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SENATE FILE

278

BY DELUHERY

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DO PASS 3-14-89 (p.773)

Passed Senate, Date 3-21-89 (p.148) Passed House, Date 4-12-89 (p.1528)

Vote: Ayes 44 Nays 2 Vote: Ayes 93 Nays 6

Approved May 24, 1989

A BILL FOR

1 An Act relating to the disclosure of information by continuing
2 care facilities and senior adult congregate living facilities,
3 and providing penalties.

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

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SF 278

1 Section 1. NEW SECTION. 523D.1 DEFINITIONS.

2 As used in this chapter, unless the context clearly
3 indicates otherwise:

4 1. "Senior adult congregate living facility" means any
5 building or buildings, section of a building, or distinct part
6 of a building, residence, private home, boarding home, home
7 for the aged, or other place, other than facilities licensed
336A-8 and operated under chapter 135C, whether operated by a for-
9 profit or a not-for-profit organization which undertakes
10 through its ownership or management to provide housing and one
11 or more supportive services for a time period exceeding
12 twenty-four consecutive hours, to ten or more residents, the
13 majority of whom are sixty years of age or older. A person
14 who is furnishing the continuing care and who is related by
15 consanguinity or affinity to the resident living in the
16 facility shall not be included in the capacity calculation.

17 2. "Senior adult congregate living services" means the
18 services provided to residents in a facility.

19 3. "Supportive services" includes, but is not limited to,
20 services such as laundry; maintenance; emergency nursing care;
21 activity services; security; dining options; transportation;
22 beauty and barber; personal, including eating, bathing,
23 dressing, and supervised medication administration; and
24 health.

25 4. "Continuing care facility" means a senior adult
26 congregate living facility which furnishes senior adult
27 congregate living services together with nursing services to
28 residents, regardless of whether or not the services are
29 provided at one location, and pursuant to one or more
30 agreements effective for the life of the resident or for a
31 period of time greater than one year.

32 5. "Continuing care" means the furnishing to residents,
33 the majority of whom are sixty years of age or older, other
34 than a resident related by consanguinity or affinity to the
35 person furnishing the care, of senior adult congregate living

1 services together with nursing services regardless of whether
2 or not the services are provided at one location and pursuant
3 to one or more agreements effective for the life of the
4 resident or for a period of time greater than one year.

5 6. "Entrance fee" means an initial or deferred transfer to
6 a provider of a sum of money or other property made or
7 promised to be made as full or partial consideration for
8 acceptance of a specified individual as a resident in a
9 facility.

10 7. "Facility" means a senior adult living facility or a
11 continuing care facility.

12 8. "Living unit" means a room, apartment, cottage, or
13 other area within a facility set aside for the exclusive use
14 or control of one or more identified residents.

15 9. "Provider" means a person undertaking to provide care
16 in a senior adult congregate living facility or continuing
17 care facility.

18 10. "Resident" means an individual, sixty years of age or
19 older, entitled to receive care in a senior adult congregate
20 living facility or continuing care facility.

3365-21 Sec. 2. NEW SECTION. 523D.2 FILING WITH DEPARTMENT OF
22 ELDER AFFAIRS.

3365-23 A person shall not, as a provider, enter into a contract to
24 provide continuing care or senior adult congregate living
25 services in a facility, or extend the term of an existing
26 contract to provide continuing care or senior adult congregate
27 living services in a facility, if the contract requires or
28 permits the payment of an entrance fee to any person, and the
29 facility is or will be located in this state, or the provider
30 or a person acting on the provider's behalf solicits the
31 contract within this state and the person to be provided with
32 continuing care or senior adult congregate living services
33 under the contract resides within this state at the time of
34 the solicitation, unless the person has filed with the depart-
35 ment of elder affairs, established by chapter 249D, a current

1 disclosure statement which meets the requirements of section
2 523D.3.

3 Sec. 3. NEW SECTION. 523D.3 DISCLOSURE STATEMENT.

4 1. At the time of or prior to the execution of a contract
5 to provide continuing care or senior adult congregate living
6 services, or at the time of or prior to the transfer of any
7 money or other property to a provider by or on behalf of a
8 prospective resident, whichever occurs first, the provider
9 shall deliver a disclosure statement to the person, and to the
10 person's personal representative if one is appointed, with
11 whom the contract is to be entered into, which shall contain
12 all of the following information unless such information is in
13 the contract, a copy of which must be attached to the
14 statement:

15 a. The name and business address of the provider and a
16 statement of whether the provider is a partnership,
17 corporation, or other type of legal entity.

18 b. The names and business addresses of the officers, di-
19 rectors, trustees, managing or general partners, and any
20 person having a ten percent or greater equity or beneficial
21 interest in or of the provider and a description of such
22 person's interest in or occupation with the provider.

23 c. If the facility will be managed on a day-to-day basis
24 by a person other than a person directly employed by the
25 provider, a person named in response to paragraph "b", or the
26 proposed manager:

27 (1) A description of the business experience of the
28 person, if any, in the operation or management of similar
29 facilities.

30 (2) The name and address of any professional service,
31 firm, association, trust, partnership, or corporation in which
32 the person has, or which has in the person, a ten percent or
33 greater interest and which will or may provide goods, leases,
34 or services to the facility of a value of five hundred dollars
35 or more, within a year, including a description of the goods,

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1 leases, or services and their probable or anticipated cost to
2 the facility or provider.

3 (3) A description of any matter in which the person has
4 been convicted of a felony or pleaded nolo contendere to a
5 felony charge or been held liable or enjoined in a civil
6 action by final judgment if the felony or civil action
7 involved fraud, embezzlement, fraudulent conversion, or
8 misappropriation of property.

9 (4) A description of any matter in which the person is
10 subject to a currently effective injunctive or restrictive
11 order of a court of record, or within the past five years had
12 any state or federal license or permit suspended or revoked as
13 a result of an action brought by a governmental agency or the
3305-14 department of elder affairs, arising out of or relating to
15 business activity or health care, including, without
16 limitation, actions affecting a license to operate a foster
17 care facility, health care facility, retirement home, home for
18 the aged, or facility licensed under this chapter or a similar
19 law of another state.

20 d. A statement as to:

21 (1) Whether the provider is or ever has been affiliated
22 with a religious, charitable, or other nonprofit organization.

23 (2) The nature of the affiliation, if any.

24 (3) The extent to which the affiliate organization will be
25 responsible for the financial and contractual obligations of
26 the provider.

27 (4) The provision of the federal Internal Revenue Code, if
28 any, under which the provider or affiliate is exempt from the
29 payment of federal income tax.

30 e. The location and description of the physical property
31 or properties of the facility, existing or proposed, and, to
32 the extent proposed, the estimated completion date or dates,
33 whether or not construction has begun, and the contingencies
34 subject to which construction may be deferred.

35 f. The services provided or proposed to be provided under

1 contracts for continuing care at the facility, including the
2 extent to which medical care is furnished. The disclosure
3 statement shall clearly state which services are included in
4 basic contracts for continuing care and which services are
5 made available at or by the facility at extra charge.

6 g. A description of all fees required of residents,
7 including the entrance fee and periodic charges, if any. The
8 description shall include the manner by which the provider may
9 adjust periodic charges or other recurring fees and the
10 limitations on such adjustments, if any.

11 h. The provisions which have been made or will be made, if
12 any, to provide reserve funding or security to enable the
13 provider to fully perform its obligations under contracts to
14 provide continuing care or senior adult congregate living
15 services at the facility, including the establishment of
16 escrow accounts, trusts, or reserve funds, together with the
17 manner in which the funds will be invested and the names and
18 experience of persons who will make the investment decisions.

19 i. Certified financial statements of the provider,
20 including:

21 (1) A balance sheet as of the end of the two most recent
22 fiscal years.

23 (2) Income statements of the provider for the two most re-
24 cent fiscal years or the shorter period of time in which the
25 provider has been in existence.

26 j. If operation of the facility has not yet commenced, a
27 statement of the anticipated source and application of the
28 funds used or to be used in the purchase or construction of
29 the facility, including:

30 (1) An estimate of the cost of purchasing or constructing
31 and equipping the facility, including related costs such as
32 financing expense, legal expense, land costs, occupancy
33 development costs, and all other similar costs which the
34 provider expects to incur or become obligated for prior to the
35 commencement of operations.

1 (2) A description of any mortgage loan or other long-term
2 financing intended to be used for the financing of the
3 facility, including the anticipated terms and costs of the
4 financing.

5 (3) An estimate of the total entrance fees to be received
6 from or on behalf of residents at or prior to commencement of
7 operation of the facility.

8 (4) An estimate of the funds, if any, which are
9 anticipated to be necessary to fund start-up losses and
10 provide reserve funds to assure full performance of the
11 obligations of the provider under contracts for the provision
12 of continuing care or senior adult congregate living services.

13 (5) A projection of estimated income from fees and charges
14 other than entrance fees, showing individual rates presently
15 anticipated to be charged and including a description of the
16 assumptions used for calculating the estimated occupancy rate
17 of the facility and the effect on the income of the facility
18 of government subsidies for health care services, if any, to
19 be provided pursuant to the contracts for continuing care or
20 senior adult congregate living services.

21 (6) A projection of estimated operating expenses of the
22 facility, including a description of the assumptions used in
23 calculating the expenses and separate allowances, if any, for
24 the replacement of equipment and furnishings and anticipated
25 major structural repairs or additions.

26 (7) Identification of any assets pledged as collateral for
27 any purpose.

28 (8) An estimate of annual payments of principal and
29 interest required by any mortgage loan or other long-term
30 financing.

339-31 k. Other material information concerning the facility or
335-32 the provider as required by the department of elder affairs or
33 as the provider wishes to include.

34 l. The cover page of the disclosure statement shall state,
35 in a prominent location and type face, the date of the disc-

1 closure statement.

2 m. A copy of the standard form or forms of contract for
3 continuing care or senior adult congregate living services
4 used by the provider, attached as an exhibit to each
5 disclosure statement.

3365 6 2. The provider shall file with the department of elder
7 affairs, annually within four months following the end of the
8 provider's fiscal year, an annual disclosure statement which
9 shall contain the information required by this chapter for the
10 initial disclosure statement. The annual disclosure statement
11 shall also be accompanied by a narrative describing any

3362 12 material differences between:

3365 13 a. The pro forma income statements filed pursuant to this
14 chapter either as part of the most recent annual disclosure
15 statement or other filing with the department of elder
16 affairs.

17 b. The actual results of operations during the fiscal
18 year.

19 The annual disclosure statement shall also contain a
3362 20 revised pro forma income statement for the next fiscal year.

3365 21 3. From the date an annual disclosure statement is filed
22 until the date the next succeeding annual disclosure statement
23 is filed with the department of elder affairs and prior to the
24 provider's acceptance of part or all of any application fee or
25 part of the entrance fee or the execution of the continuing
26 care or senior adult congregate living services contract by
27 the resident, whichever occurs first, the provider shall
28 deliver the current annual disclosure statement to the current
29 or prospective residents with whom the continuing care or
30 senior adult congregate living services contract is or may be
31 entered into and to a resident's or prospective resident's
32 personal representative if one is appointed.

33 4. In addition to filing the annual disclosure statement,
34 the provider may amend its currently filed disclosure
35 statement at any other time if, in the opinion of the

1 provider, an amendment is necessary to prevent the disclosure
2 statement and annual disclosure statement from containing any
3 material misstatement of fact or omission to state a material
4 fact required to be included in the statement. The amendment
5 or amended disclosure statement shall be filed with the
3365-6 department of elder affairs before the statement is delivered
7 to a resident or prospective resident and a personal represen-
8 tative of a resident or prospective resident and is subject to
9 all the requirements, including those as to content and
10 delivery, of this chapter.

11 Sec. 4. NEW SECTION. 523D.4 FALSE INFORMATION.

12 1. A provider shall not make, publish, disseminate, cir-
13 culate, or place before the public, or cause, directly or in-
14 directly, to be made, published, disseminated, circulated, or
15 placed before the public, in a newspaper or other publication,
16 or in the form of a notice, circular, pamphlet, letter, or
17 poster, or over any radio or television station, or in any
18 other way, an advertisement, announcement, or statement of any
19 sort containing any assertion, representation, or statement
20 which is untrue, deceptive, or misleading.

3365-21 2. A provider shall not file with the department of elder
22 affairs or make, publish, disseminate, circulate, or deliver
23 to any person or place before the public, or cause, directly
24 or indirectly, to be made, published, disseminated,
25 circulated, or delivered to any person or placed before the
26 public, a financial statement which does not meet generally
27 accepted accounting principles.

28 Sec. 5. NEW SECTION. 523D.5 ENTRANCE FEE ESCROW FOR NEW
29 CONSTRUCTION.

30 The provider shall establish an interest-bearing escrow
31 account with a state or federally regulated financial
32 institution agreed upon by the provider and the current or
33 prospective resident for any construction for which an entry
34 fee arrangement is used. These funds may be released only as
35 follows:

1 1. If the entrance fee applies to a living unit which has
2 not previously been occupied by a resident, the entrance fee
3 shall be released to the provider only when the escrow agent
4 is satisfied that aggregate entrance fees received or
5 receivable by the provider pursuant to binding continuing care
6 or senior adult congregate living services contracts equal
7 fifty percent of the units to be constructed plus the sum of
8 any anticipated entrance fees and the anticipated proceeds of
9 any first mortgage loan or other long-term financing
10 commitment are equal to not less than ninety percent of the
11 aggregate cost of constructing or purchasing, equipping, and
12 furnishing the facility.

13 2. Upon receipt by the escrow agent of a request by the
14 provider for the release of these escrow funds, the escrow
15 agent shall approve release of the funds within five working
16 days unless the escrow agent finds that the requirements of
17 subsection 1 have not been met and notifies the provider of
18 the basis for this finding. The request for release of the
19 escrow funds shall be accompanied by any documentation the
20 fiduciary requires.

21 3. If the provider fails to meet the requirements for
22 release of funds held in this escrow account within a time
23 period the escrow agent considers reasonable, these funds
24 shall be returned by the escrow agent to the persons who have
25 made payment to the provider. The escrow agent shall notify
26 the provider of the length of this time period when the
27 provider requests release of the funds.

28 4. An entrance fee held in escrow may be returned by the
29 escrow agent to the person who made payment to the provider at
30 any time upon receipt by the escrow agent of notice from the
31 provider that this person is entitled to a refund of the
32 entrance fee.

33 Sec. 6. NEW SECTION. 523D.6 PERSONAL REPRESENTATIVE --
34 CANCELLATION.

35 1. A prospective resident or resident shall be provided a

1 form to appoint a personal representative to receive copies of
2 all notices, disclosures, or forms required by this chapter to
3 be delivered to a prospective resident or resident. A
4 personal representative appointed under this section shall not
5 have legal authority to make any decision for the prospective
6 resident or resident appointing the person to be a personal
7 representative. The personal representative may advise the
8 prospective resident or resident as to the materials provided.
9 A personal representative shall not be affiliated or asso-
10 ciated with a senior adult congregate living facility and
11 shall not be a prospective resident or resident.

12 2. A person may cancel a contract with a senior adult
13 congregate living facility for a period equal to the later
14 ending period of the following:

15 a. One hundred twenty calendar days after the disclosure
16 statement required by section 523D.3 was delivered to the
17 person and to the person's personal representative if one is
18 appointed.

19 b. Within three business days after the execution of a
20 contract to provide continuing care or senior adult congregate
21 living services, or at the time of the transfer of any money
22 or other property to a provider by or on behalf of a
23 prospective resident, whichever occurs first.

24 3. A provider shall furnish to each prospective resident
25 and the prospective resident's personal representative, if one
26 is appointed, at the time section 523D.3 requires delivery of
27 a disclosure statement, a completed form in duplicate,
28 captioned "Notice of Cancellation", which shall be attached to
29 the disclosure statement and easily detachable, and which
30 shall contain in ten point boldface type the following
31 information and statements in the same language as that used
32 in the contract:

33 Notice of Cancellation

34 a. Date contract was executed or money or property trans-
35 ferred to the provider, whichever occurs first, if known:

1

2 b. Date disclosure statement was delivered:

3 You may cancel this contract, without any penalty or
4 obligation, within three business days from date in paragraph
5 "a" above, or within one hundred twenty days of date in
6 paragraph "b" above, whichever period ends upon a later date.

7 If you cancel this contract, any money or property
8 transferred to the provider, any payments made by you will be
9 returned within ten business days following receipt by the
10 provider of your cancellation notice, and any security
11 interest arising out of the transaction will be canceled.

12 If you cancel this contract, and have already moved into
13 the provider's facility, you must vacate the provider's
14 facility within ten days after receipt by the provider of your
15 cancellation notice.

16 To cancel this contract, mail or deliver a signed and dated
17 copy of this cancellation notice or any other written notice,
18 or send a telegram, to, (name of provider) at
19 (address of provider's place of business).

20 I hereby cancel this contract.

21

22 (Date)

23

24 (prospective resident's or resident's signature)

25 Sec. 7. NEW SECTION. 523D.7 CIVIL LIABILITY.

26 1. A provider is liable to the person contracting for
27 continuing care or senior adult congregate living services for
28 damages and repayment of all fees paid to the provider,
29 facility, or person violating this chapter, less the
30 reasonable value of care and lodging provided to the resident
31 by or on whose behalf the contract for continuing care or
32 senior adult congregate living services was entered into prior
33 to discovery of the violation, misstatement, or omission, or
34 the time the violation, misstatement, or omission should
35 reasonably have been discovered, together with interest at the

1 legal rate for judgments and court costs and reasonable
2 attorney fees, if the provider does any of the following:

3 a. Enters into a contract to provide continuing care or
4 senior adult congregate living services at a facility without
5 having first delivered a disclosure statement meeting the
6 requirements of this chapter to the person contracting for
7 continuing care or senior adult congregate living services and
8 to the person's personal representative if one is appointed by
9 the person.

10 b. Enters into a contract to provide continuing care or
11 senior adult congregate living services at a facility with a
12 person who has relied on a disclosure statement which omits a
13 material fact required to be included in the statement or
14 necessary in order to make the statement, in light of the
15 circumstances under which it is made, not misleading.

16 2. Liability under this section exists regardless of
17 whether or not the provider or person liable had actual know-
18 ledge of the misstatement or omission.

19 3. A person shall not file or maintain an action under
20 this section if the person, before filing the action, received
21 an offer to refund all amounts paid the provider, facility, or
22 person violating this chapter, together with interest from the
23 date of payment, less the reasonable value of care and lodging
24 provided prior to receipt of the offer, and the person failed
25 to accept the offer within thirty days of its receipt. At the
26 time a provider makes a written offer of refund, the provider

3365 27 shall file a copy with the department of elder affairs. The
28 refund offer shall refer to the provisions of this section.

29 4. An action shall not be maintained to enforce a
30 liability created under this chapter unless brought before the
31 expiration of six years after the execution of the contract
32 for continuing care or senior adult congregate living services
33 which gave rise to the violation.

34 5. Except as expressly provided in this chapter, civil
35 liability in favor of a private party shall not arise against

1 a person, by implication, from or as a result of the violation
2 of this chapter. This chapter does not limit a liability
3 which may exist by virtue of any other statute or under common
4 law if this chapter were not in effect.

5 Sec. 8. NEW SECTION. 523D.8 CRIMINAL PENALTIES.

6 1. A person who willfully and knowingly violates a pro-
7 vision of this chapter or a rule adopted or order entered
8 pursuant to this chapter, upon conviction, is guilty of an
9 aggravated misdemeanor.

10 2. This chapter does not limit the power of the state to
11 punish any person for any conduct which constitutes a crime
12 under any other statute.

13 Sec. 9. NEW SECTION. 523D.9 INITIAL FILING.

14 For any facility offering continuing care or senior adult
15 congregate living services contracts prior to the effective
16 date of this Act, initial filings of disclosure statements
17 shall take effect in and for the facility's fiscal year ending
18 after January 1, 1990.

19 EXPLANATION

20 This bill requires the filing, with the department of elder
21 affairs, of a comprehensive and updated disclosure statement
22 and the provision of the statement to persons and their
23 personal representatives, if any, considering entering into a
24 continuing care or senior adult congregate living services
25 contract. Provisions are made regarding the disclosure
26 statement. A limited right of cancellation is provided.
27 Civil liability and criminal penalties are provided for
28 violation of the new chapter or rules adopted pursuant to the
29 new chapter.

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SENATE FILE 278

S-3365

1 Amend Senate File 278 as follows:
2 1. Page 2, lines 21 through 22, by striking the
3 words "DEPARTMENT OF ELDER AFFAIRS" and inserting the
4 following: "DIVISION OF INSURANCE".
5 2. Page 2, lines 34 and 35, by striking the words
6 "department of elder affairs, established by chapter
7 249D" and inserting the following: "division of
8 insurance of the department of commerce".
9 3. Page 4, line 14, by striking the words
10 "department of elder affairs" and inserting the
11 following: "division of insurance".
12 4. Page 6, line 32, by striking the words
13 "department of elder affairs" and inserting the
14 following: "division of insurance".
15 5. Page 7, lines 6 and 7, by striking the words
16 "department of elder affairs" and inserting the
17 following: "division of insurance".
18 6. Page 7, lines 15 and 16, by striking the words
19 "department of elder affairs" and inserting the
20 following: "division of insurance".
21 7. Page 7, line 23, by striking the words
22 "department of elder affairs" and inserting the
23 following: "division of insurance".
24 8. Page 8, line 6, by striking the words
25 "department of elder affairs" and inserting the
26 following: "division of insurance".
27 9. Page 8, lines 21 and 22, by striking the words
28 "department of elder affairs" and inserting the
29 following: "division of insurance".
30 10. Page 12, line 27, by striking the words
31 "department of elder affairs" and inserting the
32 following: "division of insurance".

By JULIA B. GENTLEMAN

S-3365 FILED MARCH 21, 1989

ADOPTED 3-21-89 (p 94B)

SENATE FILE 278

S-3369

1 Amend Senate File 278 as follows:
2 1. Page 1, line 8, by inserting after the figure
3 "135C," the following: "or community supervised
4 living arrangements approved by the department of
5 human services under section 225C.21,".

By JOE WELSH
PAT DELUHERY

S-3369 FILED MARCH 21, 1989

ADOPTED 3-21-89 (p 94B)

SENATE FILE 278

S-3362

1 Amend Senate File 278 as follows:

A 2 1. Page 3, line 34, by striking the words "five
3 hundred" and inserting the following: "twenty-five
4 thousand".

B 5 2. Page 7, line 12, by striking the word
6 "material" and inserting the following:
7 "substantial".

8 3. Page 7, by inserting after line 20, the
9 following:
10 "2A. For purposes of this section, "substantial
11 differences" includes, but is not limited to the
12 following:

13 a. A change of ten percent or more of any item in
14 a financial report, between the pro forma and actual
15 results, or between one fiscal year and the prior
16 fiscal year.

17 b. An item requiring a footnote by the accountant
18 preparing a report according to generally accepted
19 accounting principles."

By JULIA B. GENTLEMAN

S-3362 FILED MARCH 21, 1989
DIVISION A-LOST, DIVISION B-LOST

3-21-89 (p. 942)

SENATE FILE 278

S-3359

1 Amend Senate File 278 as follows:

2 1. Page 6, line 31, by inserting after the word
3 "information" the following: ", which may include an
4 independent analysis of the actuarial soundness of the
5 financial plan,".

By ALVIN MILLER
PATRICK DELUHERY

S-3359 FILED MARCH 21, 1989

ADOPTED 3-21-89 (p. 937)

*Bill HUMAN RES
Amend & DO PASS / # - 3876, 45-89 (p. 1295)*

SENATE FILE 278
BY DELUHERY

(AS AMENDED AND PASSED BY THE SENATE MARCH 21, 1989)

~~-----~~ - New Language by the Senate

Passed Senate, Date 4-17-89 (p. 1476) Passed House, Date 4-12-89 (p. 1528)
Vote: Ayes 45 Nays 0 Vote: Ayes 93 Nays 0
Approved May 24, 1989

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S.F. 278

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8 and operated under chapter 135C, or community supervised
9 living arrangements approved by the department of human
10 services under section 225C.21, or community supervised living
11 arrangements approved by the department of human services
12 under section 225C.21, whether operated by a for-profit or a
13 not-for-profit organization which undertakes through its
14 ownership or management to provide housing and one or more
15 supportive services for a time period exceeding twenty-four
16 consecutive hours, to ten or more residents, the majority of
17 whom are sixty years of age or older. A person who is
18 furnishing the continuing care and who is related by
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35 period of time greater than one year.

1 5. "Continuing care" means the furnishing to residents,
2 the majority of whom are sixty years of age or older, other
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4 person furnishing the care, of senior adult congregate living
5 services together with nursing services regardless of whether
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10 a provider of a sum of money or other property made or
11 promised to be made as full or partial consideration for
12 acceptance of a specified individual as a resident in a
13 facility.

3708, 395714 7. "Facility" means a senior adult living facility or a
15 continuing care facility.

16 8. "Living unit" means a room, apartment, cottage, or
17 other area within a facility set aside for the exclusive use
18 or control of one or more identified residents.

19 9. "Provider" means a person undertaking to provide care
20 in a senior adult congregate living facility or continuing
21 care facility.

22 10. "Resident" means an individual, sixty years of age or
23 older, entitled to receive care in a senior adult congregate
24 living facility or continuing care facility.

25 Sec. 2. NEW SECTION. 523D.2 FILING WITH DIVISION OF
26 INSURANCE.

27 A person shall not, as a provider, enter into a contract to
28 provide continuing care or senior adult congregate living
29 services in a facility, or extend the term of an existing
30 contract to provide continuing care or senior adult congregate
31 living services in a facility, if the contract requires or
32 permits the payment of an entrance fee to any person, and the
33 facility is or will be located in this state, or the provider
34 or a person acting on the provider's behalf solicits the
3708, 395735 contract within this state and the person to be provided with

1 continuing care or senior adult congregate living services
2 under the contract resides within this state at the time of
3 the solicitation, unless the person has filed with the
4 division of insurance of the department of commerce, a current
5 disclosure statement which meets the requirements of section
378-6 523D.3.

7 Sec. 3. NEW SECTION. 523D.3 DISCLOSURE STATEMENT.

8 1. At the time of or prior to the execution of a contract
9 to provide continuing care or senior adult congregate living
10 services, or at the time of or prior to the transfer of any
11 money or other property to a provider by or on behalf of a
12 prospective resident, whichever occurs first, the provider
13 shall deliver a disclosure statement to the person, and to the
14 person's personal representative if one is appointed, with
15 whom the contract is to be entered into, which shall contain
16 all of the following information unless such information is in
17 the contract, a copy of which must be attached to the
18 statement:

19 a. The name and business address of the provider and a
20 statement of whether the provider is a partnership,
21 corporation, or other type of legal entity.

22 b. The names and business addresses of the officers, di-
23 rectors, trustees, managing or general partners, and any
24 person having a ten percent or greater equity or beneficial
25 interest in or of the provider and a description of such
26 person's interest in or occupation with the provider.

378, 395727 c. If the facility will be managed on a day-to-day basis
28 by a person other than a person directly employed by the
29 provider, a person named in response to paragraph "b", or the
30 proposed manager:

31 (1) A description of the business experience of the
32 person, if any, in the operation or management of similar
33 facilities.

34 (2) The name and address of any professional service,
35 firm, association, trust, partnership, or corporation in which

1 the person has, or which has in the person, a ten percent or
2 greater interest and which will or may provide goods, leases,
3 or services to the facility of a value of five hundred dollars
4 or more, within a year, including a description of the goods,
5 leases, or services and their probable or anticipated cost to
6 the facility or provider.

7 (3) A description of any matter in which the person has
8 been convicted of a felony or pleaded nolo contendere to a
9 felony charge or been held liable or enjoined in a civil
10 action by final judgment if the felony or civil action
11 involved fraud, embezzlement, fraudulent conversion, or
12 misappropriation of property.

3708-

13 (4) A description of any matter in which the person is
14 subject to a currently effective injunctive or restrictive
15 order of a court of record, or within the past five years had
16 any state or federal license or permit suspended or revoked as
17 a result of an action brought by a governmental agency or the
18 division of insurance, arising out of or relating to business
19 activity or health care, including, without limitation,
20 actions affecting a license to operate a foster care facility,
21 health care facility, retirement home, home for the aged, or
22 facility licensed under this chapter or a similar law of
23 another state.

24 d. A statement as to:

25 (1) Whether the provider is or ever has been affiliated
26 with a religious, charitable, or other nonprofit organization.

27 (2) The nature of the affiliation, if any.

28 (3) The extent to which the affiliate organization will be
29 responsible for the financial and contractual obligations of
30 the provider.

31 (4) The provision of the federal Internal Revenue Code, if
32 any, under which the provider or affiliate is exempt from the
33 payment of federal income tax.

34 e. The location and description of the physical property
35 or properties of the facility, existing or proposed, and, to

3708, 395725

1 the extent proposed, the estimated completion date or dates,
2 whether or not construction has begun, and the contingencies
3 subject to which construction may be deferred.

4 f. The services provided or proposed to be provided under
5 contracts for continuing care at the facility, including the
6 extent to which medical care is furnished. The disclosure
7 statement shall clearly state which services are included in
8 basic contracts for continuing care and which services are
9 made available at or by the facility at extra charge.

10 g. A description of all fees required of residents,
11 including the entrance fee and periodic charges, if any. The
12 description shall include the manner by which the provider may
13 adjust periodic charges or other recurring fees and the
14 limitations on such adjustments, if any.

15 h. The provisions which have been made or will be made, if
16 any, to provide reserve funding or security to enable the
17 provider to fully perform its obligations under contracts to
18 provide continuing care or senior adult congregate living
19 services at the facility, including the establishment of
20 escrow accounts, trusts, or reserve funds, together with the
21 manner in which the funds will be invested and the names and
22 experience of persons who will make the investment decisions.

3268, 3757-23 i. Certified financial statements of the provider,
24 including:

25 (1) A balance sheet as of the end of the two most recent
26 fiscal years.

27 (2) Income statements of the provider for the two most re-
28 cent fiscal years or the shorter period of time in which the
29 provider has been in existence.

30 j. If operation of the facility has not yet commenced, a
31 statement of the anticipated source and application of the
32 funds used or to be used in the purchase or construction of
33 the facility, including:

34 (1) An estimate of the cost of purchasing or constructing
35 and equipping the facility, including related costs such as

1 financing expense, legal expense, land costs, occupancy
2 development costs, and all other similar costs which the
3 provider expects to incur or become obligated for prior to the
4 commencement of operations.

5 (2) A description of any mortgage loan or other long-term
6 financing intended to be used for the financing of the
7 facility, including the anticipated terms and costs of the
8 financing.

9 (3) An estimate of the total entrance fees to be received
10 from or on behalf of residents at or prior to commencement of
11 operation of the facility.

12 (4) An estimate of the funds, if any, which are
13 anticipated to be necessary to fund start-up losses and
14 provide reserve funds to assure full performance of the
15 obligations of the provider under contracts for the provision
16 of continuing care or senior adult congregate living services.

17 (5) A projection of estimated income from fees and charges
18 other than entrance fees, showing individual rates presently
19 anticipated to be charged and including a description of the
20 assumptions used for calculating the estimated occupancy rate
21 of the facility and the effect on the income of the facility
22 of government subsidies for health care services, if any, to
23 be provided pursuant to the contracts for continuing care or
24 senior adult congregate living services.

25 (6) A projection of estimated operating expenses of the
26 facility, including a description of the assumptions used in
27 calculating the expenses and separate allowances, if any, for
28 the replacement of equipment and furnishings and anticipated
29 major structural repairs or additions.

30 (7) Identification of any assets pledged as collateral for
31 any purpose.

32 (8) An estimate of annual payments of principal and
33 interest required by any mortgage loan or other long-term
34 financing.

35 k. Other material information, which may include an

1 independent analysis of the actuarial soundness of the
2 financial plan, concerning the facility or the provider as
3 required by the division of insurance or as the provider
4 wishes to include.

5 1. The cover page of the disclosure statement shall state,
6 in a prominent location and type face, the date of the dis-
7 closure statement.

8 m. A copy of the standard form or forms of contract for
9 continuing care or senior adult congregate living services
10 used by the provider, attached as an exhibit to each
11 disclosure statement.

3708, 395712 2. The provider shall file with the division of insurance,
13 annually within four months following the end of the
14 provider's fiscal year, an annual disclosure statement which
15 shall contain the information required by this chapter for the
16 initial disclosure statement. The annual disclosure statement
17 shall also be accompanied by a narrative describing any
18 material differences between:

19 a. The pro forma income statements filed pursuant to this
20 chapter either as part of the most recent annual disclosure
21 statement or other filing with the division of insurance.

22 b. The actual results of operations during the fiscal
23 year.

24 The annual disclosure statement shall also contain a
25 revised pro forma income statement for the next fiscal year.

26 3. From the date an annual disclosure statement is filed
27 until the date the next succeeding annual disclosure statement
28 is filed with the division of insurance and prior to the
29 provider's acceptance of part or all of any application fee or
30 part of the entrance fee or the execution of the continuing
31 care or senior adult congregate living services contract by
32 the resident, whichever occurs first, the provider shall
33 deliver the current annual disclosure statement to the current
34 or prospective residents with whom the continuing care or
35 senior adult congregate living services contract is or may be

1 entered into and to a resident's or prospective resident's
2 personal representative if one is appointed.

3 4. In addition to filing the annual disclosure statement,
4 the provider may amend its currently filed disclosure
5 statement at any other time if, in the opinion of the
6 provider, an amendment is necessary to prevent the disclosure
7 statement and annual disclosure statement from containing any
8 material misstatement of fact or omission to state a material
9 fact required to be included in the statement. The amendment
10 or amended disclosure statement shall be filed with the
11 division of insurance before the statement is delivered to a
12 resident or prospective resident and a personal representative
13 of a resident or prospective resident and is subject to all
14 the requirements, including those as to content and delivery,
15 of this chapter.

16 Sec. 4. NEW SECTION. 523D.4 FALSE INFORMATION.

17 1. A provider shall not make, publish, disseminate, cir-
18 culate, or place before the public, or cause, directly or in-
19 directly, to be made, published, disseminated, circulated, or
20 placed before the public, in a newspaper or other publication,
21 or in the form of a notice, circular, pamphlet, letter, or
22 poster, or over any radio or television station, or in any
23 other way, an advertisement, announcement, or statement of any
24 sort containing any assertion, representation, or statement
25 which is untrue, deceptive, or misleading.

26 2. A provider shall not file with the division of
27 insurance or make, publish, disseminate, circulate, or deliver
28 to any person or place before the public, or cause, directly
29 or indirectly, to be made, published, disseminated,
30 circulated, or delivered to any person or placed before the
31 public, a financial statement which does not meet generally
32 accepted accounting principles.

33 Sec. 5. NEW SECTION. 523D.5 ENTRANCE FEE ESCROW FOR NEW
34 CONSTRUCTION.

35 The provider shall establish an interest-bearing escrow

1 account with a state or federally regulated financial
3708, 3457 2 institution agreed upon by the provider and the current or
3 prospective resident for any construction for which an entry
4 fee arrangement is used. These funds may be released only as
5 follows:

3708, 3457 6 1. If the entrance fee applies to a living unit which has
7 not previously been occupied by a resident, the entrance fee
8 shall be released to the provider only when the escrow agent
9 is satisfied that aggregate entrance fees received or
10 receivable by the provider pursuant to binding continuing care
11 or senior adult congregate living services contracts equal
12 fifty percent of the units to be constructed plus the sum of
13 any anticipated entrance fees and the anticipated proceeds of
14 any first mortgage loan or other long-term financing
15 commitment are equal to not less than ninety percent of the
16 aggregate cost of constructing or purchasing, equipping, and
17 furnishing the facility.

18 2. Upon receipt by the escrow agent of a request by the
19 provider for the release of these escrow funds, the escrow
20 agent shall approve release of the funds within five working
21 days unless the escrow agent finds that the requirements of
22 subsection 1 have not been met and notifies the provider of
23 the basis for this finding. The request for release of the
24 escrow funds shall be accompanied by any documentation the
25 fiduciary requires.

26 3. If the provider fails to meet the requirements for
27 release of funds held in this escrow account within a time
28 period the escrow agent considers reasonable, these funds
29 shall be returned by the escrow agent to the persons who have
30 made payment to the provider. The escrow agent shall notify
31 the provider of the length of this time period when the
32 provider requests release of the funds.

3708, 3457 33 4. An entrance fee held in escrow may be returned by the
34 escrow agent to the person who made payment to the provider at
35 any time upon receipt by the escrow agent of notice from the

1 provider that this person is entitled to a refund of the
2 entrance fee.

3 Sec. 6. NEW SECTION. 523D.6 PERSONAL REPRESENTATIVE --
4 CANCELLATION.

5 1. A prospective resident or resident shall be provided a
6 form to appoint a personal representative to receive copies of
7 all notices, disclosures, or forms required by this chapter to
8 be delivered to a prospective resident or resident. A
9 personal representative appointed under this section shall not
10 have legal authority to make any decision for the prospective
11 resident or resident appointing the person to be a personal
12 representative. The personal representative may advise the
13 prospective resident or resident as to the materials provided.
14 A personal representative shall not be affiliated or asso-
15 ciated with a senior adult congregate living facility and
16 shall not be a prospective resident or resident.

17 2. A person may cancel a contract with a senior adult
18 congregate living facility for a period equal to the later
19 ending period of the following:

20 a. One hundred twenty calendar days after the disclosure
21 statement required by section 523D.3 was delivered to the
22 person and to the person's personal representative if one is
23 appointed.

24 b. Within three business days after the execution of a
25 contract to provide continuing care or senior adult congregate
26 living services, or at the time of the transfer of any money
27 or other property to a provider by or on behalf of a
28 prospective resident, whichever occurs first.

29 3. A provider shall furnish to each prospective resident
30 and the prospective resident's personal representative, if one
31 is appointed, at the time section 523D.3 requires delivery of
32 a disclosure statement, a completed form in duplicate,
33 captioned "Notice of Cancellation", which shall be attached to
34 the disclosure statement and easily detachable, and which
35 shall contain in ten point boldface type the following

1 information and statements in the same language as that used
2 in the contract:

3 Notice of Cancellation

4 a. Date contract was executed or money or property trans-
5 ferred to the provider, whichever occurs first, if known:
6

7 b. Date disclosure statement was delivered:

8 You may cancel this contract, without any penalty or
9 obligation, within three business days from date in paragraph

378, 387 10 "a" above, or within one hundred twenty days of date in
11 paragraph "b" above, whichever period ends upon a later date.

378, 387 12 If you cancel this contract, any money or property
13 transferred to the provider, any payments made by you will be
14 returned within ten business days following receipt by the
15 provider of your cancellation notice, and any security
16 interest arising out of the transaction will be canceled.

17 If you cancel this contract, and have already moved into
18 the provider's facility, you must vacate the provider's
19 facility within ten days after receipt by the provider of your
20 cancellation notice.

378, 395 21 To cancel this contract, mail or deliver a signed and dated
22 copy of this cancellation notice or any other written notice,
23 or send a telegram, to, (name of provider) at
24 (address of provider's place of business).

25 I hereby cancel this contract.

26

27 (Date)

28

29 (prospective resident's or resident's signature)

378, 395 30 Sec. 7. NEW SECTION. 523D.7 CIVIL LIABILITY.

31 1. A provider is liable to the person contracting for
32 continuing care or senior adult congregate living services for
33 damages and repayment of all fees paid to the provider,
34 facility, or person violating this chapter, less the
35 reasonable value of care and lodging provided to the resident

1 by or on whose behalf the contract for continuing care or
2 senior adult congregate living services was entered into prior
3 to discovery of the violation, misstatement, or omission, or
4 the time the violation, misstatement, or omission should
5 reasonably have been discovered, together with interest at the
6 legal rate for judgments and court costs and reasonable
7 attorney fees, if the provider does any of the following:

8 a. Enters into a contract to provide continuing care or
9 senior adult congregate living services at a facility without
10 having first delivered a disclosure statement meeting the
11 requirements of this chapter to the person contracting for
12 continuing care or senior adult congregate living services and
13 to the person's personal representative if one is appointed by
14 the person.

3908, 395715 b. Enters into a contract to provide continuing care or
16 senior adult congregate living services at a facility with a
17 person who has relied on a disclosure statement which omits a
18 material fact required to be included in the statement or
19 necessary in order to make the statement, in light of the
20 circumstances under which it is made, not misleading.

21 2. Liability under this section exists regardless of
22 whether or not the provider or person liable had actual know-
23 ledge of the misstatement or omission.

24 3. A person shall not file or maintain an action under
25 this section if the person, before filing the action, received
3708, 395726 an offer to refund all amounts paid the provider, facility, or
27 person violating this chapter, together with interest from the
28 date of payment, less the reasonable value of care and lodging
29 provided prior to receipt of the offer, and the person failed
30 to accept the offer within thirty days of its receipt. At the
31 time a provider makes a written offer of refund, the provider
32 shall file a copy with the division of insurance. The refund
33 offer shall refer to the provisions of this section.

34 4. An action shall not be maintained to enforce a
35 liability created under this chapter unless brought before the

1 expiration of six years after the execution of the contract
2 for continuing care or senior adult congregate living services
3 which gave rise to the violation.

4 5. Except as expressly provided in this chapter, civil
5 liability in favor of a private party shall not arise against
6 a person, by implication, from or as a result of the violation
7 of this chapter. This chapter does not limit a liability
8 which may exist by virtue of any other statute or under common
9 law if this chapter were not in effect.

10 Sec. 8. NEW SECTION. 523D.8 CRIMINAL PENALTIES.

11 1. A person who willfully and knowingly violates a pro-
12 vision of this chapter or a rule adopted or order entered
13 pursuant to this chapter, upon conviction, is guilty of an
14 aggravated misdemeanor.

15 2. This chapter does not limit the power of the state to
16 punish any person for any conduct which constitutes a crime
17 under any other statute.

18 Sec. 9. NEW SECTION. 523D.9 INITIAL FILING.

19 For any facility offering continuing care or senior adult
20 congregate living services contracts prior to the effective
21 date of this Act, initial filings of disclosure statements
22 shall take effect in and for the facility's fiscal year ending
23 after January 1, 1990.

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378,3957

SENATE FILE 278

H-3957

1 Amend Senate File 278, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 1, by striking lines 10 through 12, and
4 inserting the following: "services under section
5 225C.21, whether operated by a for-profit or a".

6 2. Page 1, line 29, by striking the word
7 "facility" and inserting the following: "retirement
8 community".

9 3. Page 2, line 9, by inserting after the word
10 "transfer" the following: "which exceeds the lesser
11 amount of five thousand dollars or six times the
12 living unit's monthly fee".

13 4. Page 2, by striking lines 14 and 15 and
14 inserting the following:

15 "7. "Facility" means a senior adult congregate
16 living facility or a continuing care retirement
17 community."

18 5. Page 2, line 35, by inserting after the word
19 "state" the following: "for a facility located in
20 this state".

21 6. Page 3, line 6, by inserting after the figure
22 "523D.3." the following: "The disclosure statement
23 shall be accompanied by a one hundred dollar filing
24 fee as a condition of filing and compliance with this
25 section."

26 7. Page 3, line 27, by striking the word "If" and
27 inserting the following: "With respect to each person
28 covered by paragraph "b", and if".

29 8. Page 4, line 12, by inserting after the word
30 "property" the following: "or similar felonies
31 involving theft or dishonesty".

32 9. Page 4, line 25, by inserting after the word
33 "affiliated" the following: "with a for profit
34 organization or".

35 10. Page 5, line 23, by inserting after the word
36 "provider," the following: "for all parts of an
37 operation covered by the contract, including the
38 health center or nursing home portion of the
39 continuing care retirement community, if those
40 services are included in the contract, but the
41 disclosure statement may exclude services or
42 operations not provided to residents as senior adult
43 congregate living services under their contract,".

44 11. Page 7, line 13, by striking the word "four"
45 and inserting the following: "five".

46 12. Page 7, by striking lines 16 through 23, and
47 inserting the following: "initial disclosure
48 statement. The annual disclosure statement shall also
49 be accompanied by a narrative describing:

50 a. Any material differences between the pro forma

B-3957

Page 2

1 income statement filed pursuant to this chapter either
2 as part of the most recent annual disclosure statement
3 and the actual results of operations during the fiscal
4 year, if the material differences substantially affect
5 the financial safety or soundness of the community.

6 b. Any material differences between the pro forma
7 balance sheet and the actual results of operations
8 during the fiscal year."

9 13. Page 9, lines 2 through 4, by striking the
10 words "agreed upon by the provider and the current or
11 prospective resident for any construction for which an
12 entry fee arrangement is used." and inserting the
13 following: "for a living unit which has not
14 previously been occupied by a resident for which an
15 entry fee arrangement is used. The escrow account
16 agreement shall be entered into between the financial
17 institution and the provider with the financial
18 institution as the escrow agent and as a fiduciary for
19 the resident or the prospective resident, the
20 agreement shall state that its purpose is to protect
21 the resident or the prospective resident, and the
22 funds deposited in the account shall be kept and
23 maintained in an account separate and apart from the
24 provider's business accounts."

25 14. Page 9, by striking lines 9 through 17, and
26 inserting the following: "reasonably determines that
27 the following conditions have been satisfied:

28 a. The facility has a minimum of fifty percent of
29 the units reserved for which the provider is charging
30 an entrance fee.

31 b. The aggregate amount of the entrance fees
32 received by or pledged to the provider, plus
33 anticipated proceeds from any long-term financing
34 commitment, plus funds from all other sources in the
35 actual possession of the provider, equal not less than
36 ninety percent of the aggregate cost of constructing
37 or purchasing, equipping, and furnishing the
38 facility."

39 15. Page 9, line 33, by striking the word "may"
40 and inserting the following: "shall".

41 16. Page 10, line 15, by striking the words
42 "senior adult congregate living facility" and
43 inserting the following: "provider or any person
44 identified in section 523D.3, subsection 1, paragraph
45 "b" or "c".

46 17. Page 10, lines 17 and 18, by striking the
47 words "with a senior adult congregate living
48 facility".

49 18. Page 11, by striking lines 21 and 22, and
50 inserting the following:

H-3957

Page 3

1 "To cancel this contract, mail by certified mail or
2 hand deliver, a signed and dated copy of this
3 cancellation notice or any other written notice
4 clearly indicating your intent to cancel the
5 contract,".

6 19. Page 11, by inserting after line 29, the
7 following:

8 "4. A purchaser's cancellation is effective upon
9 mailing by certified mail, when transmitted by
10 telegraph, or when actual notice is given to the
11 provider, whichever is earlier."

12 20. Page 12, lines 17 through 20, by striking the
13 words "omits a material fact required to be included
14 in the statement or necessary in order to make the
15 statement, in light of the circumstances under which
16 it is made, not misleading." and inserting the
17 following: "contains any untrue statement of a
18 material fact or omits to state a material fact
19 necessary in order to make the statements made, in
20 light of the circumstances under which they are made,
21 not misleading."

22 21. Page 12, line 26, by inserting after the word
23 "refund" the following: ", payable upon acceptance,".

24 22. Page 13, by inserting after line 23, the
25 following:

26 "Sec. 10. NEW SECTION. 523D.10 RULES.

27 The division of insurance may adopt rules pursuant
28 to chapter 17A as necessary and appropriate to
29 implement this chapter, and may make further
30 recommendations to the general assembly for the
31 protection of residents and prospective residents of
32 facilities required to file an annual disclosure
33 statement under this chapter."

34 23. By renumbering, relettering, and correcting
35 internal references as necessary.

By HARPER of Black Hawk

BROWN of Lucas

BUHR of Polk

HERMANN of Scott

KISTLER of Jefferson

H-3957 FILED APRIL 11, 1989

Adopted 4-12-89 (p. 28)

SENATE FILE 278

H-3876

1 Amend Senate File 278, as amended, passed, and re-
2 printed by the Senate, as follows:

3 1. Page 10, line 20, by striking the words "One
4 hundred twenty" and inserting the following: "Forty-
5 five".

6 2. Page 11, line 10, by striking the words "one
7 hundred twenty" and inserting the following: "forty-
8 five calendar".

9 3. Page 11, line 14, by striking the words "ten
10 business" and inserting the following: "thirty
11 calendar".

12 4. Page 11, line 16, by inserting after the word
13 "canceled" the following: ", except that the provider
14 may retain the reasonable value of care and services
15 actually provided to the resident prior to the
16 resident vacating the provider's facility".

By COMMITTEE ON HUMAN RESOURCES
FEY of Scott, Chairperson

H-3876 FILED APRIL 6, 1989

Adopted 4-12-89 (p. 525)

SENATE FILE 278

H-3993

1 Amend Senate File 278, as amended, passed and
2 reprinted by the Senate as follows:

3 1. Title page, line 2, by striking the word
4 "facilities" and inserting the words "retirement
5 communities".

By HARPER of Black Hawk

H-3993 FILED APRIL 12, 1989

ADOPTED BY UNANIMOUS CONSENT

4-12-89 (p. 528)

HOUSE AMENDMENT TO
SENATE FILE 278

S-3708

1 Amend Senate File 278, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 1, by striking lines 10 through 12, and
4 inserting the following: "services under section
5 225C.21, whether operated by a for-profit or a".

6 2. Page 1, line 29, by striking the word
7 "facility" and inserting the following: "retirement
8 community".

9 3. Page 2, line 9, by inserting after the word
10 "transfer" the following: "which exceeds the lesser
11 amount of five thousand dollars or six times the
12 living unit's monthly fee".

13 4. Page 2, by striking lines 14 and 15 and
14 inserting the following:

15 "7. "Facility" means a senior adult congregate
16 living facility or a continuing care retirement
17 community."

18 5. Page 2, line 35, by inserting after the word
19 "state" the following: "for a facility located in
20 this state".

21 6. Page 3, line 6, by inserting after the figure
22 "523D.3." the following: "The disclosure statement
23 shall be accompanied by a one hundred dollar filing
24 fee as a condition of filing and compliance with this
25 section."

26 7. Page 3, line 27, by striking the word "If" and
27 inserting the following: "With respect to each person
28 covered by paragraph "b", and if".

29 8. Page 4, line 12, by inserting after the word
30 "property" the following: "or similar felonies
31 involving theft or dishonesty".

32 9. Page 4, line 25, by inserting after the word
33 "affiliated" the following: "with a for profit
34 organization or".

35 10. Page 5, line 23, by inserting after the word
36 "provider," the following: "for all parts of an
37 operation covered by the contract, including the
38 health center or nursing home portion of the
39 continuing care retirement community, if those
40 services are included in the contract, but the
41 disclosure statement may exclude services or
42 operations not provided to residents as senior adult
43 congregate living services under their contract,".

44 11. Page 7, line 13, by striking the word "four"
45 and inserting the following: "five".

46 12. Page 7, by striking lines 16 through 23, and
47 inserting the following: "initial disclosure
48 statement. The annual disclosure statement shall also
49 be accompanied by a narrative describing:

50 a. Any material differences between the pro forma

S-3708

Page 2

1 income statement filed pursuant to this chapter either
2 as part of the most recent annual disclosure statement
3 and the actual results of operations during the fiscal
4 year, if the material differences substantially affect
5 the financial safety or soundness of the community.

6 b. Any material differences between the pro forma
7 balance sheet and the actual results of operations
8 during the fiscal year."

9 13. Page 9, lines 2 through 4, by striking the
10 words "agreed upon by the provider and the current or
11 prospective resident for any construction for which an
12 entry fee arrangement is used." and inserting the
13 following: "for a living unit which has not
14 previously been occupied by a resident for which an
15 entry fee arrangement is used. The escrow account
16 agreement shall be entered into between the financial
17 institution and the provider with the financial
18 institution as the escrow agent and as a fiduciary for
19 the resident or the prospective resident, the
20 agreement shall state that its purpose is to protect
21 the resident or the prospective resident, and the
22 funds deposited in the account shall be kept and
23 maintained in an account separate and apart from the
24 provider's business accounts."

25 14. Page 9, by striking lines 9 through 17, and
26 inserting the following: "reasonably determines that
27 the following conditions have been satisfied:

28 a. The facility has a minimum of fifty percent of
29 the units reserved for which the provider is charging
30 an entrance fee.

31 b. The aggregate amount of the entrance fees
32 received by or pledged to the provider, plus
33 anticipated proceeds from any long-term financing
34 commitment, plus funds from all other sources in the
35 actual possession of the provider, equal not less than
36 ninety percent of the aggregate cost of constructing
37 or purchasing, equipping, and furnishing the
38 facility."

39 15. Page 9, line 33, by striking the word "may"
40 and inserting the following: "shall".

41 16. Page 10, line 15, by striking the words
42 "senior adult congregate living facility" and
43 inserting the following: "provider or any person
44 identified in section 523D.3, subsection 1, paragraph
45 "b" or "c".

46 17. Page 10, lines 17 and 18, by striking the
47 words "with a senior adult congregate living
48 facility".

49 18. Page 10, line 20, by striking the words "One
50 hundred twenty" and inserting the following: "Forty-

S-3708

Page 3

1 five".

2 19. Page 11, line 10, by striking the words "one
3 hundred twenty" and inserting the following: "forty-
4 five calendar".

5 20. Page 11, line 14, by striking the words "ten
6 business" and inserting the following: "thirty
7 calendar".

8 21. Page 11, line 16, by inserting after the word
9 "canceled" the following: ", except that the provider
10 may retain the reasonable value of care and services
11 actually provided to the resident prior to the
12 resident vacating the provider's facility".

13 22. Page 11, by striking lines 21 and 22, and
14 inserting the following:

15 "To cancel this contract, mail by certified mail or
16 hand deliver, a signed and dated copy of this
17 cancellation notice or any other written notice
18 clearly indicating your intent to cancel the
19 contract,".

20 23. Page 11, by inserting after line 29, the
21 following:

22 "4. A purchaser's cancellation is effective upon
23 mailing by certified mail, when transmitted by
24 telegraph, or when actual notice is given to the
25 provider, whichever is earlier."

26 24. Page 12, lines 17 through 20, by striking the
27 words "omits a material fact required to be included
28 in the statement or necessary in order to make the
29 statement, in light of the circumstances under which
30 it is made, not misleading." and inserting the
31 following: "contains any untrue statement of a
32 material fact or omits to state a material fact
33 necessary in order to make the statements made, in
34 light of the circumstances under which they are made,
35 not misleading."

36 25. Page 12, line 26, by inserting after the word
37 "refund" the following: ", payable upon acceptance,".

38 26. Page 13, by inserting after line 23, the
39 following:

40 "Sec. 10. NEW SECTION. 523D.10 RULES.

41 The division of insurance may adopt rules pursuant
42 to chapter 17A as necessary and appropriate to
43 implement this chapter, and may make further
44 recommendations to the general assembly for the
45 protection of residents and prospective residents of
46 facilities required to file an annual disclosure
47 statement under this chapter."

48 27. Title page, line 2, by striking the word
49 "facilities" and inserting the words "retirement
50 communities".

S-3708

Page 4

1 28. By renumbering, relettering, or redesignating
2 and correcting internal references as necessary.

RECEIVED FROM THE HOUSE

S-3708 FILED APRIL 14, 1989

Senate Council 4-17-89 (p 1476)

SENATE FILE 278

AN ACT

RELATING TO THE DISCLOSURE OF INFORMATION BY CONTINUING CARE
RETIREMENT COMMUNITIES AND SENIOR ADULT CONGREGATE LIVING
FACILITIES, AND PROVIDING PENALTIES.

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

Section 1. NEW SECTION. 523D.1 DEFINITIONS.

As used in this chapter, unless the context clearly
indicates otherwise:

1. "Senior adult congregate living facility" means any building or buildings, section of a building, or distinct part of a building, residence, private home, boarding home, home for the aged, or other place, other than facilities licensed and operated under chapter 135C, or community supervised living arrangements approved by the department of human services under section 225C.21, whether operated by a for-profit or a not-for-profit organization which undertakes through its ownership or management to provide housing and one or more supportive services for a time period exceeding twenty-four consecutive hours, to ten or more residents, the majority of whom are sixty years of age or older. A person who is furnishing the continuing care and who is related by consanguinity or affinity to the resident living in the facility shall not be included in the capacity calculation.

2. "Senior adult congregate living services" means the services provided to residents in a facility.

3. "Supportive services" includes, but is not limited to, services such as laundry; maintenance; emergency nursing care; activity services; security; dining options; transportation; beauty and barber; personal, including eating, bathing, dressing, and supervised medication administration; and health.

4. "Continuing care retirement community" means a senior adult congregate living facility which furnishes senior adult congregate living services together with nursing services to residents, regardless of whether or not the services are provided at one location, and pursuant to one or more agreements effective for the life of the resident or for a period of time greater than one year.

5. "Continuing care" means the furnishing to residents, the majority of whom are sixty years of age or older, other than a resident related by consanguinity or affinity to the person furnishing the care, of senior adult congregate living services together with nursing services regardless of whether or not the services are provided at one location and pursuant to one or more agreements effective for the life of the resident or for a period of time greater than one year.

6. "Entrance fee" means an initial or deferred transfer which exceeds the lesser amount of five thousand dollars or six times the living unit's monthly fee to a provider of a sum of money or other property made or promised to be made as full or partial consideration for acceptance of a specified individual as a resident in a facility.

7. "Facility" means a senior adult congregate living facility or a continuing care retirement community.

8. "Living unit" means a room, apartment, cottage, or other area within a facility set aside for the exclusive use or control of one or more identified residents.

9. "Provider" means a person undertaking to provide care in a senior adult congregate living facility or continuing care facility.

10. "Resident" means an individual, sixty years of age or older, entitled to receive care in a senior adult congregate living facility or continuing care facility.

Sec. 2. NEW SECTION. 523D.2 PILING WITH DIVISION OF INSURANCE.

A person shall not, as a provider, enter into a contract to provide continuing care or senior adult congregate living services in a facility, or extend the term of an existing

contract to provide continuing care or senior adult congregate living services in a facility, if the contract requires or permits the payment of an entrance fee to any person, and the facility is or will be located in this state, or the provider or a person acting on the provider's behalf solicits the contract within this state for a facility located in this state and the person to be provided with continuing care or senior adult congregate living services under the contract resides within this state at the time of the solicitation, unless the person has filed with the division of insurance of the department of commerce, a current disclosure statement which meets the requirements of section 523D.3. The disclosure statement shall be accompanied by a one hundred dollar filing fee as a condition of filing and compliance with this section.

Sec. 3. NEW SECTION. 523D.3 DISCLOSURE STATEMENT.

1. At the time of or prior to the execution of a contract to provide continuing care or senior adult congregate living services, or at the time of or prior to the transfer of any money or other property to a provider by or on behalf of a prospective resident, whichever occurs first, the provider shall deliver a disclosure statement to the person, and to the person's personal representative if one is appointed, with whom the contract is to be entered into, which shall contain all of the following information unless such information is in the contract, a copy of which must be attached to the statement:

- a. The name and business address of the provider and a statement of whether the provider is a partnership, corporation, or other type of legal entity.
- b. The names and business addresses of the officers, directors, trustees, managing or general partners, and any person having a ten percent or greater equity or beneficial interest in or of the provider and a description of such person's interest in or occupation with the provider.
- c. With respect to each person covered by paragraph "b", and if the facility will be managed on a day-to-day basis by a

person other than a person directly employed by the provider, a person named in response to paragraph "b", or the proposed manager:

- (1) A description of the business experience of the person, if any, in the operation or management of similar facilities.
 - (2) The name and address of any professional service, firm, association, trust, partnership, or corporation in which the person has, or which has in the person, a ten percent or greater interest and which will or may provide goods, leases, or services to the facility of a value of five hundred dollars or more, within a year, including a description of the goods, leases, or services and their probable or anticipated cost to the facility or provider.
 - (3) A description of any matter in which the person has been convicted of a felony or pleaded nolo contendere to a felony charge or been held liable or enjoined in a civil action by final judgment if the felony or civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property or similar felonies involving theft or dishonesty.
 - (4) A description of any matter in which the person is subject to a currently effective injunctive or restrictive order of a court of record, or within the past five years had any state or federal license or permit suspended or revoked as a result of an action brought by a governmental agency or the division of insurance, arising out of or relating to business activity or health care, including, without limitation, actions affecting a license to operate a foster care facility, health care facility, retirement home, home for the aged, or facility licensed under this chapter or a similar law of another state.
- d. A statement as to:
- (1) Whether the provider is or ever has been affiliated with a for profit organization or with a religious, charitable, or other nonprofit organization.
 - (2) The nature of the affiliation, if any.

(3) The extent to which the affiliate organization will be responsible for the financial and contractual obligations of the provider.

(4) The provision of the federal Internal Revenue Code, if any, under which the provider or affiliate is exempt from the payment of federal income tax.

e. The location and description of the physical property or properties of the facility, existing or proposed, and, to the extent proposed, the estimated completion date or dates, whether or not construction has begun, and the contingencies subject to which construction may be deferred.

f. The services provided or proposed to be provided under contracts for continuing care at the facility, including the extent to which medical care is furnished. The disclosure statement shall clearly state which services are included in basic contracts for continuing care and which services are made available at or by the facility at extra charge.

g. A description of all fees required of residents, including the entrance fee and periodic charges, if any. The description shall include the manner by which the provider may adjust periodic charges or other recurring fees and the limitations on such adjustments, if any.

h. The provisions which have been made or will be made, if any, to provide reserve funding or security to enable the provider to fully perform its obligations under contracts to provide continuing care or senior adult congregate living services at the facility, including the establishment of escrow accounts, trusts, or reserve funds, together with the manner in which the funds will be invested and the names and experience of persons who will make the investment decisions.

i. Certified financial statements of the provider, for all parts of an operation covered by the contract, including the health center or nursing home portion of the continuing care retirement community, if those services are included in the contract, but the disclosure statement may exclude services or operations not provided to residents as senior adult congregate living services under their contract, including:

(1) A balance sheet as of the end of the two most recent fiscal years.

(2) Income statements of the provider for the two most recent fiscal years or the shorter period of time in which the provider has been in existence.

j. If operation of the facility has not yet commenced, a statement of the anticipated source and application of the funds used or to be used in the purchase or construction of the facility, including:

(1) An estimate of the cost of purchasing or constructing and equipping the facility, including related costs such as financing expense, legal expense, land costs, occupancy development costs, and all other similar costs which the provider expects to incur or become obligated for prior to the commencement of operations.

(2) A description of any mortgage loan or other long-term financing intended to be used for the financing of the facility, including the anticipated terms and costs of the financing.

(3) An estimate of the total entrance fees to be received from or on behalf of residents at or prior to commencement of operation of the facility.

(4) An estimate of the funds, if any, which are anticipated to be necessary to fund start-up losses and provide reserve funds to assure full performance of the obligations of the provider under contracts for the provision of continuing care or senior adult congregate living services.

(5) A projection of estimated income from fees and charges other than entrance fees, showing individual rates presently anticipated to be charged and including a description of the assumptions used for calculating the estimated occupancy rate of the facility and the effect on the income of the facility of government subsidies for health care services, if any, to be provided pursuant to the contracts for continuing care or senior adult congregate living services.

(6) A projection of estimated operating expenses of the facility, including a description of the assumptions used in

calculating the expenses and separate allowances, if any, for the replacement of equipment and furnishings and anticipated major structural repairs or additions.

(7) Identification of any assets pledged as collateral for any purpose.

(8) An estimate of annual payments of principal and interest required by any mortgage loan or other long-term financing.

k. Other material information, which may include an independent analysis of the actuarial soundness of the financial plan, concerning the facility or the provider as required by the division of insurance or as the provider wishes to include.

1. The cover page of the disclosure statement shall state, in a prominent location and type face, the date of the disclosure statement.

m. A copy of the standard form or forms of contract for continuing care or senior adult congregate living services used by the provider, attached as an exhibit to each disclosure statement.

2. The provider shall file with the division of insurance, annually within five months following the end of the provider's fiscal year, an annual disclosure statement which shall contain the information required by this chapter for the initial disclosure statement. The annual disclosure statement shall also be accompanied by a narrative describing:

a. Any material differences between the pro forma income statement filed pursuant to this chapter either as part of the most recent annual disclosure statement and the actual results of operations during the fiscal year, if the material differences substantially affect the financial safety or soundness of the community.

b. Any material differences between the pro forma balance sheet and the actual results of operations during the fiscal year.

The annual disclosure statement shall also contain a revised pro forma income statement for the next fiscal year.

3. From the date an annual disclosure statement is filed until the date the next succeeding annual disclosure statement is filed with the division of insurance and prior to the provider's acceptance of part or all of any application fee or part of the entrance fee or the execution of the continuing care or senior adult congregate living services contract by the resident, whichever occurs first, the provider shall deliver the current annual disclosure statement to the current or prospective residents with whom the continuing care or senior adult congregate living services contract is or may be entered into and to a resident's or prospective resident's personal representative if one is appointed.

4. In addition to filing the annual disclosure statement, the provider may amend its currently filed disclosure statement at any other time if, in the opinion of the provider, an amendment is necessary to prevent the disclosure statement and annual disclosure statement from containing any material misstatement of fact or omission to state a material fact required to be included in the statement. The amendment or amended disclosure statement shall be filed with the division of insurance before the statement is delivered to a resident or prospective resident and a personal representative of a resident or prospective resident and is subject to all the requirements, including those as to content and delivery, of this chapter.

Sec. 4. NEW SECTION. 523D.4 FALSE INFORMATION.

1. A provider shall not make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper 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 of any sort containing any assertion, representation, or statement which is untrue, deceptive, or misleading.

2. A provider shall not file with the division of insurance or make, publish, disseminate, circulate, or deliver

to any person or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or delivered to any person or placed before the public, a financial statement which does not meet generally accepted accounting principles.

Sec. 5. NEW SECTION. 523D.5 ENTRANCE FEE ESCROW FOR NEW CONSTRUCTION.

The provider shall establish an interest-bearing escrow account with a state or federally regulated financial institution for a living unit which has not previously been occupied by a resident for which an entry fee arrangement is used. The escrow account agreement shall be entered into between the financial institution and the provider with the financial institution as the escrow agent and as a fiduciary for the resident or the prospective resident, the agreement shall state that its purpose is to protect the resident or the prospective resident, and the funds deposited in the account shall be kept and maintained in an account separate and apart from the provider's business accounts. These funds may be released only as follows:

1. If the entrance fee applies to a living unit which has not previously been occupied by a resident, the entrance fee shall be released to the provider only when the escrow agent reasonably determines that the following conditions have been satisfied:

a. The facility has a minimum of fifty percent of the units reserved for which the provider is charging an entrance fee.

b. The aggregate amount of the entrance fees received by or pledged to the provider, plus anticipated proceeds from any long-term financing commitment, plus funds from all other sources in the actual possession of the provider, equal not less than ninety percent of the aggregate cost of constructing or purchasing, equipping, and furnishing the facility.

2. Upon receipt by the escrow agent of a request by the provider for the release of these escrow funds, the escrow agent shall approve release of the funds within five working

days unless the escrow agent finds that the requirements of subsection 1 have not been met and notifies the provider of the basis for this finding. The request for release of the escrow funds shall be accompanied by any documentation the fiduciary requires.

3. If the provider fails to meet the requirements for release of funds held in this escrow account within a time period the escrow agent considers reasonable, these funds shall be returned by the escrow agent to the persons who have made payment to the provider. The escrow agent shall notify the provider of the length of this time period when the provider requests release of the funds.

4. An entrance fee held in escrow shall be returned by the escrow agent to the person who made payment to the provider at any time upon receipt by the escrow agent of notice from the provider that this person is entitled to a refund of the entrance fee.

Sec. 6. NEW SECTION. 523D.6 PERSONAL REPRESENTATIVE -- CANCELLATION.

1. A prospective resident or resident shall be provided a form to appoint a personal representative to receive copies of all notices, disclosures, or forms required by this chapter to be delivered to a prospective resident or resident. A personal representative appointed under this section shall not have legal authority to make any decision for the prospective resident or resident appointing the person to be a personal representative. The personal representative may advise the prospective resident or resident as to the materials provided. A personal representative shall not be affiliated or associated with a provider or any person identified in section 523D.3, subsection 1, paragraph "b" or "c" and shall not be a prospective resident or resident.

2. A person may cancel a contract for a period equal to the later ending period of the following:

a. Forty-five calendar days after the disclosure statement required by section 523D.3 was delivered to the person and to the person's personal representative if one is appointed.

b. Within three business days after the execution of a contract to provide continuing care or senior adult congregate living services, or at the time of the transfer of any money or other property to a provider by or on behalf of a prospective resident, whichever occurs first.

3. A provider shall furnish to each prospective resident and the prospective resident's personal representative, if one is appointed, at the time section 523D.3 requires delivery of a disclosure statement, a completed form in duplicate, captioned "Notice of Cancellation", which shall be attached to the disclosure statement and easily detachable, and which shall contain in ten point boldface type the following information and statements in the same language as that used in the contract:

Notice of Cancellation

a. Date contract was executed or money or property transferred to the provider, whichever occurs first, if known:

b. Date disclosure statement was delivered:

You may cancel this contract, without any penalty or obligation, within three business days from date in paragraph "a" above, or within forty-five calendar days of date in paragraph "b" above, whichever period ends upon a later date.

If you cancel this contract, any money or property transferred to the provider, any payments made by you will be returned within thirty calendar days following receipt by the provider of your cancellation notice, and any security interest arising out of the transaction will be canceled, except that the provider may retain the reasonable value of care and services actually provided to the resident prior to the resident vacating the provider's facility.

If you cancel this contract, and have already moved into the provider's facility, you must vacate the provider's facility within ten days after receipt by the provider of your cancellation notice.

To cancel this contract, mail by certified mail or hand deliver, a signed and dated copy of this cancellation notice

or any other written notice clearly indicating your intent to cancel the contract, or send a telegram, to (name of provider) at (address of provider's place of business).

I hereby cancel this contract.

.....

(Date)

.....
(prospective resident's or resident's signature)

4. A purchaser's cancellation is effective upon mailing by certified mail, when transmitted by telegraph, or when actual notice is given to the provider, whichever is earlier.

Sec. 7. NEW SECTION. 523D.7 CIVIL LIABILITY.

1. A provider is liable to the person contracting for continuing care or senior adult congregate living services for damages and repayment of all fees paid to the provider, facility, or person violating this chapter, less the reasonable value of care and lodging provided to the resident by or on whose behalf the contract for continuing care or senior adult congregate living services was entered into prior to discovery of the violation, misstatement, or omission, or the time the violation, misstatement, or omission should reasonably have been discovered, together with interest at the legal rate for judgments and court costs and reasonable attorney fees, if the provider does any of the following:

a. Enters into a contract to provide continuing care or senior adult congregate living services at a facility without having first delivered a disclosure statement meeting the requirements of this chapter to the person contracting for continuing care or senior adult congregate living services and to the person's personal representative if one is appointed by the person.

b. Enters into a contract to provide continuing care or senior adult congregate living services at a facility with a person who has relied on a disclosure statement which contains any untrue statement of a material fact or omits to state a

material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

2. Liability under this section exists regardless of whether or not the provider or person liable had actual knowledge of the misstatement or omission.

3. A person shall not file or maintain an action under this section if the person, before filing the action, received an offer to refund, payable upon acceptance, all amounts paid the provider, facility, or person violating this chapter, together with interest from the date of payment, less the reasonable value of care and lodging provided prior to receipt of the offer, and the person failed to accept the offer within thirty days of its receipt. At the time a provider makes a written offer of refund, the provider shall file a copy with the division of insurance. The refund offer shall refer to the provisions of this section.

4. An action shall not be maintained to enforce a liability created under this chapter unless brought before the expiration of six years after the execution of the contract for continuing care or senior adult congregate living services which gave rise to the violation.

5. Except as expressly provided in this chapter, civil liability in favor of a private party shall not arise against a person, by implication, from or as a result of the violation of this chapter. This chapter does not limit a liability which may exist by virtue of any other statute or under common law if this chapter were not in effect.

Sec. 8. NEW SECTION. 523D.8 CRIMINAL PENALTIES.

1. A person who willfully and knowingly violates a provision of this chapter or a rule adopted or order entered pursuant to this chapter, upon conviction, is guilty of an aggravated misdemeanor.

2. This chapter does not limit the power of the state to punish any person for any conduct which constitutes a crime under any other statute.

Sec. 9. NEW SECTION. 523D.9 INITIAL FILING.

For any facility offering continuing care or senior adult congregate living services contracts prior to the effective date of this Act, initial filings of disclosure statements shall take effect in and for the facility's fiscal year ending after January 1, 1990.

Sec. 10. NEW SECTION. 523D.10 RULES.

The division of insurance may adopt rules pursuant to chapter 17A as necessary and appropriate to implement this chapter, and may make further recommendations to the general assembly for the protection of residents and prospective residents of facilities required to file an annual disclosure statement under this chapter.

JO ANN ZIMMERMAN
President of the Senate

DONALD D. AVENSON
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 278, Seventy-third General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved May 24, 1989

TERRY E. BRANSTAD
Governor