House Study Bill 125 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE
ON COMMERCE BILL BY
CHAIRPERSON SODERBERG)

A BILL FOR

An Act relating to various matters under the purview of the insurance division of the department of commerce.

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

Section 1. Section 502.604, subsections 2 and 4, Code 2011, are amended to read as follows:

2. *Summary process.* An order under subsection 1 is effective on the date of issuance. Upon issuance of the order, the administrator shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement of any restitution order, civil penalty, or costs of investigation the administrator will seek, a statement of the reasons for the order, and notice that, within thirty days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the administrator within thirty days after the date of service of the order, the order, including an order for restitution, the imposition of a civil penalty, or a requirement for payment of costs of investigation sought in the order, becomes final as to that person by operation of law. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

4. *Civil penalty — restitution — corrective action.* In a final order under subsection 3, the administrator may impose a civil penalty up to an amount not to exceed a maximum of five thousand dollars for a single violation or five hundred thousand dollars for more than one violation, order restitution, or take other corrective action as the administrator deems necessary and appropriate to accomplish compliance with the laws of the state relating to all securities business transacted in the state.

Sec. 2. Section 505.8, subsections 1 and 10, Code 2011, are amended to read as follows:

1. The commissioner of insurance shall be the head of the division, and shall have general control, supervision, and direction over all insurance business transacted in the state,

and shall enforce all the laws of the state relating to ~~such~~ federal and state insurance business transacted in the state.

10. The commissioner may, after a hearing conducted pursuant to chapter 17A, assess fines or penalties, assess costs of an investigation or proceeding, order restitution, or take other corrective action as the commissioner deems necessary and appropriate to accomplish compliance with the laws of the state relating to all insurance business transacted in the state.

Sec. 3. Section 505.8, Code 2011, is amended by adding the following new subsection:

NEW SUBSECTION. 19. The commissioner may adopt administrative rules pursuant to chapter 17A as necessary to effectuate the insurance provisions of the federal Patient Protection and Affordable Care Act of 2010, or other applicable federal laws.

Sec. 4. Section 505.18, subsection 2, unnumbered paragraph 1, Code 2011, is amended to read as follows:

The commissioner in collaboration with the consumer advocate shall prepare and deliver a report to the governor and to the general assembly no later than November 15 of each year that provides findings regarding health spending costs for health insurance ~~plans~~ carriers in the state for the previous ~~fiscal~~ calendar year. The commissioner may contract with outside vendors or entities to assist in providing the information contained in the annual report. The report shall provide, at a minimum, the following information:

Sec. 5. Section 505.18, subsection 2, paragraph d, Code 2011, is amended to read as follows:

d. A ranking and quantification of those factors that result in higher costs and those factors that result in lower costs for each health insurance ~~plan offered~~ carrier in the state.

Sec. 6. Section 505.19, subsection 3, Code 2011, is amended to read as follows:

3. The consumer advocate shall solicit public comments on

each proposed health insurance rate increase application if the increase exceeds the average annual health spending growth rate as provided in subsection 1, and shall post without delay during the normal business hours of the division, all comments received on the insurance division's internet site prior to approval or disapproval of the proposed rate increase by the commissioner.

Sec. 7. Section 507E.8, Code 2011, is amended to read as follows:

507E.8 ~~Peace~~ Law enforcement officer status.

1. Bureau investigators shall have the power and status of ~~peace~~ law enforcement officers who by the nature of their duties may be required to perform the duties of a peace officer when making arrests for criminal violations established as a result of their investigations pursuant to this chapter.

2. The general laws applicable to arrests by ~~peace~~ law enforcement officers of the state also apply to bureau investigators. Bureau investigators shall have the power to execute arrest warrants and search warrants for the same criminal violations, serve subpoenas issued for the examination, investigation, and trial of all offenses identified through their investigations, and arrest upon probable cause without warrant a person found in the act of committing a violation of the provisions of this chapter.

Sec. 8. Section 508C.5, Code 2011, is amended by adding the following new subsections:

NEW SUBSECTION. 2A. *"Authorized assessment"*, or the term *"authorized"* when used in the context of an assessment, means that a resolution has been passed by the board of directors of the association whereby an assessment will be called immediately or in the future from member insurers for a specified amount. An assessment is authorized when the resolution is passed.

NEW SUBSECTION. 2B. *"Benefit plan"* means a specific employee, union, or association of natural persons benefit

plan.

NEW SUBSECTION. 2C. *"Called assessment"*, or the term *"called"* when used in the context of an assessment, means that a notice has been issued by the association to member insurers requiring that an authorized assessment be paid within the time frame set forth within the notice. An authorized assessment becomes a called assessment when notice is mailed by the association to member insurers.

Sec. 9. Section 508C.5, subsection 5, Code 2011, is amended to read as follows:

5. *"Covered policy"* means a policy or contract ~~within the scope of this chapter as~~ or a portion of a policy or contract for which coverage is provided under section 508C.3.

Sec. 10. Section 508C.5, Code 2011, is amended by adding the following new subsections:

NEW SUBSECTION. 12A. *"Plan sponsor"* means any of the following:

a. The employer in the case of a benefit plan established or maintained by a single employer.

b. The employee organization in the case of a benefit plan established or maintained by an employee organization.

c. In the case of a benefit plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan.

NEW SUBSECTION. 13A. *"Principal place of business"* of a plan sponsor or a person other than a natural person means the single state in which the natural persons who establish policy for the direction, control, and coordination of the operations of the entity as a whole primarily exercise that function as determined pursuant to section 508C.8A.

NEW SUBSECTION. 13B. *"Receivership court"* means a court in an insolvent or impaired insurer's state having jurisdiction

over the conservation, rehabilitation, or liquidation of the insurer.

Sec. 11. Section 508C.5, subsection 14, Code 2011, is amended to read as follows:

14. *"Resident"* means a person to whom a contractual obligation is owed and who resides in a state on the date of entry of a court order that determines a member insurer is an impaired insurer or a court order that determines a member insurer is an insolvent insurer~~, whichever occurs first~~. A person may be a resident of only one state, which in the case of a person other than a natural person shall be the state of that person's principal place of business. A citizen of the United States who is a resident of a foreign country, or is a resident of a United States possession, territory, or protectorate that does not have an association similar to the association created by this chapter, shall be deemed a resident of the state or domicile of the insurer that issued the policy or contract.

Sec. 12. NEW SECTION. **508C.8A Principal place of business — determination.**

1. The principal place of business of a plan sponsor or a person other than a natural person shall be determined by the association in its reasonable judgment by considering all of the following factors:

a. The state in which the primary executive and administrative headquarters of the entity is located.

b. The state in which the principal office of the chief executive officer of the entity is located.

c. The state in which the board of directors or similar governing person or persons of the entity conducts the majority of its meetings.

d. The state in which the executive or management committee of the board of directors or similar governing person or persons of the entity conducts the majority of its meetings.

e. The state from which the management of the overall operations of the entity is directed.

2. In the case of a benefit plan sponsored by affiliated companies comprising a consolidated corporation, the principal place of business of the entity shall be deemed to be the state in which the holding company or controlling affiliate has its principal place of business as determined by the association using the factors enumerated in subsection 1. However, if more than fifty percent of the participants in the benefit plan are employed in a single state, that state shall be determined to be the principal place of business of the entity.

3. In the case of a benefit plan established or maintained by two or more employers, or jointly by one or more employers and one or more employee organizations, the principal place of business of the entity shall be deemed to be the principal place of business of the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan. In lieu of a specific or clear designation of the principal place of business of the entity under this subsection, the principal place of business of the entity shall be deemed to be the principal place of business of the employer or employee organization that has the largest investment in the benefit plan in question.

Sec. 13. Section 508C.9, subsections 2 through 6, Code 2011, are amended to read as follows:

2. There are two classes of assessments as follows:

a. Class A assessments shall be ~~made~~ authorized and called for the purpose of meeting administrative and legal costs and other ~~general~~ expenses ~~and examinations conducted under section 508C.12, subsection 5,~~. Class A assessments may be authorized and called whether or not related to a particular impaired or insolvent insurer.

b. Class B assessments shall be ~~made~~ authorized and called to the extent necessary to carry out the powers and duties of the association under section 508C.8 with regard to an impaired ~~domestic insurer~~ or an insolvent ~~domestic, foreign, or alien~~

insurer.

3. *a.* The amount of a class A assessment shall be determined by the board ~~and to the extent that class A assessments do not exceed one hundred dollars per company in any one calendar year may be made on a per capita basis~~ and may be authorized and called on a pro rata or non-pro rata basis. If pro rata, the board may provide that the assessment be credited against future class B assessments. The total of all non-pro rata assessments shall not exceed three hundred dollars per member insurer in any one calendar year. The amount of a class B assessment shall be allocated for assessment purposes among the accounts ~~as the liabilities and expenses of the association, either experienced or reasonably expected, are attributable to those accounts, all as determined by the association and on as equitable a basis as is reasonably practical~~ pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or on any other standard deemed by the board in its sole discretion as being fair and reasonable under the circumstances.

b. Class ~~A assessments in excess of one hundred dollars per company per calendar year and class~~ B assessments against member insurers for each account shall be in the proportion that the average of the aggregate premiums received on business in this state by each assessed member insurer on policies or contracts ~~related to that~~ covered by each account for the three most recent calendar years for which information is available, preceding the year in which the insurer became ~~impaired or~~ insolvent, ~~is~~ or, in the case of an assessment with respect to an impaired insurer, the three most recent calendar years for which information is available preceding the year in which the insurer became impaired, bears to the ~~average of the aggregate~~ premiums received on business in this state for those calendar years by all assessed member insurers ~~on policies related to that account for the three most recent calendar years for which~~

~~information is available preceding the assessment~~.

c. Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer shall not be ~~made~~ authorized or called until necessary to implement the purposes of this chapter. Classification of assessments under ~~this~~ subsection 2 and computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible. The association shall notify each member insurer of its anticipated pro rata share of an authorized assessment not yet called within one hundred eighty days after the assessment is authorized.

4. The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. If an assessment against a member insurer is abated or deferred, in whole or in part, the amount by which the assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. Once the conditions that caused an abatement or deferral have been removed or rectified, the member insurer shall pay all assessments that were abated or deferred pursuant to a repayment plan approved by the association.

5. *a.* (1) ~~The~~ Subject to the provisions of subparagraph (2) of this paragraph "*a*", the total of all assessments ~~upon~~ authorized by the association with respect to a member insurer for each ~~account~~ of the accounts established pursuant to section 508C.6, and designated as the health insurance account, the life insurance account, the annuity account, and the unallocated annuity contract account, shall not in any one calendar year exceed two percent of ~~the average of the~~ that member insurer's average annual premiums received in this state on the policies and contracts covered by the account during

the three ~~most recent~~ calendar years ~~for which information is available,~~ preceding the year in which the insurer becomes impaired or insolvent~~, on the policies related to that account~~.

(2) ~~However, if~~ If two or more assessments are authorized in one calendar year with respect to insurers that become impaired or insolvent in different calendar years, the average annual premiums for purposes of the aggregate assessment percentage limitation referred to in subparagraph (1) of this paragraph "a" shall be equal~~,~~ and limited~~,~~ to the higher of the three-year average annual premiums for the applicable account as calculated pursuant to this section.

(3) If the maximum assessment ~~for an account~~, together with the other assets of the association in the account, does not provide in ~~any~~ one year in ~~the~~ either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed for the account in succeeding years as soon as permitted by this chapter.

b. The board may provide in its plan of operation a method of allocating funds among claims, whether relating to one or more impaired or insolvent insurers, when the maximum assessment will be insufficient to cover anticipated claims.

~~*b.*~~ *c.* If the maximum assessment ~~under paragraph "a"~~ for ~~any account, other than the health insurance account,~~ either the life insurance account, the annuity account, or the unallocated annuity contract account in one year does not provide an amount sufficient to carry out the responsibilities of the association ~~in any succeeding year~~, the board, pursuant to subsection 3, paragraph ~~"a"~~ "b", shall ~~assess~~ access any of the other said accounts for the necessary additional amount ~~and allocate the amount for assessment among the accounts, other than the health insurance account, in the following sequence: from the life insurance account, to the annuity account, to the unallocated annuity contract account; from the annuity account, to the unallocated annuity contract account, to the life insurance~~

~~account; from the unallocated annuity contract account, to the annuity account, to the life insurance account; provided that no amount shall be allocated to an account for assessment until the maximum amount has been allocated to the preceding account~~, subject to the maximum assessments stated in paragraph "*a*" of this subsection.

6. By an equitable method as established in the plan of operation, the board may refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account, including assets accruing from assignment, subrogation, net realized gains, and income from investments, exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that account. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future ~~losses if refunds are impractical~~ claims.

Sec. 14. Section 508C.9, Code 2011, is amended by adding the following new subsections:

NEW SUBSECTION. 9. *a.* A member insurer that wishes to protest all or part of an assessment shall pay when due the full amount of the assessment as set forth in the notice provided by the association. The payment shall be made available to meet association obligations during the pendency of the protest or any subsequent appeal. The payment shall be accompanied by a statement in writing that the payment is made under protest and setting forth a brief statement of the grounds for the protest.

b. Within sixty days following the payment of an assessment under protest by a member insurer, the association shall either notify the protesting member insurer in writing of its determination with respect to the protest or notify the protesting member insurer that additional time is required to resolve the issues raised by the protest.

c. Within thirty days after a final decision has been made,

the association shall notify the protesting member insurer in writing of that final decision. Within sixty days of receipt of notice of the final decision, the protesting member insurer may appeal that final decision to the commissioner.

d. As an alternative to rendering a final decision with respect to a protest of an assessment, the association may refer the protest to the commissioner for a final decision, with or without a recommendation from the association.

e. If a protest or subsequent appeal of an assessment is upheld in favor of the protesting member insurer, the amount paid in error or the excess shall be refunded to the member insurer. Interest on a refund due a protesting member insurer shall be paid at the rate actually earned by the association during the pendency of the protest or any subsequent appeal.

NEW SUBSECTION. 10. The association may request information from member insurers in order to aid in the exercise of the association's power under this section, and the member insurers shall promptly comply with such a request.

Sec. 15. Section 508C.11, subsection 1, paragraph c, Code 2011, is amended by striking the paragraph.

Sec. 16. Section 508C.11, subsection 3, Code 2011, is amended to read as follows:

3. ~~An~~ A final action of the board of directors or the association may be appealed to the commissioner by a member insurer if the appeal is taken within ~~thirty~~ sixty days of the member insurer's receipt of notice of the final action being appealed. A final action or order of the commissioner is subject to judicial review pursuant to chapter 17A in a court of competent jurisdiction.

Sec. 17. Section 508C.12, subsection 1, paragraphs b through d, Code 2011, are amended to read as follows:

b. Report to the board of directors when the commissioner has taken any of the actions set forth in paragraph "*a*" or has received a report from any other commissioner indicating that ~~a member insurer is impaired or insolvent~~ such action has been

taken in another state. Reports to the board of directors shall contain all significant details of the action taken or the report received from another commissioner.

c. Report to the board of directors when there is reasonable cause to believe from an examination, whether completed or in process, of a member ~~company~~ insurer that the ~~company~~ insurer may be an impaired or insolvent insurer.

d. Furnish to the board of directors the national association of insurance commissioners' ~~early warning tests. The~~ insurance regulatory information system ratios, and listing of insurers not included in the ratios, developed by the national association of insurance commissioners, and the board may use the information in carrying out its duties and responsibilities under this section. The report and the information contained in the report shall be kept confidential by the board of directors until such time as it is made public by the commissioner or other lawful authority.

Sec. 18. Section 508C.12, subsection 2, Code 2011, is amended to read as follows:

2. The commissioner may seek the advice and recommendations of the board of directors concerning any matter affecting the commissioner's duties and responsibilities regarding the financial condition of member ~~companies~~ insurers and companies seeking admission to transact insurance business in this state.

Sec. 19. Section 508C.12, subsection 7, Code 2011, is amended by striking the subsection.

Sec. 20. Section 508C.16, Code 2011, is amended to read as follows:

508C.16 Immunity —— indemnification.

1. A member insurer and its agents and employees, the association and its agents and employees, members of the board of directors, and the commissioner and the commissioner's representatives are not liable for any action taken by them or omission by them while acting within the scope of their employment and in the performance of their powers and duties

under this chapter and such immunity granted under this section shall extend to their participation in any organization of one or more state associations of similar purposes and to that organization and its agents and employees.

2. Sections 490.850 through 490.859 apply to the association.

Sec. 21. Section 508C.17, Code 2011, is amended to read as follows:

508C.17 Stay of proceedings — reopening default judgments.

Proceedings in which the insolvent insurer is a party in a court in this state shall be stayed ~~sixty~~ one hundred eighty days from the date an order of liquidation, rehabilitation, or conservation is final to permit proper legal action by the association on matters germane to its powers or duties. The association may apply to have a judgment under a decision, order, verdict, or finding based on default, set aside by the same court that entered the judgment, and shall be permitted to defend against the suit on the merits.

Sec. 22. Section 508C.18, Code 2011, is amended to read as follows:

508C.18 Prohibited advertisements.

A person, including an insurer, agent or affiliate of an insurer, shall not make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over a radio station or television station, or in any other way, an advertisement, announcement, or statement, written or oral, which uses the existence of the insurance guaranty association of this state for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by this chapter. However, this section does not apply to the association or any other entity which does not sell or solicit insurance.

Sec. 23. NEW SECTION. **508C.18A Notice to policyholders — summary of chapter and disclosure.**

1. *a.* Within one hundred eighty days after enactment of this section, the association shall prepare a summary document describing the general purposes and current provisions of this chapter and containing a disclosure in compliance with subsection 2. This summary document shall be submitted to the commissioner for approval. The approved summary document and disclosure shall be delivered to the owner of an insurance policy or contract as provided in this section.

b. This subsection is repealed July 1, 2012.

2. *a.* On or after March 1, 2012, an insurer shall not deliver an insurance policy or contract in Iowa to the owner of the policy or contract unless a summary document describing the general purposes and current provisions of this chapter and containing a disclosure in compliance with subsection 3 is delivered to the policy or contract owner at the same time.

b. The summary document shall also be available upon request by an insurance policy or contract owner.

c. The distribution, delivery, contents, or interpretation of this summary document does not guarantee that either the insurance policy or contract or the owner of the policy or contract is covered in the event of the impairment or insolvency of a member insurer.

d. The summary document shall be revised by the association and approved by the commissioner as amendments to this chapter may require. Failure to receive a summary document does not give the insurance policy or contract owner, certificate holder, or insured any greater rights than those stated in this chapter.

3. The summary document prepared pursuant to this section shall contain a clear and conspicuous disclosure on its face. The commissioner shall establish the form and content of the disclosure which shall do all of the following:

a. State the name and address of the association and the

Iowa insurance division.

b. Prominently warn the insurance policy or contract owner that the association may not cover the policy or contract or, if coverage is available, it will be subject to substantial limitations and exclusions and conditioned on continued residence in this state.

c. State the types of insurance policies and contracts for which the association will provide coverage.

d. State that the insurer and its agents are prohibited by law from using the existence of the association for the purpose of sales, solicitation, or inducement to purchase any form of insurance.

e. State that the insurance policy or contract owner should not rely on coverage from the association when selecting an insurer.

f. Explain rights available and procedures for filing a complaint to allege a violation of any provisions of this chapter.

g. Provide other information as directed by the commissioner, including but not limited to sources for information about the financial condition of an insurer provided that the information is not proprietary and is subject to disclosure under chapter 22.

4. A member insurer shall retain evidence of compliance with the provisions of this section for as long as the insurance policy or contract for which the notice is given remains in effect.

Sec. 24. Section 511.8, subsection 16, Code 2011, is amended by adding the following new paragraph:

NEW PARAGRAPH. *h.* Financial instruments used in hedging transactions, and securities pledged as collateral for financial instruments used in highly effective hedging transactions, eligible for inclusion in the legal reserve under subsection 22 may be made a part of the deposit by filing a verified statement of the financial instruments or securities

pursuant to the terms and conditions of the applicable hedging transaction agreement or of the applicable collateral agreement or other credit support agreement.

Sec. 25. Section 511.8, subsection 22, Code 2011, is amended by adding the following new paragraph:

NEW PARAGRAPH. *i.* Securities held in the legal reserve of a life insurance company or association pledged as collateral for financial instruments used in highly effective hedging transactions as defined in the national association of insurance commissioners' Statement of Statutory Accounting Principles No. 86 shall continue to be eligible for inclusion on the legal reserve of the life insurance company or association subject to all of the following:

(1) The life insurance company or association does not include the financial instruments used in highly effective hedging transactions for which the securities are pledged as collateral in the legal reserve of the life insurance company or association, provided, however, that this subparagraph shall not exclude securities pledged to a counterparty, clearing organization, or clearinghouse on an upfront basis in the form of initial margin, independent amount, or other securities pledged as a precondition of entering into financial instruments used in highly effective hedging transactions from inclusion in the legal reserve of the life insurance company or association.

(2) Securities pledged as collateral for financial instruments used in highly effective hedging transactions are not eligible in excess of ten percent of the legal reserve of the life insurance company or association, less any financial instruments used in hedging transactions held in the legal reserve under this subsection.

(3) Securities pledged to a counterparty, clearing organization, or clearinghouse on an upfront basis in the form of initial margin, independent amount, or other securities pledged as a precondition of entering into financial

instruments used in highly effective hedging transactions are not eligible in excess of one percent of the legal reserve of the life insurance company or association.

Sec. 26. Section 514C.18, subsection 1, paragraph a, Code 2011, is amended by striking the paragraph and inserting in lieu thereof the following:

a. Equipment and supplies.

Sec. 27. Section 515.125, subsection 1, Code 2011, is amended to read as follows:

1. Unless otherwise provided in section 515.127, 515.128, 515.129, 515.129A, 515.129B, or 515.129C, a policy or contract of insurance provided for in this chapter shall not be forfeited, suspended, or canceled except by notice to the insured as provided in this chapter. A notice of cancellation is not effective unless mailed or delivered by the insurer to the named insured at least thirty days before the effective date of cancellation or, where cancellation is for nonpayment of a premium, assessment, or installment provided for in the policy, or in a note or contract for the payment thereof, at least ten days prior to the date of cancellation. The notice may be made in person, or by sending by mail a letter addressed to the insured at the insured's address as given in or upon the policy, anything in the policy, application, or a separate agreement to the contrary notwithstanding.

Sec. 28. Section 515.126, Code 2011, is amended to read as follows:

515.126 Cancellation of policy —— notice to insured or mortgagee.

1. Unless otherwise provided in section 515.127 ~~or~~, 515.128, 515.129, 515.129A, 515.129B, or 515.129C, at any time after the maturity of a premium, assessment, or installment provided for in the policy, or a note or contract for the payment thereof, or after the suspension, forfeiture, or cancellation of a policy or contract of insurance, the insured may pay to the company the customary short rates and costs of

action, if one has been commenced or judgment rendered thereon, and may, if the insured so elects, have the policy and all contracts or obligations connected with the policy, whether in judgment or otherwise, canceled, and all such policy and contracts shall be void; and in case of suspension, forfeiture, or cancellation of a policy or contract of insurance, the insured is not liable for a greater amount than the short rates earned at the date of the suspension, forfeiture, or cancellation and the costs of action provided for in this section.

2. If the policy is canceled by the insurance company, the insurer may retain only the pro rata premium, and if the initial cash premium, or any part of the premium, has not been paid, the policy may be canceled by the insurance company by giving notice to the insured as provided in section 515.125 and ten days' notice to the mortgagee, or other person to whom the policy is made payable, if any, without tendering any part of the premium, anything to the contrary in the policy notwithstanding.

Sec. 29. Section 515D.5, subsection 1, Code 2011, is amended to read as follows:

1. *a.* Notwithstanding the provisions of sections 515.125 ~~through 515.127~~, 515.126, and 515.129A, a notice of cancellation of a policy shall not be effective unless mailed or delivered by the insurer to the named insured at least thirty days prior to the effective date of cancellation, or, where the cancellation is for nonpayment of premium notwithstanding the provisions of sections 515.125 and ~~515.127~~ 515.126, at least ten days prior to the date of cancellation. A post office department certificate of mailing to the named insured at the address shown in the policy shall be proof of receipt of such mailing. Unless the reason accompanies the notice of cancellation, the notice shall state that upon written request of the named insured, mailed or delivered to the insurer not less than fifteen days prior to the

date of cancellation, the insurer will state the reason for cancellation together with notification of the right to a hearing before the commissioner within fifteen days as provided in this chapter.

b. When the reason does not accompany the notice of cancellation, the insurer shall, upon receipt of a timely request by the named insured, state in writing the reason for cancellation. A statement of reason shall be mailed or delivered to the named insured within five days after receipt of a request.

Sec. 30. Section 515D.7, subsection 1, Code 2011, is amended to read as follows:

1. Notwithstanding the provisions of sections 515.125 ~~through 515.128~~, 515.129B, and 515.129C, an insurer shall not fail to renew a policy except by notice to the insured as provided in this chapter. A notice of intention not to renew shall not be effective unless mailed or delivered by the insurer to the named insured at least thirty days prior to the expiration date of the policy. A post office department certificate of mailing to the named insured at the address shown in the policy shall be proof of receipt of such mailing. Unless the reason accompanies the notice of intent not to renew, the notice shall state that, upon written request of the named insured, mailed or delivered to the insurer not less than thirty days prior to the expiration date of the policy, the insurer will state the reason for nonrenewal.

Sec. 31. Section 518C.3, subsection 4, paragraph b, subparagraph (3), Code 2011, is amended to read as follows:

(3) ~~An~~ A fee or other amount ~~due an~~ relating to goods and services sought by or on behalf of an attorney, adjuster, ~~or~~ witness ~~as a fee for services rendered to~~, or other provider of goods or services retained by the insolvent insurer or by an insured prior to the date the insurer was declared insolvent.

Sec. 32. Section 518C.3, subsection 4, paragraph b, Code 2011, is amended by adding the following new subparagraphs:

NEW SUBPARAGRAPH. (4A) A fee or other amount sought by or on behalf of an attorney, adjuster, witness, or other provider of goods or services retained by the insured or claimant in connection with the assertion of any claim, covered or otherwise, against the association.

NEW SUBPARAGRAPH. (4B) A claim filed with the association or with a liquidator for protection afforded under the insured's policy or contract for incurred but not reported losses or expenses.

Sec. 33. Section 518C.5, Code 2011, is amended to read as follows:

518C.5 Board of directors.

1. The board of directors of the association shall consist of the officers and directors of the mutual insurance association of Iowa or its successor association, but only if such officers and directors are employed by a corporation organized as a county mutual insurance association pursuant to chapter 518 or a state mutual insurance association pursuant to chapter 518A.

2. An officer and director of the mutual insurance association of Iowa shall serve in the same capacity on the association board as the officer or director serves the mutual insurance association of Iowa or its successor association, but only if the officer and director is employed by a corporation organized as a county mutual insurance association pursuant to chapter 518 or a state mutual insurance association pursuant to chapter 518A.

Sec. 34. Section 518C.6, subsection 1, paragraph a, subparagraph (2), subparagraph division (b), Code 2011, is amended to read as follows:

(b) An amount not exceeding the lesser of the policy limits or ~~three~~ five hundred thousand dollars per claim for all covered claims for all damages arising out of any one or a series of accidents, occurrences, or incidents, regardless of the number of persons making claims or the number of applicable

policies.

Sec. 35. Section 518C.15, Code 2011, is amended to read as follows:

518C.15 Immunity.

~~Liability~~ There shall be no liability on the part of, and a cause of action of any nature shall not arise against, any member insurer, the association~~,~~ or its agents or employees, the board of directors, any committee established for the purpose of administering the affairs of the association, or any person serving as an alternate or substitute representative director of the association, or the commissioner, or the commissioner's representatives, for any ~~reasonable~~ action taken or any failure to act by them in the performance of their duties and ~~execution of~~ powers ~~as provided for~~ under this chapter.

Sec. 36. Section 521.1, subsection 4, Code 2011, is amended to read as follows:

4. "*Company*" means a company or association organized under chapter 508, ~~511~~ 514B, 515, 518, 518A, or 520, and includes a mutual insurance holding company organized pursuant to section 521A.14.

Sec. 37. Section 521.2, subsection 1, Code 2011, is amended to read as follows:

1. One or more domestic mutual insurance companies organized under chapter 491 may merge or consolidate with a domestic or foreign mutual insurance company as provided in this chapter. ~~Sections 491.102 through 491.105 shall not be applicable to a merger or consolidation of a domestic mutual insurance company pursuant to this chapter.~~

Sec. 38. Section 521.2, Code 2011, is amended by adding the following new subsections:

NEW SUBSECTION. 5. One or more foreign or domestic stock insurance companies may merge into a domestic mutual insurance company organized under chapter 491 as provided in this chapter.

NEW SUBSECTION. 6. One or more domestic health maintenance organizations or limited service organizations formed under chapter 514B may merge into a domestic insurance company organized under chapter 490 or chapter 491 as provided in this chapter.

NEW SUBSECTION. 7. Sections 491.102 through 491.105 shall not be applicable to a merger or consolidation of a domestic mutual insurance company pursuant to this chapter.

Sec. 39. Section 521E.3, subsection 1, paragraph a, unnumbered paragraph 1, Code 2011, is amended to read as follows:

The filing of a risk-based capital report by an insurer which indicates ~~either~~ any of the following:

Sec. 40. Section 521E.3, subsection 1, paragraph a, Code 2011, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (3) For a property and casualty insurer, the insurer's total adjusted capital is greater than or equal to its company-action-level risk-based capital but less than the product of its authorized-control-level risk-based capital and three and triggers the trend test determined in accordance with the trend test calculation included in the property and casualty risk-based capital instructions.

Sec. 41. Section 521F.4, subsection 1, Code 2011, is amended to read as follows:

1. *"Company-action-level event"* means any of the following:

a. The filing of a risk-based capital report by a health organization which indicates that the health organization's total adjusted capital is greater than or equal to its regulatory-action-level risk-based capital but less than its company-action-level risk-based capital.

b. The filing of a risk-based capital report by a health organization which indicates that the health organization has total adjusted capital which is greater than or equal to its company-action-level risk-based capital but less than the product of its authorized-control-level risk-based capital and

three and triggers the trend test determined in accordance with the trend test calculations included in the health risk-based capital instructions.

~~*b.*~~ *c.* Notification by the commissioner to a health organization of an adjusted risk-based capital report that indicates an event in paragraph *"a"* or *"b"*, provided the health organization does not challenge the adjusted risk-based capital report and request a hearing pursuant to section 521F.8.

~~*c.*~~ *d.* If a hearing is requested pursuant to section 521F.8, notification by the commissioner to the health organization after the hearing that the commissioner has rejected the health organization's challenge of the adjusted risk-based capital report indicating the event in paragraph *"a"* or *"b"*.

Sec. 42. Section 522B.11, Code 2011, is amended by adding the following new subsection:

NEW SUBSECTION. 7. *a.* Unless an insurance producer holds oneself out as an insurance specialist, consultant, or counselor and receives compensation for consultation and advice apart from commissions paid by an insurer, the duties and responsibilities of an insurance producer are limited to those duties and responsibilities set forth in Sandbulte v. Farm Bureau Mut. Ins. Co., 343 N.W.2d 457 (Iowa 1984).

b. The general assembly declares that the holding of Langwith v. Am. Nat'l Gen. Ins. Co., ___ N.W.2d ___, (No. 08-0778) (Iowa 2010) is abrogated to the extent that it overrules Sandbulte and imposes higher or greater duties and responsibilities on insurance producers than those set forth in Sandbulte.

Sec. 43. Section 523A.206, subsection 1, Code 2011, is amended to read as follows:

1. The commissioner may conduct an examination under this chapter of any seller as often as the commissioner deems appropriate. If a seller has a trust arrangement, the commissioner shall conduct an examination of such seller doing business in this state not less than once every ~~three~~ five

years unless the seller has provided to the commissioner, on an annual basis, a certified copy of an audit conducted by an independent certified public accountant verifying compliance with this chapter. The commissioner may require an audit of a seller, or other person by a certified public accountant to verify compliance with the requirements of this chapter, including rules adopted and orders issued pursuant to this chapter.

Sec. 44. Section 523I.213A, subsection 1, Code 2011, is amended to read as follows:

1. The commissioner or the commissioner's designee may conduct an examination under this chapter of any cemetery as often as the commissioner deems appropriate. If a cemetery has a trust arrangement, the commissioner shall conduct an examination not less than once every ~~three~~ five years.

EXPLANATION

This bill relates to various matters under the purview of the insurance division of the department of commerce.

UNIFORM SECURITIES ACT. Code section 502.604 is amended to allow the administrator of the securities and regulated industries bureau of the insurance division of the department of commerce to order restitution or take other corrective action as deemed necessary to accomplish compliance with the state's securities laws.

INSURANCE DIVISION. Code section 505.8 is amended to provide that the commissioner of insurance shall enforce all state laws relating to both federal and state insurance business transacted in the state and to allow the commissioner to assess the costs of an investigation or proceeding after an administrative hearing. The commissioner is also authorized to adopt administrative rules and emergency rules pursuant to Code chapter 17A as necessary to effectuate the insurance provisions of the federal Patient Protection and Affordable Care Act of 2010, or other applicable federal laws.

Code section 505.18 is amended to specify that the

commissioner's duty in preparing a report for the governor and the general assembly should include findings regarding health spending costs for health insurance carriers in the state, not health insurance plans.

Code section 505.19 is amended to provide that public comments received concerning proposed health insurance rate increases will be posted without delay during the normal business hours of the insurance division.

INSURANCE FRAUD. Code section 507E.8 is amended to provide that securities and regulated industries bureau investigators have the power and status of law enforcement officers who by the nature of their duties may be required to perform the duties of a peace officer.

IOWA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION. Code section 508C.5 is amended to add definitions of "authorized assessment", "benefit plan", "called assessment", "plan sponsor", "principal place of business", and "receivership court" and to amend the definition of "covered policy" and "resident" for purposes of the Code chapter.

New Code section 508C.8A specifies the factors an association must consider in determining what constitutes the principal business of a plan sponsor or a person other than a natural person.

Code section 508C.9(2) is amended to require that the association must now "authorize" and "call" class A assessments for the purpose of meeting administrative and legal costs of the association and class B assessments for otherwise carrying out the powers and duties of the association. As newly defined, an "authorized assessment" means that the board of directors of the association has passed a resolution authorizing the assessment and a "called assessment" means that a notice has been issued to member insurers requiring that an authorized assessment be paid within the time set forth in the notice.

Code section 508C.9(3) is amended to provide that class

A assessments may be authorized and called on a pro rata or non-pro rata basis. Pro rata assessments may be credited against future class B assessments and the total of all non-pro rata assessments cannot exceed $300 per member insurer in any one calendar year. Class B assessments are determined pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard deemed fair and reasonable by the board. Class B assessments for each account maintained by the association are made in the proportion each assessed member insurer's premiums bear to premiums received by all assessed member insurers. The association is required to notify each member insurer of its anticipated pro rata share of an assessment within 180 days after the assessment is authorized.

Code section 508C.9(4) is amended to provide that if the association abates or defers the assessment of a member insurer, the assessment shall be paid by the insurer once the conditions that caused the abatement or deferral are removed pursuant to a payment plan approved by the association.

Code section 508C.9(5) is amended to change the calculation method for assessments of member insurers with respect to the health insurance account, the life insurance account, the annuity account, and the unallocated annuity contract account. The board is also authorized to provide in its plan of operation a method of allocating funds among claims relating to one or more impaired or insolvent insurers when the maximum assessment will be insufficient to cover anticipated claims. If the maximum assessment under the life insurance account, the annuity account, or the unallocated annuity contract account is insufficient, the board shall access the other said accounts for the necessary amount subject to the maximum assessments allowed.

Code section 508C.9(6) is amended to allow the board to refund to member insurers amounts the board finds are not necessary to carry out the obligations of the association

with regard to an account that includes assets accruing from assignment, subrogation, net realized gains, and income from investments.

New Code section 508C.9(9) provides a procedure for a member insurer to protest and appeal an assessment.

New Code section 508C.9(10) allows the association to request information from member insurers in order to aid in the exercise of the association's power.

Code section 508C.11(1) is amended to strike a provision requiring the commissioner to be appointed as the liquidator or rehabilitator in a liquidation or rehabilitation proceeding involving a domestic insurer.

Code section 508C.11(3) is amended to provide that a final action of the board or the association may be appealed to the commissioner by a member insurer within 60, instead of 30, days of the insurer's receipt of notice of the final action.

Code section 508C.12 is amended to require the commissioner to report to the board upon receiving notice that certain actions have been taken against a member insurer in another state and to provide the board with the national association of insurance commissioners' insurance regulatory information system ratios, and listing of insurers not included in the ratios, developed for use by the board in carrying out its duties and responsibilities in preventing insolvencies.

Code section 508C.12(7), which required the board to prepare a report to the commissioner at the conclusion of an insurer insolvency in which the association was obligated to pay claims, is stricken.

Code section 508C.16 is amended to provide that immunity and indemnification provisions that apply to member insurers, the association, the board of directors, the commissioner, and any of their agents, employees, and representatives for actions or omissions made by them in performing their powers and duties under Code chapter 508C, are extended to their participation in any organization of one or more similar state associations and

to that organization and its agents and employees.

Code section 508C.17 is amended to allow a stay of court proceedings in which an insolvent insurer is a party from 180 instead of 60 days from the date of a final order of liquidation, rehabilitation, or conservation to permit legal action by the association.

Code section 508C.18 is amended to specify that persons, including insurers and their agents, are prohibited from making written or oral advertisements that use the existence of the insurance guaranty association to sell insurance.

New Code section 508C.18A requires the association within 180 days after enactment of this Code section to prepare a summary document describing the general purposes and current provisions of Code chapter 508C and containing a disclosure with specified information about the coverage provided by the association. On or after March 1, 2012, an insurer shall not deliver an insurance policy or contract in Iowa to the owner of the policy or contract unless the summary document is delivered at the same time.

LIFE INSURANCE COMPANIES AND ASSOCIATIONS. Code section 511.8(16)(h) is added to provide that financial instruments used in hedging transactions and securities pledged as collateral for financial instruments used in highly effective hedging transactions are eligible for inclusion in the legal reserve of an insurance company or association under Code section 511.8(22). A corollary provision is added in Code section 511.8(22)(i) to provide that securities held in the legal reserve of a life insurance company or association pledged as collateral for financial instruments used in highly effective hedging transactions as defined in the national association of insurance commissioners' Statement of Statutory Accounting Principles continue to be eligible for inclusion in the legal reserve subject to specified conditions.

SPECIAL HEALTH AND ACCIDENT INSURANCE COVERAGES. Code section 514C.18, requiring health insurance coverage for the

treatment of diabetes, is amended to delete a reference to specific testing supplies for home monitoring of the disease and instead add a more general reference to coverage of equipment and supplies.

INSURANCE OTHER THAN LIFE. Code chapter 515 has several provisions which relate to the duties of insurers when forfeiting, suspending, canceling or nonrenewing commercial and personal line policies or contracts of insurance. Code sections 515.125 and 515.126 which contain general provisions concerning those duties are amended to specify that more specific provisions enacted in 2010 concerning personal lines of insurance take precedence over these more general provisions if they are inconsistent with one another.

AUTOMOBILE INSURANCE CANCELLATION. Code chapter 515D contains provisions which relate specifically to the cancellation of personal automobile insurance. Code sections 515D.5 and 515D.7 are amended to provide that the provisions of Code chapter 515D take precedence over those relating to the cancellation of personal lines insurance contained in Code chapter 515 concerning the cancellation or nonrenewal of personal automobile insurance.

COUNTY AND STATE MUTUAL INSURANCE GUARANTY ASSOCIATION. Code section 518C.3(4)(b)(3) is amended to specify that a covered claim for which the guaranty association provides coverage does not include a fee or other amount relating to goods or services sought by on behalf of any provider of goods or services retained by an insolvent insurer or by an insured prior to the date the insurer was declared insolvent.

Code section 518C.3(4)(b) is also amended to provide that a covered claim does not include a fee or other amount sought by or on behalf of an attorney, adjuster, witness, or other provider of goods or services retained by an insured or claimant in connection with the assertion of a claim against the association.

Code section 518C.5 is amended to provide that the board

of directors of the guaranty association consists of the officers and directors of the mutual insurance association of Iowa or its successor only if those people are employed by a corporation organized as a county mutual insurance association pursuant to Code chapter 518 or a state mutual insurance association pursuant to Code chapter 518A.

Code section 518C.6(1)(a)(2)(b) is amended to provide that the association is obligated to pay certain claims not exceeding the lesser of the policy limits or $500,000, instead of $300,000, per claim or claims arising out of any one or a series of occurrences.

Code section 518C.15 is amended to expand the immunity provisions pertaining to the association to include any committee established for the purpose of administering the affairs of the association or any person serving as an alternate or substitute representative director of the association for any actions taken or any failure to act in the performance of their duties.

CONSOLIDATION, MERGERS, AND REINSURANCE. Code section 521.1(4) is amended to provide that a company subject to the consolidation, merger, and reinsurance provisions of Code chapter 521 includes a health maintenance organization or limited service organization organized pursuant to Code chapter 514B.

Code section 521.2 is amended to provide that one or more foreign or domestic stock insurance companies may merge into a domestic mutual insurance company organized under Code chapter 491 and one or more domestic health maintenance organizations or limited service organizations formed under Code chapter 514B may merge into a domestic insurance company organized under Code chapter 490 or 491. In addition, certain provisions relating to merger or consolidation in Code chapter 491 are not applicable to the merger or consolidation of a domestic mutual insurance company pursuant to this chapter.

RISK-BASED CAPITAL REQUIREMENTS FOR INSURERS. Code section

521E.3(1)(a) is amended to add another situation which constitutes a company-action-level event for an insurer when included in the filing of a risk-based capital report by the insurer.

RISK-BASED CAPITAL REQUIREMENTS FOR HEALTH ORGANIZATIONS. Code section 521F.4(1) is amended to add another situation which constitutes a company-action-level event for a health organization when included in the filing of a risk-based capital report by the health organization.

INSURANCE PRODUCERS. New Code section 522B.11(7) provides that unless an insurance producer holds oneself out as an insurance specialist, consultant, or counselor and receives compensation for consultation and advice apart from commissions paid by an insurer, the duties and responsibilities of an insurance producer are limited to those set forth in a case entitled Sandbulte v. Farm Bureau Mut. Ins. Co. decided by the Iowa Supreme Court in 1984.

The bill further provides that the new subsection abrogates the holding of a case entitled Langwith v. Am. Nat'l Gen. Ins. Co. decided by the Iowa Supreme Court on December 30, 2010, to the extent that case overrules the Sandbulte case and imposes higher or greater duties and responsibilities on insurance producers than those set forth in the earlier case.

CEMETERY AND FUNERAL MERCHANDISE AND FUNERAL SERVICES. Code section 523A.206(1) is amended to require the commissioner to conduct examinations of sellers of cemetery and funeral merchandise, and funeral services every five years, instead of every three years.

CEMETERY REGULATION. Code section 523I.213A(1) is amended to require the commissioner to conduct an examination of a cemetery every five years, instead of every three years.