

COMMERCE  
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SENATE FILE 99  
BY VEENSTRA

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

**A BILL FOR**

1 An Act relating to insurance fraud, and providing civil remedies.  
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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COMMERCE

1 Section 1. NEW SECTION. 507F.1 SHORT TITLE.

2 This chapter shall be known and may be cited as the  
3 "Insurance Fraud Civil Remedies Act".

4 Sec. 2. NEW SECTION. 507F.2 DEFINITIONS.

5 For purposes of this chapter:

6 1. "Conceal" means to take affirmative action to prevent  
7 others from discovering information.

8 2. "Insurance policy" means an insurance policy as defined  
9 in section 507B.2.

10 3. "Insurance professional" means a person or any other  
11 legal entity engaged in the business of insurance, including  
12 producers, brokers, adjusters, and third-party administrators.

13 4. "Insurance transaction" means a transaction by,  
14 between, or among an insurer, or a person who acts on behalf  
15 of an insurer, and an insured, claimant, applicant for  
16 insurance, public adjuster, insurance professional,  
17 practitioner, or any person who acts on behalf of any of those  
18 persons, for the purpose of obtaining insurance or  
19 reinsurance, calculating insurance premiums, submitting a  
20 claim, negotiating or adjusting a claim, or otherwise  
21 obtaining insurance, self-insurance, or reinsurance, or  
22 obtaining the benefits of insurance.

23 5. "Insurer" means a person engaged in the business of  
24 insurance, as defined in section 507A.3.

25 6. "Premium" includes any premium or consideration paid or  
26 payable for coverage under a group or individual insurance  
27 policy.

28 7. "Reckless" means without reasonable belief of the truth  
29 of representations made, or, for the purposes of section  
30 507F.3, subsection 2, paragraph "c", with a high degree of  
31 awareness of probable insolvency.

32 8. "Withhold" means to fail to disclose facts or  
33 information which any law, other than this chapter, requires  
34 to be disclosed. Mere failure to disclose does not constitute  
35 withholding if the person failing to disclose reasonably

1 believes that no duty to disclose applies.

2 Sec. 3. NEW SECTION. 507F.3 UNLAWFUL INSURANCE PRACTICE.

3 Any person who commits, participates in, or aids, abets, or  
4 conspires to commit, or solicits another person to commit, or  
5 permits the person's employees or agents to commit any of the  
6 following acts with an intent to induce reliance, commits an  
7 unlawful insurance practice:

8 1. Presents, causes to be presented, or prepares with  
9 knowledge or belief that it will be presented, by or on behalf  
10 of an insured, claimant, or applicant to an insurer or  
11 insurance professional in connection with an insurance  
12 transaction, any information that the person knows to contain  
13 false representations, or representations the falsity of which  
14 the person has recklessly disregarded, as to any material  
15 fact, or that withholds or conceals a material fact,  
16 concerning any of the following:

17 a. The application for, rating of, or renewal of any  
18 insurance policy.

19 b. A claim for payment or benefit pursuant to any  
20 insurance policy.

21 c. Payments made in accordance with the terms of any  
22 insurance policy.

23 2. Presents, causes to be presented, or prepares with  
24 knowledge or belief that it will be presented, to or by an  
25 insurer or insurance professional, in connection with an  
26 insurance transaction, any information that contains false  
27 representations as to any material fact, or that withholds or  
28 conceals a material fact, concerning any of the following:

29 a. The solicitation for sale of any insurance policy or  
30 purported insurance policy.

31 b. An application for certificate of authority.

32 c. The financial condition of any insurer.

33 d. The acquisition, formation, merger, affiliation, or  
34 dissolution of any insurer.

35 3. Solicits or accepts new or renewal insurance risks by

1 or for an insurer that the person knows was insolvent or the  
2 insolvency of which the person recklessly disregards.

3 Sec. 4. NEW SECTION. 507F.4 CIVIL REMEDIES.

4 1. A person who suffers an injury to the person's business  
5 or property by reason of a violation of section 507F.3,  
6 subsection 1, may recover all of the following from the person  
7 violating section 507F.3:

8 a. Any profit, benefit, compensation, or payment received  
9 by the person violating section 507F.3 that directly resulted  
10 from the violation.

11 b. Reasonable attorney fees and related legal expenses,  
12 including internal legal expenses and court costs.

13 An action maintained under this subsection shall not be  
14 certified as a class action and shall not be made part of a  
15 class action.

16 2. A person who suffers an injury to the person's business  
17 or property by reason of a violation of section 507F.3,  
18 subsection 2, may recover all of the following from the person  
19 violating section 507F.3:

20 a. Any profit, benefit, compensation, or payment received  
21 by the person violating section 507F.3 that directly resulted  
22 from the violation.

23 b. Reasonable attorney fees and related legal expenses,  
24 including internal legal expenses and court costs.

25 c. All other pecuniary damages directly resulting from the  
26 violation of section 507F.3.

27 d. Reasonable investigative fees based on a reasonable  
28 estimate of the time and expense incurred in the investigation  
29 of the violation of section 507F.3.

30 e. A civil penalty not to exceed forty thousand dollars  
31 per violation.

32 An action maintained under this subsection shall not be  
33 certified as a class action and shall not be made part of a  
34 class action.

35 3. a. A violation of section 507F.3, subsection 2, is a

1 violation of section 714.16, subsection 2, paragraph "a". All  
2 the powers conferred upon the attorney general to accomplish  
3 the objectives and carry out the duties prescribed pursuant to  
4 section 714.16 are also conferred upon the attorney general to  
5 enforce section 507F.3, including, but not limited to, the  
6 power to issue subpoenas, adopt rules which shall have the  
7 force of law, and seek injunctive relief and civil penalties.

8     b. In seeking reimbursement pursuant to section 714.16,  
9 subsection 7, from a person who has committed a violation of  
10 section 507F.3, the attorney general may seek an order from  
11 the court that the person pay to the attorney general on  
12 behalf of consumers the amounts for which the person would be  
13 liable under section 507F.3, for each consumer who has a cause  
14 of action pursuant to section 507F.3. Section 714.16, as it  
15 relates to consumer reimbursement, shall apply to consumer  
16 reimbursement pursuant to this section.

17     4. Any court in which a civil action has been commenced  
18 pursuant to this section may stay or limit proceedings  
19 regarding the same or related conduct or may transfer or  
20 consolidate the actions or allow the plaintiffs in the actions  
21 to participate in the action brought pursuant to this section.

22     5. An insurer shall not pay damages awarded under this  
23 section, or provide a defense or moneys for a defense, on  
24 behalf of an insured under a contract of insurance or  
25 indemnification. A third party who has asserted a claim  
26 against an insured shall have no cause of action under this  
27 section against the insurer of the insured arising out of the  
28 insurer's processing or settlement of the third party's claim.  
29 An obligee under a surety bond shall not have a cause of  
30 action under this section against the surety arising out of  
31 the surety's processing or settlement of the obligee's claim  
32 against the bond.

33     Sec. 5. NEW SECTION. 507F.5 EXCLUSIVITY OF REMEDIES.

34     1. The remedies expressly provided in section 507F.4 shall  
35 be the only remedies for violations of this chapter and no

1 additional remedies shall be implied.

2 2. The remedies available under section 507F.4 shall not  
3 be used in conjunction with or in addition to any other  
4 remedies available at law or in equity to duplicate recovery  
5 for the same element of economic damage.

6 3. This chapter shall not limit or abrogate any right of  
7 action that would have existed in the absence of this chapter,  
8 but an action based on such a right shall not rely on this  
9 chapter to establish a standard of conduct or for any other  
10 purpose.

11 EXPLANATION

12 This bill creates new Code chapter 507F, providing civil  
13 remedies for insurance fraud.

14 The new Code section 507F.2 provides definitions, including  
15 "conceal", "insurance policy", "insurance professional",  
16 "insurance transaction", and "withhold".

17 The bill sets out in new Code section 507F.3 circumstances  
18 in which the false representation of a material fact or  
19 withholding or concealment of a material fact in the  
20 application for, claim for payment or benefit pursuant to, or  
21 payments made in accordance with any insurance policy are  
22 unlawful insurance practices. A person who acts with reckless  
23 disregard for the falsity of representations may also be  
24 liable under this section. Also included as unlawful  
25 insurance practices are the solicitation for sale of any  
26 insurance policy or purported policy in connection with false  
27 representations or withholding of a material fact; false  
28 representation of a material fact or the withholding or  
29 concealing of a material fact in an application for  
30 certificate of authority; false representation relating to the  
31 financial condition of any insurer, or the acquisition,  
32 formation, merger, affiliation, or dissolution of any insurer;  
33 and the solicitation or acceptance of new or renewal insurance  
34 risks by or for an insolvent insurer. The Code section makes  
35 unlawful any attempt to commit such acts, and any aiding and

1 assisting, or commission or attempted commission of unlawful  
2 insurance practices.

3 The bill provides, in new Code section 507F.4, civil  
4 remedies for persons injured as a result of violations of the  
5 prohibitions against unlawful insurance practices. The civil  
6 remedies for violation of Code section 507F.3, unlawful  
7 insurance practices, may include recovery of profit, benefit,  
8 compensation, or payment received by the person violating the  
9 Code section, as well as attorney fees and legal expenses.  
10 The action for civil remedies cannot be certified as, nor made  
11 part of, a class action. Civil remedies for violation of Code  
12 section 507F.3, fraudulent insurance practices, include  
13 pecuniary damages directly resulting from the violation,  
14 reasonable investigative fees, and a civil penalty not to  
15 exceed \$40,000 per violation.

16 New Code section 507F.4 also deems a violation of Code  
17 section 507F.3, subsection 2, as a violation of Code section  
18 714.16, subsection 2, paragraph "a", relating to consumer  
19 frauds. The attorney general may seek relief on behalf of  
20 consumers in accordance with that Code section.

21 The bill grants the court certain rights to stay and to  
22 consolidate actions regarding the same or similar conduct.

23 The bill also prohibits insurers from providing a defense  
24 or money for a defense, and limits the rights of third-party  
25 claimants and surety bond obligees.

26 The bill provides that the remedies provided in the new  
27 Code chapter are the exclusive remedies for the violations set  
28 out in the Code chapter.

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