

FILED MAR 11 1993

SENATE FILE 271
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 220)

(P740)
Passed Senate, Date 3-22-93 Passed House, Date _____
Vote: Ayes 44 Nays 0 Vote: Ayes _____ Nays _____
Approved April 28, 1993

A BILL FOR

1 An Act relating to entities and subject matter under the
2 regulatory authority of the regulated industries unit of the
3 division of insurance, including residential service
4 contracts, continuing care retirement communities, loan
5 brokers, and membership organizations.
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
7

SF271

SENATE FILE 271

S-3168

- 1 Amend Senate File 271 as follows:
- 2 1. Page 3, line 34, by inserting after the word
- 3 "prohibit" the following: "fees, payments, or
- 4 reimbursements for".
- 5 2. Page 3, by striking line 35 and inserting the
- 6 following: "payments-or-reimbursements-for-inspection
- 7 fees inspections, if an".
- 8 3. Page 5, line 3, by striking the word "company"
- 9 and inserting the following: "contractor".
- 10 4. Page 5, line 22, by striking the word
- 11 "INSTITUTION" and inserting the following:
- 12 "INSURANCE INSTITUTIONS, SERVICE COMPANIES, AND
- 13 INSURANCE COMPANIES".
- 14 5. Page 8, line 7, by inserting after the word
- 15 "licensed" the following: "or registered".

3-22-93 adopted (P.739) BY PATRICK J. DELUHERY

S-3168 FILED MARCH 19, 1993

22

23

1 Section 1. NEW SECTION. 503A.1 DEFINITIONS.

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

4 1. "Buying club" means a corporation, partnership,
5 unincorporated association, or other business enterprise which
6 sells or offers for sale to the public generally memberships
7 or certificates of membership.

8 2. "Membership" means certificates, memberships, shares,
9 bonds, contracts, stocks, or agreements of any kind or
10 character issued upon any plan offered generally to the public
11 entitling the holder to purchase merchandise, materials,
12 equipment, or service, either from the issuer or another
13 person designated by the issuer, either under a franchise or
14 otherwise, whether it be at a discount, at cost plus a
15 percentage, at cost plus a fixed amount, at a fixed price, or
16 on any other similar basis.

17 3. "Contract" means the agreement by which a person
18 acquires a membership in a buying club.

19 Sec. 2. NEW SECTION. 503A.2 EXEMPTIONS.

20 This chapter does not apply to any of the following:

21 1. Building and loan associations, state or national
22 banks, insurance companies and associations, mutual or
23 cooperative telephone companies organized under chapter 491
24 which have been determined to be exempt from taxation under
25 501(c)(12) of the Internal Revenue Code.

26 2. Corporations and cooperative associations subject to
27 regulation under chapter 497, 498, or 499.

28 3. The sale of membership camping contracts by persons or
29 entities registered or exempt under chapter 557B.

30 4. The sale of physical exercise club contracts by persons
31 or entities registered under chapter 552.

32 5. Corporations, partnerships, unincorporated
33 associations, or other business enterprises which sell or
34 offer for sale memberships to an individual or to a family
35 unit for consideration of no more than fifty dollars for a

1 one-year period. Consideration for this purpose includes but
2 is not limited to the amount of any required purchase under
3 the terms of the contract.

4 Sec. 3. NEW SECTION. 503A.3 RIGHT OF CANCELLATION --
5 REQUIREMENT OF WRITING.

6 The requirements of sections 555A.1 through 555A.5,
7 relating to door-to-door sales, shall apply to sales of buying
8 club memberships, irrespective of the place or manner of sale
9 or the purpose for which they are purchased. In addition to
10 the requirements of chapter 555A, a contract shall not be
11 enforceable against a person acquiring a membership in a
12 buying club unless the contract is in writing and signed by
13 the purchaser.

14 Sec. 4. NEW SECTION. 503A.4 LIMITATION ON MEMBERSHIP
15 PERIOD.

16 A contract shall not be valid for a term longer than
17 eighteen months from the date on which the contract is signed.
18 However, a buying club may allow a member to convert the
19 contract into a contract for a period longer than eighteen
20 months after the member has been a member of the club for at
21 least one year. The duration of the contract shall be clearly
22 and conspicuously disclosed in the contract in bold-face type
23 of a minimum size of fourteen points.

24 Sec. 5. NEW SECTION. 503A.5 REMEDIES.

25 1. A violation of this chapter is a violation of section
26 714.16, subsection 2, paragraph "a".

27 2. The rights, obligations, and remedies provided in this
28 chapter shall be in addition to any other rights, obligations,
29 or remedies provided by law or in equity.

30 3. In addition to the remedies otherwise provided by law,
31 any person injured by a violation of this chapter may bring a
32 civil action and recover damages, together with costs,
33 including reasonable attorney's fees, and receive other
34 equitable relief as determined by the court.

35 Sec. 6. Section 505.1, Code 1993, is amended to read as

1 follows:

2 505.1 INSURANCE DIVISION CREATED.

3 An insurance division is created within the department of
4 commerce to regulate and supervise the conducting of the
5 business of insurance in the state. The commissioner of
6 insurance is the chief executive officer of the division. As
7 used in this chapter, the rest of the insurance title, and
8 chapters 502, 503, and 535C, "division" means the insurance
9 division.

10 Sec. 7. Section 523C.2, Code 1993, is amended to read as
11 follows:

12 523C.2 LICENSE REQUIRED.

13 A person shall not issue a residential service contract or
14 undertake or arrange to perform services pursuant to a
15 residential service contract unless the person is a
16 corporation or other form of organization approved by the
17 commissioner by rule and is a licensed service company.

18 Sec. 8. Section 523C.8, Code 1993, is amended to read as
19 follows:

20 523C.8 REBATES AND COMMISSIONS.

21 A service company shall not pay a commission or any other
22 consideration to any person as an inducement or compensation
23 for the issuance, purchase, or acquisition of a residential
24 service contract. However, this section does not prohibit
25 payment of an override commission or marketing fee to an
26 employee or commission sales agent who is the a marketing or
27 sales representative of the service company or its parent
28 company, subsidiary, or affiliate on the sale or marketing of
29 a residential service contract, provided the employee or
30 commission sales agent is not a real estate licensee sharing
31 in or entitled to share in, or affiliated with, a company or
32 organization which is entitled to share in any real estate
33 commission generated by the underlying real property
34 transaction. This section also does not prohibit bona fide
35 payments or reimbursements for inspection fees, if an

1 inspection of the property to be the subject of a residential
2 service contract is required by a service company and if the
3 inspection fee is reasonably related to the services
4 performed.

5 Sec. 9. NEW SECTION. 523C.8A ISSUANCE OF RESIDENTIAL
6 SERVICE CONTRACT WITHOUT CONSIDERATION PROHIBITED.

7 1. Except as provided in subsection 2, furnishing a
8 residential service contract to any person without charge for
9 the applicable contract fees constitutes a violation of this
10 chapter. A residential service contract providing for listing
11 period coverage shall not be issued or delivered unless it
12 provides for consideration for such coverage. The
13 consideration may consist of a bona fide promise to pay the
14 applicable residential service contract fees at the close of
15 the sale. However, if a contract is subsequently cancelled as
16 a result of the failure to close such a sale, including such
17 failure due to cancellation, expiration, or other termination
18 of any real estate listing agreement on the residence, the
19 residential service contract holder shall pay to the service
20 company, at the time of cancellation of the residential
21 service contract, the lesser of the actual costs of such
22 service or a pro rata portion of the applicable annual
23 residential service contract fees based on the number of days
24 the residential service contract remained in effect, together
25 with administrative costs incurred by the service company as a
26 result of the cancellation.

27 2. a. Notwithstanding subsection 1, a service company may
28 offer a residential service contract providing for listing
29 period coverage for consideration which consists of both of
30 the following:

31 (1) The contract holder's bona fide promise to pay, upon
32 the close of sale, the applicable residential service contract
33 fees for coverage of the residence for at least one year from
34 the close of sale.

35 (2) Actual payment of the costs of any and all services

1 performed under the residential service contract during the
2 term of the listing period coverage by the contract holder to
3 the service company.

4 b. Upon the close of sale and actual payment of the
5 contract fees referred to in paragraph "a", subparagraph (1),
6 the service company shall reimburse the listing period
7 coverage contract holder for all legitimate service costs
8 incurred and paid under the residential service contract
9 during the term of the listing period coverage with offset
10 only for any deductible or service call fees remaining due and
11 payable with respect to service performed under the
12 residential service contract during the term of the listing
13 period coverage.

14 3. For purposes of this section:

15 a. "Close of sale" means the time an interest in, or title
16 to, a home to which the interest or title attaches is sold or
17 transferred.

18 b. "Listing period coverage" means coverage provided prior
19 to the close of sale.

20 Sec. 10. Section 523C.17, Code 1993, is amended to read as
21 follows:

22 523C.17 LENDING INSTITUTION.

23 A bank, savings and loan association, insurance company or
24 other lending institution shall not require the purchase of a
25 residential service contract as a condition of a loan. A
26 service company or an insurer, either directly or indirectly,
27 as a part of any real property transaction in which a
28 residential service contract will be issued, purchased, or
29 acquired, shall not require that a residential service
30 contract be issued, purchased, or acquired in conjunction with
31 or as a condition precedent to the issuance, purchase, or
32 acquisition, by any person, of a policy of insurance. A
33 lending institution shall not sell a residential service
34 contract to a borrower unless the borrower signs an affidavit
35 acknowledging that the purchase is not required. Violation of

1 this section is punishable as provided in section 523C.13.

2 Sec. 11. NEW SECTION. 523C.20 CONSENT TO SERVICE OF
3 PROCESS.

4 If a person engages in conduct subject to regulation under
5 this chapter, the conduct shall constitute the appointment of
6 the commissioner of insurance as the person's attorney to
7 receive service of any lawful process in a noncriminal
8 proceeding against the person, a successor, or personal
9 representative, which grows out of that conduct, with the same
10 force and validity as if served personally.

11 Sec. 12. Section 523D.5, subsection 3, Code 1993, is
12 amended to read as follows:

13 3. CONSTRUCTION. New construction shall not begin until
14 the filing required by this section has been made and at least
15 fifty percent of the proposed number of independent living
16 units in the initial stage or phase have been reserved
17 pursuant to executed contracts and at least ten percent of the
18 entrance fees required by those contracts are held in escrow
19 pursuant to this chapter. However, the requirements of this
20 subsection may be waived by the commissioner by rule or order
21 upon a showing of good cause.

22 For purposes of this subsection, "good cause" includes but
23 is not limited to, evidence of the following:

24 a. Secured financing adequate in an amount and term to
25 complete the project described in the filing required by this
26 section.

27 b. Cash reserves adequate in an amount to operate the
28 facility for twenty-four months based upon reasonable
29 projections of income and expenses.

30 c. Creation of an escrow account in which a resident's
31 entrance fee or purchase price will be deposited, if the terms
32 of the escrow agreement provide reasonable protection from
33 loss until at least fifty percent of the proposed number of
34 independent living units in the initial stage or phase have
35 been reserved.

1 Sec. 13. Section 535C.2, subsections 1, 3, and 5, Code
2 1993, are amended by striking the subsections.

3 Sec. 14. Section 535C.2, subsections 2, 7, and 8, Code
4 1993, are amended to read as follows:

5 2. "Advance fee" means consideration of any type including
6 a payment, fee, pay-per-call charge, or deposit, which is
7 assessed or collected prior to the closing of a loan or the
8 issuing of a credit card. ~~An advance fee includes, but is not~~
9 ~~limited to, money assessed or collected for processing, for an~~
10 ~~appraisal, for a credit check, for a consultation, or for~~
11 ~~expenses.~~

12 7. "Loan broker" or "broker" means a person who ~~in return~~
13 ~~for an advance fee~~, promises to obtain a loan or credit card
14 or assist in obtaining a loan for another from a third person,
15 or who promises to consider making a loan or offering to issue
16 a credit card to a person. A loan broker does not include any
17 of the following:

18 a. An attorney licensed to practice in this state while
19 engaged in the practice of law.

20 b. A certified public accountant licensed to practice in
21 this state while engaged in practice as a certified public
22 accountant.

23 c. An accounting practitioner, while engaged as an
24 accounting practitioner, who procures loans as an incidental
25 part of the accountant's practice.

26 d. ~~A person whose fee is entirely contingent on the~~
27 ~~successful procurement of a loan from a third person, if the~~
28 ~~borrower has not paid a fee prior to the closing of a loan~~
29 ~~other than a bona fide third party fee~~ A governmental body or
30 employee acting in an official capacity.

31 e. A financial institution, to the extent the
32 institution's activities or arrangements are expressly
33 approved or regulated by a regulatory body or officer acting
34 under authority of the United States.

35 f. An insurance company ~~organized under the laws of this~~

1 state-and subject to regulation by the commissioner of
2 insurance.

3 g. A bank incorporated under chapter 524.

4 h. A credit union incorporated under chapter 533.

5 i. A savings and loan association or savings bank
6 incorporated under chapter 534.

7 j. A mortgage broker or mortgage banker licensed under
8 chapter 535B.

9 k. A regulated loan company licensed under chapter 536.

10 l. An industrial loan company licensed under chapter 536A.

11 8. "Loan brokerage agreement" or "agreement" means an
12 agreement between a loan broker and a borrower in which the
13 loan broker promises to do any of the following:

14 a. Obtain a loan or credit card for a borrower.

15 b. Assist the borrower in obtaining a loan or credit card.

16 c. Consider making a loan or issuing a credit card to the
17 borrower.

18 Sec. 15. NEW SECTION. 535C.2A PROHIBITION ON ADVANCE
19 FEES.

20 A loan broker shall not directly or indirectly solicit,
21 receive, or accept from a borrower an advance fee as
22 consideration for providing services as a loan broker. A loan
23 broker's fee may only be assessed or collected from a borrower
24 after the successful procurement of a loan or issuance of a
25 credit card.

26 Sec. 16. Section 535C.6, Code 1993, is amended to read as
27 follows:

28 535C.6 PENALTIES.

29 A loan broker who violates a provision of this chapter is
30 guilty of a serious misdemeanor ~~for-failure-to-do-any-of-the~~
31 ~~following:~~

32 ~~1.--Obtain-and-maintain-a-surety-bond-or-establish-and~~
33 ~~maintain-a-trust-account-as-required-in-section-535E.4.~~

34 ~~2.--Make-accurate-and-timely-filings-as-required-in-section~~
35 ~~535E.5.~~

1 Sec. 17. Section 535C.9, Code 1993, is amended to read as
2 follows:

3 535C.9 RULES.

4 The ~~administrator~~ attorney general may adopt rules
5 according to chapter 17A as necessary or appropriate to
6 implement the purposes of this chapter.

7 Sec. 18. Section 535C.10, subsection 1, Code 1993, is
8 amended to read as follows:

9 1. If a broker materially violates the loan brokerage
10 agreement, the borrower may, upon written notice, void the
11 agreement. In addition, the borrower may recover all moneys
12 paid the broker ~~and may recover,~~ a penalty of twice the amount
13 of the fee sought by the broker, other damages including, and
14 reasonable attorney's fees. ~~The broker materially violates~~
15 ~~the agreement if the broker does~~ A material violation
16 includes, but is not limited to, any of the following:

17 a. ~~Makes~~ Making false or misleading statements relative to
18 the agreement.

19 b. ~~Does not~~ Failure to comply with the agreement or the
20 obligations arising from the agreement.

21 c. ~~Does not~~ Failure to either grant the borrower a loan or
22 issue a credit card or diligently attempt to obtain a loan or
23 credit card for the borrower.

24 d. ~~Does not~~ Failure to comply with the requirements of
25 this chapter.

26 e. Soliciting or obtaining, directly or indirectly, an
27 advance fee.

28 Sec. 19. Section 535C.11, Code 1993, is amended to read as
29 follows:

30 535C.11 APPLICABILITY.

31 This chapter does not apply to activities or arrangements
32 expressly approved or regulated by the ~~administrator under~~
33 ~~other law, or the banking division or savings and loan~~
34 ~~division in the~~ department of commerce.

35 Sec. 20. NEW SECTION. 535C.11A EXEMPTION -- BURDEN OF

1 PROOF.

2 In a civil proceeding pursuant to this chapter, a person
3 claiming to be excluded from the definition of "loan broker"
4 or "broker" has the burden of proof in substantiating the
5 claim.

6 Sec. 21. Section 535C.12, Code 1993, is amended to read as
7 follows:

8 535C.12 RECORDS.

9 1. A loan broker shall maintain accurate records, ~~as~~
10 ~~required-by-the-administrator,~~ relating to transactions
11 regulated under this chapter. The records shall include all
12 of the following:

- 13 a. The accounts of the broker.
- 14 b. A copy of each contract in which the broker is a party,
15 including loan brokerage agreements.
- 16 c. The amount of receipts received by the broker and the
17 date the receipts were received.

18 2. The broker shall retain each loan brokerage agreement
19 entered into by the broker and records pertaining to each
20 agreement for at least two years after the agreement expires.
21 ~~The-agreements-and-records-shall-be-maintained-and-made~~
22 ~~available-for-examination-by-the-administrator.~~

23 Sec. 22. Section 535C.14, Code 1993, is amended to read as
24 follows:

25 535C.14 MISREPRESENTATION OF GOVERNMENTAL APPROVAL.

26 It is unlawful for a loan broker to represent or imply that
27 the broker has been sponsored, recommended, or approved by, or
28 that the broker's abilities or qualifications have been passed
29 upon by ~~the-commissioner, the insurance division, the~~
30 ~~securities-bureau, or the state of Iowa~~ a governmental entity
31 of the state or its political subdivisions.

32 Sec. 23. Section 538A.2, subsection 1, Code 1993, is
33 amended to read as follows:

34 1. A credit services organization is a person who, with
35 respect to the extension of credit by others and in return for

1 the payment of money or other valuable consideration,
2 provides, or represents that the person can or will provide,
3 any of the following services:

- 4 a. Improving a buyer's credit record, history, or rating.
- 5 ~~b. Obtaining an extension of credit for a buyer.~~
- 6 c. Providing advice or assistance to a buyer with regard
7 to paragraph "a" or "b".

8 Sec. 24. Section 546.8, Code 1993, is amended to read as
9 follows:

10 546.8 INSURANCE DIVISION.

11 The insurance division shall regulate and supervise the
12 conducting of the business of insurance in the state. The
13 division shall enforce and implement Title XIII, subtitle 1,
14 insurance and related regulation, chapters 505 through 523E
15 523G, and chapters 502, 503, and 535C, and shall perform other
16 duties assigned to the division by law. The division is
17 headed by the commissioner of insurance who shall be appointed
18 pursuant to section 505.2.

19 Sec. 25. Section 557B.14, Code 1993, is amended to read as
20 follows:

21 557B.14 REMEDIES.

22 1. A violation of this chapter or the commission of any
23 act declared to be unlawful under this chapter constitutes a
24 violation of section 714.16, subsection 2, paragraph "a", and
25 the attorney general has all the powers enumerated in that
26 section to enforce the provisions of this chapter.

27 2. In addition, the attorney general may seek civil pen-
28 alties of not more than ten thousand dollars for each viola-
29 tion of or the commission of any act declared to be uniaulful
30 under this chapter. Each day of continued violation consti-
31 tutes a separate offense.

32 3. Any person who fails to pay the filing fees required by
33 this chapter and continues to sell membership camping
34 contracts is liable civilly in an action brought by the at-
35 torney general for a penalty in an amount equal to treble the

1 unpaid fees.

2 4. The provisions of this chapter are cumulative and
3 nonexclusive and do not affect any other available remedy at
4 law or equity, except as otherwise provided in sections
5 502.202, ~~503.3~~ 503A.2, and 537.3310.

6 Sec. 26. Chapter 503, Code 1993, is repealed.

7 Sec. 27. Sections 535C.3, 535C.3A, 535C.4, 535C.5,
8 535C.13, and 535C.16, Code 1993, are repealed.

9 EXPLANATION

10 This bill amends several provisions relating to subject
11 matter under the authority of the regulated industries unit of
12 the division of insurance including membership organizations,
13 residential service contracts, continuing care retirement
14 communities, and loan brokers.

15 Chapter 503 (membership sales) is repealed and new chapter
16 503A is established. This new chapter regulates membership
17 sales in buying clubs which permit a member to purchase
18 merchandise, materials, equipment, or services at a discount,
19 at cost plus a percentage, at cost plus a fixed amount, at a
20 fixed price, or on any other basis. The bill imposes a
21 disclosure requirement and establishes a 3-day right to cancel
22 such memberships. The bill provides that a violation of this
23 chapter is a violation of the Iowa consumer fraud Act and
24 provides for a private right of action for a violation.
25 Conforming amendments are made to sections 505.1, 546.8, and
26 557B.14.

27 Section 523C.2 is amended to permit noncorporate entities
28 approved by the commissioner to be licensed as a residential
29 service contract company. Section 523C.8 is amended for
30 purposes of describing an entitlement or share of a real
31 estate commission.

32 Section 523C.8A is created and provides that furnishing a
33 residential service contract to any person without charge for
34 the applicable contract fees is a violation of chapter 523C.
35 However, the section provides that a service company may offer

1 a residential service contract providing for listing period
2 coverage for consideration which consists of both of the
3 following:

4 (1) The contract holder's bona fide promise to pay, upon
5 the close of sale, the applicable residential service contract
6 fees for coverage of the residence for at least one year from
7 the close of sale.

8 (2) Actual payment of the costs of any and all services
9 performed under the residential service contract during the
10 term of the listing period coverage by the contract holder to
11 the service company.

12 Section 523C.17 is amended to provide that a service
13 company or insurer cannot require that a residential service
14 contract be issued, purchased, or acquired as a condition to
15 the issuance, purchase, or acquisition of a policy of
16 insurance.

17 Section 523C.20 is created which provides that a
18 residential service contract provider who engages in conduct
19 subject to regulation under chapter 523C consents to the
20 appointment of the commissioner of insurance to receive
21 service of process on behalf of such person in noncriminal
22 proceedings.

23 Section 523D.5 is amended to give the commissioner of
24 insurance discretionary authority to allow new construction of
25 retirement facilities to commence even though compliance with
26 the standards set forth in that section have not been met, if
27 the application demonstrates good cause for the waiver. The
28 bill provides a definition of good cause.

29 Chapter 535C, the Iowa loan brokers Act is amended by
30 eliminating the filing requirements, removing the division of
31 insurance as the administrator and giving this authority to
32 the attorney general, and establishing a prohibition on
33 advance fees. The chapter has been amended to include a
34 person who assists another in procuring a credit card as well.

35

8

SENATE FILE 271
BY COMMITTEE ON COMMERCE
Substituted for HF 593
(SUCCESSOR TO SSB 220)

(AS AMENDED AND PASSED BY THE SENATE MARCH 22, 1993)

- New Language by the Senate

Passed Senate, ^(p.1262) Date 4/21/93 Passed House, ^(p.1400) Date 4-19-93
Vote: Ayes 48 Nays 0 Vote: Ayes 91 Nays 4
Approved April 28, 1993

A BILL FOR

1 An Act relating to entities and subject matter under the
2 regulatory authority of the regulated industries unit of the
3 division of insurance, including residential service
4 contracts, continuing care retirement communities, loan
5 brokers, and membership organizations.

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

7

SENATE FILE 271

H-3973

1 Amend Senate File 271, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 2, by inserting after line 3 the
4 following:
5 " _____. The sale of goods or services by
6 corporations, partnerships, unincorporated
7 associations, or other business enterprises which sell
8 products to direct sellers as defined by section 3508
9 of the Internal Revenue Code, where the initial
10 contract establishing the relationship with the direct
11 seller is terminable at will by either party, and
12 where the corporation, partnership, unincorporated
13 association, or other business enterprise offers to
14 repurchase the products at reasonable commercial
15 terms."
16 2. By renumbering as necessary.

H-3973 FILED APRIL 14, 1993 By HALVORSON of Clayton

adopted 4/19/93 (p.1396)

S.F. 271

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3 requires:

4 1. "Buying club" means a corporation, partnership,
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6 sells or offers for sale to the public generally memberships
7 or certificates of membership.

8 2. "Membership" means certificates, memberships, shares,
9 bonds, contracts, stocks, or agreements of any kind or
10 character issued upon any plan offered generally to the public
11 entitling the holder to purchase merchandise, materials,
12 equipment, or service, either from the issuer or another
13 person designated by the issuer, either under a franchise or
14 otherwise, whether it be at a discount, at cost plus a
15 percentage, at cost plus a fixed amount, at a fixed price, or
16 on any other similar basis.

17 3. "Contract" means the agreement by which a person
18 acquires a membership in a buying club.

19 Sec. 2. NEW SECTION. 503A.2 EXEMPTIONS.

20 This chapter does not apply to any of the following:

21 1. Building and loan associations, state or national
22 banks, insurance companies and associations, mutual or
23 cooperative telephone companies organized under chapter 491
24 which have been determined to be exempt from taxation under
25 501(c)(12) of the Internal Revenue Code.

26 2. Corporations and cooperative associations subject to
27 regulation under chapter 497, 498, or 499.

28 3. The sale of membership camping contracts by persons or
29 entities registered or exempt under chapter 557B.

30 4. The sale of physical exercise club contracts by persons
31 or entities registered under chapter 552.

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1 one-year period. Consideration for this purpose includes but
2 is not limited to the amount of any required purchase under
3 the terms of the contract.

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5 REQUIREMENT OF WRITING.

6 The requirements of sections 555A.1 through 555A.5,
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8 club memberships, irrespective of the place or manner of sale
9 or the purpose for which they are purchased. In addition to
10 the requirements of chapter 555A, a contract shall not be
11 enforceable against a person acquiring a membership in a
12 buying club unless the contract is in writing and signed by
13 the purchaser.

14 Sec. 4. NEW SECTION. 503A.4 LIMITATION ON MEMBERSHIP
15 PERIOD.

16 A contract shall not be valid for a term longer than
17 eighteen months from the date on which the contract is signed.
18 However, a buying club may allow a member to convert the
19 contract into a contract for a period longer than eighteen
20 months after the member has been a member of the club for at
21 least one year. The duration of the contract shall be clearly
22 and conspicuously disclosed in the contract in bold-face type
23 of a minimum size of fourteen points.

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25 1. A violation of this chapter is a violation of section
26 714.16, subsection 2, paragraph "a".

27 2. The rights, obligations, and remedies provided in this
28 chapter shall be in addition to any other rights, obligations,
29 or remedies provided by law or in equity.

30 3. In addition to the remedies otherwise provided by law,
31 any person injured by a violation of this chapter may bring a
32 civil action and recover damages, together with costs,
33 including reasonable attorney's fees, and receive other
34 equitable relief as determined by the court.

35 Sec. 6. Section 505.1, Code 1993, is amended to read as

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3 An insurance division is created within the department of
4 commerce to regulate and supervise the conducting of the
5 business of insurance in the state. The commissioner of
6 insurance is the chief executive officer of the division. As
7 used in this chapter, the rest of the insurance title, and
8 chapters 502, 503, and 535C, "division" means the insurance
9 division.

10 Sec. 7. Section 523C.2, Code 1993, is amended to read as
11 follows:

12 523C.2 LICENSE REQUIRED.

13 A person shall not issue a residential service contract or
14 undertake or arrange to perform services pursuant to a
15 residential service contract unless the person is a
16 corporation or other form of organization approved by the
17 commissioner by rule and is a licensed service company.

18 Sec. 8. Section 523C.8, Code 1993, is amended to read as
19 follows:

20 523C.8 REBATES AND COMMISSIONS.

21 A service company shall not pay a commission or any other
22 consideration to any person as an inducement or compensation
23 for the issuance, purchase, or acquisition of a residential
24 service contract. However, this section does not prohibit
25 payment of an override commission or marketing fee to an
26 employee or commission sales agent who is the a marketing or
27 sales representative of the service company or its parent
28 company, subsidiary, or affiliate on the sale or marketing of
29 a residential service contract, provided the employee or
30 commission sales agent is not a real estate licensee sharing
31 in or entitled to share in, or affiliated with, a company or
32 organization which is entitled to share in any real estate
33 commission generated by the underlying real property
34 transaction. This section also does not prohibit fees,
35 payments, or reimbursements for bona fide payments-or

1 reimbursements-for-inspection-fees inspections, if an
2 inspection of the property to be the subject of a residential
3 service contract is required by a service company and if the
4 inspection fee is reasonably related to the services
5 performed.

6 Sec. 9. NEW SECTION. 523C.8A ISSUANCE OF RESIDENTIAL
7 SERVICE CONTRACT WITHOUT CONSIDERATION PROHIBITED.

8 1. Except as provided in subsection 2, furnishing a
9 residential service contract to any person without charge for
10 the applicable contract fees constitutes a violation of this
11 chapter. A residential service contract providing for listing
12 period coverage shall not be issued or delivered unless it
13 provides for consideration for such coverage. The
14 consideration may consist of a bona fide promise to pay the
15 applicable residential service contract fees at the close of
16 the sale. However, if a contract is subsequently cancelled as
17 a result of the failure to close such a sale, including such
18 failure due to cancellation, expiration, or other termination
19 of any real estate listing agreement on the residence, the
20 residential service contract holder shall pay to the service
21 company, at the time of cancellation of the residential
22 service contract, the lesser of the actual costs of such
23 service or a pro rata portion of the applicable annual
24 residential service contract fees based on the number of days
25 the residential service contract remained in effect, together
26 with administrative costs incurred by the service company as a
27 result of the cancellation.

28 2. a. Notwithstanding subsection 1, a service company may
29 offer a residential service contract providing for listing
30 period coverage for consideration which consists of both of
31 the following:

32 (1) The contract holder's bona fide promise to pay, upon
33 the close of sale, the applicable residential service contract
34 fees for coverage of the residence for at least one year from
35 the close of sale.

1 (2) Actual payment of the costs of any and all services
2 performed under the residential service contract during the
3 term of the listing period coverage by the contract holder to
4 the service contractor.

5 b. Upon the close of sale and actual payment of the
6 contract fees referred to in paragraph "a", subparagraph (1),
7 the service company shall reimburse the listing period
8 coverage contract holder for all legitimate service costs
9 incurred and paid under the residential service contract
10 during the term of the listing period coverage with offset
11 only for any deductible or service call fees remaining due and
12 payable with respect to service performed under the
13 residential service contract during the term of the listing
14 period coverage.

15 3. For purposes of this section:

16 a. "Close of sale" means the time an interest in, or title
17 to, a home to which the interest or title attaches is sold or
18 transferred.

19 b. "Listing period coverage" means coverage provided prior
20 to the close of sale.

21 Sec. 10. Section 523C.17, Code 1993, is amended to read as
22 follows:

23 523C.17 LENDING INSTITUTION INSTITUTIONS, SERVICE
24 COMPANIES, AND INSURANCE COMPANIES.

25 A bank, savings and loan association, insurance company or
26 other lending institution shall not require the purchase of a
27 residential service contract as a condition of a loan. A
28 service company or an insurer, either directly or indirectly,
29 as a part of any real property transaction in which a
30 residential service contract will be issued, purchased, or
31 acquired, shall not require that a residential service
32 contract be issued, purchased, or acquired in conjunction with
33 or as a condition precedent to the issuance, purchase, or
34 acquisition, by any person, of a policy of insurance. A
35 lending institution shall not sell a residential service

1 contract to a borrower unless the borrower signs an affidavit
2 acknowledging that the purchase is not required. Violation of
3 this section is punishable as provided in section 523C.13.

4 Sec. 11. NEW SECTION. 523C.20 CONSENT TO SERVICE OF
5 PROCESS.

6 If a person engages in conduct subject to regulation under
7 this chapter, the conduct shall constitute the appointment of
8 the commissioner of insurance as the person's attorney to
9 receive service of any lawful process in a noncriminal
10 proceeding against the person, a successor, or personal
11 representative, which grows out of that conduct, with the same
12 force and validity as if served personally.

13 Sec. 12. Section 523D.5, subsection 3, Code 1993, is
14 amended to read as follows:

15 3. CONSTRUCTION. New construction shall not begin until
16 the filing required by this section has been made and at least
17 fifty percent of the proposed number of independent living
18 units in the initial stage or phase have been reserved
19 pursuant to executed contracts and at least ten percent of the
20 entrance fees required by those contracts are held in escrow
21 pursuant to this chapter. However, the requirements of this
22 subsection may be waived by the commissioner by rule or order
23 upon a showing of good cause.

24 For purposes of this subsection, "good cause" includes but
25 is not limited to, evidence of the following:

26 a. Secured financing adequate in an amount and term to
27 complete the project described in the filing required by this
28 section.

29 b. Cash reserves adequate in an amount to operate the
30 facility for twenty-four months based upon reasonable
31 projections of income and expenses.

32 c. Creation of an escrow account in which a resident's
33 entrance fee or purchase price will be deposited, if the terms
34 of the escrow agreement provide reasonable protection from
35 loss until at least fifty percent of the proposed number of

1 independent living units in the initial stage or phase have
2 been reserved.

3 Sec. 13. Section 535C.2, subsections 1, 3, and 5, Code
4 1993, are amended by striking the subsections.

5 Sec. 14. Section 535C.2, subsections 2, 7, and 8, Code
6 1993, are amended to read as follows:

7 2. "Advance fee" means consideration of any type including
8 a payment, fee, pay-per-call charge, or deposit, which is
9 assessed or collected prior to the closing of a loan or the
10 issuing of a credit card. ~~An advance fee includes, but is not~~
11 ~~limited to, money assessed or collected for processing, for an~~
12 ~~appraisal, for a credit check, for a consultation, or for~~
13 ~~expenses.~~

14 7. "Loan broker" or "broker" means a person who ~~in return~~
15 ~~for an advance fee,~~ promises to obtain a loan or credit card
16 or assist in obtaining a loan for another from a third person,
17 or who promises to consider making a loan or offering to issue
18 a credit card to a person. A loan broker does not include any
19 of the following:

20 a. An attorney licensed to practice in this state while
21 engaged in the practice of law.

22 b. A certified public accountant licensed to practice in
23 this state while engaged in practice as a certified public
24 accountant.

25 c. An accounting practitioner, while engaged as an
26 accounting practitioner, who procures loans as an incidental
27 part of the accountant's practice.

28 ~~d. A person whose fee is entirely contingent on the~~
29 ~~successful procurement of a loan from a third person, if the~~
30 ~~borrower has not paid a fee prior to the closing of a loan~~
31 ~~other than a bona fide third party fee~~ A governmental body or
32 employee acting in an official capacity.

33 e. A financial institution, to the extent the
34 institution's activities or arrangements are expressly
35 approved or regulated by a regulatory body or officer acting

1 under authority of the United States.

2 f. An insurance company ~~organized under the laws of this~~
3 ~~state and~~ subject to regulation by the commissioner of
4 insurance.

5 g. A bank incorporated under chapter 524.

6 h. A credit union incorporated under chapter 533.

7 i. A savings and loan association or savings bank
8 incorporated under chapter 534.

9 j. A mortgage broker or mortgage banker licensed or
10 registered under chapter 535B.

11 ~~_____~~ k. A regulated loan company licensed under chapter 536.

12 l. An industrial loan company licensed under chapter 536A.

13 8. "Loan brokerage agreement" or "agreement" means an
14 agreement between a loan broker and a borrower in which the
15 loan broker promises to do any of the following:

16 a. Obtain a loan or credit card for a borrower.

17 b. Assist the borrower in obtaining a loan or credit card.

18 c. Consider making a loan or issuing a credit card to the
19 borrower.

20 Sec. 15. NEW SECTION. 535C.2A PROHIBITION ON ADVANCE
21 FEES.

22 A loan broker shall not directly or indirectly solicit,
23 receive, or accept from a borrower an advance fee as
24 consideration for providing services as a loan broker. A loan
25 broker's fee may only be assessed or collected from a borrower
26 after the successful procurement of a loan or issuance of a
27 credit card.

28 Sec. 16. Section 535C.6, Code 1993, is amended to read as
29 follows:

30 535C.6 PENALTIES.

31 A loan broker who violates a provision of this chapter is
32 guilty of a serious misdemeanor ~~for failure to do any of the~~
33 ~~following:~~

34 ~~1. Obtain and maintain a surety bond or establish and~~
35 ~~maintain a trust account as required in section 535E.4.~~

1 ~~2---Make-accurate-and-timely-filings-as-required-in-section~~
2 535C-5.

3 Sec. 17. Section 535C.9, Code 1993, is amended to read as
4 follows:

5 535C.9 RULES.

6 The ~~administrator~~ attorney general may adopt rules
7 according to chapter 17A as necessary or appropriate to
8 implement the purposes of this chapter.

9 Sec. 18. Section 535C.10, subsection 1, Code 1993, is
10 amended to read as follows:

11 1. If a broker materially violates the loan brokerage
12 agreement, the borrower may, upon written notice, void the
13 agreement. In addition, the borrower may recover all moneys
14 paid the broker ~~and-may-recover,~~ a penalty of twice the amount
15 of the fee sought by the broker, other damages ~~including,~~ and
16 reasonable attorney's fees. ~~The-broker-materially-violates~~
17 ~~the-agreement-if-the-broker-does~~ A material violation
18 includes, but is not limited to, any of the following:

19 a. ~~Makes~~ Making false or misleading statements relative to
20 the agreement.

21 b. ~~Does-not~~ Failure to comply with the agreement or the
22 obligations arising from the agreement.

23 c. ~~Does-not~~ Failure to either grant the borrower a loan or
24 issue a credit card or diligently attempt to obtain a loan or
25 credit card for the borrower.

26 d. ~~Does-not~~ Failure to comply with the requirements of
27 this chapter.

28 e. Soliciting or obtaining, directly or indirectly, an
29 advance fee.

30 Sec. 19. Section 535C.11, Code 1993, is amended to read as
31 follows:

32 535C.11 APPLICABILITY.

33 This chapter does not apply to activities or arrangements
34 expressly approved or regulated by the ~~administrator-under~~
35 ~~other-law,~~ or-the-banking-division-or-savings-and-loan

1 ~~division-in-the~~ department of commerce.

2 Sec. 20. NEW SECTION. 535C.11A EXEMPTION -- BURDEN OF
3 PROOF.

4 In a civil proceeding pursuant to this chapter, a person
5 claiming to be excluded from the definition of "loan broker"
6 or "broker" has the burden of proof in substantiating the
7 claim.

8 Sec. 21. Section 535C.12, Code 1993, is amended to read as
9 follows:

10 535C.12 RECORDS.

11 1. A loan broker shall maintain accurate records, ~~as~~
12 ~~required-by-the-administrator,~~ relating to transactions
13 regulated under this chapter. The records shall include all
14 of the following:

15 a. The accounts of the broker.

16 b. A copy of each contract in which the broker is a party,
17 including loan brokerage agreements.

18 c. The amount of receipts received by the broker and the
19 date the receipts were received.

20 2. The broker shall retain each loan brokerage agreement
21 entered into by the broker and records pertaining to each
22 agreement for at least two years after the agreement expires.

23 ~~The-agreements-and-records-shall-be-maintained-and-made~~
24 ~~available-for-examination-by-the-administrator.~~

25 Sec. 22. Section 535C.14, Code 1993, is amended to read as
26 follows:

27 535C.14 MISREPRESENTATION OF GOVERNMENTAL APPROVAL.

28 It is unlawful for a loan broker to represent or imply that
29 the broker has been sponsored, recommended, or approved by, or
30 that the broker's abilities or qualifications have been passed
31 upon by ~~the-commissioner, the insurance division, the~~
32 ~~securities-bureau, or the state of Iowa~~ a governmental entity
33 of the state or its political subdivisions.

34 Sec. 23. Section 538A.2, subsection 1, Code 1993, is
35 amended to read as follows:

1 1. A credit services organization is a person who, with
2 respect to the extension of credit by others and in return for
3 the payment of money or other valuable consideration,
4 provides, or represents that the person can or will provide,
5 any of the following services:

- 6 a. Improving a buyer's credit record, history, or rating.
- 7 b. ~~Obtaining an extension of credit for a buyer.~~
- 8 c. Providing advice or assistance to a buyer with regard
9 to paragraph "a" or "b".

10 Sec. 24. Section 546.8, Code 1993, is amended to read as
11 follows:

12 546.8 INSURANCE DIVISION.

13 The insurance division shall regulate and supervise the
14 conducting of the business of insurance in the state. The
15 division shall enforce and implement Title XIII, subtitle 1,
16 insurance and related regulation, chapters 505 through ~~523E~~
17 523G, and chapters 502, ~~503~~, and 535C, and shall perform other
18 duties assigned to the division by law. The division is
19 headed by the commissioner of insurance who shall be appointed
20 pursuant to section 505.2.

21 Sec. 25. Section 557B.14, Code 1993, is amended to read as
22 follows:

23 557B.14 REMEDIES.

24 1. A violation of this chapter or the commission of any
25 act declared to be unlawful under this chapter constitutes a
26 violation of section 714.16, subsection 2, paragraph "a", and
27 the attorney general has all the powers enumerated in that
28 section to enforce the provisions of this chapter.

29 2. In addition, the attorney general may seek civil pen-
30 alties of not more than ten thousand dollars for each viola-
31 tion of or the commission of any act declared to be unlawful
32 under this chapter. Each day of continued violation consti-
33 tutes a separate offense.

34 3. Any person who fails to pay the filing fees required by
35 this chapter and continues to sell membership camping

1 contracts is liable civilly in an action brought by the at-
2 torney general for a penalty in an amount equal to treble the
3 unpaid fees.

4 4. The provisions of this chapter are cumulative and
5 nonexclusive and do not affect any other available remedy at
6 law or equity, except as otherwise provided in sections
7 502.202, ~~503.3~~ 503A.2, and 537.3310.

8 Sec. 26. Chapter 503, Code 1993, is repealed.

9 Sec. 27. Sections 535C.3, 535C.3A, 535C.4, 535C.5,
10 535C.13, and 535C.16, Code 1993, are repealed.

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SENATE FILE 271

4043

1 Amend Senate File 271, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 2, by inserting before line 4 the
4 following:

5 "For purposes of subsection 6, "reasonable
6 commercial terms" includes the repurchase of all
7 unencumbered products which are in an unused,
8 commercially resalable condition within one year from
9 the direct seller's date of purchase. The repurchase
10 shall be at a price not less than ninety percent of
11 the original net cost to the direct seller of the
12 products being returned. "Original net cost" means
13 the amount actually paid by the direct seller for the
14 products, less any consideration received by the
15 direct seller for the purchase of the products being
16 returned. Products which are no longer marketed by a
17 program shall be deemed resalable if the products are
18 otherwise in an unused, commercially resalable
19 condition and are returned to the seller within one
20 year from the direct seller's date of purchase,
21 provided, however, that products which are no longer
22 marketed by a program shall not be deemed resalable if
23 the products are sold to direct sellers as
24 nonreturnable, discontinued, seasonal, or special
25 promotion items and the nonreturnable nature of the
26 product was clearly disclosed to the direct seller
27 prior to purchase."

By HALVORSON of Clayton

H-4043 FILED APRIL 19, 1993

Adopted
4-19-93
(P.1400)

HOUSE AMENDMENT TO
SENATE FILE 271

S-3528

1 Amend Senate File 271, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 2, by inserting after line 3 the
4 following:

5 " . The sale of goods or services by
6 corporations, partnerships, unincorporated
7 associations, or other business enterprises which sell
8 products to direct sellers as defined by section 3508
9 of the Internal Revenue Code, where the initial
10 contract establishing the relationship with the direct
11 seller is terminable at will by either party, and
12 where the corporation, partnership, unincorporated
13 association, or other business enterprise offers to
14 repurchase the products at reasonable commercial
15 terms."

16 2. Page 2, by inserting before line 4 the
17 following:

18 "For purposes of subsection 6, "reasonable
19 commercial terms" includes the repurchase of all
20 unencumbered products which are in an unused,
21 commercially resalable condition within one year from
22 the direct seller's date of purchase. The repurchase
23 shall be at a price not less than ninety percent of
24 the original net cost to the direct seller of the
25 products being returned. "Original net cost" means
26 the amount actually paid by the direct seller for the
27 products, less any consideration received by the
28 direct seller for the purchase of the products being
29 returned. Products which are no longer marketed by a
30 program shall be deemed resalable if the products are
31 otherwise in an unused, commercially resalable
32 condition and are returned to the seller within one
33 year from the direct seller's date of purchase,
34 provided, however, that products which are no longer
35 marketed by a program shall not be deemed resalable if
36 the products are sold to direct sellers as
37 nonreturnable, discontinued, seasonal, or special
38 promotion items and the nonreturnable nature of the
39 product was clearly disclosed to the direct seller
40 prior to purchase."

41 3. By renumbering, relettering, or redesignating
42 and correcting internal references as necessary.

RECEIVED FROM THE HOUSE

S-3528 FILED APRIL 20, 1993

Senate Concurred
4-21-93
P. 1262

DELUHRY, CH.
PRIEBE
FUHRMAN

SSB 220
Commerce

SENATE/HOUSE FILE 271
BY (PROPOSED DEPARTMENT OF
COMMERCE/DIVISION OF
INSURANCE BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to entities and subject matter under the
2 regulatory authority of the regulated industries unit of the
3 division of insurance, including residential service
4 contracts, continuing care retirement communities, loan
5 brokers, and membership organizations.

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

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1 Section 1. NEW SECTION. 503A.1 DEFINITIONS.

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

4 1. "Buying club" means a corporation, partnership,
5 unincorporated association, or other business enterprise which
6 sells or offers for sale to the public generally memberships
7 or certificates of membership.

8 2. "Membership" means certificates, memberships, shares,
9 bonds, contracts, stocks, or agreements of any kind or
10 character issued upon any plan offered generally to the public
11 entitling the holder to purchase merchandise, materials,
12 equipment, or service, either from the issuer or another
13 person designated by the issuer, either under a franchise or
14 otherwise, whether it be at a discount, at cost plus a
15 percentage, at cost plus a fixed amount, at a fixed price, or
16 on any other similar basis.

17 3. "Contract" means the agreement by which a person
18 acquires a membership in a buying club.

19 Sec. 2. NEW SECTION. 503A.2 EXEMPTIONS.

20 This chapter does not apply to any of the following:

21 1. Building and loan associations, state or national
22 banks, insurance companies and associations, mutual or
23 cooperative telephone companies organized under chapter 491
24 which have been determined to be exempt from taxation under
25 501(c)(12) of the Internal Revenue Code.

26 2. Corporations and cooperative associations subject to
27 regulation under chapter 497, 498, or 499.

28 3. The sale of membership camping contracts by persons or
29 entities registered or exempt under chapter 557B.

30 4. The sale of physical exercise club contracts by persons
31 or entities registered under chapter 552.

32 5. Corporations, partnerships, unincorporated
33 associations, or other business enterprises which sell or
34 offer for sale memberships to an individual or to a family
35 unit for consideration of no more than fifty dollars for a

1 one-year period. Consideration for this purpose includes but
2 is not limited to the amount of any required purchase under
3 the terms of the contract.

4 Sec. 3. NEW SECTION. 503A.3 RIGHT OF CANCELLATION --
5 REQUIREMENT OF WRITING.

6 The requirements of sections 555A.1 through 555A.5,
7 relating to door-to-door sales, shall apply to sales of buying
8 club memberships, irrespective of the place or manner of sale
9 or the purpose for which they are purchased. In addition to
10 the requirements of chapter 555A, a contract shall not be
11 enforceable against a person acquiring a membership in a
12 buying club unless the contract is in writing and signed by
13 the purchaser.

14 Sec. 4. NEW SECTION. 503A.4 LIMITATION ON MEMBERSHIP
15 PERIOD.

16 A contract shall not be valid for a term longer than
17 eighteen months from the date on which the contract is signed.
18 However, a buying club may allow a member to convert the
19 contract into a contract for a period longer than eighteen
20 months after the member has been a member of the club for at
21 least one year. The duration of the contract shall be clearly
22 and conspicuously disclosed in the contract in bold-face type
23 of a minimum size of fourteen points.

24 Sec. 5. NEW SECTION. 503A.5 REMEDIES.

25 1. A violation of this chapter is a violation of section
26 714.16, subsection 2, paragraph "a".

27 2. The rights, obligations, and remedies provided in this
28 chapter shall be in addition to any other rights, obligations,
29 or remedies provided by law or in equity.

30 3. In addition to the remedies otherwise provided by law,
31 any person injured by a violation of this chapter may bring a
32 civil action and recover damages, together with costs,
33 including reasonable attorney's fees, and receive other
34 equitable relief as determined by the court.

35 Sec. 6. Section 505.1, Code 1993, is amended to read as

1 follows:

2 505.1 INSURANCE DIVISION CREATED.

3 An insurance division is created within the department of
4 commerce to regulate and supervise the conducting of the
5 business of insurance in the state. The commissioner of
6 insurance is the chief executive officer of the division. As
7 used in this chapter, the rest of the insurance title, and
8 chapters 502, 503, and 535C, "division" means the insurance
9 division.

10 Sec. 7. Section 523C.2, Code 1993, is amended to read as
11 follows:

12 523C.2 LICENSE REQUIRED.

13 A person shall not issue a residential service contract or
14 undertake or arrange to perform services pursuant to a
15 residential service contract unless the person is a
16 corporation or other form of organization approved by the
17 commissioner by rule and is a licensed service company.

18 Sec. 8. Section 523C.8, Code 1993, is amended to read as
19 follows:

20 523C.8 REBATES AND COMMISSIONS.

21 A service company shall not pay a commission or any other
22 consideration to any person as an inducement or compensation
23 for the issuance, purchase, or acquisition of a residential
24 service contract. However, this section does not prohibit
25 payment of an override commission or marketing fee to an
26 employee or commission sales agent who is the a marketing or
27 sales representative of the service company or its parent
28 company, subsidiary, or affiliate on the sale or marketing of
29 a residential service contract, provided the employee or
30 commission sales agent is not a real estate licensee sharing
31 in or entitled to share in, or affiliated with, a company or
32 organization which is entitled to share in any real estate
33 commission generated by the underlying real property
34 transaction. This section also does not prohibit bona fide
35 payments or reimbursements for inspection fees, if an

1 inspection of the property to be the subject of a residential
2 service contract is required by a service company and if the
3 inspection fee is reasonably related to the services
4 performed.

5 Sec. 9. NEW SECTION. 523C.8A ISSUANCE OF RESIDENTIAL
6 SERVICE CONTRACT WITHOUT CONSIDERATION PROHIBITED.

7 1. Except as provided in subsection 2, furnishing a
8 residential service contract to any person without charge for
9 the applicable contract fees constitutes a violation of this
10 chapter. A residential service contract providing for listing
11 period coverage shall not be issued or delivered unless it
12 provides for consideration for such coverage. The
13 consideration may consist of a bona fide promise to pay the
14 applicable residential service contract fees at the close of
15 the sale. However, if a contract is subsequently cancelled as
16 a result of the failure to close such a sale, including such
17 failure due to cancellation, expiration, or other termination
18 of any real estate listing agreement on the residence, the
19 residential service contract holder shall pay to the service
20 company, at the time of cancellation of the residential
21 service contract, the lesser of the actual costs of such
22 service or a pro rata portion of the applicable annual
23 residential service contract fees based on the number of days
24 the residential service contract remained in effect, together
25 with administrative costs incurred by the service company as a
26 result of the cancellation.

27 2. a. Notwithstanding subsection 1, a service company may
28 offer a residential service contract providing for listing
29 period coverage for consideration which consists of both of
30 the following:

31 (1) The contract holder's bona fide promise to pay, upon
32 the close of sale, the applicable residential service contract
33 fees for coverage of the residence for at least one year from
34 the close of sale.

35 (2) Actual payment of the costs of any and all services

1 performed under the residential service contract during the
2 term of the listing period coverage by the contract holder to
3 the service company.

4 b. Upon the close of sale and actual payment of the
5 contract fees referred to in paragraph "a", subparagraph (1),
6 the service company shall reimburse the listing period
7 coverage contract holder for all legitimate service costs
8 incurred and paid under the residential service contract
9 during the term of the listing period coverage with offset
10 only for any deductible or service call fees remaining due and
11 payable with respect to service performed under the
12 residential service contract during the term of the listing
13 period coverage.

14 3. For purposes of this section:

15 a. "Close of sale" means the time an interest in, or title
16 to, a home to which the interest or title attaches is sold or
17 transferred.

18 b. "Listing period coverage" means coverage provided prior
19 to the close of sale.

20 Sec. 10. Section 523C.17, Code 1993, is amended to read as
21 follows:

22 523C.17 LENDING INSTITUTION.

23 A bank, savings and loan association, insurance company or
24 other lending institution shall not require the purchase of a
25 residential service contract as a condition of a loan. A
26 service company or an insurer, either directly or indirectly,
27 as a part of any real property transaction in which a
28 residential service contract will be issued, purchased, or
29 acquired, shall not require that a residential service
30 contract be issued, purchased, or acquired in conjunction with
31 or as a condition precedent to the issuance, purchase, or
32 acquisition, by any person, of a policy of insurance. A
33 lending institution shall not sell a residential service
34 contract to a borrower unless the borrower signs an affidavit
35 acknowledging that the purchase is not required. Violation of

1 this section is punishable as provided in section 523C.13.

2 Sec. 11. NEW SECTION. 523C.20 CONSENT TO SERVICE OF
3 PROCESS.

4 If a person engages in conduct subject to regulation under
5 this chapter, the conduct shall constitute the appointment of
6 the commissioner of insurance as the person's attorney to
7 receive service of any lawful process in a noncriminal
8 proceeding against the person, a successor, or personal
9 representative, which grows out of that conduct, with the same
10 force and validity as if served personally.

11 Sec. 12. Section 523D.5, subsection 3, Code 1993, is
12 amended to read as follows:

13 3. CONSTRUCTION. New construction shall not begin until
14 the filing required by this section has been made and at least
15 fifty percent of the proposed number of independent living
16 units in the initial stage or phase have been reserved
17 pursuant to executed contracts and at least ten percent of the
18 entrance fees required by those contracts are held in escrow
19 pursuant to this chapter. However, the requirements of this
20 subsection may be waived by the commissioner by rule or order
21 upon a showing of good cause.

22 For purposes of this subsection, "good cause" includes but
23 is not limited to, evidence of the following:

24 a. Secured financing adequate in an amount and term to
25 complete the project described in the filing required by this
26 section.

27 b. Cash reserves adequate in an amount to operate the
28 facility for twenty-four months based upon reasonable
29 projections of income and expenses.

30 c. Creation of an escrow account in which a resident's
31 entrance fee or purchase price will be deposited, if the terms
32 of the escrow agreement provide reasonable protection from
33 loss until at least fifty percent of the proposed number of
34 independent living units in the initial stage or phase have
35 been reserved.

1 Sec. 13. Section 535C.2, subsections 1, 3, and 5, Code
2 1993, are amended by striking the subsections.

3 Sec. 14. Section 535C.2, subsections 2, 7, and 8, Code
4 1993, are amended to read as follows:

5 2. "Advance fee" means consideration of any type including
6 a payment, fee, pay-per-call charge, or deposit, which is
7 assessed or collected prior to the closing of a loan or the
8 issuing of a credit card. ~~An advance fee includes, but is not~~
9 ~~limited to, money assessed or collected for processing, for an~~
10 ~~appraisal, for a credit check, for a consultation, or for~~
11 ~~expenses.~~

12 7. "Loan broker" or "broker" means a person who ~~in return~~
13 ~~for an advance fee,~~ promises to obtain a loan or credit card
14 or assist in obtaining a loan for another from a third person,
15 or who promises to consider making a loan or offering to issue
16 a credit card to a person. A loan broker does not include any
17 of the following:

18 a. An attorney licensed to practice in this state while
19 engaged in the practice of law.

20 b. A certified public accountant licensed to practice in
21 this state while engaged in practice as a certified public
22 accountant.

23 c. An accounting practitioner, while engaged as an
24 accounting practitioner, who procures loans as an incidental
25 part of the accountant's practice.

26 d. ~~A person whose fee is entirely contingent on the~~
27 ~~successful procurement of a loan from a third person, if the~~
28 ~~borrower has not paid a fee prior to the closing of a loan~~
29 ~~other than a bona fide third party fee~~ A governmental body or
30 employee acting in an official capacity.

31 e. A financial institution, to the extent the
32 institution's activities or arrangements are expressly
33 approved or regulated by a regulatory body or officer acting
34 under authority of the United States.

35 f. An insurance company ~~organized under the laws of this~~

1 state-and subject to regulation by the commissioner of
2 insurance.

3 g. A bank incorporated under chapter 524.

4 h. A credit union incorporated under chapter 533.

5 i. A savings and loan association or savings bank
6 incorporated under chapter 534.

7 j. A mortgage broker or mortgage banker licensed under
8 chapter 535B.

9 k. A regulated loan company licensed under chapter 536.

10 l. An industrial loan company licensed under chapter 536A.

11 8. "Loan brokerage agreement" or "agreement" means an
12 agreement between a loan broker and a borrower in which the
13 loan broker promises to do any of the following:

14 a. Obtain a loan or credit card for a borrower.

15 b. Assist the borrower in obtaining a loan or credit card.

16 c. Consider making a loan or issuing a credit card to the
17 borrower.

18 Sec. 15. NEW SECTION. 535C.2A PROHIBITION ON ADVANCE
19 FEES.

20 A loan broker shall not directly or indirectly solicit,
21 receive, or accept from a borrower an advance fee as
22 consideration for providing services as a loan broker. A loan
23 broker's fee may only be assessed or collected from a borrower
24 after the successful procurement of a loan or issuance of a
25 credit card.

26 Sec. 16. Section 535C.6, Code 1993, is amended to read as
27 follows:

28 535C.6 PENALTIES.

29 A loan broker who violates a provision of this chapter is
30 guilty of a serious misdemeanor for-failure-to-do-any-of-the
31 following:

32 1---Obtain-and-maintain-a-surety-bond-or-establish-and
33 maintain-a-trust-account-as-required-in-section-535C-4-

34 2---Make-accurate-and-timely-filings-as-required-in-section
35 535C-5.

1 Sec. 17. Section 535C.9, Code 1993, is amended to read as
2 follows:

3 535C.9 RULES.

4 The administrator attorney general may adopt rules
5 according to chapter 17A as necessary or appropriate to
6 implement the purposes of this chapter.

7 Sec. 18. Section 535C.10, subsection 1, Code 1993, is
8 amended to read as follows:

9 1. If a broker materially violates the loan brokerage
10 agreement, the borrower may, upon written notice, void the
11 agreement. In addition, the borrower may recover all moneys
12 paid the broker ~~and may recover~~ , a penalty of twice the
13 amount of the fee sought by the broker, other damages
14 including , and reasonable attorney's fees. ~~The broker~~
15 ~~materially violates the agreement if the broker does~~ A
16 material violation includes, but is not limited to, any of the
17 following:

18 a. ~~Makes~~ Making false or misleading statements relative to
19 the agreement.

20 b. ~~Does not~~ Failure to comply with the agreement or the
21 obligations arising from the agreement.

22 c. ~~Does not~~ Failure to either grant the borrower a loan or
23 issue a credit card or diligently attempt to obtain a loan or
24 credit card for the borrower.

25 d. ~~Does not~~ Failure to comply with the requirements of
26 this chapter.

27 e. Soliciting or obtaining, directly or indirectly, an
28 advance fee.

29 Sec. 19. Section 535C.11, Code 1993, is amended to read as
30 follows:

31 535C.11 APPLICABILITY.

32 This chapter does not apply to activities or arrangements
33 expressly approved or regulated by the ~~administrator under~~
34 ~~other law, or the banking division or savings and loan~~
35 ~~division in the~~ department of commerce.

1 Sec. 20. NEW SECTION. 535C.11A EXEMPTION -- BURDEN OF
2 PROOF.

3 In a civil proceeding pursuant to this chapter, a person
4 claiming to be excluded from the definition of "loan broker"
5 or "broker" has the burden of proof in substantiating the
6 claim.

7 Sec. 21. Section 535C.12, Code 1993, is amended to read as
8 follows:

9 535C.12 RECORDS.

10 1. A loan broker shall maintain accurate records~~7-as~~
11 ~~required-by-the-administrator7~~ relating to transactions
12 regulated under this chapter. The records shall include all
13 of the following:

14 a. The accounts of the broker.

15 b. A copy of each contract in which the broker is a party,
16 including loan brokerage agreements.

17 c. The amount of receipts received by the broker and the
18 date the receipts were received.

19 2. The broker shall retain each loan brokerage agreement
20 entered into by the broker and records pertaining to each
21 agreement for at least two years after the agreement expires.
22 ~~The-agreements-and-records-shall-be-maintained-and-made~~
23 ~~available-for-examination-by-the-administrator7~~

24 Sec. 22. Section 535C.14, Code 1993, is amended to read as
25 follows:

26 535C.14 MISREPRESENTATION OF GOVERNMENTAL APPROVAL.

27 It is unlawful for a loan broker to represent or imply that
28 the broker has been sponsored, recommended, or approved by, or
29 that the broker's abilities or qualifications have been passed
30 upon by ~~the-commissioner7-the-insurance-division7-the~~
31 ~~securities-bureau7-or-the-state-of-iowa~~ a governmental entity
32 of the state or its political subdivisions.

33 Sec. 23. Section 538A.2, subsection 1, Code 1993, is
34 amended to read as follows:

35 1. A credit services organization is a person who, with

1 respect to the extension of credit by others and in return for
2 the payment of money or other valuable consideration,
3 provides, or represents that the person can or will provide,
4 any of the following services:

5 a. Improving a buyer's credit record, history, or rating.

6 b. ~~Obtaining an extension of credit for a buyer.~~

7 c. Providing advice or assistance to a buyer with regard
8 to paragraph "a" or "b".

9 Sec. 24. Section 546.8, Code 1993, is amended to read as
10 follows:

11 546.8 INSURANCE DIVISION.

12 The insurance division shall regulate and supervise the
13 conducting of the business of insurance in the state. The
14 division shall enforce and implement Title XIII, subtitle 1,
15 insurance and related regulation, chapters 505 through 523E
16 523G, and chapters 502, 503, and 535C, and shall perform other
17 duties assigned to the division by law. The division is
18 headed by the commissioner of insurance who shall be appointed
19 pursuant to section 505.2.

20 Sec. 25. Section 557B.14, Code 1993, is amended to read as
21 follows:

22 557B.14 REMEDIES.

23 1. A violation of this chapter or the commission of any
24 act declared to be unlawful under this chapter constitutes a
25 violation of section 714.16, subsection 2, paragraph "a", and
26 the attorney general has all the powers enumerated in that
27 section to enforce the provisions of this chapter.

28 2. In addition, the attorney general may seek civil pen-
29 alties of not more than ten thousand dollars for each viola-
30 tion of or the commission of any act declared to be unlawful
31 under this chapter. Each day of continued violation consti-
32 tutes a separate offense.

33 3. Any person who fails to pay the filing fees required by
34 this chapter and continues to sell membership camping
35 contracts is liable civilly in an action brought by the at-

1orney general for a penalty in an amount equal to treble the
2 unpaid fees.

3 4. The provisions of this chapter are cumulative and
4 nonexclusive and do not affect any other available remedy at
5 law or equity, except as otherwise provided in sections
6 502.202, 503.3 503A.2, and 537.3310.

7 Sec. 26. Chapter 503, Code 1993, is repealed.

8 Sec. 27. Sections 535C.3, 535C.3A, 535C.4, 535C.5,
9 535C.13, and 535C.16, Code 1993, are repealed.

10 EXPLANATION

11 This bill amends several provisions of relating to subject
12 matter under the authority of the regulated industries unit of
13 the division of insurance including membership organizations,
14 residential service contracts, continuing care retirement
15 communities, and loan brokers.

16 Chapter 503 (membership sales) is repealed and new chapter
17 503A is established. This new chapter regulates membership
18 sales in buying clubs which permit a member to purchase
19 merchandise, materials, equipment, or services at a discount,
20 at cost plus a percentage, at cost plus a fixed amount, at a
21 fixed price, or on any other basis. The bill imposes a
22 disclosure requirement and establishes a 3-day right to cancel
23 such memberships. The bill provides that a violation of this
24 chapter is a violation of the Iowa consumer fraud Act and
25 provides for a private right of action for a violation.
26 Conforming amendments are made to sections 505.1, 546.8, and
27 557B.14.

28 Section 523C.2 is amended to permit noncorporate entities
29 approved by the commissioner to be licensed as a residential
30 service contract company. Section 523C.8 is amended for
31 purposes of describing an entitlement or share of a real
32 estate commission.

33 Section 523C.8A is created and provides that furnishing a
34 residential service contract to any person without charge for
35 the applicable contract fees is a violation of chapter 523C.

1 However, the section provides that a service company may offer
2 a residential service contract providing for listing period
3 coverage for consideration which consists of both of the
4 following:

5 (1) The contract holder's bona fide promise to pay, upon
6 the close of sale, the applicable residential service contract
7 fees for coverage of the residence for at least one year from
8 the close of sale.

9 (2) Actual payment of the costs of any and all services
10 performed under the residential service contract during the
11 term of the listing period coverage by the contract holder to
12 the service company.

13 Section 523C.17 is amended to provide that a service
14 company or insurer cannot require that a residential service
15 contract be issued, purchased, or acquired as a condition to
16 the issuance, purchase, or acquisition of a policy of
17 insurance.

18 Section 523C.20 is created which provides that a
19 residential service contract provider who engages in conduct
20 subject to regulation under chapter 523C consents to the
21 appointment of the commissioner of insurance to receive
22 service of process on behalf of such person in noncriminal
23 proceedings.

24 Section 523D.5 is amended to give the commissioner of
25 insurance discretionary authority to allow new construction of
26 retirement facilities to commence even though compliance with
27 the standards set forth in that section have not been met, if
28 the application demonstrates good cause for the waiver. The
29 bill provides a definition of good cause.

30 Chapter 535C, the Iowa loan brokers Act is amended by
31 eliminating the filing requirements, removing the division of
32 insurance as the administrator and giving this authority to
33 the attorney general, and establishing a prohibition on
34 advance fees. The chapter has been amended to include a
35 person who assists another in procuring a credit card as well.

1 BACKGROUND STATEMENT
2 SUBMITTED BY THE AGENCY

3 In the 1991 legislative session, enhanced regulation of new
4 construction of retirement communities was adopted to decrease
5 the risk of loss for prospective residents' down payments.
6 The amendment will provide the division with discretion to
7 waive the prohibition in situations where a risk of loss for
8 residents or prospective residents is minimal or does not
9 exist.

10 The division is modifying what appears to be an unwarranted
11 restriction on the form of legal entity used by a licensee
12 under the residential service contracts Act. Greater
13 flexibility is provided to use a form of organization other
14 than a corporation. The division is also making a clarifying
15 amendment of the prohibition on the payment of certain sales
16 commissions.

17 Fraudulent loan brokers continue to prey on persons in Iowa
18 and throughout the country. In 1991 the securities bureau
19 received over 90 loan broker complaints; presumably many
20 Iowans were also victimized but did not complain to law
21 enforcement officials. The majority of complaints involve
22 advance fees schemes, where brokers promise to obtain a loan
23 or credit card in exchange for money up-front. In most
24 circumstances, a loan or credit card is never obtained and the
25 person never receives a refund of the money. Loan brokers
26 also use 900 numbers ("pay-per-call") in conjunction with
27 radio, television, and newspaper advertisements to solicit
28 calls from individuals with "poor credit/bad credit",
29 guaranteeing them loans or credit cards; the 900 number charge
30 results in advance fees to these brokers. Unscrupulous loan
31 brokers prey on persons in serious financial circumstances who
32 are least able to afford the loss of additional funds to
33 fraudulent credit schemes.

34 Chapter 535C currently allows loan brokers to charge
35 advance fees if they file a statement with the commissioner,

1 obtain a \$10,000 bond and provide various disclosures to
2 potential borrowers. Only one loan broker is currently filing
3 with the office. The agency believes the filing requirement
4 does not protect Iowans as fully as an outright ban on advance
5 fees would. Recently, several states have enacted laws
6 prohibiting loan brokers from soliciting advance fees. These
7 states report that neither legitimate businesses nor potential
8 borrowers have been harmed by this ban.

9 Since loan brokers would be prohibited from seeking advance
10 fees, the filing requirements would not be necessary.
11 Therefore, the provisions regarding disclosure statements,
12 bonding, filing, and administrative actions would be repealed.
13 These amendments would better protect Iowans and also conserve
14 state resources that could be used for other activities.

15 This bill also increases the penalties for violating the
16 chapter by allowing persons to sue for actual damages,
17 attorney's fees and a penalty of twice the amount of the fee
18 sought. This penalty provision should encourage persons to
19 recoup their losses through private actions against fraudulent
20 loan brokers. The state may still pursue loan brokers
21 directly since chapter 535C currently provides that a
22 violation of the chapter is a violation of the Iowa consumer
23 fraud Act, Iowa Code § 714.16, which is enforceable by the
24 attorney general. The bill also clarifies that offering to
25 find lenders who would issue a credit card to a person also
26 constitutes loan brokering. This is an area of particular
27 concern and abuse.

28 The list of parties exempt from chapter 535C includes
29 regulated lending and financial institutions, insurance
30 companies, lawyers, and other parties. These exemptions are
31 maintained, since problems with advance fee loan schemes do
32 not come from these entities. An exemption has been added for
33 governmental entities. The exemption for loan brokers who do
34 not solicit advance fees has been deleted as the Act would
35 cover all loan brokers and prohibit seeking advance fees.

1 The amendment to chapter 538A, credit services
2 organizations, is necessary to close a loophole which could
3 permit loan brokers to charge advance fees by registering
4 under that chapter, which is primarily directed towards
5 "credit repair" companies.

6 Since 1983, the division has opened 15 registration files
7 under the Iowa membership sales Act. Of these 15 files, four
8 have been granted exemptions, two are currently registered,
9 and two applications are pending. The registration procedure
10 simply has not been very effective.

11 While registration activity has been nominal, complaints
12 and inquiries continue to be received. Complaints have been
13 received by the division on an average of eight per year over
14 the last four fiscal years. Recently, inquiries are on the
15 rise as discount buying club pyramids flood the consumer
16 marketplace.

17 The latest, most common activity within this area is the
18 explosion of discount buying club plans. These plans have
19 generally been able either to fall outside the scope of the
20 Iowa membership sales Act (less than \$50 fee for one year) or
21 to comply with the filing requirements. At that point, the
22 division has no jurisdiction, but we know that the multi-level
23 marketing provisions of the consumer protection Act are being
24 violated. Our only course of action is to refer the file to
25 the consumer protection division of the department of justice.
26 If the membership sales Act is transferred to the jurisdiction
27 of the attorney general, these statutes could be administered
28 in tandem, minimizing duplicative investigations and
29 enforcement actions.

30 Several membership sales files opened in fiscal year 1992
31 involved a loan broker/membership combination. In our office,
32 enforcement action under the two statutes has been effected
33 simultaneously. If the loan broker statute is administered by
34 the attorney general, transferring authority over memberships
35 will allow the tandem administration of these two statutes to

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SENATE FILE 271

AN ACT

RELATING TO ENTITIES AND SUBJECT MATTER UNDER THE REGULATORY AUTHORITY OF THE REGULATED INDUSTRIES UNIT OF THE DIVISION OF INSURANCE, INCLUDING RESIDENTIAL SERVICE CONTRACTS, CONTINUING CARE RETIREMENT COMMUNITIES, LOAN BROKERS, AND MEMBERSHIP ORGANIZATIONS.

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

Section 1. NEW SECTION. 503A.1 DEFINITIONS.

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

1. "Buying club" means a corporation, partnership, unincorporated association, or other business enterprise which sells or offers for sale to the public generally memberships or certificates of membership.

2. "Membership" means certificates, memberships, shares, bonds, contracts, stocks, or agreements of any kind or character issued upon any plan offered generally to the public entitling the holder to purchase merchandise, materials, equipment, or service, either from the issuer or another person designated by the issuer, either under a franchise or otherwise, whether it be at a discount, at cost plus a percentage, at cost plus a fixed amount, at a fixed price, or on any other similar basis.

3. "Contract" means the agreement by which a person acquires a membership in a buying club.

Sec. 2. NEW SECTION. 503A.2 EXEMPTIONS.

This chapter does not apply to any of the following:

1. Building and loan associations, state or national banks, insurance companies and associations, mutual or cooperative telephone companies organized under chapter 491 which have been determined to be exempt from taxation under 501(c)(12) of the Internal Revenue Code.

2. Corporations and cooperative associations subject to regulation under chapter 497, 498, or 499.

3. The sale of membership camping contracts by persons or entities registered or exempt under chapter 557B.

4. The sale of physical exercise club contracts by persons or entities registered under chapter 552.

5. Corporations, partnerships, unincorporated associations, or other business enterprises which sell or offer for sale memberships to an individual or to a family unit for consideration of no more than fifty dollars for a one-year period. Consideration for this purpose includes but is not limited to the amount of any required purchase under the terms of the contract.

6. The sale of goods or services by corporations, partnerships, unincorporated associations, or other business enterprises which sell products to direct sellers as defined by section 3508 of the Internal Revenue Code, where the initial contract establishing the relationship with the direct seller is terminable at will by either party, and where the corporation, partnership, unincorporated association, or other business enterprise offers to repurchase the products at reasonable commercial terms.

For purposes of subsection 6, "reasonable commercial terms" includes the repurchase of all unencumbered products which are in an unused, commercially resalable condition within one year from the direct seller's date of purchase. The repurchase shall be at a price not less than ninety percent of the original net cost to the direct seller of the products being returned. "Original net cost" means the amount actually paid by the direct seller for the products, less any consideration received by the direct seller for the purchase of the products being returned. Products which are no longer marketed by a program shall be deemed resalable if the products are otherwise in an unused, commercially resalable condition and are returned to the seller within one year from the direct seller's date of purchase, provided, however, that products

which are no longer marketed by a program shall not be deemed resalable if the products are sold to direct sellers as nonreturnable, discontinued, seasonal, or special promotion items and the nonreturnable nature of the product was clearly disclosed to the direct seller prior to purchase.

Sec. 3. NEW SECTION. 503A.3 RIGHT OF CANCELLATION -- REQUIREMENT OF WRITING.

The requirements of sections 555A.1 through 555A.5, relating to door-to-door sales, shall apply to sales of buying club memberships, irrespective of the place or manner of sale or the purpose for which they are purchased. In addition to the requirements of chapter 555A, a contract shall not be enforceable against a person acquiring a membership in a buying club unless the contract is in writing and signed by the purchaser.

Sec. 4. NEW SECTION. 503A.4 LIMITATION ON MEMBERSHIP PERIOD.

A contract shall not be valid for a term longer than eighteen months from the date on which the contract is signed. However, a buying club may allow a member to convert the contract into a contract for a period longer than eighteen months after the member has been a member of the club for at least one year. The duration of the contract shall be clearly and conspicuously disclosed in the contract in bold-face type of a minimum size of fourteen points.

Sec. 5. NEW SECTION. 503A.5 REMEDIES.

1. A violation of this chapter is a violation of section 714.16, subsection 2, paragraph "a".
2. The rights, obligations, and remedies provided in this chapter shall be in addition to any other rights, obligations, or remedies provided by law or in equity.
3. In addition to the remedies otherwise provided by law, any person injured by a violation of this chapter may bring a civil action and recover damages, together with costs, including reasonable attorney's fees, and receive other equitable relief as determined by the court.

Sec. 6. Section 505.1, Code 1993, is amended to read as follows:

505.1 INSURANCE DIVISION CREATED.

An insurance division is created within the department of commerce to regulate and supervise the conducting of the business of insurance in the state. The commissioner of insurance is the chief executive officer of the division. As used in this chapter, the rest of the insurance title, and chapters 502, 503, and 535C, "division" means the insurance division.

Sec. 7. Section 523C.2, Code 1993, is amended to read as follows:

523C.2 LICENSE REQUIRED.

A person shall not issue a residential service contract or undertake or arrange to perform services pursuant to a residential service contract unless the person is a corporation or other form of organization approved by the commissioner by rule and is a licensed service company.

Sec. 8. Section 523C.8, Code 1993, is amended to read as follows:

523C.8 REBATES AND COMMISSIONS.

A service company shall not pay a commission or any other consideration to any person as an inducement or compensation for the issuance, purchase, or acquisition of a residential service contract. However, this section does not prohibit payment of an override commission or marketing fee to an employee or commission sales agent who is the a marketing or sales representative of the service company or its parent company, subsidiary, or affiliate on the sale or marketing of a residential service contract, provided the employee or commission sales agent is not a real estate licensee sharing in or entitled to share in, or affiliated with, a company or organization which is entitled to share in any real estate commission generated by the underlying real property transaction. This section also does not prohibit fees, payments, or reimbursements for bona fide payments or

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

Sec. 9. NEW SECTION. 523C.8A ISSUANCE OF RESIDENTIAL SERVICE CONTRACT WITHOUT CONSIDERATION PROHIBITED.

1. Except as provided in subsection 2, furnishing a residential service contract to any person without charge for the applicable contract fees constitutes a violation of this chapter. A residential service contract providing for listing period coverage shall not be issued or delivered unless it provides for consideration for such coverage. The consideration may consist of a bona fide promise to pay the applicable residential service contract fees at the close of the sale. However, if a contract is subsequently cancelled as a result of the failure to close such a sale, including such failure due to cancellation, expiration, or other termination of any real estate listing agreement on the residence, the residential service contract holder shall pay to the service company, at the time of cancellation of the residential service contract, the lesser of the actual costs of such service or a pro rata portion of the applicable annual residential service contract fees based on the number of days the residential service contract remained in effect, together with administrative costs incurred by the service company as a result of the cancellation.

2. a. Notwithstanding subsection 1, a service company may offer a residential service contract providing for listing period coverage for consideration which consists of both of the following:

(1) The contract holder's bona fide promise to pay, upon the close of sale, the applicable residential service contract fees for coverage of the residence for at least one year from the close of sale.

(2) Actual payment of the costs of any and all services performed under the residential service contract during the term of the listing period coverage by the contract holder to the service contractor.

b. Upon the close of sale and actual payment of the contract fees referred to in paragraph "a", subparagraph (1), the service company shall reimburse the listing period coverage contract holder for all legitimate service costs incurred and paid under the residential service contract during the term of the listing period coverage with offset only for any deductible or service call fees remaining due and payable with respect to service performed under the residential service contract during the term of the listing period coverage.

3. For purposes of this section:

a. "Close of sale" means the time an interest in, or title to, a home to which the interest or title attaches is sold or transferred.

b. "Listing period coverage" means coverage provided prior to the close of sale.

Sec. 10. Section 523C.17, Code 1993, is amended to read as follows:

523C.17 LENDING INSTITUTION INSTITUTIONS, SERVICE COMPANIES, AND INSURANCE COMPANIES.

A bank, savings and loan association, insurance company or other lending institution shall not require the purchase of a residential service contract as a condition of a loan. A service company or an insurer, either directly or indirectly, as a part of any real property transaction in which a residential service contract will be issued, purchased, or acquired, shall not require that a residential service contract be issued, purchased, or acquired in conjunction with or as a condition precedent to the issuance, purchase, or acquisition, by any person, of a policy of insurance. A lending institution shall not sell a residential service contract to a borrower unless the borrower signs an affidavit

acknowledging that the purchase is not required. Violation of this section is punishable as provided in section 523C.13.

Sec. 11. NEW SECTION. 523C.20 CONSENT TO SERVICE OF PROCESS.

If a person engages in conduct subject to regulation under this chapter, the conduct shall constitute the appointment of the commissioner of insurance as the person's attorney to receive service of any lawful process in a noncriminal proceeding against the person, a successor, or personal representative, which grows out of that conduct, with the same force and validity as if served personally.

Sec. 12. Section 523D.5, subsection 3, Code 1993, is amended to read as follows:

3. CONSTRUCTION. New construction shall not begin until the filing required by this section has been made and at least fifty percent of the proposed number of independent living units in the initial stage or phase have been reserved pursuant to executed contracts and at least ten percent of the entrance fees required by those contracts are held in escrow pursuant to this chapter. However, the requirements of this subsection may be waived by the commissioner by rule or order upon a showing of good cause.

For purposes of this subsection, "good cause" includes but is not limited to, evidence of the following:

a. Secured financing adequate in an amount and term to complete the project described in the filing required by this section.

b. Cash reserves adequate in an amount to operate the facility for twenty-four months based upon reasonable projections of income and expenses.

c. Creation of an escrow account in which a resident's entrance fee or purchase price will be deposited, if the terms of the escrow agreement provide reasonable protection from loss until at least fifty percent of the proposed number of independent living units in the initial stage or phase have been reserved.

Sec. 13. Section 535C.2, subsections 1, 3, and 5, Code 1993, are amended by striking the subsections.

Sec. 14. Section 535C.2, subsections 2, 7, and 8, Code 1993, are amended to read as follows:

2. "Advance fee" means consideration of any type including a payment, fee, pay-per-call charge, or deposit, which is assessed or collected prior to the closing of a loan or the issuing of a credit card. ~~An advance fee includes, but is not limited to, money assessed or collected for processing, for an appraisal, for a credit check, for a consultation, or for expenses.~~

7. "Loan broker" or "broker" means a person who in return for an advance fee, promises to obtain a loan or credit card or assist in obtaining a loan for another from a third person, or who promises to consider making a loan or offering to issue a credit card to a person. A loan broker does not include any of the following:

a. An attorney licensed to practice in this state while engaged in the practice of law.

b. A certified public accountant licensed to practice in this state while engaged in practice as a certified public accountant.

c. An accounting practitioner, while engaged as an accounting practitioner, who procures loans as an incidental part of the accountant's practice.

d. ~~A person whose fee is entirely contingent on the successful procurement of a loan from a third person, if the borrower has not paid a fee prior to the closing of a loan other than a bona fide third party fee~~ A governmental body or employee acting in an official capacity.

e. A financial institution, to the extent the institution's activities or arrangements are expressly approved or regulated by a regulatory body or officer acting under authority of the United States.

f. An insurance company organized under the laws of this state and subject to regulation by the commissioner of insurance.

- g. A bank incorporated under chapter 524.
- h. A credit union incorporated under chapter 533.
- i. A savings and loan association or savings bank incorporated under chapter 534.
- j. A mortgage broker or mortgage banker licensed or registered under chapter 535B.
- k. A regulated loan company licensed under chapter 536.
- 1. An industrial loan company licensed under chapter 536A.
- 8. "Loan brokerage agreement" or "agreement" means an agreement between a loan broker and a borrower in which the loan broker promises to do any of the following:
 - a. Obtain a loan or credit card for a borrower.
 - b. Assist the borrower in obtaining a loan or credit card.
 - c. Consider making a loan or issuing a credit card to the borrower.

Sec. 15. NEW SECTION. 535C.2A PROHIBITION ON ADVANCE FEES.

A loan broker shall not directly or indirectly solicit, receive, or accept from a borrower an advance fee as consideration for providing services as a loan broker. A loan broker's fee may only be assessed or collected from a borrower after the successful procurement of a loan or issuance of a credit card.

Sec. 16. Section 535C.6, Code 1993, is amended to read as follows:

535C.6 PENALTIES.

A loan broker who violates a provision of this chapter is guilty of a serious misdemeanor ~~for failure to do any of the following:~~

- 1--~~Obtain and maintain a surety bond or establish and maintain a trust account as required in section 535E.4;~~
- 2--~~Make accurate and timely filings as required in section 535E.5.~~

Sec. 17. Section 535C.9, Code 1993, is amended to read as follows:

535C.9 RULES.

The administrator attorney general may adopt rules according to chapter 17A as necessary or appropriate to implement the purposes of this chapter.

Sec. 18. Section 535C.10, subsection 1, Code 1993, is amended to read as follows:

- 1. If a broker materially violates the loan brokerage agreement, the borrower may, upon written notice, void the agreement. In addition, the borrower may recover all moneys paid the broker and may recover, a penalty of twice the amount of the fee sought by the broker, other damages including, and reasonable attorney's fees. ~~The broker materially violates the agreement if the broker does~~ A material violation includes, but is not limited to, any of the following:

- a. Makes Making false or misleading statements relative to the agreement.
- b. ~~Does not~~ Failure to comply with the agreement or the obligations arising from the agreement.
- c. ~~Does not~~ Failure to either grant the borrower a loan or issue a credit card or diligently attempt to obtain a loan or credit card for the borrower.
- d. ~~Does not~~ Failure to comply with the requirements of this chapter.
- e. Soliciting or obtaining, directly or indirectly, an advance fee.

Sec. 19. Section 535C.11, Code 1993, is amended to read as follows:

535C.11 APPLICABILITY.

This chapter does not apply to activities or arrangements expressly approved or regulated by the ~~administrator under other law or the banking division or savings and loan division in the~~ department of commerce.

Sec. 20. NEW SECTION. 535C.11A EXEMPTION -- BURDEN OF PROOF.

In a civil proceeding pursuant to this chapter, a person claiming to be excluded from the definition of "loan broker" or "broker" has the burden of proof in substantiating the claim.

Sec. 21. Section 535C.12, Code 1993, is amended to read as follows:

535C.12 RECORDS.

1. A loan broker shall maintain accurate records, ~~as required by the administrator,~~ relating to transactions regulated under this chapter. The records shall include all of the following:

- a. The accounts of the broker.
- b. A copy of each contract in which the broker is a party, including loan brokerage agreements.
- c. The amount of receipts received by the broker and the date the receipts were received.

2. The broker shall retain each loan brokerage agreement entered into by the broker and records pertaining to each agreement for at least two years after the agreement expires. ~~The agreements and records shall be maintained and made available for examination by the administrator.~~

Sec. 22. Section 535C.14, Code 1993, is amended to read as follows:

535C.14 MISREPRESENTATION OF GOVERNMENTAL APPROVAL.

It is unlawful for a loan broker to represent or imply that the broker has been sponsored, recommended, or approved by, or that the broker's abilities or qualifications have been passed upon by ~~the commissioner, the insurance division, the securities bureau, or the state of Iowa~~ a governmental entity of the state or its political subdivisions.

Sec. 23. Section 538A.2, subsection 1, Code 1993, is amended to read as follows:

1. A credit services organization is a person who, with respect to the extension of credit by others and in return for the payment of money or other valuable consideration, provides, or represents that the person can or will provide, any of the following services:

- a. Improving a buyer's credit record, history, or rating.
- b. ~~Obtaining an extension of credit for a buyer.~~

~~or~~ Providing advice or assistance to a buyer with regard to paragraph "a" ~~or "b"~~.

Sec. 24. Section 546.8, Code 1993, is amended to read as follows:

546.8 INSURANCE DIVISION.

The insurance division shall regulate and supervise the conducting of the business of insurance in the state. The division shall enforce and implement Title XIII, subtitle 1, insurance and related regulation, chapters 505 through 523E 523G, and chapters 502, 503, and 535C, and shall perform other duties assigned to the division by law. The division is headed by the commissioner of insurance who shall be appointed pursuant to section 505.2.

Sec. 25. Section 557B.14, Code 1993, is amended to read as follows:

557B.14 REMEDIES.

1. A violation of this chapter or the commission of any act declared to be unlawful under this chapter constitutes a violation of section 714.16, subsection 2, paragraph "a", and the attorney general has all the powers enumerated in that section to enforce the provisions of this chapter.

2. In addition, the attorney general may seek civil penalties of not more than ten thousand dollars for each violation of or the commission of any act declared to be unlawful under this chapter. Each day of continued violation constitutes a separate offense.

3. Any person who fails to pay the filing fees required by this chapter and continues to sell membership camping contracts is liable civilly in an action brought by the attorney general for a penalty in an amount equal to treble the unpaid fees.

4. The provisions of this chapter are cumulative and nonexclusive and do not affect any other available remedy at law or equity, except as otherwise provided in sections 502.202, 503-3 503A.2, and 537.3310.

Sec. 26. Chapter 503, Code 1993, is repealed.

Sec. 27. Sections 535C.3, 535C.3A, 535C.4, 535C.5, 535C.13, and 535C.16, Code 1993, are repealed.

LEONARD L. BOSWELL
President of the Senate

HAROLD VAN MAANEN
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 271, Seventy-fifth General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved April 28, 1993

TERRY E. BRANSTAD
Governor

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