 6, by inserting after the word
 4 "insurer," the following: "except a county mutual
 5 association that operates only within a given county
 6 and counties contiguous to that county,".

RECEIVED FROM THE HOUSE

S-3896 FILED APRIL 25, 1989

Senate Concurred 4-28-89 (p.1747)

S-3896

1 DIVISION I

2 Section 1. NEW SECTION. 515.161 DEFINITIONS.

3 For purposes of this subchapter, unless the context
4 requires otherwise:

5 "Managing general agent" means a person, acting as an
4052-6 independent contractor with respect to a domestic insurer, who
7 performs an underwriting or claims function for the insurer,
8 but does not include any of the following:

9 1. A licensed attorney retained for the defense of an
10 insured, as required or allowed by the policy of insurance
11 issued by the domestic insurer.

12 2. A licensed insurance agent who is extended settlement
13 authority by an insurer as an incidental part of the agent's
14 duties as an agent.

15 3. An independent claims adjuster who receives periodic
16 assignments of claims from an insurer.

17 4. A person retained for the purpose of obtaining
18 photographs, diagrams, or otherwise verifying information
19 submitted on applications for insurance, and who does not
20 perform any other claim or underwriting services for the
21 insurer.

22 Sec. 2. NEW SECTION. 515.162 CONTRACTS WITH MANAGING
23 GENERAL AGENTS.

24 A domestic insurer shall not enter into a contract with a
25 managing general agent unless the domestic insurer notifies
26 the commissioner in writing of its intention to enter into the
27 contract at least thirty days prior to entering into the
28 contract or within a shorter time permitted by the
29 commissioner and the commissioner has not disapproved of the
30 contracts within the time period. The commissioner shall not
31 approve the contracts if the commissioner finds any of the
32 following:

33 1. The service or management charges in the contract are
34 based upon criteria unrelated either to the insurer's profits
35 or to the reasonable, customary, and usual charges for such

1 services to the company.

2 2. Management personnel or other employees of the
3 insurance company are to be performing management functions
4 and receiving any remuneration for those management functions
5 through the contract in addition to the compensation received
6 directly from the insurance company for their services.

7 3. The contract would transfer substantial control of the
8 insurer or any of the powers vested in the board of directors,
9 by statute, articles of incorporation, or bylaws, or
10 substantially all of the basic functions of the insurer's
11 management to the managing general agent.

12 4. The contract contains provisions which would be clearly
13 detrimental to the best interest of policyholders,
14 stockholders, or members of the company.

15 5. The officers and directors of the managing general
16 agent firm are of known bad character or have been affiliated,
17 directly or indirectly, through ownership, control,
18 management, reinsurance transactions, or other insurance or
19 business relations with any person known to have been involved
20 in the improper manipulation of assets, accounts, or
21 reinsurance.

22 If the commissioner disapproves of a contract, notice of
23 the disapproval shall be given to the insurer, specifying the
24 reasons in writing. The commissioner shall grant any party to
25 the contract a hearing on the disapproval upon request
26 pursuant to chapter 17A.

27 Sec. 3. NEW SECTION. 515.163 LIABILITY OF MANAGING
28 GENERAL AGENTS.

29 Notwithstanding any obligation of a director or officer of
30 an insolvent insurer to the liquidator of the insolvent
31 insurer, a managing general agent of a domestic insurer
32 against whom an order of liquidation has been entered is
* 33 liable for fees paid to the managing general agent prior to
34 the entry of the order of liquidation upon a finding that the
35 rendering of services, or failure to render services

1 contracted for, substantially caused or contributed to the
2 insolvency of the domestic insurer, and was pursuant to a
3 contract which had not been submitted to the commissioner, or
4 which had been submitted to the commissioner and disapproved,
5 or the services did not meet accepted standards for such
6 services.

7 DIVISION II

8 Sec. 4. NEW SECTION. 515.166 DEFINITIONS.

9 As used in this subchapter, unless the context otherwise
10 requires:

11 1. "Administrator" means a person who collects charges or
12 premiums from, or who adjusts or settles claims on, residents
13 of this state in connection with life or health insurance
14 coverage or annuities other than any of the following:

* 15 a. A union or association on behalf of its members.

16 b. An insurance company which is either licensed in this
17 state or acting as an insurer with respect to a policy
18 lawfully issued and delivered by it in and pursuant to the
19 laws of a state in which the insurer was authorized to do an
20 insurance business.

21 c. An entity licensed under chapter 514 including its
22 sales representatives licensed in this state when engaged in
23 the performance of its duties as sales representatives.

24 d. A life or health agent or broker licensed in this
25 state, whose activities are limited exclusively to the sale of
26 insurance.

27 e. A creditor on behalf of its debtors with respect to
28 insurance covering a debt between the creditor and its
29 debtors.

30 f. A trust, its trustees, agents, and employees acting
31 under the trust, established in conformity with 29 U.S.C. §
32 186.

33 g. A trust exempt from taxation under section 501(a) of
34 the Internal Revenue Code, its trustees, and employees acting
35 under the trust.

1 h. A custodian, its agents, and employees acting pursuant
2 to a custodian account which meets the requirements of section
3 401(f) of the Internal Revenue Code.

4 i. A bank, credit union, or other financial institution
5 which is subject to supervision or examination by federal or
6 state banking authorities.

7 j. A credit card issuing company which advances for and
8 collects premiums or charges from its credit card holders who
9 have authorized it to do so, if the company does not adjust or
10 settle claims.

11 k. A person who adjusts or settles claims in the normal
12 course of the person's practice or employment as an attorney-
13 at-law, and who does not collect charges or premiums in
14 connection with life or health insurance coverage or
15 annuities.

16 2. "Life or health insurance" includes, but is not limited
17 to, the following:

18 a. Individual or group accident and sickness insurance
19 providing coverage on an expense-incurred basis.

20 b. An individual or group hospital or medical service
21 contract issued pursuant to chapter 509, 514, or 514A.

22 c. An individual or group health maintenance organization
23 contract regulated under chapter 514B.

24 d. An individual or group Medicare supplemental policy.

25 e. A long-term care policy.

26 f. An individual or group life insurance policy or annuity
27 issued pursuant to chapter 508, 508A, or 509A.

28 Sec. 5. NEW SECTION. 515.167 WRITTEN AGREEMENT
29 NECESSARY.

30 A person shall not act as an administrator without a
31 written agreement between the administrator and the insurer,
32 and the written agreement shall be retained as part of the
33 official records of both the insurer and the administrator for
34 the duration of the agreement plus five years. The written
35 agreement shall contain provisions which include the

1 requirements of sections 515.166 through 515.171, except
2 insofar as those requirements do not apply to the functions
3 performed by the administrator.

4 When a policy is issued to a trustee, a copy of the trust
5 agreement and any amendments to the trust agreement shall be
6 furnished to the insurer by the administrator and shall be
7 retained as part of the official records of both the insurer
8 and the administrator for the duration of the policy plus five
9 years.

10 Sec. 6. NEW SECTION. 515.168 PAYMENT TO ADMINISTRATOR.

11 If an insurer uses the services of an administrator under
12 the terms of a written contract as required in section
13 515.167, payment to the administrator of any premiums or
14 charges for insurance by or on behalf of the insured shall be
15 deemed to have been received by the insurer, and the payment
16 of return premiums or claims by the insurer to the
17 administrator shall not be deemed payment to the insured or
18 claimant until the payments are received by the insured or
19 claimant. This section does not limit any right of the
20 insurer against the administrator resulting from the
21 administrator's failure to make payments to the insurer,
22 insureds, or claimants.

23 Sec. 7. NEW SECTION. 515.169 MAINTENANCE OF INFORMATION.

24 An administrator shall maintain at its principal
25 administrative office for the duration of the written
26 agreement referred to in section 515.167 plus five years,
27 adequate books and records of all transactions between it,
28 insurers, and insured persons. The administrator's books and
29 records shall be maintained in accordance with prudent
30 standards of insurance recordkeeping. The commissioner shall
31 have access to such books and records for the purpose of
32 examination, audit, and inspection. Trade secrets contained
33 in an administrator's books and records, including but not
34 limited to the identity and addresses of policyholders and
35 certificate holders, shall be confidential, except the

1 commissioner may use trade secret information in any
2 proceeding instituted against the administrator. The insurer
3 retains the right to continuing access to the administrator's
4 books and records sufficient to permit the insurer to fulfill
5 all of its contractual obligations to insured persons, subject
6 to any restrictions in the written agreement between the
7 insurer and administrator on the proprietary rights of the
8 parties in the administrator's books and records.

9 Sec. 8. NEW SECTION. 515.170 APPROVAL OF ADVERTISING.

10 An administrator may use only such advertising pertaining
11 to the business underwritten by an insurer as has been
12 approved by the insurer in advance of its use.

13 Sec. 9. NEW SECTION. 515.171 UNDERWRITING PROVISION.

14 The agreement shall provide for the underwriting or other
15 standards pertaining to the business underwritten by the
16 insurer.

17 Sec. 10. NEW SECTION. 515.172 PREMIUM COLLECTION.

18 1. All insurance charges or premiums collected by an
19 administrator on behalf of or for an insurer, and return
20 premiums received from the insurer, shall be held by the
21 administrator in a fiduciary capacity. Such funds shall be
22 immediately remitted to the person or persons entitled to
23 them, or shall be deposited promptly in a fiduciary bank
24 account established and maintained by the administrator. If
25 charges or premiums so deposited have been collected on behalf
26 of or for more than one insurer, the administrator shall cause
27 the bank in which the fiduciary account is maintained to keep
28 records clearly recording the deposits in and withdrawals from
29 the account on behalf of or for each insurer. The
30 administrator shall promptly obtain and keep copies of all
31 such records and, upon request of an insurer, shall furnish
32 the insurer with copies of the records pertaining to deposits
33 and withdrawals on behalf of or for that insurer.

34 2. The administrator shall not pay a claim by withdrawal
35 from the fiduciary account. Withdrawals from the fiduciary

1 account shall be made, as provided in the written agreement
2 between the administrator and the insurer, for any of the
3 following:

4 a. Remittance to an insurer entitled thereto.

5 b. Deposit in an account maintained in the name of the
6 insurer.

7 c. Transfer to and deposit in a claims-paying account,
8 with claims to be paid as provided in section 515.173.

9 d. Payment to a group policyholder for remittance to the
10 insurer entitled thereto.

11 e. Payment to the administrator of its commission, fees,
12 or charges.

13 f. Remittance of return premiums to the persons entitled
14 thereto.

15 Sec. 11. NEW SECTION. 515.173 PAYMENT OF CLAIMS.

16 A claim paid by the administrator from funds collected on
17 behalf of the insurer shall be paid only on a draft of and as
18 authorized by the insurer.

19 Sec. 12. NEW SECTION. 515.174 CLAIM ADJUSTMENT AND
20 SETTLEMENT.

21 The compensation paid to an administrator shall not be
22 contingent on claim experience on policies for which the
23 administrator adjusts or settles claims. This section does
24 not prevent the compensation of an administrator from being
25 based on premiums or charges collected or number of claims
26 paid or processed.

27 Sec. 13. NEW SECTION. 515.175 NOTIFICATION REQUIRED.

28 When the services of an administrator are used, the
29 administrator shall provide a written notice, approved by the
30 insurer, to insured individuals, advising them of the identity
31 of and relationship among the administrator, the policyholder,
32 and the insurer. When an administrator collects funds, it
33 must identify and state separately in writing to the person
34 paying to the administrator any charge or premium for
35 insurance coverage the amount of any such charge or premium

1 specified by the insurer for such insurance coverage.

2 Sec. 14. NEW SECTION. 515.176 CERTIFICATE OF
3 REGISTRATION REQUIRED.

4 A person shall not act as or represent oneself to be an
5 administrator in this state, other than an adjuster licensed
6 in this state for the kinds of business for which the person
7 is acting as an administrator, unless the person holds a
8 current certificate of registration as an administrator issued
9 by the commissioner of insurance. A certificate of
10 registration as an administrator is renewable every three
11 years. Failure to hold a certificate subjects the
12 administrator to the sanctions set out in section 507B.7. The
13 certificate shall be issued by the commissioner to an
14 administrator unless the commissioner, after due notice and
15 hearing, determines that the administrator is not competent,
16 trustworthy, financially responsible, or of good personal and
17 business reputation, or has had a previous application for an
18 insurance license denied for cause within the preceding five
19 years.

20 An application for registration shall be accompanied by a
21 filing fee of one hundred dollars. After notice and hearing,
22 the commissioner may impose any or all of the sanctions set
23 out in section 507B.7, upon finding that either the
24 administrator violated any of the requirements of section
25 515.134 and sections 515.161 through 515.176, or the
26 administrator is not competent, trustworthy, financially
27 responsible, or of good personal and business reputation.

28 Sec. 15. NEW SECTION. 515.177 WAIVING OF REQUIREMENTS.

29 The commissioner may waive the requirements of section
30 515.176 for any person or class of persons. The factors taken
31 into account in granting a waiver shall include, but are not
32 limited to whether:

33 1. The person acting as an administrator is primarily in a
34 business other than that of administrator.

35 2. The financial strength and history of the organization

1 indicates stability in its continuity of doing business.
2 3. The regular duties being performed as an administrator
3 are such that the covered persons are not likely to be injured
4 by a waiver of such requirements.

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SSB 168
COMMERCE

SENATE FILE 272
BY (PROPOSED DEPARTMENT OF
COMMERCE/DIVISION OF
INSURANCE BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to insurance by providing for notice and review
2 of contracts between insurers and managing general agents and
3 providing for regulation of third-party administrators.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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DIVISION I

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Section 1. NEW SECTION. 515.161 DEFINITIONS.

3

For purposes of this subchapter, unless the context

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requires otherwise:

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"Managing general agent" means a person, acting as an

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independent contractor with respect to a domestic insurer, who

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performs an underwriting or claims function for the insurer,

8

but does not include any of the following:

9

1. A licensed attorney retained for the defense of an

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insured, as required or allowed by the policy of insurance

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issued by the domestic insurer.

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2. A licensed insurance agent who is extended settlement

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authority by an insurer as an incidental part of the agent's

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duties as an agent.

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3. An independent claims adjuster who receives periodic

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assignments of claims from an insurer.

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4. A person retained for the purpose of obtaining

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photographs, diagrams, or otherwise verifying information

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submitted on applications for insurance, and who does not

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perform any other claim or underwriting services for the

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insurer.

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Sec. 2. NEW SECTION. 515.162 CONTRACTS WITH MANAGING

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GENERAL AGENTS.

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A domestic insurer shall not enter into a contract with a

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managing general agent unless the domestic insurer notifies

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the commissioner in writing of its intention to enter into the

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contract at least thirty days prior to entering into the

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contract or within a shorter time permitted by the

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commissioner and the commissioner has not disapproved of the

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contracts within the time period. The commissioner shall not

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approve the contracts if the commissioner finds any of the

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following:

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1. The service or management charges in the contract are

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based upon criteria unrelated either to the insurer's profits

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or to the reasonable, customary, and usual charges for such

1 services to the company.

2 2. Management personnel or other employees of the
3 insurance company are to be performing management functions
4 and receiving any remuneration for those management functions
5 through the contract in addition to the compensation received
6 directly from the insurance company for their services.

7 3. The contract would transfer substantial control of the
8 insurer or any of the powers vested in the board of directors,
9 by statute, articles of incorporation, or bylaws, or
10 substantially all of the basic functions of the insurer's
11 management to the managing general agent.

12 4. The contract contains provisions which would be clearly
13 detrimental to the best interest of policyholders,
14 stockholders, or members of the company.

15 5. The officers and directors of the managing general
16 agent firm are of known bad character or have been affiliated,
17 directly or indirectly, through ownership, control,
18 management, reinsurance transactions, or other insurance or
19 business relations with any person known to have been involved
20 in the improper manipulation of assets, accounts, or
21 reinsurance.

22 If the commissioner disapproves of a contract, notice of
23 the disapproval shall be given to the insurer, specifying the
24 reasons in writing. The commissioner shall grant any party to
25 the contract a hearing on the disapproval upon request
26 pursuant to chapter 17A.

27 Sec. 3. NEW SECTION. 515.163 LIABILITY OF MANAGING
28 GENERAL AGENTS.

29 Notwithstanding any obligation of a director or officer of
30 an insolvent insurer to the liquidator of the insolvent
31 insurer, a managing general agent of a domestic insurer
32 against whom an order of liquidation has been entered is
33 liable for fees paid to the managing general agent within two
34 years prior to the entry of the order of liquidation upon a
35 finding that the rendering of services, or failure to render

1 services contracted for, substantially caused or contributed
2 to the insolvency of the domestic insurer, and was pursuant to
3 a contract which had not been submitted to the commissioner,
4 or which had been submitted to the commissioner and
5 disapproved, or the services did not meet accepted standards
6 for such services.

7 DIVISION II

8 Sec. 4. NEW SECTION. 515.166 DEFINITIONS.

9 As used in this subchapter, unless the context otherwise
10 requires:

11 1. "Administrator" means a person who collects charges or
12 premiums from, or who adjusts or settles claims on, residents
13 of this state in connection with life or health insurance
14 coverage or annuities other than any of the following:

15 a. An employer on behalf of its employees or the employees
16 of one or more subsidiary or affiliated corporations of the
17 employer.

18 b. A union on behalf of its members.

19 c. An insurance company which is either licensed in this
20 state or acting as an insurer with respect to a policy
21 lawfully issued and delivered by it in and pursuant to the
22 laws of a state in which the insurer was authorized to do an
23 insurance business.

24 d. An entity licensed under chapter 514 including its
25 sales representatives licensed in this state when engaged in
26 the performance of its duties as sales representatives.

27 e. A life or health agent or broker licensed in this
28 state, whose activities are limited exclusively to the sale of
29 insurance.

30 f. A creditor on behalf of its debtors with respect to
31 insurance covering a debt between the creditor and its
32 debtors.

33 g. A trust, its trustees, agents, and employees acting
34 under the trust, established in conformity with 29 U.S.C. §
35 186.

1 h. A trust exempt from taxation under section 501(a) of
2 the Internal Revenue Code, its trustees, and employees acting
3 under the trust.

4 i. A custodian, its agents, and employees acting pursuant
5 to a custodian account which meets the requirements of section
6 401(f) of the Internal Revenue Code.

7 j. A bank, credit union, or other financial institution
8 which is subject to supervision or examination by federal or
9 state banking authorities.

10 k. A credit card issuing company which advances for and
11 collects premiums or charges from its credit card holders who
12 have authorized it to do so, if the company does not adjust or
13 settle claims.

14 1. A person who adjusts or settles claims in the normal
15 course of the person's practice or employment as an attorney-
16 at-law, and who does not collect charges or premiums in
17 connection with life or health insurance coverage or
18 annuities.

19 2. "Life or health insurance" includes, but is not limited
20 to, the following:

21 a. Individual or group accident and sickness insurance
22 providing coverage on an expense-incurred basis.

23 b. An individual or group hospital or medical service
24 contract issued pursuant to chapter 509, 514, or 514A.

25 c. An individual or group health maintenance organization
26 contract regulated under chapter 514B.

27 d. An individual or group Medicare supplemental policy.

28 e. A long-term care policy.

29 f. An individual or group life insurance policy or annuity
30 issued pursuant to chapter 508, 508A, or 509A.

31 Sec. 5. NEW SECTION. 515.167 WRITTEN AGREEMENT
32 NECESSARY.

33 A person shall not act as an administrator without a
34 written agreement between the administrator and the insurer,
35 and the written agreement shall be retained as part of the

1 official records of both the insurer and the administrator for
2 the duration of the agreement plus five years. The written
3 agreement shall contain provisions which include the
4 requirements of sections 515.166 through 515.171, except
5 insofar as those requirements do not apply to the functions
6 performed by the administrator.

7 When a policy is issued to a trustee, a copy of the trust
8 agreement and any amendments to the trust agreement shall be
9 furnished to the insurer by the administrator and shall be
10 retained as part of the official records of both the insurer
11 and the administrator for the duration of the policy plus five
12 years.

13 Sec. 6. NEW SECTION. 515.168 PAYMENT TO ADMINISTRATOR.

14 If an insurer uses the services of an administrator under
15 the terms of a written contract as required in section
16 515.167, payment to the administrator of any premiums or
17 charges for insurance by or on behalf of the insured shall be
18 deemed to have been received by the insurer, and the payment
19 of return premiums or claims by the insurer to the
20 administrator shall not be deemed payment to the insured or
21 claimant until the payments are received by the insured or
22 claimant. This section does not limit any right of the
23 insurer against the administrator resulting from the
24 administrator's failure to make payments to the insurer,
25 insureds, or claimants.

26 Sec. 7. NEW SECTION. 515.169 MAINTENANCE OF INFORMATION.

27 An administrator shall maintain at its principal
28 administrative office for the duration of the written
29 agreement referred to in section 515.167 plus five years,
30 adequate books and records of all transactions between it,
31 insurers, and insured persons. The administrator's books and
32 records shall be maintained in accordance with prudent
33 standards of insurance recordkeeping. The commissioner shall
34 have access to such books and records for the purpose of
35 examination, audit, and inspection. Trade secrets contained

1 in an administrator's books and records, including but not
2 limited to the identity and addresses of policyholders and
3 certificate holders, shall be confidential, except the
4 commissioner may use trade secret information in any
5 proceeding instituted against the administrator. The insurer
6 retains the right to continuing access to the administrator's
7 books and records sufficient to permit the insurer to fulfill
8 all of its contractual obligations to insured persons, subject
9 to any restrictions in the written agreement between the
10 insurer and administrator on the proprietary rights of the
11 parties in the administrator's books and records.

12 Sec. 8. NEW SECTION. 515.170 APPROVAL OF ADVERTISING.

13 An administrator may use only such advertising pertaining
14 to the business underwritten by an insurer as has been
15 approved by the insurer in advance of its use.

16 Sec. 9. NEW SECTION. 515.171 UNDERWRITING PROVISION.

17 The agreement shall provide for the underwriting or other
18 standards pertaining to the business underwritten by the
19 insurer.

20 Sec. 10. NEW SECTION. 515.172 PREMIUM COLLECTION.

21 1. All insurance charges or premiums collected by an
22 administrator on behalf of or for an insurer, and return
23 premiums received from the insurer, shall be held by the
24 administrator in a fiduciary capacity. Such funds shall be
25 immediately remitted to the person or persons entitled to
26 them, or shall be deposited promptly in a fiduciary bank
27 account established and maintained by the administrator. If
28 charges or premiums so deposited have been collected on behalf
29 of or for more than one insurer, the administrator shall cause
30 the bank in which the fiduciary account is maintained to keep
31 records clearly recording the deposits in and withdrawals from
32 the account on behalf of or for each insurer. The
33 administrator shall promptly obtain and keep copies of all
34 such records and, upon request of an insurer, shall furnish
35 the insurer with copies of the records pertaining to deposits

1 and withdrawals on behalf of or for that insurer.

2 2. The administrator shall not pay a claim by withdrawal
3 from the fiduciary account. Withdrawals from the fiduciary
4 account shall be made, as provided in the written agreement
5 between the administrator and the insurer, for any of the
6 following:

7 a. Remittance to an insurer entitled thereto.

8 b. Deposit in an account maintained in the name of the
9 insurer.

10 c. Transfer to and deposit in a claims-paying account,
11 with claims to be paid as provided in section 515.173.

12 d. Payment to a group policyholder for remittance to the
13 insurer entitled thereto.

14 e. Payment to the administrator of its commission, fees,
15 or charges.

16 f. Remittance of return premiums to the persons entitled
17 thereto.

18 Sec. 11. NEW SECTION. 515.173 PAYMENT OF CLAIMS.

19 A claim paid by the administrator from funds collected on
20 behalf of the insurer shall be paid only on a draft of and as
21 authorized by the insurer.

22 Sec. 12. NEW SECTION. 515.174 CLAIM ADJUSTMENT AND
23 SETTLEMENT.

24 The compensation paid to an administrator shall not be
25 contingent on claim experience on policies for which the
26 administrator adjusts or settles claims. This section does
27 not prevent the compensation of an administrator from being
28 based on premiums or charges collected or number of claims
29 paid or processed.

30 Sec. 13. NEW SECTION. 515.175 NOTIFICATION REQUIRED.

31 When the services of an administrator are used, the
32 administrator shall provide a written notice, approved by the
33 insurer, to insured individuals, advising them of the identity
34 of and relationship among the administrator, the policyholder,
35 and the insurer. When an administrator collects funds, it

1 must identify and state separately in writing to the person
2 paying to the administrator any charge or premium for
3 insurance coverage the amount of any such charge or premium
4 specified by the insurer for such insurance coverage.

5 Sec. 14. NEW SECTION. 515.176 CERTIFICATE OF
6 REGISTRATION REQUIRED.

7 A person shall not act as or represent oneself to be an
8 administrator in this state, other than an adjuster licensed
9 in this state for the kinds of business for which the person
10 is acting as an administrator, unless the person holds a
11 current certificate of registration as an administrator issued
12 by the commissioner of insurance. A certificate of
13 registration as an administrator is renewable every three
14 years. Failure to hold a certificate subjects the
15 administrator to the sanctions set out in section 507B.7. The
16 certificate shall be issued by the commissioner to an
17 administrator unless the commissioner, after due notice and
18 hearing, determines that the administrator is not competent,
19 trustworthy, financially responsible, or of good personal and
20 business reputation, or has had a previous application for an
21 insurance license denied for cause within the preceding five
22 years.

23 An application for registration shall be accompanied by a
24 filing fee of one hundred dollars. After notice and hearing,
25 the commissioner may impose any or all of the sanctions set
26 out in section 507B.7, upon finding that either the
27 administrator violated any of the requirements of section
28 515.134 and sections 515.161 through 515.176, or the
29 administrator is not competent, trustworthy, financially
30 responsible, or of good personal and business reputation.

31 Sec. 15. NEW SECTION. 515.177 WAIVING OF REQUIREMENTS.

32 The commissioner may waive the requirements of section
33 515.176 for any person or class of persons. The factors taken
34 into account in granting a waiver shall include, but are not
35 limited to whether:

1 1. The person acting as an administrator is primarily in a
2 business other than that of administrator.

3 2. The financial strength and history of the organization
4 indicates stability in its continuity of doing business.

5 3. The regular duties being performed as an administrator
6 are such that the covered persons are not likely to be injured
7 by a waiver of such requirements.

8 EXPLANATION

9 Sections 1 through 3 regulate the practice of "managing
10 general agents" whereby on a contract basis a person performs
11 certain duties normally performed by the insurer's own
12 officers or employees. The sections permit the commissioner
13 to review the fairness of the contracts and impose liability
14 upon the managing general agent if the insurer becomes
15 insolvent under certain conditions.

16 Sections 4 through 15 adopt the national association of
17 insurance commissioners' model third-party administrator bill.
18 These sections extend the commissioner's authority to regulate
19 insurers to their third-party administrators.

20 BACKGROUND STATEMENT

21 SUBMITTED BY THE AGENCY

22 Division I is bill sections 1 through 3.

23 In the commissioner's role, a statutory liquidator of
24 insolvent insurance companies, there has been found a pattern
25 and practice of involvement by "managing general agents".
26 These are individuals or entities who perform critical
27 functions for an insurer--functions which would normally be
28 performed by the insurer's own officers or employees but which
29 are performed by outside independent contractors. These
30 agents have been found to be a significant contributory factor
31 in a number of serious insolvencies. Their role has been to
32 extract exorbitant fees for independent underwriting or claim
33 services. Division I makes contracts with such agents subject
34 to prior review by the Commissioner for excessiveness of fees
35 in relation to services rendered and imposes liability upon

1 these agents in the event of insolvency under certain
2 conditions.

3 Division II (sections 4 through 15) adopts the NAIC model
4 bill on third-party administrators (TPA's), which 19 other
5 states have adopted in various forms. TPA's perform functions
6 which insurers have traditionally performed and, in order to
7 effectively regulate the life and health industry, control
8 over these parties is necessary. This law will require
9 administrators to maintain certain information on its contracts
10 which may be examined by the Commissioner.

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SENATE FILE 272

AN ACT

RELATING TO INSURANCE BY PROVIDING FOR NOTICE AND REVIEW OF
CONTRACTS BETWEEN INSURERS AND MANAGING GENERAL AGENTS AND
PROVIDING FOR REGULATION OF THIRD-PARTY ADMINISTRATORS.

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

DIVISION I

Section 1. NEW SECTION. 515.161 DEFINITIONS.

For purposes of this subchapter, unless the context
requires otherwise:

"Managing general agent" means a person, acting as an
independent contractor with respect to a domestic insurer,
except a county mutual association that operates only within a
given county and counties contiguous to that county, who
performs an underwriting or claims function for the insurer,
but does not include any of the following:

1. A licensed attorney retained for the defense of an
insured, as required or allowed by the policy of insurance
issued by the domestic insurer.
2. A licensed insurance agent who is extended settlement
authority by an insurer as an incidental part of the agent's
duties as an agent.
3. An independent claims adjuster who receives periodic
assignments of claims from an insurer.
4. A person retained for the purpose of obtaining
photographs, diagrams, or otherwise verifying information
submitted on applications for insurance, and who does not
perform any other claim or underwriting services for the
insurer.

Sec. 2. NEW SECTION. 515.162 CONTRACTS WITH MANAGING
GENERAL AGENTS.

A domestic insurer shall not enter into a contract with a
managing general agent unless the domestic insurer notifies
the commissioner in writing of its intention to enter into the
contract at least thirty days prior to entering into the
contract or within a shorter time permitted by the
commissioner and the commissioner has not disapproved of the
contracts within the time period. The commissioner shall not
approve the contracts if the commissioner finds any of the
following:

1. The service or management charges in the contract are
based upon criteria unrelated either to the insurer's profits
or to the reasonable, customary, and usual charges for such
services to the company.
2. Management personnel or other employees of the
insurance company are to be performing management functions
and receiving any remuneration for those management functions
through the contract in addition to the compensation received
directly from the insurance company for their services.
3. The contract would transfer substantial control of the
insurer or any of the powers vested in the board of directors,
by statute, articles of incorporation, or bylaws, or
substantially all of the basic functions of the insurer's
management to the managing general agent.
4. The contract contains provisions which would be clearly
detrimental to the best interest of policyholders,
stockholders, or members of the company.
5. The officers and directors of the managing general
agent firm are of known bad character or have been affiliated,
directly or indirectly, through ownership, control,
management, reinsurance transactions, or other insurance or
business relations with any person known to have been involved
in the improper manipulation of assets, accounts, or
reinsurance.

If the commissioner disapproves of a contract, notice of
the disapproval shall be given to the insurer, specifying the
reasons in writing. The commissioner shall grant any party to

the contract a hearing on the disapproval upon request pursuant to chapter 17A.

Sec. 3. NEW SECTION. 515.163 LIABILITY OF MANAGING GENERAL AGENTS.

Notwithstanding any obligation of a director or officer of an insolvent insurer to the liquidator of the insolvent insurer, a managing general agent of a domestic insurer against whom an order of liquidation has been entered is liable for fees paid to the managing general agent prior to the entry of the order of liquidation upon a finding that the rendering of services, or failure to render services contracted for, substantially caused or contributed to the insolvency of the domestic insurer, and was pursuant to a contract which had not been submitted to the commissioner, or which had been submitted to the commissioner and disapproved, or the services did not meet accepted standards for such services.

DIVISION II

Sec. 4. NEW SECTION. 515.166 DEFINITIONS.

As used in this subchapter, unless the context otherwise requires:

1. "Administrator" means a person who collects charges or premiums from, or who adjusts or settles claims on, residents of this state in connection with life or health insurance coverage or annuities other than any of the following:

- a. A union or association on behalf of its members.
- b. An insurance company which is either licensed in this state or acting as an insurer with respect to a policy lawfully issued and delivered by it in and pursuant to the laws of a state in which the insurer was authorized to do an insurance business.
- c. An entity licensed under chapter 514 including its sales representatives licensed in this state when engaged in the performance of its duties as sales representatives.
- d. A life or health agent or broker licensed in this state, whose activities are limited exclusively to the sale of insurance.

e. A creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors.

f. A trust, its trustees, agents, and employees acting under the trust, established in conformity with 29 U.S.C. § 186.

g. A trust exempt from taxation under section 501(a) of the Internal Revenue Code, its trustees, and employees acting under the trust.

h. A custodian, its agents, and employees acting pursuant to a custodian account which meets the requirements of section 401(f) of the Internal Revenue Code.

i. A bank, credit union, or other financial institution which is subject to supervision or examination by federal or state banking authorities.

j. A credit card issuing company which advances for and collects premiums or charges from its credit card holders who have authorized it to do so, if the company does not adjust or settle claims.

k. A person who adjusts or settles claims in the normal course of the person's practice or employment as an attorney-at-law, and who does not collect charges or premiums in connection with life or health insurance coverage or annuities.

2. "Life or health insurance" includes, but is not limited to, the following:

- a. Individual or group accident and sickness insurance providing coverage on an expense-incurred basis.
- b. An individual or group hospital or medical service contract issued pursuant to chapter 509, 514, or 514A.
- c. An individual or group health maintenance organization contract regulated under chapter 514B.
- d. An individual or group Medicare supplemental policy.
- e. A long-term care policy.
- f. An individual or group life insurance policy or annuity issued pursuant to chapter 508, 508A, or 509A.

Sec. 5. NEW SECTION. 515.167 WRITTEN AGREEMENT NECESSARY.

A person shall not act as an administrator without a written agreement between the administrator and the insurer, and the written agreement shall be retained as part of the official records of both the insurer and the administrator for the duration of the agreement plus five years. The written agreement shall contain provisions which include the requirements of sections 515.166 through 515.171, except insofar as those requirements do not apply to the functions performed by the administrator.

When a policy is issued to a trustee, a copy of the trust agreement and any amendments to the trust agreement shall be furnished to the insurer by the administrator and shall be retained as part of the official records of both the insurer and the administrator for the duration of the policy plus five years.

Sec. 6. NEW SECTION. 515.168 PAYMENT TO ADMINISTRATOR.

If an insurer uses the services of an administrator under the terms of a written contract as required in section 515.167, payment to the administrator of any premiums or charges for insurance by or on behalf of the insured shall be deemed to have been received by the insurer, and the payment of return premiums or claims by the insurer to the administrator shall not be deemed payment to the insured or claimant until the payments are received by the insured or claimant. This section does not limit any right of the insurer against the administrator resulting from the administrator's failure to make payments to the insurer, insureds, or claimants.

Sec. 7. NEW SECTION. 515.169 MAINTENANCE OF INFORMATION.

An administrator shall maintain at its principal administrative office for the duration of the written agreement referred to in section 515.167 plus five years, adequate books and records of all transactions between it, insurers, and insured persons. The administrator's books and

records shall be maintained in accordance with prudent standards of insurance recordkeeping. The commissioner shall have access to such books and records for the purpose of examination, audit, and inspection. Trade secrets contained in an administrator's books and records, including but not limited to the identity and addresses of policyholders and certificate holders, shall be confidential, except the commissioner may use trade secret information in any proceeding instituted against the administrator. The insurer retains the right to continuing access to the administrator's books and records sufficient to permit the insurer to fulfill all of its contractual obligations to insured persons, subject to any restrictions in the written agreement between the insurer and administrator on the proprietary rights of the parties in the administrator's books and records.

Sec. 8. NEW SECTION. 515.170 APPROVAL OF ADVERTISING.

An administrator may use only such advertising pertaining to the business underwritten by an insurer as has been approved by the insurer in advance of its use.

Sec. 9. NEW SECTION. 515.171 UNDERWRITING PROVISION.

The agreement shall provide for the underwriting or other standards pertaining to the business underwritten by the insurer.

Sec. 10. NEW SECTION. 515.172 PREMIUM COLLECTION.

1. All insurance charges or premiums collected by an administrator on behalf of or for an insurer, and return premiums received from the insurer, shall be held by the administrator in a fiduciary capacity. Such funds shall be immediately remitted to the person or persons entitled to them, or shall be deposited promptly in a fiduciary bank account established and maintained by the administrator. If charges or premiums so deposited have been collected on behalf of or for more than one insurer, the administrator shall cause the bank in which the fiduciary account is maintained to keep records clearly recording the deposits in and withdrawals from the account on behalf of or for each insurer. The

administrator shall promptly obtain and keep copies of all such records and, upon request of an insurer, shall furnish the insurer with copies of the records pertaining to deposits and withdrawals on behalf of or for that insurer.

2. The administrator shall not pay a claim by withdrawal from the fiduciary account. Withdrawals from the fiduciary account shall be made, as provided in the written agreement between the administrator and the insurer, for any of the following:

- a. Remittance to an insurer entitled thereto.
- b. Deposit in an account maintained in the name of the insurer.
- c. Transfer to and deposit in a claims-paying account, with claims to be paid as provided in section 515.173.
- d. Payment to a group policyholder for remittance to the insurer entitled thereto.
- e. Payment to the administrator of its commission, fees, or charges.
- f. Remittance of return premiums to the persons entitled thereto.

Sec. 11. NEW SECTION. 515.173 PAYMENT OF CLAIMS.

A claim paid by the administrator from funds collected on behalf of the insurer shall be paid only on a draft of and as authorized by the insurer.

Sec. 12. NEW SECTION. 515.174 CLAIM ADJUSTMENT AND SETTLEMENT.

The compensation paid to an administrator shall not be contingent on claim experience on policies for which the administrator adjusts or settles claims. This section does not prevent the compensation of an administrator from being based on premiums or charges collected or number of claims paid or processed.

Sec. 13. NEW SECTION. 515.175 NOTIFICATION REQUIRED.

When the services of an administrator are used, the administrator shall provide a written notice, approved by the insurer, to insured individuals, advising them of the identity

of and relationship among the administrator, the policyholder, and the insurer. When an administrator collects funds, it must identify and state separately in writing to the person paying to the administrator any charge or premium for insurance coverage the amount of any such charge or premium specified by the insurer for such insurance coverage.

Sec. 14. NEW SECTION. 515.176 CERTIFICATE OF REGISTRATION REQUIRED.

A person shall not act as or represent oneself to be an administrator in this state, other than an adjuster licensed in this state for the kinds of business for which the person is acting as an administrator, unless the person holds a current certificate of registration as an administrator issued by the commissioner of insurance. A certificate of registration as an administrator is renewable every three years. Failure to hold a certificate subjects the administrator to the sanctions set out in section 507B.7. The certificate shall be issued by the commissioner to an administrator unless the commissioner, after due notice and hearing, determines that the administrator is not competent, trustworthy, financially responsible, or of good personal and business reputation, or has had a previous application for an insurance license denied for cause within the preceding five years.

An application for registration shall be accompanied by a filing fee of one hundred dollars. After notice and hearing, the commissioner may impose any or all of the sanctions set out in section 507B.7, upon finding that either the administrator violated any of the requirements of section 515.134 and sections 515.161 through 515.176, or the administrator is not competent, trustworthy, financially responsible, or of good personal and business reputation.

Sec. 15. NEW SECTION. 515.177 WAIVING OF REQUIREMENTS.

The commissioner may waive the requirements of section 515.176 for any person or class of persons. The factors taken into account in granting a waiver shall include, but are not limited to whether:

1. The person acting as an administrator is primarily in a business other than that of administrator.

2. The financial strength and history of the organization indicates stability in its continuity of doing business.

3. The regular duties being performed as an administrator are such that the covered persons are not likely to be injured by a waiver of such requirements.

JO ANN ZIMMERMAN

President of the Senate

DONALD D. AVENSON

Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 272, Seventy-third General Assembly.

JOHN F. DWYER

Secretary of the Senate

Approved May 26, 1989

TERRY E. BRANSTAD

Governor