

Senate Study Bill 1089 - Introduced

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

A BILL FOR

1 An Act relating to the insurance fraud bureau, criminal history
2 checks for licenses granted by the insurance division, and
3 resolving inconsistencies.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 502.604A, Code 2019, is amended to read
2 as follows:

3 **502.604A ~~Limited law~~ Law enforcement authority.**

4 The administrator or the administrator's designee, when
5 carrying out the provisions of [section 502.603](#) or [502.604](#), may
6 develop, share, and receive information related to any law
7 enforcement purpose, including any criminal investigation.
8 ~~The administrator or designee shall not have the authority to~~
9 ~~issue criminal subpoenas or make arrests. The administrator~~
10 ~~or designee shall not be considered a peace officer, including~~
11 ~~as provided in [chapter 801](#).~~ An insurance fraud bureau
12 investigator shall be authorized to conduct an investigation
13 under article 5 of this chapter and shall have law enforcement
14 authority pursuant to section 507E.8.

15 Sec. 2. Section 507E.2, Code 2019, is amended to read as
16 follows:

17 **507E.2 Purpose.**

18 An insurance fraud bureau is created within the insurance
19 division. Upon a reasonable determination by the division,
20 by its own inquiries or as a result of ~~complaints~~ a complaint
21 filed with the division, that a person has engaged in, is
22 engaging in, or may be engaging in an act or practice that
23 violates ~~this chapter~~ or any other provision of the insurance
24 code subject to the jurisdiction of the commissioner, the
25 division may administer oaths and affirmations, serve subpoenas
26 ordering the attendance of witnesses, and collect evidence
27 related to such act or practice.

28 Sec. 3. Section 507E.5, subsection 5, Code 2019, is amended
29 to read as follows:

30 5. An insurance fraud bureau investigator or other staff
31 member of the bureau is not subject to subpoena in a civil
32 action concerning any matter of which the bureau investigator
33 or other staff member has knowledge pursuant to a pending or
34 continuing investigation being conducted by the bureau pursuant
35 to [this chapter](#).

1 Sec. 4. Section 507E.8, Code 2019, is amended to read as
2 follows:

3 **507E.8 Law enforcement ~~officer status~~ authority.**

4 1. ~~Bureau investigators~~ For purposes of an arrest resulting
5 from a criminal violation of any provision of the Code subject
6 to the jurisdiction of the commissioner established as a result
7 of an investigation pursuant to this chapter, an insurance
8 fraud bureau investigator shall have the ~~power~~ authority and
9 status of a law enforcement officers ~~who by the nature of their~~
10 ~~duties may be required to perform the duties of a peace officer~~
11 ~~when making arrests for criminal violations established as a~~
12 ~~result of their investigations pursuant to this chapter~~ officer
13 pursuant to section 80B.3, subsection 3.

14 2. The ~~general laws applicable to arrests~~ an arrest by a
15 law enforcement ~~officers~~ officer of the state ~~also apply to~~
16 an insurance fraud bureau investigators investigator. Bureau
17 ~~investigators~~ An insurance fraud bureau investigator shall
18 have the power to execute arrest warrants and search warrants
19 ~~for the same criminal violations, serve subpoenas issued for~~
20 the examination, investigation, and trial of all offenses
21 identified through ~~their investigations~~ the course of an
22 investigation conducted pursuant to this section, and arrest
23 upon probable cause without warrant a person found in the act
24 of committing a violation of ~~the provisions~~ a provision of this
25 chapter.

26 Sec. 5. Section 508E.3, Code 2019, is amended to read as
27 follows:

28 **508E.3 License requirements.**

29 1. *a.* A person shall not operate as a viatical settlement
30 provider or viatical settlement broker without first obtaining
31 a license from the commissioner of the state of residence of
32 the viator.

33 ~~*b.* (1) A life insurance producer who has been duly licensed~~
34 ~~as a resident insurance producer with a life line of authority~~
35 ~~in this state or the life insurance producer's home state for~~

1 ~~at least one year immediately prior to operating as a viatical~~
2 ~~settlement broker and is licensed as a nonresident producer in~~
3 ~~this state shall be deemed to meet the licensing requirements~~
4 ~~of this section and shall be permitted to operate as a viatical~~
5 ~~settlement broker.~~

6 ~~(2) Not later than thirty days from the first day of~~
7 ~~operating as a viatical settlement broker, the life insurance~~
8 ~~producer shall notify the commissioner that the life insurance~~
9 ~~producer is acting as a viatical settlement broker on a form~~
10 ~~prescribed by the commissioner, and shall pay any applicable~~
11 ~~fee of up to one hundred dollars as provided by rules adopted~~
12 ~~by the commissioner. The notification shall include an~~
13 ~~acknowledgment by the life insurance producer that the life~~
14 ~~insurance producer will operate as a viatical settlement broker~~
15 ~~in accordance with this chapter. The notification shall also~~
16 ~~include proof that the life insurance producer is covered by an~~
17 ~~errors and omissions policy for an amount of not less than one~~
18 ~~hundred thousand dollars per occurrence and not less than one~~
19 ~~hundred thousand dollars total annual aggregate for all claims~~
20 ~~during the policy period.~~

21 ~~(3) b. The An insurer that issued the a policy being~~
22 ~~viaticated shall not be responsible for any act or omission of~~
23 ~~a viatical settlement broker or viatical settlement provider~~
24 ~~arising out of or in connection with the viatical settlement~~
25 ~~transaction, unless the insurer receives compensation for the~~
26 ~~placement of a viatical settlement contract from the viatical~~
27 ~~settlement provider or viatical settlement broker in connection~~
28 ~~with the viatical settlement contract.~~

29 ~~c. A person licensed as an attorney, certified public~~
30 ~~accountant, or financial planner accredited by a nationally~~
31 ~~recognized accreditation agency who is retained to represent~~
32 ~~the a viator, whose compensation is not paid directly or~~
33 ~~indirectly by the viatical settlement provider, may negotiate a~~
34 ~~viatical settlement ~~contracts~~ contract on behalf of the viator~~
35 ~~without having to obtain a license as a viatical settlement~~

1 broker.

2 2. An application for a viatical settlement provider
3 or viatical settlement broker license shall be made to the
4 commissioner by the applicant on a form prescribed by the
5 commissioner, and the application shall be accompanied by a
6 fee of not more than one hundred dollars as provided by rules
7 adopted by the commissioner.

8 3. ~~The~~ A viatical settlement provider or viatical
9 settlement broker license term shall be three years and the
10 license may be renewed upon payment of ~~the~~ a renewal fee of not
11 more than one hundred dollars as provided by rules adopted by
12 the commissioner. A failure to pay the fee by the renewal date
13 ~~results shall result~~ in expiration of the license.

14 4. An applicant shall provide information on forms
15 required by the commissioner and shall meet all requirements
16 pursuant to section 522B.5A if required by the commissioner.
17 The commissioner shall have the authority, ~~at any time,~~ to
18 require ~~the~~ an applicant to fully disclose the identity of
19 all stockholders, partners, officers, members, and employees,
20 ~~and the.~~ The commissioner may, in the ~~exercise of the~~
21 commissioner's discretion, refuse to issue a license ~~in the~~
22 ~~name of a legal entity~~ to such applicant if not satisfied that
23 any officer, employee, stockholder, partner, ~~or~~ member thereof,
24 or employee who may materially influence the applicant's
25 conduct meets the standards of this chapter.

26 ~~5. A license issued to a legal entity authorizes all~~
27 ~~partners, officers, members, and designated employees to act as~~
28 ~~viatical settlement providers or viatical settlement brokers,~~
29 ~~as applicable, under the license, and all those persons~~
30 ~~shall be named in the application and any supplements to the~~
31 ~~application.~~

32 ~~6.~~ 5. Upon the filing of an application and the payment of
33 the license fee, the commissioner shall ~~make an investigation~~
34 ~~of~~ investigate each applicant and issue a license if the
35 commissioner finds that the applicant complies with all of the

1 following:

2 a. If a viatical settlement provider, has provided a
3 detailed plan of operation.

4 b. Is competent and trustworthy and intends to act in good
5 faith in the capacity involved by the license applied for.

6 c. Has a good business reputation and has had experience,
7 training, or education so as to be qualified in the business
8 for which the license is applied for.

9 ~~d. If a legal entity, provides a certificate of good
10 standing from the state of its domicile.~~

11 ~~e. d.~~ If a viatical settlement provider or viatical
12 settlement broker, has provided an antifraud plan that meets
13 the requirements of pursuant to section 508E.15, subsection 7.

14 ~~7. 6.~~ The commissioner shall not issue a license to a
15 nonresident applicant unless a written designation of an
16 agent for service of process is filed and maintained with the
17 commissioner or the applicant has filed with the commissioner
18 the applicant's written irrevocable consent that any action
19 against the applicant may be commenced against the applicant by
20 service of process on the commissioner. If an applicant files
21 such consent, service of process made on the commissioner as
22 the agent for service of process shall be made as provided in
23 section 505.30.

24 ~~8. 7.~~ A viatical settlement provider or viatical settlement
25 broker shall provide to the commissioner new or revised
26 information about officers, ten-percent-or-more stockholders,
27 partners, directors, members, or designated employees within
28 thirty days of the change.

29 ~~9. 8.~~ An individual licensed as a viatical settlement
30 broker shall complete on a triennial basis running concurrent
31 with the license term twenty credits of training related to
32 viatical settlements and viatical settlement transactions, as
33 required by the commissioner; ~~provided, however, that a life~~
34 ~~insurance producer who is operating as a viatical settlement~~
35 ~~broker pursuant to subsection 1, paragraph "b", shall not be~~

1 ~~subject to the requirements of this subsection~~. Any person
2 failing to meet the requirements of this subsection shall be
3 subject to the penalties imposed by the commissioner.

4 ~~10.~~ 9. Fees collected pursuant to this section shall be
5 deposited as provided in section 505.7.

6 Sec. 6. Section 522B.5, subsection 1, unnumbered paragraph
7 1, Code 2019, is amended to read as follows:

8 A person applying for a resident insurance producer license
9 shall make application to the commissioner on the uniform
10 application, meet all requirements pursuant to section 522B.5A,
11 and declare under penalty of refusal, suspension, or revocation
12 of the license that ~~the~~ all statements made in the application
13 are true, correct, and complete to the best of the individual's
14 knowledge and belief. Before approving the application, the
15 commissioner shall find all of the following:

16 Sec. 7. NEW SECTION. 522B.5A Criminal history check.

17 1. In determining eligibility for licensure, the
18 commissioner is authorized to require an applicant pursuant to
19 subsection 2 to provide to the commissioner the applicant's
20 fingerprints and reasonable fees required to perform a
21 state criminal history check through the Iowa single contact
22 repository and a national criminal history check through
23 the federal bureau of investigation. By submitting such
24 fingerprints, the applicant authorizes the commissioner to do
25 all of the following:

26 a. Submit the applicant's fingerprints to the department of
27 public safety for a state criminal history check and submission
28 to the federal bureau of investigation for the purpose of
29 conducting a national criminal history check.

30 b. Receive the results of the state and national criminal
31 history checks directly from the department of public safety
32 and the federal bureau of investigation.

33 2. The commissioner is authorized to require a state and
34 national criminal history check on each applicant that applies
35 for any of the following:

1 *a.* An initial license in Iowa as a resident insurance
2 producer.

3 *b.* An initial license or an additional line of authority
4 under a nonresident insurance producer license if a state and
5 national criminal history check has not already been completed.

6 *c.* A renewal, reinstatement, or reissuance of a license if
7 a producer's license has been revoked or suspended pursuant to
8 section 522B.11.

9 *d.* An initial license as a viatical settlement provider or
10 viatical settlement broker in this state.

11 3. The commissioner shall require an applicant pursuant
12 to subsection 2 to submit a full set of fingerprints and any
13 other required identifying information to the commissioner on a
14 form prescribed by the department of public safety. In lieu
15 of the department of public safety, the commissioner shall be
16 authorized to receive an applicant's criminal history check
17 information, requested by the department of public safety
18 pursuant to this section, directly from the federal bureau of
19 investigation.

20 4. The commissioner may contract with a third-party vendor
21 or the department of public safety for the collection and
22 transmission of an applicant's fingerprints for the purpose of
23 conducting a state and national criminal history check. The
24 commissioner may agree to reasonable fees to be charged by
25 the third-party vendor or the department of public safety and
26 may require such reasonable fees to be paid by the applicant
27 directly to the third-party vendor or the department of public
28 safety.

29 5. The commissioner shall apply security measures
30 consistent with the standards of the criminal justice
31 information services division of the federal bureau of
32 investigation for the storage of fingerprints and necessary
33 identifying information, and shall limit the use of such solely
34 to the purposes authorized in this section.

35 6. The results of a criminal history check conducted

1 pursuant to this section shall not be considered a public
2 record pursuant to chapter 22. An applicant's fingerprints and
3 any criminal history check information shall not be subject to
4 subpoena, other than a subpoena issued in a criminal action or
5 investigation, shall be confidential by law and privileged, and
6 shall not be subject to discovery or be admissible in evidence
7 in a private civil action.

8 Sec. 8. Section 522C.5, Code 2019, is amended to read as
9 follows:

10 **522C.5 Application for license.**

11 1. A person applying for a public adjuster license shall
12 make application on a uniform individual application or uniform
13 business entity application as prescribed by the commissioner
14 pursuant to rules adopted under [chapter 17A](#).

15 2. In determining eligibility for licensure under this
16 chapter, the commissioner ~~shall~~ is authorized to require
17 a criminal history check pursuant to section 522B.5A for
18 each individual applying for a public adjuster license to
19 submit a full set of fingerprints with the application. The
20 commissioner shall also require and for each individual who
21 will be acting as a public adjuster of a business entity
22 applying for licensure under [this chapter](#) to submit a full
23 set of fingerprints for each individual who will be acting
24 as a public adjuster on behalf of the business entity. The
25 commissioner shall conduct a state and national criminal
26 history record check on each applicant. The commissioner is
27 authorized to submit fingerprints and any required fees to the
28 state department of public safety, the state attorney general,
29 and the federal bureau of investigation for the performance of
30 such criminal record checks.

31 ~~a. The commissioner may contract for the collection,~~
32 ~~transmission, and resubmission of fingerprints required under~~
33 ~~[this section](#) and may contract for a reasonable fingerprinting~~
34 ~~fee to be charged by the contractor for these services. Any~~
35 ~~fees for the collection, transmission, and retention of~~

1 ~~fingerprints submitted pursuant to this subsection shall be~~
2 ~~paid directly to the contractor by the applicant.~~

3 ~~b. The commissioner may waive submission of fingerprints~~
4 ~~by any person who has previously furnished fingerprints if~~
5 ~~those fingerprints are on file with the central repository~~
6 ~~of the national association of insurance commissioners, its~~
7 ~~affiliates, or subsidiaries.~~

8 ~~c. The commissioner may receive criminal history record~~
9 ~~information concerning an applicant that was requested by the~~
10 ~~state department of justice directly from the federal bureau~~
11 ~~of investigation.~~

12 ~~d. The commissioner may submit electronic fingerprint~~
13 ~~records and necessary identifying information to the national~~
14 ~~association of insurance commissioners, its affiliates,~~
15 ~~or subsidiaries for permanent retention in a centralized~~
16 ~~repository whose purpose is to provide state insurance~~
17 ~~commissioners with access to fingerprint records in order to~~
18 ~~perform criminal history record checks.~~

19 EXPLANATION

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

22 This bill relates to the insurance fraud bureau and criminal
23 history checks for licenses granted by the insurance division.

24 The bill clarifies that the insurance fraud bureau has the
25 authority to conduct investigations in all areas under the
26 jurisdiction of the insurance commissioner and also clarifies
27 the law enforcement authority of an insurance fraud bureau
28 investigator.

29 The bill authorizes the commissioner to require new
30 applicants licensed under the commissioner's jurisdiction to
31 submit fingerprints. The bill does not apply to current Iowa
32 producers in good standing.

33 The bill provides that by submitting fingerprints an
34 applicant is authorizing the commissioner to submit such
35 fingerprints to the department of public safety for a state

1 criminal history check and for submission to the federal bureau
2 of investigation for a national criminal history check. The
3 applicant is also authorizing the department of public safety
4 and the federal bureau of investigation to send the results of
5 the criminal history checks directly to the commissioner. The
6 bill also provides that the federal bureau of investigation may
7 send the criminal history results directly to the commissioner
8 rather than to the department of public safety.

9 The bill authorizes the commissioner to contract with a
10 third-party vendor or the department of public safety for the
11 collection and submission of applicants' fingerprints. The
12 commissioner may agree to reasonable fees to be charged by the
13 vendor or by the department of public safety.

14 The commissioner is required to apply security measures for
15 the storage of fingerprints and must limit use of fingerprints
16 to purposes authorized in the bill. The bill provides that an
17 applicant's criminal history check is not a public record under
18 Code chapter 22. An applicant's fingerprints and criminal
19 history check are only subject to a subpoena issued in a
20 criminal action or investigation, shall be confidential by law
21 and privileged, and are not subject to discovery or admissible
22 in a private civil action.

23 The bill requires any person operating as either a viatical
24 settlement provider or viatical settlement broker to be
25 licensed and no longer allows an exception for a life insurance
26 producer licensed for at least one year as a resident producer
27 in this state, or the producer's home state, to operate as
28 a viatical settlement broker. The bill no longer permits a
29 license to be issued to a legal entity, as is currently allowed
30 by law, to operate as either a viatical settlement provider or
31 viatical settlement broker.