

Sec. 2. NEW SECTION. POLYGRAPH EXAMINATION PROHIBITED. An employer shall not require an applicant for employment or a current employee to take a polygraph examination as a condition of employment. An employer who requires a polygraph examination as a condition of employment is guilty of a simple misdemeanor.

Sec. 3. Section 2 shall not apply to the state or a political subdivision of the state when in the process of selecting a candidate for employment as a peace officer.

Approved May 6, 1983

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**CHAPTER 87**  
**REGULATION OF RESIDENTIAL SERVICE COMPANIES**  
*H.F. 448*

**AN ACT** providing for the regulation of residential maintenance service companies by the commissioner of insurance, and providing penalties.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Sections 2 through 18 of this Act shall be codified as one new chapter.

Sec. 2. NEW SECTION. DEFINITIONS. As used in this Act, unless the context otherwise requires:

1. "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 period of time, to maintain, repair, or replace all or any part of the structural components, appliances, or electrical, plumbing, heating, cooling, or air-conditioning systems of residential property containing not more than four dwelling units.

2. "Service company" means a person who issues and performs, or arranges to perform, services pursuant to a residential service contract.

3. "Licensed service company" means a service company which is licensed by the commission pursuant to this Act.

4. "Commissioner" means the commissioner of insurance.

Sec. 3. NEW SECTION. LICENSE REQUIRED. A person shall not issue a residential service contract or undertake or arrange to perform services pursuant to a residential service contract unless the person is a corporation and is a licensed service company.

Sec. 4. NEW SECTION. 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.

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 as provided in section 6 of this Act.

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 7 of this Act.

e. A license fee in the amount of two hundred fifty dollars.

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 7 of this Act 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.

Sec. 5. NEW SECTION. LICENSE EXPIRATION AND RENEWAL. Each license issued under this Act shall expire on June 30 next following the date of issuance. If the service company maintains in force the surety bond described in section 6 of this Act and if its license is not subject to or under suspension or revocation under section 10 of this Act, 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 4, subsection 2, paragraphs b, c, d, and e, and section 16 of this Act. 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.

Sec. 6. NEW SECTION. REQUIRED BOND. To assure the faithful performance of obligations under residential service contracts issued and outstanding in this state, a service company shall, prior to the issuance or renewal of a license, file with the commissioner a surety bond in the amount of one hundred thousand dollars, which has been issued by an authorized surety company and approved by the commissioner as to issuer, form, and contents. The bond shall not be canceled or be subject to cancellation unless thirty days' advance notice in writing is filed with the commissioner. Notwithstanding the provisions of chapter 17A, if a bond is canceled for any reason and a new bond in the required amount is not received by the commissioner on or before the effective date of cancellation, the license of the service company is automatically revoked as of the date the bond ceases to be in effect. A service company whose license is revoked under this section may file an application for a new license pursuant to section 4 of this Act.

The bond posted by a service company pursuant to this section shall be for the benefit of, and subject to recovery thereon by any residential service contract holder sustaining actionable injury due to the failure of the service company to faithfully perform its obligations under a residential service contract because of insolvency of the service company.

If a service company ceases to do business in this state and furnishes to the commissioner satisfactory proof that it has discharged all obligations to contract holders, the surety bond shall be released.

Sec. 7. NEW SECTION. NET WORTH REQUIREMENT. A service company that has issued or renewed in the aggregate one thousand or less residential service contracts during the preceding calendar year shall maintain a minimum net worth of forty thousand dollars, and the minimum net worth to be maintained shall be increased by an additional twenty thousand dollars for each additional five hundred contracts or fraction thereof issued or renewed, up to a maximum required net worth of four hundred thousand dollars.

For purposes of this Act, "net worth" means the excess of all assets over all liabilities including required reserves, computed in accordance with generally accepted accounting principles. At least twenty thousand dollars of net worth shall consist of paid-in capital.

**Sec. 8. NEW SECTION. FILING OF FORMS OF CONTRACT.**

1. A residential service contract shall not be issued or used in this state unless it has been filed with and approved by the commissioner. If the commissioner fails to inform the service company of objections to the form of the residential service contract within thirty days after filing, the residential contract shall be deemed to have been approved by the commissioner provided it otherwise complies with this section.

2. Residential service contracts shall:

a. Be written in nontechnical, readily understood language, using words with common and everyday meanings.

b. Clearly, conspicuously, and plainly specify all of the following:

(1) The services to be performed by the service company, and the terms and conditions of performance.

(2) The fee, if any, to be charged for a service call.

(3) Each of the systems, appliances, and components covered by the contract.

(4) Any exclusions and limitations respecting the extent of coverage.

(5) The period during which the contract will remain in effect.

(6) All limitations respecting the performance of services, including any restrictions as to the time periods when services may be requested or will be performed.

(7) The following statement: "The issuer of this contract is subject to regulation by the insurance department of the state of Iowa. Complaints which are not settled by the issuer may be sent to the Iowa insurance department."

c. Provide for the performance of services only. A residential service contract shall not provide for a payment to, or reimbursement or indemnification of the holder of the contract.

d. Provide for the performance of services upon a request by telephone to the service company without a requirement that claim forms or applications be filed prior to the rendition of services.

e. Provide for the initiation of services by or under the direction of the service company within forty-eight hours of the request for the services by the holder of the contract.

3. Any application for a residential service contract shall notify the purchaser that the person submitting the application to the service company for the purchaser is acting as the representative of the service company and not of the purchaser in that transaction.

**Sec. 9. NEW SECTION. REBATES AND COMMISSIONS.** A service company shall not pay a person who is acting as the agent, representative, attorney, or employee of the owner or prospective owner of residential property, a commission or any other consideration, either directly or indirectly, as an inducement or compensation for the issuance, purchase, or acquisition of a residential service contract. As used in this section, the phrase "commission or any other consideration" does not include bona fide payments or reimbursements for any of the following:

1. Goods or facilities actually furnished or services actually performed, if the payments or reimbursements are reasonably related to the value of the goods, facilities, or services furnished.

2. Inspection fees, if an inspection of the property to be the subject of a residential service contract is required by a service company and if the inspection fee is reasonably related to the services performed.

3. Advertising, marketing, and educational expenses actually incurred in the sale of the service company's service contracts which are applicable on a similar and essentially equal basis to all its customers and the agents of its customers.

4. Reasonable expenses for food, beverage, and similar items if furnished within the context of a service company's customary business, educational, or promotional practices.

**Sec. 10. NEW SECTION. SUSPENSION OR REVOCATION OF LICENSE.**

1. In addition to the license revocation provisions of section 6 of this Act, the commissioner may suspend or revoke or refuse to renew the license of a service company for any of the following grounds:

a. The service company violated a lawful order of the commission or any provision of this Act.

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

c. 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. The service company violated section 14 of this Act.

e. The service company failed to maintain the net worth required by section 7 of this Act.

f. The service company failed to maintain the reserve account required by section 12 of this Act.

g. 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 6 of this Act 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. 11. NEW SECTION. RULES.** The commissioner may adopt rules under chapter 17A to implement this Act.

**Sec. 12. NEW SECTION. RESERVE ACCOUNT.**

1. A service company shall maintain in an independent depository a reserve account containing cash or marketable securities in an amount equal to fifty percent of aggregate annual fees collected on residential service contracts issued in this state, if any, and for actual expenditures for services rendered under those contracts.

2. The depository shall make its records concerning the service company reserve accounts available to the commissioner or a designee for inspection on the premises of the depository.

3. The service company shall submit with each license renewal application an affidavit by an authorized officer of the depository attesting to the balance in the reserve account and that the reserve account is being maintained in accordance with this Act.

**Sec. 13. NEW SECTION. OPTIONAL EXAMINATION.** The commissioner or a designee of the commissioner may make an examination of the books and records of a service company and verify its assets, liabilities, and reserves. The actual costs of the examination shall be borne by the service company.

**Sec. 14. NEW SECTION. DECEPTIVE ACTS OR PRACTICES — PENALTY.** The commissioner shall adopt rules which regulate 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 shall issue an order to that person to cease and desist and may order any or all of the following:

1. 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 fine to the employer and not such person.

2. 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.

Sec. 15. NEW SECTION. RATE REVIEW. Using the information obtained in the annual reports and any additional information requested by the commissioner, the commissioner shall evaluate the fees charged for the residential service contract to determine if they are reasonable in relation to the value of the claims made. The commissioner may order an adjustment of the fees if the commissioner determines that the fees are not reasonable in relation to the value of the claims made.

Sec. 16. NEW SECTION. ANNUAL REPORT. A licensed service company shall file with the commissioner an annual report within ninety days of the close of its fiscal 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. Any other information relating to the performance and solvency of the residential service company required by the commissioner.

Sec. 17. NEW SECTION. EXCLUSIONS. This Act does not apply to any of the following:

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 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 appliances or electrical, plumbing, heating, cooling or air-conditioning systems.

3. A contract between a service company 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 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.

Sec. 18. NEW SECTION. LENDING INSTITUTION. A bank, savings and loan association, insurance company or other lending institution shall not require the purchase of a residential service contract as a condition of a loan. 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 14 of this Act.

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