

INSURANCE DIVISION[191]

Adopted and Filed Emergency

Rule making related to residential and motor vehicle service contracts.

The Insurance Division hereby amends Chapter 103, "Residential Service Contracts," and Chapter 104, "Motor Vehicle Service Contracts," Iowa Administrative Code.

Legal Authority for Rule Making.

This rule making is adopted under the authority provided in Iowa Code sections 516E.7 and 523C.10, 2019 Iowa Acts, Senate File 619, Section 18.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 516E and 523C, 2019 Iowa Acts, SF 619.

Purpose and Summary

The new rules in these amendments augment 2019 Iowa Acts, Senate File 619 which, in part, updates provisions regarding the licensing of residential service companies and motor vehicle service companies that enter into residential service contracts and motor vehicle service contracts with consumers. This rule making is intended to provide guidance to residential service companies and motor vehicle service companies regarding how their current license or registration status will be administered by the Insurance Division now that the new law has become effective.

The bill consolidates Iowa Code chapters 516E and 523C, and makes significant changes to the licensing of residential service companies and motor vehicle service companies. These emergency rules consolidate chapters 103 and 104, and meanwhile guide service companies until the next licensing cycle begins, pursuant to 2019 Iowa Acts, Senate File 619, on September 1, 2019.

Reason for Adoption of Rule Making Without Prior Notice and Opportunity for Public Participation

The new law was to take effect upon enactment, according to 2019 Iowa Acts, Senate File 619, Section 19. The Governor signed the law, thereby making it effective, on May 16, 2019.

The Commissioner of Insurance was authorized by 2019 Iowa Acts, Senate File 619, Section 18, to adopt emergency rules under Iowa Code section 17A.4, subsection 3, and section 17A.5, subsection 2, paragraph "b," to implement the provisions of Senate File 619, and required that such emergency rules also be published as a notice of intended action as provided in section 17A.4. In addition to its adoption on an emergency basis, this rule making has been initiated through the normal rule-making process and is published herein under Notice of Intended Action as ARC _____ to allow for public comment.

Reason for Waiver of Normal Effective Date

The Insurance Division finds, pursuant to Iowa Code section 17A.5(2)(b)(2), that the situation described above proves (as required by 17A.5(2)(b)(2)) that, because the rule confers a benefit or removes a restriction on the public or some segment thereof (as required by 17A.5(2)(b)(1)(b)), the normal effective date of the amendment, 35 days after publication, should be waived and this amendment should be made effective on May 20, 2019, to allow service companies currently licensed or registered with the Insurance Division to maintain their licenses or registrations through the beginning of the licensing period under the new legislation..

Adoption of Rule Making

This rule making was adopted by the Doug Ommen, Iowa Insurance Commissioner on May 17, 2019.

Concurrent Publication of Notice of Intended Action

In addition to its adoption on an emergency basis, this rule making has been initiated through the normal rule-making process and is published herein under Notice of Intended Action as ARC _____ to allow for public comment.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

These rules do not include a provision for the waiver of the rule because the Insurance Division's general waiver rules of 191—Chapter 4 apply.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on May 20, 2019.

The following rule-making action is adopted:

Item 1. Amend the title of Chapter 191—103 as follows:

RESIDENTIAL AND MOTOR VEHICLE SERVICE CONTRACTS

Item 2. Amend rule 191—103.1(523C) as follows:

191—103.1(523C,88GA,SF619) Purpose. The purpose of this chapter is to administer Iowa Code

chapter 523C, as amended by 2019 Iowa Acts, relating to ~~residential service contracts as defined in Iowa Code section 523C.1(9)~~ service contracts and service companies.

Item 3. Amend rule 191—103.1(523C) as follows:

191—103.2(523C, 88GA, SF619) Applicability, scope, and definitions.

~~103.2(1)~~ This chapter shall apply to ~~any person who issues or offers to issue a residential service contract as defined in Iowa Code section 523C.1(9)~~.

~~103.2(2)~~ 103.2(1) This chapter shall apply when an offer to sell a ~~residential~~ service contract is made or accepted in this state. An offer to sell is made in this state when the offer either originates from this state or is directed by the offeror to a person in this state.

~~103.2(3)~~ 103.2(2) The definitions in Iowa Code sections 523C.1 ~~and 523C.8A(3)~~, as amended by 2019 Iowa Acts, Senate File 619, are incorporated by this reference. In addition, the following definitions shall apply to this chapter.

“Division” means the Iowa insurance division, supervised by the commissioner pursuant to Iowa Code section 505.8, in the division’s performance of the duties of the commissioner under Iowa Code chapter 523C, as amended by 2019 Iowa Acts, Senate File 619.

“Division’s ~~Web site~~ website” means the ~~Web site~~ website of the Iowa insurance division, www.iid.iowa.gov~~iid.iowa.gov~~.

“Residential ~~customer~~”customer,” as used in the definition of “residential service contract” in 2019 Iowa Acts, Senate File 619, Section 1 (Iowa Code section 523C.1(10)), means any person (whether or not the person is the owner of the residential property) who purchases a residential service contract relating to a residential property.

“Residential property” No change.

“Service contract holder” means the original purchaser of a service contract or the

successor in interest or transferee entitled to services under the contract.

“~~Structural components~~”components,” as used in the definition of “residential service contract” in 2019 Iowa Acts, Senate File 619, Section 1 (Iowa Code section 523C.1(10)), means the roof, foundation, basement, walls, ceiling or floors of a residential property.

Item 4. Rescind rule 191—103.3(523C) and adopt new rule 191—103.3(523C,88GA, **SF619**) in lieu thereof, as follows:

191—103.3(523C,88GA,SF619) Filings of forms, contracts and other items. If Iowa Code chapter 523C or this chapter requires an item to be filed with the division, the applicable item shall be filed with the division’s securities and regulated industries bureau, regardless of whether the applicable item has already been filed elsewhere within the division.

Item 5. Amend rule 191—103.4(523C) as follows:

191—103.4(523C,88GA,SF619) Forms and instructions. Instructions for license applications, fees, forms and other filings, and copies of all required forms are available on the division’s ~~Web site~~ website.

Item 6. Rescind rule 191—103.5(523C) and adopt new rule 191—103.5(523C,88GA,HF665) in lieu thereof, as follows:

191—103.5(523C,88GA, SF619) Financial Security Deposits.

103.5(1) For purposes of 2019 Iowa Acts, Senate File 619, Section 5 (Iowa Code section 523C.5(2)(b)), “placing in trust with the commissioner” means filing a surety bond with the commissioner or creating a financial or custodial account in a manner acceptable to the commissioner.

103.5(2) Requirements for surety bonds.

a. A surety bond filed with the commissioner as a financial security deposit pursuant to 2019 Iowa Acts, Senate File 619, Section 5 (Iowa Code section 523C.5(2)(b)) shall be in the form directed by the Division and as available on the division's website.

b. A surety bond filed with the commissioner as a financial security deposit pursuant to 2019 Iowa Acts, Senate File 619, Section 5 (Iowa Code section 523C.5(2)(b)) shall cover service contracts still outstanding that predate the effective date of the surety bond and any service contracts executed during the surety bond's period of coverage except service contracts that have been rescinded, fulfilled, or that are secured by another bond.

c. No suit or action shall be commenced by a surety bond claimant later than one year after the expiration date of the surety bond.

d. The surety bond shall, in the event of the service company's failure to perform under the service contract or otherwise, either reimburse or pay on behalf of the service company any covered amounts that the service company is legally obligated to pay under the service contract.

e. The surety bond is for the benefit of and subject to recovery by any Iowa service contract holder sustaining actionable injury due to the failure of the service company to perform its obligations under a service contract. A holder of a service contract issued in this state may, in the event of nonperformance of the contract by the service company, maintain an action and file a claim against the surety bond filed. The surety's liability shall extend to all service contracts issued by the service company and outstanding in this state. Provided, however, that a surety's aggregate liability shall not exceed the penal sum of the bond.

f. The surety bond cannot be canceled by the surety except upon written notice of cancellation by the surety to the commissioner by certified mail, and not prior to the expiration of sixty days after receipt of the notice by the commissioner.

g. A service company shall maintain an adequate surety bond and shall continuously monitor the surety amount to assure its adequacy.

Item 7. Amend rule 191—103.6(523C) as follows:

191—103.6(523C,88GA,SF619) Prohibited acts or practices.

103.6(1) No change.

103.6(2) *Boycott, coercion, and intimidation.* A service company is prohibited from entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the ~~residential~~ service contract industry.

103.6(3) No change.

103.6(4) No change.

103.6(5) *Misrepresentation, false advertising, and unfair practices.*

a. A service company shall not:

(1) Use in its name, contracts, or literature, any of the words “insurance,” “casualty,” “surety,” “mutual,” or any other words descriptive of the insurance, casualty or surety business or deceptively similar to the name or description of any insurance or surety corporation, or any other service company. This subparagraph does not apply to a ~~residential~~ service company also licensed as an insurance company.

(2) No change.

(3) Without the written consent of the ~~residential~~ customer, knowingly charge for

duplication of coverage or duties required by state or federal law, or duplication of a warranty expressly issued by a manufacturer or seller of a product or any implied warranty enforceable against the lessor, seller or manufacturer of a product.

(4) No change.

(5) No change.

(6) No change.

(7) No change.

(8) Cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation, or statement with respect to the ~~residential~~-service contract industry or with respect to any service company which is untrue, deceptive or misleading.

(9) Require the use of used parts in the repair of a motor vehicle covered by a motor vehicle service contract unless the service company has obtained prior written authorization by the vehicle owner or unless all of the following are true regarding any rebuilt parts:

1. The parts have been dismantled and reconstructed as necessary.

2. All of the internal and external parts have been cleaned and made free from rust and corrosion.

3. All impaired, defective, or substantially worn parts have been restored to a sound condition or replaced with new, rebuilt, or unimpaired used parts.

4. All rewinding or machining or other necessary operations have been performed.

5. The rebuilt parts have been put in working condition, using, as minimum standards, the manufacturer's performance specifications in existence when the parts were originally manufactured if those specifications are publicly available.

~~b. — 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 and shall not sell a residential service contract to a borrower unless the borrower signs an affidavit acknowledging that the purchase is not required.~~

Item 8. Amend rule 191—103.7(523C) as follows:

191—103.7(523C, 88GA, SF619) Service company licenses.

~~**103.7(1)** A person shall not issue, offer for sale, or sell a residential service contract or undertake or arrange to perform services pursuant to a residential service contract unless the person is a corporation, limited liability company, partnership or limited liability partnership and has procured a service company license from the division.~~

~~**103.7(2)**~~**103.7(1)** Service company licenses shall not be transferable. A service company which sells its business shall cancel its service company license, and the purchaser of the business shall apply for a new service license under the purchaser's name.

103.7(2) A service company licensed or registered with the division on April 1, 2019 in accordance with Iowa Code Chapter 516E or 523C, shall be deemed licensed with the insurance division under Iowa Code Chapter 523C, as amended by 2019 Iowa Acts, Senate File 619, until August 31, 2019, without any additional application or filing.

Item 9. Rescind rule 191—103.8(523C) and reserve.

Item 10. Amend rule 191—103.9(523C) as follows:

191—103.9(523C,88GA,SF619) Financial statements and calculation of net worth.

103.9(1) All financial statements, including balance statements, filed pursuant to or prepared for purposes of Iowa Code chapter 523C, as amended by 2019 Iowa Acts, Senate File 619, or this chapter shall be prepared in accordance with generally accepted accounting principles and certified by an independent certified public accountant.

103.9(2) For purposes of Iowa Code section 523C.6, as amended by 2019 Iowa Acts, Senate File 619 (Iowa Code section 523C.5), “net worth” means the excess of all assets over liabilities, and any required reserves shall be treated as a liability rather than as an asset.

Item 11. Amend rule 191—103.10(523C) as follows:

191—103.10(523C,88GA,SF619) Records.

103.10(1) All licensed service companies ~~and independent depositories~~ shall keep accurate accounts, books, and records concerning transactions regulated under Iowa Code chapter 523C, as amended by 2019 Iowa Acts, Senate File 619.

103.10(2) A licensed service company’s accounts, books, and records shall include:

- a. Copies of all service contracts;
- b. The name and address of each ~~residential customer~~ service contract holder; and
- c. ~~The name and address of each independent depository; and~~
- ~~d. —~~ The dates and amounts of all receipts and expenditures related to all service contracts.

103.10(3) A licensed service company shall retain all required accounts, books, and records pertaining to each ~~residential~~ service contract for at least two years after the expiration of the specified period of time.

103.10(4) All licensed service companies ~~and independent depositories~~ shall make all

accounts, books, and records concerning transactions regulated under Iowa Code chapter 523C, as amended by 2019 Iowa Acts, Senate File 619, available to the division for the purpose of examination.

103.10(5) A licensed service company discontinuing business in this state shall maintain its records until it furnishes the division satisfactory proof that it has discharged all obligations to service contract holders in this state.

Item 12. Rescind rules 191—103.11(523C) through 191—103.14(523C) and reserve.

Item 13. Amend rule 191—103.15(523C,88GA,SF619) as follows:

191—103.15(523C,88GA, SF619) Violations. Failure to comply with this chapter or with Iowa Code chapter 523C, as amended by 2019 Iowa Acts, Senate File 619, shall be deemed a violation which shall subject a person or entity to the procedures and penalties set forth in Iowa Code chapter 523C, as amended by 2019 Iowa Acts, Senate File 619.

Item 12. Rescind Chapter 104, “Motor Vehicle Service Contracts,” Iowa Administrative Code.

These rules are intended to implement Iowa Code chapter 523C, as amended by 2019 Iowa Acts, Senate File 619.