SENATE FILE 619
BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO SF 595)
(SUCCESSOR TO SSB 1223)

(As Amended and Passed by the Senate April 22, 2019)
ALL New Language by the Senate

A BILL FOR

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

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

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

523C.1 Definitions.

As used in this chapter, unless the context otherwise requires:

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

~~2. *"Custodial account"* means an account established by agreement between a licensed service company and a custodian under section 523C.5.~~

~~3. *"Custodial agreement"* means an agreement entered into between a licensed service company and a custodian under section 523C.5.~~

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

~~5. *"Depository"* means an institution designated by the commissioner as an authorized custodian for purposes of sections 523C.5 and 523C.11.~~

~~6.~~ 2. *"Licensed service company"* means a service company which is licensed by the commissioner pursuant to this chapter.

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

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

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

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

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

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

d. A person who does not manufacture or produce motor

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

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

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

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

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

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

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

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

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

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

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

9. *"Reimbursement insurance policy"* means a contractual liability insurance policy issued to a service company that either provides reimbursement to a service company under the terms of insured service contracts issued or sold by the service company or, in the event of nonperformance by the service company, pays, on behalf of the service company, all covered contractual obligations incurred by the service company under the terms of the insured service contracts issued or sold by the service company.

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

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

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

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

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

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

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

523C.2 License required.

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

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

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

523C.3 Application for license.

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

a. The name and principal address of the applicant.

b. The state of incorporation of the applicant.

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

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

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

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

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

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

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

~~*b. A surety bond, a copy of the receipt from the treasurer of state that a cash deposit has been made, or a copy of a custodial agreement as provided in section 523C.5.*~~

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

~~*d. An affidavit of an authorized officer of the service company stating the number of contracts issued by the service company in the preceding calendar year, and stating that the net worth of the service company satisfies the requirements of section 523C.6.*~~

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

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

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

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

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

523C.4 License expiration and renewal.

1. Each license issued under this chapter shall ~~expire on June 30 next~~ be valid for a period of one year and shall be renewed by August 31 of each year following the date of issuance. ~~If the service company maintains in force the surety bond described in section 523C.5 and if its license is not subject to or under suspension or revocation under section 523C.9, its license shall be renewed by the commissioner upon receipt by the commissioner on or before the expiration date of a renewal application accompanied by the items required by section 523C.3, subsection 2, paragraphs "b", "c", "d", and "e", and section 523C.15.~~

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

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

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

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

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

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

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

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

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

523C.5 Financial responsibility — demonstration

requirements.

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

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

2. Doing both of the following:

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

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

(1) Cash.

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

(3) Certificates of deposit.

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

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

3. Doing both of the following:

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

hundred million dollars or more.

b. Upon request from the commissioner, providing either:

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

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

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

523C.6 Reimbursement insurance policy requirements — insurer qualifications.

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

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

b. The reimbursement insurance policy shall entitle a

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

523C.9 Suspension or revocation of license.

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

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

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

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

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

~~d.~~ 4. The service company violated section 523C.13.

~~e.~~ 5. The service company failed to ~~maintain the net worth required by section 523C.6~~ demonstrate financial responsibility pursuant to section 523C.5.

~~f. The service company failed to maintain the reserve account required by section 523C.11.~~

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

~~2. If the license of a service company is terminated under section 523C.5 because of failure to maintain bond, the commissioner shall give written notice of termination to the service company. The notice shall include the effective date of the termination.~~

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

523C.12 Optional examination.

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

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

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

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

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

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

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

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

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

and not such person. Any civil penalties collected under this subsection shall be deposited as provided in section 505.7.

~~2.~~ *b.* Suspension or revocation of the license of a person, if the person knew or reasonably should have known the person was in violation of this section.

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

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

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

523C.15 Annual report.

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

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

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

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

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

523C.16 Exclusions.

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

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

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

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

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

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

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

7. A residential service contract involving residential

property containing more than four dwelling units.

8. A warranty.

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

10. A maintenance agreement.

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

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

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

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

523C.22 Claim procedures.

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

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

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

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

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

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

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

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

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

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