

REPRINTED

FILED MAR 2 1998

SENATE FILE 2397  
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 2187)

(P. 576) Passed Senate, Date 3/5/98 Passed House, Date 3/30/98 (P. 1070)  
 Vote: Ayes 45 Nays 0 Vote: Ayes 93 Nays 1  
 Approved April 6, 1998

A BILL FOR

1 An Act relating to the operation and regulation of certain  
 2 insurance companies, miscellaneous provisions relating to  
 3 small group health care coverage, and the elimination of  
 4 countersigning resident agent provisions.

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

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S.F. 2397

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1 Section 1. NEW SECTION. 432.13 STATUTE OF LIMITATIONS.

2 Within five years after the tax return is filed or within  
3 five years after the tax return became due, whichever is  
4 later, the commissioner of insurance shall examine the return  
5 and determine the tax. An assessment or a claim for credit  
6 must be made within five calendar years after the annual tax  
7 filing is made. For a five-year period preceding the current  
8 calendar year, a company may apply for a credit, or the  
9 commissioner may make an assessment, as appropriate. The  
10 period of examination and determination of the correct amount  
11 of tax is unlimited in the case of a false or fraudulent  
12 return made with the intent to evade tax or in the case of a  
13 failure to file a return.

14 Sec. 2. Section 507C.32, Code 1997, is amended to read as  
15 follows:

16 507C.32 REINSURER'S LIABILITY.

17 1. Notwithstanding a provision in the reinsurance contract  
18 or other agreement, the amount recoverable by the liquidator  
19 from reinsurers shall not be reduced as a result of  
20 delinquency proceedings. Payment made directly to an insured  
21 or other creditor shall not diminish the reinsurer's  
22 obligation to the insurer's estate except when ~~the reinsurance~~  
23 ~~contract provided for direct coverage of a named insured and~~  
24 ~~the payment was made in discharge of that obligation~~ either of  
25 the following applies:

26 a. The contract or other written agreement specifically  
27 provides for another payee of the reinsurance in the event of  
28 the insolvency of the ceding insurer.

29 b. The assuming insurer, with the consent of the direct  
30 insured, has assumed the policy obligations of the ceding  
31 insurer as direct obligations of the assuming insurer to the  
32 payees under the policies and in substitution for the  
33 obligations of the ceding insurer to the payees.

34 Sec. 3. Section 508.5, subsection 1, Code 1997, is amended  
35 to read as follows:

1 1. A stock life insurance company shall not be authorized  
2 to transact business under this chapter with less than two  
3 ~~five million five-hundred-thousand dollars capital-stock-fully~~  
4 ~~paid-for-in-cash-and-two-million-five-hundred-thousand-dollars~~  
5 of capital and surplus paid in cash or invested as provided by  
6 law. A stock life insurance company shall not increase its  
7 capital stock unless the amount of the increase is fully paid  
8 in cash. ~~The-stock-shall-be-divided-into-shares-of-not-less~~  
9 ~~than-one-dollar-par-value-each.~~ A stock life insurance  
10 company authorized to do business in Iowa that undergoes a  
11 change of control as defined under chapter 521A shall maintain  
12 the minimum capital and surplus requirements mandated by this  
13 section.

14 Sec. 4. NEW SECTION. 508.31A FUNDING AGREEMENTS.

15 1. A life insurance company organized under this chapter  
16 may issue funding agreements. The issuance of a funding  
17 agreement under this section is deemed to be doing insurance  
18 business. For purposes of this section, "funding agreement"  
19 means an agreement for an insurer to accept and accumulate  
20 funds and to make one or more payments at future dates in  
21 amounts that are not based on mortality or morbidity  
22 contingencies. A funding agreement does not constitute life  
23 insurance, an annuity, or other insurance authorized by  
24 section 508.29, and does not constitute a security as defined  
25 in section 502.102.

26 2. a. Funding agreements may be issued to the following:

27 (1) A person authorized by a state or foreign country to  
28 engage in an insurance business or a subsidiary of such  
29 business.

30 (2) A person for the purpose of funding any of the  
31 following:

32 (a) Benefits under an employee benefit plan as defined in  
33 the federal Employee Retirement Income Security Act of 1974,  
34 29 U.S.C. § 1001 et seq., maintained in the United States or  
35 in a foreign country.

1 (b) Activities of an organization exempt from taxation  
2 pursuant to section 501c of the Internal Revenue Code, or any  
3 similar organization in any foreign country.

4 (c) A program of the United States government, another  
5 state government or political subdivision of such state, or of  
6 a foreign country, or any agency or instrumentality of any  
7 such government, political subdivision, or foreign country.

8 (d) An agreement providing for periodic payments in  
9 satisfaction of a claim.

10 (e) A program of an institution which has assets in excess  
11 of twenty-five million dollars.

12 b. A funding agreement shall be for a total amount of not  
13 less than one million dollars.

14 c. An amount under a funding agreement shall not be  
15 guaranteed or credited except upon reasonable assumptions as  
16 to investment income and expenses and on a basis equitable to  
17 all holders of funding agreements of a given class. Such  
18 funding agreements shall not provide for payments to or by the  
19 insurer based on mortality or morbidity contingencies.

20 d. Amounts paid to the insurer pursuant to a funding  
21 agreement, and proceeds applied under optional modes of  
22 settlement, may be allocated by the insurer to one or more  
23 separate accounts pursuant to section 508A.1.

24 3. A funding agreement is a class 3 claim under section  
25 507C.42, subsection 3.

26 4. The commissioner may adopt rules to implement funding  
27 agreements.

28 Sec. 5. Section 508A.1, unnumbered paragraph 1, Code 1997,  
29 is amended to read as follows:

30 A domestic life insurance company organized under chapter  
31 508 may establish one or more separate accounts, and may  
32 allocate ~~thereto~~ to such accounts amounts, including without  
33 limitation proceeds applied under optional modes of settlement  
34 or under dividend options, to provide for life insurance or  
35 annuities, and benefits incidental ~~thereto~~ to such life

1 insurance or annuities, payable in fixed or variable amounts  
2 or both, and may hold and accumulate funds pursuant to funding  
3 agreements, subject to the following:

4 Sec. 6. Section 508C.3, subsection 3, Code 1997, is  
5 amended by adding the following new paragraph:

6 NEW PARAGRAPH. i. A funding agreement under section  
7 508.31A.

8 Sec. 7. Section 508C.5, subsection 13, Code 1997, is  
9 amended to read as follows:

10 13. "Unallocated annuity contract" means a guaranteed  
11 investment contract, deposit administration contract,  
12 ~~unallocated-funding-agreement~~, or any other annuity contract  
13 which is not issued to and owned by an individual, except to  
14 the extent of any annuity benefits guaranteed to an individual  
15 by an insurer under such a contract or certificate.

16 Sec. 8. Section 513B.2, subsection 8, Code Supplement  
17 1997, is amended by adding the following new paragraph:

18 NEW PARAGRAPH. 1. A short-term limited duration policy.

19 Sec. 9. Section 515.8, subsection 1, Code 1997, is amended  
20 to read as follows:

21 1. An insurance company other than a life insurance  
22 company shall not be incorporated to transact business upon  
23 the stock plan with less than two five million five-hundred  
24 thousand dollars of capital and surplus, the entire amount of  
25 which shall be fully paid up in cash and invested as provided  
26 by law. An insurance company other than a life insurance  
27 company shall not increase its capital stock unless the amount  
28 of the increase is fully paid up in cash. ~~The stock shall be~~  
29 ~~divided into shares of not less than one dollar each:~~ An  
30 insurance company authorized to do business in Iowa that  
31 undergoes a change of control as defined under chapter 521A  
32 shall maintain the minimum capital and surplus requirements  
33 mandated by this section.

34 Sec. 10. Section 515E.7, Code 1997, is amended to read as  
35 follows:

1 515E.7 PURCHASING GROUPS EXEMPTIONS.

2 A purchasing group which meets the criteria established  
3 under the federal Act is exempt from any law of this state  
4 relating to the creation of groups for the purchase of  
5 insurance, the prohibition of group purchasing, the  
6 ~~countersignature-requirement-as-provided-in-sections-515-22~~  
7 ~~and-515-52~~; or any law that would discriminate against a  
8 purchasing group or its members. An insurer is exempt from  
9 any law of this state which prohibits providing, or offering  
10 to provide, to a purchasing group or its members advantages  
11 based on their loss and expense experience not afforded to  
12 other persons with respect to rates, policy forms, coverages,  
13 or other matters. A purchasing group is subject to all other  
14 applicable laws.

15 Sec. 11. Sections 515.10, 515.22, 515.52 through 515.61,  
16 and 515E.6, Code 1997, are repealed.

17 EXPLANATION

18 This bill amends provisions relating to the operation of  
19 insurance companies.

20 The bill creates new Code section 432.13, which provides  
21 that the insurance commissioner must examine the tax return of  
22 an insurance company for purposes of determining the tax  
23 within five years after the return is filed or within five  
24 years after the tax return became due, whichever is later.  
25 The bill provides that an assessment for tax or a claim for  
26 refund must be made within five calendar years after the  
27 annual tax filing is made. The bill also provides that a  
28 company may apply for a credit and the commissioner may make  
29 an assessment for the five-year period preceding the current  
30 calendar year.

31 The bill amends Code section 507C.32 to provide that a  
32 reinsurer's obligation to the insurer's estate is not reduced  
33 as a result of delinquency proceedings except when the  
34 agreement provides for another payee of the reinsurance to  
35 make payment or when an assuming insurer has assumed the

1 policy obligations of the ceding insurer.

2 Code section 508.5 is amended to provide that a stock life  
3 insurance company must have \$5,000,000 in capital and surplus  
4 paid in cash or invested as permitted. Currently, such  
5 company must have \$2,500,000 capital stock fully paid for in  
6 cash and \$2,500,000 of surplus paid in cash or invested as  
7 permitted.

8 The bill creates new Code section 508.31A which authorizes  
9 a life insurance company to issue funding agreements. A  
10 funding agreement is an agreement for an insurer to accept and  
11 accumulate funds and to make one or more payments at future  
12 dates in amounts that are not based on mortality or morbidity  
13 contingencies. The bill provides that such agreement is not  
14 life insurance, but is deemed to be doing insurance business.  
15 The bill provides that a funding agreement may be issued to a  
16 person authorized by a state or foreign country to engage in  
17 an insurance business or a subsidiary of such business; or an  
18 individual for the purpose of funding benefits under an  
19 employee benefit plan as defined in the federal Employee  
20 Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et  
21 seq., maintained in the United States or in a foreign country,  
22 activities of an organization exempt from taxation pursuant to  
23 § 501c of the Internal Revenue Code, or any similar  
24 organization in any foreign country, a program of the United  
25 States government, another state government or political  
26 subdivision of such state, or of a foreign country, or any  
27 agency or instrumentality of any such government, political  
28 subdivision, or foreign country, an agreement providing for  
29 periodic payments in satisfaction of a claim, or a program of  
30 an institution which has assets in excess of \$25 million.

31 Code section 508C.3 is amended to exclude the application  
32 of Code chapter 508C, Iowa life and health insurance guaranty  
33 association, to a funding agreement established under Code  
34 section 508.31A.

35 Conforming amendments with respect to such funding

1 agreements are made in Code sections 508A.1 and 508C.5.

2 Code section 513B.2 is amended to include a short-term  
3 limited duration policy in the definition of creditable  
4 coverage for purposes of small group health coverage.

5 Code section 515.8 is amended to provide that a stock  
6 insurance company, other than a stock life insurance company,  
7 must have \$5,000,000 in capital and surplus paid in cash or  
8 invested as permitted. Currently, that section provides that  
9 such company must have \$2,500,000 capital stock fully paid for  
10 in cash.

11 Code section 515E.7 is amended to conform to the repeals of  
12 section 515.22 and sections 515.52 through 515.61 by this  
13 bill.

14 Code section 515.10, providing that in addition to the  
15 required paid-up capital required in Code section 515.8, an  
16 insurance company other than a life insurance company must  
17 have \$2,500,000 of surplus paid in cash or invested as  
18 permitted, is repealed.

19 Code sections 515.22, 515.52 through 515.61, and 515E.6,  
20 relating to the participation, compensation, and duties of a  
21 resident countersigning agent required to be utilized by an  
22 insurance company issuing a policy or contract of insurance in  
23 this state, are repealed.

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SENATE FILE 2397

S-5121

1 Amend Senate File 2397 as follows:

2 1. Page 4, by inserting after line 33 the  
3 following:

4 "Sec. \_\_\_\_ . NEW SECTION. 515A.15B APPLICANTS  
5 UNABLE TO PROCURE INSURANCE THROUGH ORDINARY METHODS.

6 An agreement among licensed insurers to offer  
7 workers' compensation insurance for applicants unable  
8 to procure workers' compensation insurance through  
9 ordinary methods shall be administered by a rating  
10 organization licensed under this chapter."

11 2. Page 5, by inserting after line 14 the  
12 following:

13 "Sec. \_\_\_\_ . NEW SECTION. 516A.5 TOLLING OF  
14 STATUTE.

15 Commencement of an action by an insured under a  
16 provision included in an automobile liability or motor  
17 vehicle liability insurance policy pursuant to section  
18 516A.1 tolls the statute of limitations for purposes  
19 of the insurer's subrogated cause of action against a  
20 party, as defined in section 668.2. Section 668.8 is  
21 also applicable to an action commenced as described in  
22 this section."

23 3. Title page, line 3, by inserting after the  
24 word "coverage," the following: "the ability of  
25 certain insurers to bring an action in certain  
26 instances,".

27 4. By renumbering as necessary.

By MICHAEL E. GRONSTAL

S-5121 FILED MARCH 3, 1998

*Adopted*

*3/5/98*

*(p. 575)*



REINSURANCE LIABILITY OF CEDING INSURER

1 Section 1. NEW SECTION. 432.13 STATUTE OF LIMITATIONS.

2 Within five years after the tax return is filed or within  
3 five years after the tax return became due, whichever is  
4 later, the commissioner of insurance shall examine the return  
5 and determine the tax. An assessment or a claim for credit  
6 must be made within five calendar years after the annual tax  
7 filing is made. For a five-year period preceding the current  
8 calendar year, a company may apply for a credit, or the  
9 commissioner may make an assessment, as appropriate. The  
10 period of examination and determination of the correct amount  
11 of tax is unlimited in the case of a false or fraudulent  
12 return made with the intent to evade tax or in the case of a  
13 failure to file a return.

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15 follows:

16 507C.32 REINSURER'S LIABILITY.

17 1. Notwithstanding a provision in the reinsurance contract  
18 or other agreement, the amount recoverable by the liquidator  
19 from reinsurers shall not be reduced as a result of  
20 delinquency proceedings. Payment made directly to an insured  
21 or other creditor shall not diminish the reinsurer's  
22 obligation to the insurer's estate except when the reinsurance  
23 ~~contract provided for direct coverage of a named insured and~~  
24 ~~the payment was made in discharge of that obligation~~ either of  
25 the following applies:

26 a. The contract or other written agreement specifically  
27 provides for another payee of the reinsurance in the event of  
28 the insolvency of the ceding insurer.

29 b. The assuming insurer, with the consent of the direct  
30 insured, has assumed the policy obligations of the ceding  
31 insurer as direct obligations of the assuming insurer to the  
32 payees under the policies and in substitution for the  
33 obligations of the ceding insurer to the payees.

34 Sec. 3. Section 508.5, subsection 1, Code 1997, is amended  
35 to read as follows:

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3 five million five-hundred-thousand dollars capital-stock-fully  
4 paid-for-in-cash-and-two-million-five-hundred-thousand-dollars  
5 of capital and surplus paid in cash or invested as provided by  
6 law. A stock life insurance company shall not increase its  
7 capital stock unless the amount of the increase is fully paid  
8 in cash. ~~The-stock-shall-be-divided-into-shares-of-not-less~~  
9 ~~than-one-dollar-par-value-each-~~ A stock life insurance  
10 company authorized to do business in Iowa that undergoes a  
11 change of control as defined under chapter 521A shall maintain  
12 the minimum capital and surplus requirements mandated by this  
13 section.

14 Sec. 4. NEW SECTION. 508.31A FUNDING AGREEMENTS.

15 1. A life insurance company organized under this chapter  
16 may issue funding agreements. The issuance of a funding  
17 agreement under this section is deemed to be doing insurance  
18 business. For purposes of this section, "funding agreement"  
19 means an agreement for an insurer to accept and accumulate  
20 funds and to make one or more payments at future dates in  
21 amounts that are not based on mortality or morbidity  
22 contingencies. A funding agreement does not constitute life  
23 insurance, an annuity, or other insurance authorized by  
24 section 508.29, and does not constitute a security as defined  
25 in section 502.102.

26 2. a. Funding agreements may be issued to the following:

27 (1) A person authorized by a state or foreign country to  
28 engage in an insurance business or a subsidiary of such  
29 business.

30 (2) A person for the purpose of funding any of the  
31 following:

32 (a) Benefits under an employee benefit plan as defined in  
33 the federal Employee Retirement Income Security Act of 1974,  
34 29 U.S.C. § 1001 et seq., maintained in the United States or  
35 in a foreign country.

1 (b) Activities of an organization exempt from taxation  
2 pursuant to section 501c of the Internal Revenue Code, or any  
3 similar organization in any foreign country.

4 (c) A program of the United States government, another  
5 state government or political subdivision of such state, or of  
6 a foreign country, or any agency or instrumentality of any  
7 such government, political subdivision, or foreign country.

8 (d) An agreement providing for periodic payments in  
9 satisfaction of a claim.

10 (e) A program of an institution which has assets in excess  
11 of twenty-five million dollars.

12 b. A funding agreement shall be for a total amount of not  
13 less than one million dollars.

14 c. An amount under a funding agreement shall not be  
15 guaranteed or credited except upon reasonable assumptions as  
16 to investment income and expenses and on a basis equitable to  
17 all holders of funding agreements of a given class. Such  
18 funding agreements shall not provide for payments to or by the  
19 insurer based on mortality or morbidity contingencies.

20 d. Amounts paid to the insurer pursuant to a funding  
21 agreement, and proceeds applied under optional modes of  
22 settlement, may be allocated by the insurer to one or more  
23 separate accounts pursuant to section 508A.1.

24 3. A funding agreement is a class 3 claim under section  
25 507C.42, subsection 3.

26 4. The commissioner may adopt rules to implement funding  
27 agreements.

28 Sec. 5. Section 508A.1, unnumbered paragraph 1, Code 1997,  
29 is amended to read as follows:

30 A domestic life insurance company organized under chapter  
31 508 may establish one or more separate accounts, and may  
32 allocate thereto to such accounts amounts, including without  
33 limitation proceeds applied under optional modes of settlement  
34 or under dividend options, to provide for life insurance or  
35 annuities, and benefits incidental thereto to such life

1 insurance or annuities, payable in fixed or variable amounts  
2 or both, and may hold and accumulate funds pursuant to funding  
3 agreements, subject to the following:

4 Sec. 6. Section 508C.3, subsection 3, Code 1997, is  
5 amended by adding the following new paragraph:

6 NEW PARAGRAPH. i. A funding agreement under section  
7 508.31A.

8 Sec. 7. Section 508C.5, subsection 13, Code 1997, is  
9 amended to read as follows:

10 13. "Unallocated annuity contract" means a guaranteed  
11 investment contract, deposit administration contract,  
12 ~~unallocated-funding-agreement~~, or any other annuity contract  
13 which is not issued to and owned by an individual, except to  
14 the extent of any annuity benefits guaranteed to an individual  
15 by an insurer under such a contract or certificate.

16 Sec. 8. Section 513B.2, subsection 8, Code Supplement  
17 1997, is amended by adding the following new paragraph:

18 NEW PARAGRAPH. 1. A short-term limited duration policy.

19 Sec. 9. Section 515.8, subsection 1, Code 1997, is amended  
20 to read as follows:

21 1. An insurance company other than a life insurance  
22 company shall not be incorporated to transact business upon  
23 the stock plan with less than ~~two~~ five million ~~five-hundred~~  
24 ~~thousand~~ dollars of capital and surplus, the entire amount of  
25 which shall be fully paid up in cash and invested as provided  
26 by law. An insurance company other than a life insurance  
27 company shall not increase its capital stock unless the amount  
28 of the increase is fully paid up in cash. ~~The stock shall be~~  
29 ~~divided into shares of not less than one dollar each.~~ An  
30 insurance company authorized to do business in Iowa that  
31 undergoes a change of control as defined under chapter 521A  
32 shall maintain the minimum capital and surplus requirements  
33 mandated by this section.

34 Sec. 10. NEW SECTION. 515A.15B APPLICANTS UNABLE TO  
35 PROCURE INSURANCE THROUGH ORDINARY METHODS.

1 An agreement among licensed insurers to offer workers'  
2 compensation insurance for applicants unable to procure  
3 workers' compensation insurance through ordinary methods shall  
4 be administered by a rating organization licensed under this  
5 chapter.

6 Sec. 11. Section 515E.7, Code 1997, is amended to read as  
7 follows:

8 515E.7 PURCHASING GROUPS EXEMPTIONS.

9 A purchasing group which meets the criteria established  
10 under the federal Act is exempt from any law of this state  
11 relating to the creation of groups for the purchase of  
12 insurance, the prohibition of group purchasing, the  
13 ~~countersignature-requirement-as-provided-in-sections-515-22~~  
14 ~~and-515-52~~, or any law that would discriminate against a  
15 purchasing group or its members. An insurer is exempt from  
16 any law of this state which prohibits providing, or offering  
17 to provide, to a purchasing group or its members advantages  
18 based on their loss and expense experience not afforded to  
19 other persons with respect to rates, policy forms, coverages,  
20 or other matters. A purchasing group is subject to all other  
21 applicable laws.

22 Sec. 12. NEW SECTION. 516A.5 TOLLING OF STATUTE.

*YMA*  
23 Commencement of an action by an insured under a provision  
24 included in an automobile liability or motor vehicle liability  
25 insurance policy pursuant to section 516A.1 tolls the statute  
26 of limitations for purposes of the insurer's subrogated cause  
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29 described in this section.

30 Sec. 13. Sections 515.10, 515.22, 515.52 through 515.61,  
31 and 515E.6, Code 1997, are repealed.

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*Gronstal*  
*Douglas*  
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SS B. 2187  
*Commerce*  
INTRODUCED BY  
SENATE/HOUSE FILE (SF) HF 2397

BY (PROPOSED DEPARTMENT OF  
COMMERCE/INSURANCE DIVISION  
BILL)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to the operation and regulation of certain  
2 insurance companies, miscellaneous provisions relating to  
3 small group health care coverage, and the elimination of  
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5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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33 such company must have \$2,500,000 capital stock fully paid for  
34 in cash.

35 Code section 515E.7 is amended to conform to the repeals of

1 section 515.22 and sections 515.52 through 515.61 by this  
2 bill.

3 Code section 515.10, providing that in addition to the  
4 required paid-up capital required in Code section 515.8, an  
5 insurance company other than a life insurance company must  
6 have \$2,500,000 of surplus paid in cash or invested as  
7 permitted, is repealed.

8 Code sections 515.22, 515.52 through 515.61, and 515E.6,  
9 relating to the participation, compensation, and duties of a  
10 resident countersigning agent required to be utilized by an  
11 insurance company issuing a policy or contract of insurance in  
12 this state, are repealed.

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SENATE FILE 2397

AN ACT

RELATING TO THE OPERATION AND REGULATION OF CERTAIN INSURANCE COMPANIES, MISCELLANEOUS PROVISIONS RELATING TO SMALL GROUP HEALTH CARE COVERAGE, THE ABILITY OF CERTAIN INSURERS TO BRING AN ACTION IN CERTAIN INSTANCES, AND THE ELIMINATION OF COUNTERSIGNING RESIDENT AGENT PROVISIONS.

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

Section 1. NEW SECTION. 432.13 STATUTE OF LIMITATIONS.

Within five years after the tax return is filed or within five years after the tax return became due, whichever is later, the commissioner of insurance shall examine the return and determine the tax. An assessment or a claim for credit must be made within five calendar years after the annual tax filing is made. For a five-year period preceding the current calendar year, a company may apply for a credit, or the commissioner may make an assessment, as appropriate. The period of examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax or in the case of a failure to file a return.

Sec. 2. Section 507C.32, Code 1997, is amended to read as follows:

507C.32 REINSURER'S LIABILITY.

1. Notwithstanding a provision in the reinsurance contract or other agreement, the amount recoverable by the liquidator from reinsurers shall not be reduced as a result of delinquency proceedings. Payment made directly to an insured or other creditor shall not diminish the reinsurer's obligation to the insurer's estate except when ~~the reinsurance contract provided for direct coverage of a named insured and~~

~~the payment was made in discharge of that obligation either of the following applies:~~

a. The contract or other written agreement specifically provides for another payee of the reinsurance in the event of the insolvency of the ceding insurer.

b. The assuming insurer, with the consent of the direct insured, has assumed the policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under the policies and in substitution for the obligations of the ceding insurer to the payees.

Sec. 3. Section 508.5, subsection 1, Code 1997, is amended to read as follows:

1. A stock life insurance company shall not be authorized to transact business under this chapter with less than two five million five-hundred-thousand dollars capital-stock-fully paid-for-in-cash-and-two-million-five-hundred-thousand-dollars of capital and surplus paid in cash or invested as provided by law. A stock life insurance company shall not increase its capital stock unless the amount of the increase is fully paid in cash. ~~The stock shall be divided into shares of not less than one dollar par value each.~~ A stock life insurance company authorized to do business in Iowa that undergoes a change of control as defined under chapter 521A shall maintain the minimum capital and surplus requirements mandated by this section.

Sec. 4. NEW SECTION. 508.31A FUNDING AGREEMENTS.

1. A life insurance company organized under this chapter may issue funding agreements. The issuance of a funding agreement under this section is deemed to be doing insurance business. For purposes of this section, "funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies. A funding agreement does not constitute life insurance, an annuity, or other insurance authorized by

section 508.29, and does not constitute a security as defined in section 502.102.

2. a. Funding agreements may be issued to the following:

(1) A person authorized by a state or foreign country to engage in an insurance business or a subsidiary of such business.

(2) A person for the purpose of funding any of the following:

(a) Benefits under an employee benefit plan as defined in the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., maintained in the United States or in a foreign country.

(b) Activities of an organization exempt from taxation pursuant to section 501c of the Internal Revenue Code, or any similar organization in any foreign country.

(c) A program of the United States government, another state government or political subdivision of such state, or of a foreign country, or any agency or instrumentality of any such government, political subdivision, or foreign country.

(d) An agreement providing for periodic payments in satisfaction of a claim.

(e) A program of an institution which has assets in excess of twenty-five million dollars.

b. A funding agreement shall be for a total amount of not less than one million dollars.

c. An amount under a funding agreement shall not be guaranteed or credited except upon reasonable assumptions as to investment income and expenses and on a basis equitable to all holders of funding agreements of a given class. Such funding agreements shall not provide for payments to or by the insurer based on mortality or morbidity contingencies.

d. Amounts paid to the insurer pursuant to a funding agreement, and proceeds applied under optional modes of settlement, may be allocated by the insurer to one or more separate accounts pursuant to section 508A.1.

3. A funding agreement is a class 3 claim under section 507C.42, subsection 3.

4. The commissioner may adopt rules to implement funding agreements.

Sec. 5. Section 508A.1, unnumbered paragraph 1, Code 1997, is amended to read as follows:

A domestic life insurance company organized under chapter 508 may establish one or more separate accounts, and may allocate thereto to such accounts amounts, including without limitation proceeds applied under optional modes of settlement or under dividend options, to provide for life insurance or annuities, and benefits incidental thereto to such life insurance or annuities, payable in fixed or variable amounts or both, and may hold and accumulate funds pursuant to funding agreements, subject to the following:

Sec. 6. Section 508C.3, subsection 3, Code 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. i. A funding agreement under section 508.31A.

Sec. 7. Section 508C.5, subsection 13, Code 1997, is amended to read as follows:

13. "Unallocated annuity contract" means a guaranteed investment contract, deposit administration contract, ~~unallocated-funding-agreement~~, or any other annuity contract which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under such a contract or certificate.

Sec. 8. Section 513B.2, subsection 8, Code Supplement 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. 1. A short-term limited duration policy.

Sec. 9. Section 515.8, subsection 1, Code 1997, is amended to read as follows:

1. An insurance company other than a life insurance company shall not be incorporated to transact business upon the stock plan with less than two five million five-hundred

thousand dollars of capital and surplus, the entire amount of which shall be fully paid up in cash and invested as provided by law. An insurance company other than a life insurance company shall not increase its capital stock unless the amount of the increase is fully paid up in cash. ~~The stock shall be divided into shares of not less than one dollar each.~~ An insurance company authorized to do business in Iowa that undergoes a change of control as defined under chapter 521A shall maintain the minimum capital and surplus requirements mandated by this section.

Sec. 10. NEW SECTION. 515A.15B APPLICANTS UNABLE TO PROCURE INSURANCE THROUGH ORDINARY METHODS.

An agreement among licensed insurers to offer workers' compensation insurance for applicants unable to procure workers' compensation insurance through ordinary methods shall be administered by a rating organization licensed under this chapter.

Sec. 11. Section 515E.7, Code 1997, is amended to read as follows:

515E.7 PURCHASING GROUPS EXEMPTIONS.

A purchasing group which meets the criteria established under the federal Act is exempt from any law of this state relating to the creation of groups for the purchase of insurance, the prohibition of group purchasing, the ~~countersignature requirement as provided in sections 515.22 and 515.52,~~ or any law that would discriminate against a purchasing group or its members. An insurer is exempt from any law of this state which prohibits providing, or offering to provide, to a purchasing group or its members advantages based on their loss and expense experience not afforded to other persons with respect to rates, policy forms, coverages, or other matters. A purchasing group is subject to all other applicable laws.

Sec. 12. NEW SECTION. 516A.5 TOLLING OF STATUTE.

Commencement of an action by an insured under a provision included in an automobile liability or motor vehicle liability insurance policy pursuant to section 516A.1 tolls the statute of limitations for purposes of the insurer's subrogated cause of action against a party, as defined in section 668.2. Section 668.8 is also applicable to an action commenced as described in this section.

Sec. 13. Sections 515.10, 515.22, 515.52 through 515.61, and 515E.6, Code 1997, are repealed.

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MARY E. KRAMER  
President of the Senate

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RON J. CORBETT  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2397, Seventy-seventh General Assembly.

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MARY PAT GUNDERSON  
Secretary of the Senate

Approved 4/6, 1998

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TERRY E. BRANSTAD  
Governor