

House File 747 - Introduced

HOUSE FILE 747

BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO HF 665)

(SUCCESSOR TO HSB 225)

A BILL FOR

1 An Act modifying provisions applicable to certain service
2 contract providers regulated by the commissioner of
3 insurance, providing fees, making penalties applicable,
4 making an appropriation, and including effective date
5 provisions.

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

1 Section 1. Section 523C.1, Code 2019, is amended to read as
2 follows:

3 **523C.1 Definitions.**

4 As used in [this chapter](#), unless the context otherwise
5 requires:

6 1. *"Commissioner"* means the commissioner of insurance.

7 ~~2. *"Custodial account"* means an account established by
8 agreement between a licensed service company and a custodian
9 under [section 523C.5](#).~~

10 ~~3. *"Custodial agreement"* means an agreement entered into
11 between a licensed service company and a custodian under
12 [section 523C.5](#).~~

13 ~~4. *"Custodian"* means an institution meeting the requirements
14 established by the commissioner which institution has entered
15 into a custodial agreement or reserve account agreement with a
16 licensed service company.~~

17 ~~5. *"Depository"* means an institution designated by the
18 commissioner as an authorized custodian for purposes of
19 [sections 523C.5](#) and [523C.11](#).~~

20 ~~6. 2. *"Licensed service company"* means a service company
21 which is licensed by the commissioner pursuant to [this chapter](#).~~

22 3. *"Maintenance agreement"* means a contract of any duration
23 that provides for scheduled maintenance to property.

24 4. *"Motor vehicle"* means any self-propelled vehicle subject
25 to registration under chapter 321.

26 5. *"Motor vehicle manufacturer"* means any of the following:

27 a. A person who manufactures or produces motor vehicles
28 and sells the motor vehicles under the person's trade name or
29 label.

30 b. A person who is a wholly owned subsidiary of any person
31 who manufactures or produces motor vehicles.

32 c. A person who holds a one hundred percent ownership
33 interest in another person who manufactures or produces motor
34 vehicles.

35 d. A person who does not manufacture or produce motor

1 vehicles, but for which motor vehicles are sold under the
2 person's trade name or label.

3 e. A person who manufactures or produces motor vehicles,
4 but the motor vehicles are sold under the trade name or label
5 of another person.

6 f. A person who does not manufacture or produce motor
7 vehicles, but who licenses the use of the person's trade name
8 or label to another person pursuant to a written contract, who
9 then sells motor vehicles under the trade name or label of the
10 licensor.

11 6. "Motor vehicle service contract" means a contract or
12 agreement sold for separate consideration for a specific
13 duration that undertakes to perform the repair, replacement,
14 or maintenance of a motor vehicle, or indemnification for
15 such repair, replacement, or maintenance, for the operation
16 or structural failure of a motor vehicle due to a defect in
17 materials, workmanship, or normal wear and tear, with or
18 without additional provisions for the incidental payment
19 of indemnity under limited circumstances, including but
20 not limited to motor vehicle towing, rental, emergency road
21 service, and road hazard protection. "Motor vehicle service
22 contract" also includes a contract or agreement sold for
23 separate consideration for a specific duration that provides
24 for any of the following services or products:

25 a. The repair or replacement of motor vehicle tires or
26 wheels that are damaged as a result of contact with road
27 hazards, including but not limited to potholes, rocks, wood
28 debris, metal parts, glass, plastic, curbs, or composite
29 scraps.

30 b. The removal of dents or creases on a motor vehicle
31 under a process that does not use paint or affect the existing
32 paint finish, and without sanding, bonding, or replacing motor
33 vehicle body panels.

34 c. The repair or replacement of motor vehicle windshields
35 that are damaged as a result of contact with road hazards.

1 d. The replacement of motor vehicle keys or key fobs in the
2 event that such device becomes inoperable, lost, or stolen.

3 e. Any other service or product approved by the
4 commissioner.

5 7. "Premium" means the consideration paid to an insurer for
6 a reimbursement insurance policy.

7 ~~7.~~ 8. "Record" means the same as defined in section 516E.1
8 information stored or preserved in any medium, including in
9 an electronic or paper format. A "record" includes but is
10 not limited to documents, books, publications, accounts,
11 correspondence, memoranda, agreements, computer files, film,
12 microfilm, photographs, and audio or visual tapes.

13 9. "Reimbursement insurance policy" means a contractual
14 liability insurance policy issued to a service company that
15 either provides reimbursement to a service company under the
16 terms of insured service contracts issued or sold by the
17 service company or, in the event of nonperformance by the
18 service company, pays, on behalf of the service company, all
19 covered contractual obligations incurred by the service company
20 under the terms of the insured service contracts issued or sold
21 by the service company.

22 ~~8. "Reserve account agreement" means an agreement entered~~
23 ~~into between a licensed service company and a depository under~~
24 ~~section 523C.11.~~

25 ~~9.~~ 10. "Residential service contract" means a contract or
26 agreement between a residential customer and a service company
27 which undertakes, for a predetermined fee and for a specified
28 any period of time, to service, maintain, repair, or replace,
29 or indemnify expenses for all or any part of the operational or
30 structural components, appliances, or electrical, mechanical,
31 plumbing, heating, cooling, or air-conditioning systems of
32 residential property containing not more than four dwelling
33 units in the state which fails due to normal wear or tear or
34 inherent defect. "Residential service contract" also includes
35 a contract which provides for the service, repair, replacement,

1 or maintenance of property for damage resulting from power
2 surges, roof leakage, and accidental damage.

3 ~~10.~~ 11. "Service company" means a person who issues and
4 ~~performs, or arranges to perform,~~ is contractually obligated to
5 perform services pursuant to a motor vehicle service contract
6 or residential service contract.

7 12. "Service contract" means a motor vehicle service
8 contract or residential service contract.

9 13. "Warranty" means a statement made solely by the
10 manufacturer, importer, or seller of property or services
11 without consideration, that is not negotiated or separated from
12 the sale of the product and is incidental to the sale of the
13 product, and that guarantees indemnity for defective parts,
14 mechanical or electrical breakdown, and labor or other remedial
15 measures, such as repair or replacement of the property or
16 repetition of services.

17 Sec. 2. Section 523C.2, Code 2019, is amended to read as
18 follows:

19 **523C.2 License required.**

20 1. A person shall not issue a, offer for sale, or sell a
21 motor vehicle service contract or residential service contract
22 ~~or undertake or arrange to perform services pursuant to a~~
23 ~~residential service contract in this state unless the person~~
24 ~~is a corporation or other form of organization approved by the~~
25 ~~commissioner by rule and is a licensed as a service company~~
26 under this chapter.

27 2. The licensure requirements of this chapter shall not
28 apply to any person who provides support services or works
29 under the direction of a licensed service company in connection
30 with the issuance, offer for sale, or sale of a service
31 contract in this state, including but not limited to a person
32 who provides marketing, administrative, or technical support.

33 Sec. 3. Section 523C.3, Code 2019, is amended to read as
34 follows:

35 **523C.3 Application for license.**

1 1. Application for a license as a service company shall
2 be made to and filed with the commissioner on forms approved
3 by the commissioner and shall include all of the following
4 information:

5 a. The name and principal address of the applicant.

6 b. The state of incorporation of the applicant.

7 c. The name and address of the applicant's registered agent
8 for service of process within Iowa.

9 d. A certificate of good standing for the applicant issued
10 by the secretary of state and dated not more than thirty days
11 prior to the date of the application.

12 e. Evidence of compliance with section 523C.5.

13 f. A copy of each motor vehicle service contract form to be
14 used or issued in this state, if applicable.

15 g. A copy of each residential service contract form to be
16 used or issued in this state, if applicable.

17 2. The application shall be accompanied by all of the
18 following:

19 ~~a. A certificate of good standing for the applicant issued~~
20 ~~by the secretary of state and dated not more than thirty days~~
21 ~~prior to the date of the application.~~

22 ~~b. A surety bond, a copy of the receipt from the treasurer~~
23 ~~of state that a cash deposit has been made, or a copy of a~~
24 ~~custodial agreement as provided in [section 523C.5](#).~~

25 ~~c. A copy of the most recent financial statement, including~~
26 ~~balance sheets and related statements of income, of the~~
27 ~~applicant, prepared in accordance with generally accepted~~
28 ~~accounting principles, audited by a certified public accountant~~
29 ~~and dated not more than twelve months prior to the date of the~~
30 ~~application.~~

31 ~~d. An affidavit of an authorized officer of the service~~
32 ~~company stating the number of contracts issued by the service~~
33 ~~company in the preceding calendar year, and stating that the~~
34 ~~net worth of the service company satisfies the requirements of~~
35 ~~[section 523C.6](#).~~

1 ~~e.~~ a. A license fee in the amount of ~~two~~ five hundred fifty
2 dollars.

3 b. If applicable, a fee in the amount of fifty dollars
4 for each motor vehicle service contract form submitted in an
5 application as provided in subsection 1, paragraph "f".

6 3. If the application contains the required information and
7 is accompanied by the items set forth in subsection 2, ~~and if~~
8 ~~the net worth requirements of section 523C.6 are satisfied, as~~
9 ~~evidenced by the audited financial statements,~~ the commissioner
10 shall issue the license. If the form of application is not
11 properly completed or if the required accompanying documents
12 are not furnished or in proper form, the commissioner shall
13 not issue the license and shall give the applicant written
14 notice of the grounds for not issuing the license. A notice
15 of license denial shall be accompanied by a refund of fifty
16 percent of the fee submitted with the application.

17 4. Fees collected under this section shall be deposited as
18 provided in section 505.7 523C.24.

19 Sec. 4. Section 523C.4, Code 2019, is amended to read as
20 follows:

21 **523C.4 License expiration and renewal.**

22 1. Each license issued under this chapter shall expire
23 on June 30 next be valid for a period of one year and shall
24 be renewed by August 31 of each year following the date of
25 issuance. If the service company maintains in force the surety
26 bond described in section 523C.5 and if its license is not
27 subject to or under suspension or revocation under section
28 523C.9, its license shall be renewed by the commissioner upon
29 receipt by the commissioner on or before the expiration date
30 of a renewal application accompanied by the items required by
31 section 523C.3, subsection 2, paragraphs "b", "c", "d", and "e",

32 and section 523C.15.
33 2. An application for renewal shall include the information
34 required for an initial license as described in section 523C.3,
35 subsection 1.

1 3. The renewal application shall be accompanied by all of
2 the following:

3 a. A license renewal fee in the amount of five hundred
4 dollars.

5 b. If applicable, a fee in the amount of three percent of
6 the aggregate amount of payments the licensee received for the
7 sale or issuance of residential service contracts in this state
8 during the preceding fiscal year, provided that such fee shall
9 be no less than one hundred dollars and no greater than fifty
10 thousand dollars.

11 c. If applicable, a fee in the amount of fifty dollars
12 for each motor vehicle service contract form submitted in a
13 renewal application as provided in section 523C.3, subsection
14 1, paragraph "f".

15 d. Information regarding the number of motor vehicle service
16 contracts or residential service contracts issued during the
17 preceding fiscal year, the number canceled or expired during
18 the preceding fiscal year, the number in effect at the end of
19 the preceding fiscal year, and the amount of service contract
20 fees received during the preceding fiscal year.

21 4. If the commissioner denies renewal of the license, the
22 denial shall be in writing setting forth the grounds for denial
23 and shall be accompanied by a refund of fifty percent of the
24 license renewal fee.

25 5. In addition to the annual license renewal requirements
26 as provided in this section, a licensee shall report to the
27 commissioner any material change in information submitted by
28 the licensee in its initial license application which has
29 not been reported to the commissioner, including a change in
30 contact information, a change in ownership, or any other change
31 which substantially affects the licensee's operations in this
32 state.

33 Sec. 5. Section 523C.5, Code 2019, is amended by striking
34 the section and inserting in lieu thereof the following:

35 **523C.5 Financial responsibility — demonstration**

1 requirements.

2 In order to assure the faithful performance of a service
3 company's obligations to its contract holders in this state,
4 a licensed service company shall demonstrate financial
5 responsibility to the commissioner by satisfying one of the
6 following, as evidenced by the service company:

7 1. Insuring all motor vehicle service contracts and
8 residential service contracts offered for sale in this state
9 under a reimbursement insurance policy that complies with
10 section 523C.6.

11 2. Doing both of the following:

12 a. Maintaining a funded reserve account for the service
13 company's obligations under any issued and outstanding service
14 contracts in this state, in an amount no less than forty
15 percent of gross consideration received, less claims paid, for
16 the sale of all service contracts issued and in force in this
17 state. The reserve account shall be subject to examination and
18 review by the commissioner.

19 b. Placing in trust with the commissioner a financial
20 security deposit in an amount no less than five percent of
21 the gross consideration received by the service company,
22 less claims paid, for the sale of all motor vehicle service
23 contracts and residential service contracts issued and in force
24 in this state, but not less than twenty-five thousand dollars,
25 consisting of one of the following:

26 (1) Cash.

27 (2) Securities of the type eligible for deposit by insurers
28 authorized to transact business in this state.

29 (3) Certificates of deposit.

30 (4) A surety bond issued by an authorized surety company.

31 (5) Another form of security as prescribed by the
32 commissioner by rule.

33 3. Doing both of the following:

34 a. Maintaining, on its own or together with a parent
35 company, a minimum net worth or stockholders' equity of one

1 hundred million dollars or more.

2 *b.* Upon request from the commissioner, providing either:

3 (1) A copy of the service company's financial statements.

4 (2) If the service company's financial statements are
5 consolidated with those of its parent company, a copy of the
6 parent company's most recent form 10-K or form 20-F filed with
7 the federal securities and exchange commission within the last
8 calendar year, or if the parent company does not file with
9 the federal securities and exchange commission, a copy of the
10 parent company's audited financial statements showing a net
11 worth of at least one hundred million dollars. If the service
12 company's financial statements are consolidated with those of
13 its parent company, the service company shall also provide a
14 copy of a written agreement by the parent company guaranteeing
15 the obligations of the service company under motor vehicle
16 service contracts and residential service contracts issued and
17 outstanding by the service company in this state.

18 Sec. 6. Section 523C.6, Code 2019, is amended by striking
19 the section and inserting in lieu thereof the following:

20 **523C.6 Reimbursement insurance policy requirements — insurer**
21 **qualifications.**

22 1. *Requirements.* A reimbursement insurance policy insuring
23 a motor vehicle service contract or residential service
24 contract issued, sold, or offered for sale in this state shall
25 provide for all of the following:

26 *a.* The reimbursement insurance policy shall obligate the
27 insurer that issued such policy to reimburse or pay on behalf
28 of the service company any covered sums that the service
29 company is legally obligated to pay according to the terms of
30 the contract or, in the event of nonperformance by the service
31 company, provide the service which the service company is
32 legally obligated to perform according to the terms of the
33 service contract, which shall be conspicuously stated in the
34 reimbursement insurance policy.

35 *b.* The reimbursement insurance policy shall entitle a

1 service contract holder to make a claim directly against the
2 insurance policy if the service company fails to pay or provide
3 service on a claim within sixty days after proof of loss is
4 filed with the service company.

5 *c.* The insurer that issued a reimbursement insurance policy
6 shall be deemed to have received the premiums upon the payment
7 of the total purchase price of the service contract by the
8 service contract holder.

9 2. *Termination.* As applicable, an insurer that issued a
10 reimbursement insurance policy shall not terminate the policy
11 unless a written notice has been received by the commissioner
12 and by each applicable service company. The notice shall
13 fix the date of termination at a date no earlier than ten
14 days after receipt of the notice by the commissioner. The
15 termination of a reimbursement insurance policy shall not
16 reduce the issuer's responsibility for a service contract
17 issued by an insured service company prior to the date of
18 termination.

19 3. *Indemnification or subrogation.* This section does
20 not prevent or limit the right of an insurer that issued a
21 reimbursement insurance policy to seek indemnification from or
22 subrogation against a service company if the insurer pays or
23 is obligated to pay a service contract holder sums that the
24 service company was obligated to pay pursuant to the provisions
25 of a service contract or pursuant to a contractual agreement.

26 4. *Premium tax liability.* Payments for the purchase price
27 of a service contract by a service contract holder shall be
28 exempt from premium tax. However, premiums shall be subject
29 to premium tax.

30 5. *Qualifications of insurer.* An insurer issuing a
31 reimbursement insurance policy under this chapter shall be
32 authorized, registered, or otherwise permitted to transact
33 business in this state and shall meet one of the following
34 requirements:

35 *a.* At the time the policy is filed with the commissioner,

1 and continuously thereafter, the insurer maintains surplus
2 as to policyholders and paid-in capital of at least fifteen
3 million dollars and annually files copies of the insurer's
4 financial statements, national association of insurance
5 commissioners annual statement, and actuarial certification, if
6 required and filed in the insurer's state of domicile.

7 *b.* At the time the policy is filed with the commissioner and
8 continuously thereafter, the insurer does all of the following:

9 (1) Maintains surplus as to policyholders and paid-in
10 capital of less than fifteen million dollars but at least ten
11 million dollars.

12 (2) Demonstrates to the satisfaction of the commissioner
13 that the insurer maintains a ratio of net written premiums,
14 wherever written, to surplus as to policyholders and paid-in
15 capital of not greater than three to one.

16 (3) Files copies annually of the insurer's financial
17 statements, national association of insurance commissioners
18 annual statement, and actuarial certification, if required and
19 filed in the insurer's state of domicile.

20 Sec. 7. Section 523C.7, Code 2019, is amended by striking
21 the section and inserting in lieu thereof the following:

22 **523C.7 Disclosure to service contract holders — contract**
23 **form — required provisions.**

24 1. A motor vehicle service contract or residential service
25 contract shall not be issued, sold, or offered for sale in this
26 state unless the service company does all of the following:

27 *a.* Provides a receipt for the purchase of the service
28 contract to the service contract holder.

29 *b.* Provides a copy of the service contract to the service
30 contract holder within a reasonable period of time after the
31 date of purchase of the service contract.

32 *c.* Provides a complete sample copy of the terms and
33 conditions of the service contract to the service contract
34 holder prior to the date of purchase. A service company may
35 comply with this paragraph by providing the service contract

1 holder with a complete sample copy of the terms or conditions
2 of the service contract, or directing the service contract
3 holder to an internet site containing a complete sample copy of
4 the terms and conditions of the service contract.

5 2. A motor vehicle service contract or residential service
6 contract issued, sold, or offered for sale in this state shall
7 comply with all of the following, as applicable:

8 a. A service contract shall be written in clear,
9 understandable language in at least eight point font.

10 b. (1) A service contract insured by a reimbursement
11 insurance policy as provided in section 523C.5, subsection 1,
12 shall include a statement in substantially the following form:

13 Obligations of the service company under this service
14 contract are guaranteed under a reimbursement insurance policy.
15 If the service company fails to pay or provide service on a
16 claim within sixty days after proof of loss has been filed with
17 the service company, the service contract holder is entitled
18 to make a claim directly against the reimbursement insurance
19 policy.

20 (2) A service contract insured by a reimbursement insurance
21 policy shall conspicuously state the name and address of the
22 issuer of the reimbursement insurance policy for that service
23 contract. A claim against a reimbursement insurance policy
24 shall also include a claim for return of any refund due in
25 accordance with paragraphs "k" and "l".

26 c. A service contract not insured under a reimbursement
27 insurance policy shall contain a statement in substantially the
28 following form:

29 Obligations of the service company under this service
30 contract are backed by the full faith and credit of the service
31 company and are not guaranteed under a reimbursement insurance
32 policy.

33 d. A service contract shall state the name and address of
34 the service company obligated to perform services under the
35 contract, and shall conspicuously identify the service company,

1 any third-party administrator, and the service contract holder
2 to the extent that the name and address of the service contract
3 holder has been furnished. The identities of such parties are
4 not required to be printed on the contract in advance and may
5 be added to the contract at the time of sale.

6 *e.* A service contract shall clearly state the total purchase
7 price of the service contract and the terms under which the
8 service contract is sold. The total purchase price is not
9 required to be printed on the contract in advance and may be
10 added to the contract at the time of sale.

11 *f.* If prior approval of repair work is required, a service
12 contract shall conspicuously describe the procedure for
13 obtaining prior approval and for making a claim, including a
14 toll-free telephone number for claim service, and the procedure
15 for obtaining emergency repairs performed outside of normal
16 business hours.

17 *g.* A service contract shall clearly state the existence of
18 any deductible amount.

19 *h.* A service contract shall specify the merchandise
20 or services, or both, to be provided and any limitations,
21 exceptions, or exclusions.

22 *i.* A service contract shall clearly state the conditions on
23 which the use of substitute parts or services will be allowed.
24 Such conditions shall comply with applicable state and federal
25 laws.

26 *j.* A service contract shall clearly state any terms,
27 restrictions, or conditions governing the transferability of
28 the service contract.

29 *k.* A service contract shall clearly state the terms and
30 conditions governing the cancellation of the contract prior
31 to the termination or expiration date of the contract by the
32 service company or the service contract holder. If the service
33 company cancels the contract, the service company shall mail a
34 written notice of termination to the service contract holder
35 at least fifteen days before the date of the termination.

1 Prior notice of cancellation by the service company is not
2 required if the reason for cancellation is nonpayment of the
3 purchase price, a material misrepresentation by the service
4 contract holder to the service company or its administrator, or
5 a substantial breach of duties by the service contract holder
6 relating to the covered product or its use. The notice of
7 cancellation shall state the effective date of the cancellation
8 and the reason for the cancellation. If a service contract
9 is canceled by the service company for any reason other than
10 nonpayment of the purchase price, the service company shall
11 refund the service contract holder in an amount equal to one
12 hundred percent of the unearned purchase price paid, calculated
13 on a pro rata basis based upon elapsed time or mileage,
14 less any claims paid. The service company may also charge a
15 reasonable administrative fee in an amount no greater than ten
16 percent of the total purchase price.

17 1. (1) A service contract shall permit the original
18 service contract holder that purchased the contract to cancel
19 and return the service contract within at least twenty days
20 of the date of mailing the service contract to the service
21 contract holder or within at least ten days after delivery of
22 the service contract if the service contract is delivered at
23 the time of sale of the service contract, or within a longer
24 period of time as permitted under the service contract. If no
25 claim has been made under the service contract prior to its
26 return, the service contract is void and the full purchase
27 price of the service contract shall be refunded to the service
28 contract holder. A ten percent penalty shall be added each
29 month to a refund that is not paid to a service contract holder
30 within thirty days of the return of the service contract to the
31 service company.

32 (2) If the service contract holder cancels the service
33 contract outside of the applicable time as provided in
34 subparagraph (1) or after a claim is made under the service
35 contract, the service company shall refund the service contract

1 holder in an amount equal to one hundred percent of the
2 unearned purchase price paid, calculated on a pro rata basis
3 based upon elapsed time or mileage, less any claims paid. The
4 service company may also charge a reasonable administrative fee
5 in an amount no greater than ten percent of the total purchase
6 price.

7 *m.* A service contract shall set forth all of the obligations
8 and duties of the service contract holder, including but not
9 limited to the duty to protect against any further damage,
10 and the obligation to follow an owner's manual or any other
11 required service or maintenance.

12 *n.* A service contract shall clearly state whether or not
13 the contract provides for or excludes consequential damages
14 or preexisting conditions, if applicable. A service contract
15 may, but is not required to, cover damage resulting from rust,
16 corrosion, or damage caused by a part or system which is not
17 covered under the service contract.

18 *o.* A service contract shall clearly state the fee, if any,
19 charged on the service contract holder for making a service
20 call.

21 *p.* A service contract shall state the name and address of
22 the commissioner.

23 Sec. 8. Section 523C.9, Code 2019, is amended to read as
24 follows:

25 **523C.9 Suspension or revocation of license.**

26 ~~1. In addition to the license revocation provisions of~~
27 ~~section 523C.5, the~~ The commissioner may suspend or revoke or
28 refuse to renew the license of a service company for any of the
29 following grounds:

30 ~~a.~~ 1. The service company violated a lawful order of the
31 commissioner or any provision of this chapter.

32 ~~b.~~ 2. The service company failed to pay any final judgment
33 rendered against it in this state within sixty days after the
34 judgment became final.

35 ~~c.~~ 3. The service company has without just cause refused

1 to perform or negligently or incompetently performed services
2 required to be performed under its ~~residential~~ service
3 contracts and the refusal, or negligent or incompetent
4 performance has occurred with such frequency, as the
5 commissioner determines, as to indicate the general business
6 practices of the service company.

7 ~~d.~~ 4. The service company violated [section 523C.13](#).

8 ~~e.~~ 5. The service company failed to ~~maintain the net worth~~
9 ~~required by [section 523C.6](#) demonstrate financial responsibility~~
10 ~~pursuant to section 523C.5.~~

11 ~~f.~~ ~~The service company failed to maintain the reserve~~
12 ~~account required by [section 523C.11](#).~~

13 ~~g.~~ 6. The service company failed to maintain its corporate
14 certificate of good standing with the secretary of state.

15 2. ~~If the license of a service company is terminated~~
16 ~~under [section 523C.5](#) because of failure to maintain bond, the~~
17 ~~commissioner shall give written notice of termination to the~~
18 ~~service company. The notice shall include the effective date~~
19 ~~of the termination.~~

20 Sec. 9. Section 523C.12, Code 2019, is amended to read as
21 follows:

22 **523C.12 Optional examination.**

23 The commissioner or a designee of the commissioner may
24 make an examination of the books and records of a service
25 company, including copies of contracts and records of claims
26 and expenditures, and verify its assets, liabilities, and
27 reserves. The actual costs of the examination shall be borne
28 by the service company. The costs of an examination under this
29 section shall not exceed an amount equal to ten percent of the
30 service company's reported net income in the previous fiscal
31 year.

32 Sec. 10. Section 523C.13, Code 2019, is amended to read as
33 follows:

34 **523C.13 Prohibited acts or practices — penalty — violations**
35 **— contracts voided.**

1 1. A licensed service company which offers motor
2 vehicle service contracts for sale in this state, or its
3 representative, shall not, directly or indirectly, represent in
4 any manner, whether by written solicitation or telemarketing, a
5 false, deceptive, or misleading statement with respect to any
6 of the following:

7 a. Statements regarding the service company's affiliation
8 with a motor vehicle manufacturer or importer.

9 b. Statements regarding the validity or expiration of a
10 warranty.

11 c. Statements regarding a motor vehicle service contract
12 holder's coverage under a motor vehicle service contract,
13 including statements suggesting that the service contract
14 holder must purchase a new service contract in order to
15 maintain coverage under the existing service contract or
16 warranty.

17 2. The commissioner shall may adopt rules which regulate
18 motor vehicle service contracts and residential service
19 contracts to prohibit misrepresentation, false advertising,
20 defamation, boycotts, coercion, intimidation, false statements
21 and entries and unfair discrimination or practices. If the
22 commissioner finds that a person has violated the rules adopted
23 under this section, the commissioner may order any or all of
24 the following:

25 ~~1-~~ a. Payment of a civil penalty of not more than one
26 thousand dollars for each and every act or violation, but not
27 to exceed an aggregate of ten thousand dollars, unless the
28 person knew or reasonably should have known the person was in
29 violation of this section, in which case the penalty shall be
30 not more than five thousand dollars for each and every act or
31 violation, but not to exceed an aggregate penalty of fifty
32 thousand dollars in any one six-month period. The commissioner
33 shall, if it finds the violations of this section were
34 directed, encouraged, condoned, ignored, or ratified by the
35 employer of such person, assess such penalty to the employer

1 and not such person. Any civil penalties collected under this
2 subsection shall be deposited as provided in [section 505.7](#).

3 ~~2. b.~~ Suspension or revocation of the license of a person,
4 if the person knew or reasonably should have known the person
5 was in violation of [this section](#).

6 3. A violation of this chapter constitutes an unlawful
7 practice pursuant to section 714.16.

8 4. A service contract issued or sold in this state is void
9 if the person that issued or sold the service contract, at the
10 time of issuance or sale, was not licensed as a service company
11 under this chapter.

12 Sec. 11. Section 523C.15, Code 2019, is amended to read as
13 follows:

14 **523C.15 Annual report.**

15 A licensed service company that does not demonstrate
16 financial responsibility by insuring service contracts under a
17 reimbursement insurance policy as provided in section 523C.5,
18 subsection 1, shall file with the commissioner an annual
19 report ~~within ninety days of the close of its fiscal~~ no later
20 than August 31 of each year. The annual report shall be in
21 a form prescribed by the commissioner and contain all of the
22 following:

23 1. A current financial statement including a balance
24 sheet and statement of operations prepared in accordance with
25 generally accepted accounting principles and certified by an
26 independent certified public accountant.

27 ~~2. The number of residential service contracts issued~~
28 ~~during the preceding fiscal year, the number canceled or~~
29 ~~expired during the year, the number in effect at year end and~~
30 ~~the amount of residential service contract fees received.~~

31 ~~3.~~ 2. Any other information relating to the performance and
32 solvency of the ~~residential~~ service company required by the
33 commissioner.

34 Sec. 12. Section 523C.16, Code 2019, is amended to read as
35 follows:

1 **523C.16 Exclusions.**

2 This chapter does not apply to any of the following and the
3 following do not constitute the practice of insurance:

4 1. A performance guarantee given by a builder of a residence
5 or the manufacturer or seller or lessor of residential property
6 if no identifiable charge is made for the guarantee.

7 2. A residential service contract, guarantee or warranty
8 between a residential customer and a service company which will
9 perform the work itself and not through subcontractors for
10 the service, repair or replacement of residential property,
11 appliances, or electrical, plumbing, heating, cooling or
12 air-conditioning systems.

13 3. A contract between a service company issuing residential
14 service contracts and a person who actually performs the
15 maintenance, repairs, or replacements of structural components,
16 or appliances, or electrical, plumbing, heating, cooling, or
17 air-conditioning systems, if someone other than the service
18 company actually performs these functions.

19 4. A residential service contract, guarantee or warranty
20 issued by a retail merchant to a retail customer, guaranteeing
21 or warranting the repair, service or replacement of appliances
22 or electrical, plumbing, heating, cooling or air-conditioning
23 systems sold by said retail merchant.

24 5. A residential service contract, guarantee, or warranty
25 issued by a manufacturer, third party, or retail company,
26 covering the repair, maintenance, or replacement of residential
27 property, individual appliances, and other individual items
28 of merchandise marketed and sold by a retail company, in the
29 ordinary course of business.

30 6. A motor vehicle service contract issued by the
31 manufacturer or importer of the motor vehicle covered by
32 the service contract or to any third party acting in an
33 administrative capacity on the manufacturer's behalf in
34 connection with that service contract.

35 7. A residential service contract involving residential

1 property containing more than four dwelling units.

2 8. A warranty.

3 9. A motor vehicle service contract issued, offered for
4 sale, or sold to any person other than a consumer.

5 10. A maintenance agreement.

6 Sec. 13. Section 523C.17, Code 2019, is amended to read as
7 follows:

8 **523C.17 Lending institutions, ~~service companies, and~~**
9 **~~insurance companies.~~**

10 A bank, savings association, insurance company, or other
11 lending institution shall not require the purchase of a motor
12 vehicle service contract or residential service contract as
13 a condition of a loan or the sale of any property or motor
14 vehicle. ~~A service company or an insurer, either directly or~~
15 ~~indirectly, as a part of any real property transaction in which~~
16 ~~a residential service contract will be issued, purchased, or~~
17 ~~acquired, shall not require that a residential service contract~~
18 ~~be issued, purchased, or acquired in conjunction with or as a~~
19 ~~condition precedent to the issuance, purchase, or acquisition,~~
20 ~~by any person, of a policy of insurance. A lending institution~~
21 ~~shall not sell a residential service contract to a borrower~~
22 ~~unless the borrower signs an affidavit acknowledging that~~
23 ~~the purchase is not required. Violation of **this section** is~~
24 ~~punishable as provided in **section 523C.13.**~~

25 Sec. 14. Section 523C.22, Code 2019, is amended to read as
26 follows:

27 **523C.22 Claim procedures.**

28 A licensed service company shall promptly provide a written
29 explanation to the ~~residential customer~~ service contract
30 holder, describing the reasons for denying a claim or for the
31 offer of a compromise settlement, based on all relevant facts
32 or legal requirements and referring to applicable provisions of
33 the ~~residential~~ service contract.

34 Sec. 15. NEW SECTION. **523C.24 Service company oversight**
35 **fund.**

1 1. A service company oversight fund is created in the
2 state treasury as a separate fund under the control of the
3 commissioner. The fund shall consist of all moneys deposited
4 in the fund pursuant to subsection 2.

5 2. The commissioner shall deposit in the service company
6 oversight fund an amount equal to one-third of all licensing,
7 examination, renewal, and inspection fees collected under this
8 chapter, provided that the maximum amount of fees deposited
9 in the fund each fiscal year shall not exceed five hundred
10 thousand dollars. Any remaining fees collected under this
11 chapter and not deposited in the service company oversight fund
12 shall be deposited as provided in section 505.7.

13 3. Moneys in the service company oversight fund are
14 appropriated to the commissioner for the administration and
15 enforcement of this chapter, and for establishing service
16 contract consumer complaint, education, and outreach programs.

17 4. Notwithstanding section 12C.7, subsection 2, interest or
18 earnings on moneys deposited in the service company oversight
19 fund shall be credited to the fund. Notwithstanding section
20 8.33, moneys credited to the fund shall not revert at the close
21 of a fiscal year.

22 Sec. 16. REPEAL. Chapter 516E, Code 2019, is repealed.

23 Sec. 17. REPEAL. Sections 523C.8, 523C.8A, 523C.11,
24 523C.14, and 523C.18, Code 2019, are repealed.

25 Sec. 18. EMERGENCY RULES. The commissioner of insurance
26 may adopt emergency rules under section 17A.4, subsection 3,
27 and section 17A.5, subsection 2, paragraph "b", to implement
28 the provisions of this Act and the rules shall be effective
29 immediately upon filing unless a later date is specified in the
30 rules. Any rules adopted in accordance with this section shall
31 also be published as a notice of intended action as provided
32 in section 17A.4.

33 Sec. 19. EFFECTIVE DATE. This Act, being deemed of
34 immediate importance, takes effect upon enactment.

35

EXPLANATION

1 The inclusion of this explanation does not constitute agreement with
2 the explanation's substance by the members of the general assembly.

3 This bill modifies provisions applicable to certain service
4 contract providers regulated by the commissioner of insurance.

5 Current Code chapter 516E requires service contract
6 providers, or service companies, that offer motor vehicle
7 service contracts for sale in Iowa to register annually
8 with the commissioner, whereas service companies that offer
9 residential service contracts must become licensed annually by
10 the commissioner under Code chapter 523C.

11 The bill repeals Code chapter 516E, incorporates certain
12 provisions regarding service companies offering motor vehicle
13 service contracts in Code chapter 523C, thereby requiring any
14 service company that sells motor vehicle service contracts
15 or residential service contracts in Iowa to obtain an annual
16 license from the commissioner under Code chapter 523C, and
17 makes other changes to provisions in Code chapter 523C.

18 The bill makes several changes to the definitions in Code
19 section 523C.1. The bill removes definitions for "custodial
20 account", "custodial agreement", "custodian", "depository",
21 and "reserve account agreement". The bill adds definitions
22 for "maintenance agreement", "motor vehicle", "motor vehicle
23 manufacturer", "motor vehicle service contract", "premium",
24 "reimbursement insurance policy", "service contract", and
25 "warranty", and modifies existing definitions for "residential
26 service contract" and "service contract", as described in the
27 bill.

28 The bill provides that a person shall not issue, offer for
29 sale, or sell a motor vehicle service contract or residential
30 service contract in Iowa unless the person is licensed as
31 a service company under Code chapter 523C. The licensure
32 requirements do not apply to any person who provides support
33 services or works under the direction of a licensed service
34 company, including but not limited to a person who provides
35 marketing, administrative, or technical support.

1 The bill specifies the information required in an
2 application for a license under Code chapter 523C. In addition
3 to such information, an application shall be accompanied
4 by a license fee of \$500 and a fee of \$50 for each motor
5 vehicle service contract form submitted in an application,
6 if applicable. The commissioner shall issue a license if
7 an application contains the required information and is
8 accompanied by the required fees.

9 The bill provides that each license issued under Code
10 chapter 523C shall be valid for a period of one year and shall
11 be renewed by August 31 of each year following the date of
12 issuance. An application for renewal shall require the same
13 information required in an initial application, a \$500 license
14 renewal fee, other fees described in the bill that apply to
15 certain service companies, and other information described in
16 the bill regarding a service company's operations during the
17 preceding fiscal year. In addition to such requirements, a
18 service company must report to the commissioner any material
19 change in information provided in the initial application which
20 has not been reported to the commissioner.

21 The bill replaces Code section 523C.5, which provides a
22 surety bond requirement, with a new Code section which requires
23 a service company to demonstrate financial responsibility to
24 the commissioner. The service company shall satisfy this
25 requirement by either insuring all of its service contracts
26 offered for sale in Iowa under a reimbursement insurance
27 policy that complies with the bill, maintaining a funded
28 reserve account and placing in trust with the commissioner a
29 financial security deposit, or maintaining a minimum net worth
30 or stockholders' equity and providing certain information to
31 the commissioner upon request, as described in the bill.

32 The bill replaces Code section 523C.6, which provides a net
33 worth requirement, with a new Code section which establishes
34 certain requirements for reimbursement insurance policies
35 that insure service contracts offered for sale in Iowa. The

1 requirements include provisions regarding insurer obligations,
2 service contract holder rights, termination, indemnification
3 or subrogation, insurance premium tax liability, and insurer
4 qualifications, as described in the bill.

5 The bill replaces Code section 523C.7, which provides
6 service contract filing and form requirements, with a new
7 Code section which establishes certain requirements regarding
8 disclosure to service contract holders, service contract forms,
9 and provisions included in service contracts, as described in
10 the bill.

11 The bill provides that the commissioner may suspend or
12 revoke or refuse to renew the license of a service company if
13 the service company violates a lawful order of the commissioner
14 or any provision of Code chapter 523C, fails to pay a final
15 judgment in Iowa within 60 days, indicates negligence,
16 incompetence, or a refusal to perform services, performs any
17 prohibited acts or practices described in the bill, fails to
18 demonstrate financial responsibility as provided in the bill,
19 or fails to maintain its corporate certificate of good standing
20 with the secretary of state.

21 The bill provides that the costs of a service company
22 examination conducted at the discretion of the commissioner,
23 which is paid by the service company, shall not exceed an
24 amount equal to 10 percent of the service company's reported
25 net income in the previous fiscal year.

26 The bill prohibits a licensed service company offering
27 for sale in Iowa motor vehicle service contracts, or its
28 representatives, from directly or indirectly representing a
29 false, deceptive, or misleading statement with respect to
30 certain statements regarding its affiliation with a motor
31 vehicle manufacturer or importer, the validity or expiration
32 of a warranty, or a service contract holder's coverage
33 under a service contract, as described in the bill. The
34 bill also allows the commissioner to adopt rules regulating
35 service contract practices, any violation of which allows the

1 commissioner to assess certain civil penalties or suspend or
2 revoke a license, as described in the bill.

3 The bill provides that a violation of Code chapter 523C
4 constitutes an unlawful practice under Code section 714.16, the
5 "Iowa Consumer Frauds Act", which allows the attorney general
6 to investigate, issue subpoenas, and commence civil proceedings
7 seeking restraining orders or injunctions prohibiting persons
8 from engaging in unlawful practices or seeking termination
9 of the business affairs of a person engaging in unlawful
10 practices. In addition, a civil penalty of up to \$40,000 per
11 violation may be imposed by a court against a person found to
12 have committed an unlawful practice.

13 The bill provides that a service contract issued or sold
14 in Iowa is void if the person who issued or sold the service
15 contract, at the time of issuance or sale, was not licensed as
16 a service company under Code chapter 523C.

17 The bill provides that annual reporting requirements
18 shall apply only to licensed service companies which do not
19 demonstrate financial responsibility by insuring their service
20 contracts under a reimbursement insurance policy. The annual
21 report shall be filed with the commissioner no later than
22 August 31 of each year and shall contain certain information
23 described in the bill.

24 The bill excludes from regulation under Code chapter
25 523C, in addition to residential service contracts currently
26 excluded under Code section 523C.16, certain motor vehicle
27 service contracts currently excluded from regulation under
28 Code chapter 516E, residential service contracts involving
29 residential property containing more than four dwelling units,
30 warranties, motor vehicle service contracts issued or sold to
31 any person other than a consumer, and maintenance agreements.
32 The bill also provides that such contracts or agreements do not
33 constitute the practice of insurance.

34 The bill prohibits a lending institution from requiring the
35 purchase of a motor vehicle service contract or residential

1 service contract as a condition of a loan or the sale of any
2 property or motor vehicle. A violation of this provision
3 allows the commissioner to assess certain civil penalties or
4 suspend or revoke a license, as described in the bill.

5 The bill establishes new Code section 523C.24, which
6 creates a service company oversight fund under the control
7 of the commissioner. The fund shall consist of all moneys
8 deposited in the fund pursuant to the bill. The bill directs
9 the commissioner to deposit in the fund an amount equal
10 to one-third of all licensing, examination, renewal, and
11 inspection fees collected under Code chapter 523C, provided
12 that the maximum amount deposited each fiscal year shall
13 not exceed \$500,000. Any remaining fees collected and not
14 deposited in the fund shall be deposited in the department
15 of commerce revolving fund, pursuant to Code section
16 505.7. Moneys in the oversight fund are appropriated to the
17 commissioner for the administration and enforcement of Code
18 chapter 523C, and for establishing service contract consumer
19 complaint, education, and outreach programs. Interest or
20 earnings on moneys deposited in the fund shall be credited to
21 the fund. Moneys deposited in the fund shall not revert at the
22 close of a fiscal year.

23 In addition to repealing Code chapter 516E, the bill
24 repeals the following Code sections: 523C.8 (provisions
25 regarding rebates and commissions), 523C.8A (prohibition
26 against the issuance of residential service contracts without
27 consideration), 523C.11 (reserve account requirements), 523C.14
28 (provisions regarding rate review), and 523C.18 (criminal
29 penalty no longer applicable). The bill makes conforming
30 changes throughout Code chapter 523C.

31 The bill allows the commissioner to adopt emergency rules
32 to implement the provisions of the bill. Any such rules shall
33 be effective immediately upon filing unless a later date is
34 specified and shall be published as a notice of intended
35 action.

1 The bill takes effect upon enactment.