Gronstal
King
Schneider

SSB 1122
Commerce

SENATE/HOUSE FILE _____ Succeeded by HF 406
BY (PROPOSED DEPARTMENT OF
COMMERCE/INSURANCE
DIVISION 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 insurance division, including
3 securities, business opportunities, cemetery merchandise and
4 residential service contracts, providing for fees, and
5 establishing penalties.
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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TLSB 1307DP 78
da/jw/5

1 Section 1. Section 502.202, subsection 12, paragraph b,
2 unnumbered paragraph 1, Code 1999, is amended to read as
3 follows:
4 A mutual or cooperative organization, including a
5 cooperative association organized in good faith under and for
6 any of the purposes enumerated in chapters 497, 498, and 499,
7 and 501 that deals in commodities or supplies goods or
8 services in transactions primarily with and for the benefit of
9 its members, if:
10 Sec. 2. Section 502.302, subsection 3, Code 1999, is
11 amended to read as follows:
12 3. Every applicant for initial or renewal registration as
13 a broker-dealer or investment adviser shall pay a filing fee
14 of two hundred dollars. Every applicant for initial or
15 renewal registration as an agent or investment adviser
16 representative shall pay a filing fee of thirty dollars.
17 However, an investment adviser representative is not required
18 to pay a filing fee, if the investment adviser is a sole
19 proprietorship or the substantial equivalent and the
20 investment adviser representative is the same individual as
21 the investment adviser. A filing fee is not refundable.
22 Every person acting as a federal covered adviser in this
23 state, except with respect to federal covered advisers whose
24 only clients are those described in section 502.301,
25 subsection 3, paragraph "b", shall pay an initial and renewal
26 notice filing fee of one hundred dollars.
27 Sec. 3. Section 502.304, subsection 5, Code 1999, is
28 amended to read as follows:
29 5. Withdrawal from registration as a broker-dealer, agent,
30 investment adviser, or investment adviser representative
31 becomes effective thirty days after receipt of an application
32 to withdraw or within such shorter period of time as the
33 administrator may by order determine, unless a proceeding to
34 deny, suspend, or revoke a registration is pending when the
35 application is filed or a proceeding to deny, suspend, or

1 revoke a registration, or to impose conditions upon the
2 withdrawal is instituted within thirty days after the
3 application is filed. If a proceeding is pending or
4 instituted, withdrawal becomes effective at such time and upon
5 such conditions as the administrator by order determines. If
6 no proceeding is pending or instituted and withdrawal
7 automatically becomes effective, the administrator may
8 nevertheless institute a revocation or suspension proceeding
9 under subsection 1~~,paragraph "b",~~ within one year after
10 withdrawal became effective and enter a revocation or
11 suspension order as of the last date on which registration was
12 effective.
13 Sec. 4. Section 502.304, Code 1999, is amended by adding
14 the following new subsection:
15 NEW SUBSECTION. 5A. A person who directly or indirectly
16 controls a broker-dealer or agent is subject to the same
17 sanctions applicable to an applicant or registrant under this
18 section, unless the person proves that the person did not
19 know, and was not grossly negligent in failing to know, of the
20 existence of facts by reason of which the liability is alleged
21 to exist.
22 Sec. 5. Section 502.305, Code 1999, is amended to read as
23 follows:
24 502.305 EXAMINATION OF INVESTMENT ADVISER REPRESENTATIVE
25 AND EXEMPTION FROM EXAMINATION.
26 The administrator may adopt rules requiring the passage of
27 an examination by an individual who is required to be
28 registered under this chapter as an investment adviser
29 representative. However, a person who is registered as an
30 investment adviser representative between January 1, 1999, and
31 December 31, ~~2000~~ 1999, shall not be required to pass an
32 examination for as long as the person maintains a continuous
33 registration.
34 Sec. 6. Section 502.503, subsection 1, Code 1999, is
35 amended to read as follows:

1 1. Affiliates of a person liable under section 502.401,
2 502.501, 502.502, ~~or~~ 502.502A, or 502.604, partners, principal
3 executive officers or directors of such person, persons
4 occupying a similar status or performing similar functions for
5 such person, persons (whether employees of such person or
6 otherwise) who materially aid and abet in the act or
7 transaction constituting the violation, and broker-dealers or
8 agents who materially aid and abet in the act or transaction
9 constituting the violation, are also liable jointly and
10 severally with and to the same extent as such person, unless
11 one of the following applies:
12 a. With respect to section 502.501, section 502.502,
13 subsections 1 and 5, or section 502.502A, ~~any~~ a person liable
14 ~~hereunder~~ under this subsection proves that the person did not
15 know, and in the exercise of reasonable care could not have
16 known, of the existence of the facts by reason of which the
17 liability is alleged to exist~~;--and~~.
18 b. With respect to section 502.401, section 502.502,
19 subsections 2 and 3, and section 502.604 ~~any~~ a person liable
20 ~~hereunder~~ under this subsection proves that the person did not
21 know, and was not grossly negligent in failing to know, of the
22 existence of the facts by reason of which the liability is
23 alleged to exist.
24 Sec. 7. Section 502.504, Code 1999, is amended by adding
25 the following new subsection:
26 NEW SUBSECTION. 7. This section shall not apply to
27 actions filed by the administrator pursuant to section
28 502.604.
29 Sec. 8. Section 502.604, subsection 2, Code 1999, is
30 amended to read as follows:
31 2. Bring an action in the district court to enjoin the act
32 or practice and to enforce compliance with this chapter or a
33 rule or order adopted or issued pursuant to this chapter.
34 Upon a proper showing, the court may do all of the following:
35 a. Grant a permanent or temporary injunction, restraining

order, ~~or~~ asset freeze, accounting, writ of attachment, writ of general or special execution, writ of mandamus ~~shall be granted and a~~, or other equitable or ancillary relief.

b. Appoint a receiver or conservator ~~may be appointed~~ for the defendant or the defendant's assets. ~~In addition, upon a proper showing by the administrator, the court may enter an order of~~

c. Order the administrator to take charge and control of a party's property, including but not limited to managing rents and profits, collecting debts, and acquiring and disposing of property.

d. Order the rescission, restitution, or disgorgement directed at any person who has engaged in an act constituting a violation of this chapter, or a rule or order adopted or issued pursuant to this chapter~~, and may order~~.

e. Order the payment of prejudgment and postjudgment interest.

PARAGRAPH DIVIDED. The administrator shall not be required to post a bond.

Sec. 9. Section 523B.2, subsection 10, paragraph a, subparagraph 9, Code 1999, is amended to read as follows:

(9) The seller does not have a minimum net worth of ~~twenty-five~~ fifty thousand dollars, as determined in accordance with generally accepted accounting principles. A seller may submit a surety bond in lieu of the net worth requirement. The administrator may by rule or order increase the amount of the net worth or bond for the protection of purchasers and may require the seller to file reports of all sales in this state to determine the appropriate amount of the net worth requirement. The surety bond shall be for the period of the registration, issued by a surety company authorized to do business in this state and for the benefit of any purchaser.

Sec. 10. Section 523C.6, Code 1999, is amended to read as follows:

523C.6 NET WORTH REQUIREMENT.

A service company that has issued or renewed in the aggregate one thousand or less residential service contracts during the preceding calendar year shall maintain a minimum net worth of forty thousand dollars, and the minimum net worth to be maintained shall be increased by an additional twenty thousand dollars for each additional five hundred contracts or fraction thereof issued or renewed, up to a maximum required net worth of four hundred thousand dollars. At least twenty thousand dollars of net worth shall consist of paid-in capital.

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

Sec. 11. Section 523C.8, Code 1999, is amended to read as follows:

523C.8 REBATES AND COMMISSIONS.

1. ~~A~~ Except as provided in subsection 2, 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~~

2. This section does not prohibit any of the following:

a. The payment of an override commission or marketing fee to an employee or commission sales agent who is 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,~~

b. Fees, payments, or reimbursements for a bona fide ~~inspections~~ inspection, if an inspection of the property to be the subject of a residential service contract is required by a service company and if the inspection fee is reasonably related to the services performed.

3. The division may adopt rules identifying types of fees, payments, or reimbursements that do not constitute an inducement or compensation for the issuance, purchase, or acquisition of a residential service contract.

Sec. 12. Section 523E.1, subsection 6, Code 1999, is amended to read as follows:

6. This section does not apply to payments for merchandise delivered to the purchaser. Delivery includes storage in a warehouse ~~under-the-control-of-the-seller-or-any-other warehouse~~ or storage facility approved by the commissioner ~~when-a-receipt-of-ownership-in-the-name-of-the-purchaser-is delivered-to-the-purchaser,-the-merchandise-is-insured-against loss,-the-merchandise-is-protected-against-damage,-title-has been-transferred-to-the-purchaser,-the-merchandise-is appropriately-identified-and-described-in-a-manner-that-it-can be-distinguished-from-other-similar-items-of-merchandise unless-this-identification-requirement-with-respect-to-bronze merchandise-is-waived-by-the-commissioner-by-rule,-the-method of-storage-allows-for-visual-audits-of-the-merchandise,-and the-annual-reporting-requirements-of-section-523E.2, subsection-1,-are-satisfied.~~

EXPLANATION

This bill amends a number of provisions regulating entities under the authority of the insurance division, including securities, business opportunities, cemetery merchandise, and residential service contracts.

Code section 502.202 exempts certain entities from registration and filing requirements of the securities law. The bill exempts cooperatives organized under Code chapter 501.

1 Code section 502.302 imposes a registration fee upon
2 investment advisers and investment adviser representatives.
3 The bill provides that in the case of a sole proprietorship an
4 investment adviser representative is not required to pay a fee
5 if the person is also the investment adviser.
6 Code section 502.304 provides for the denial, revocation,
7 or suspension of registration as a broker-dealer or agent.
8 The section provides that the division may institute a
9 revocation or suspension proceeding following withdrawal from
10 registration within one year after withdrawal. The bill
11 provides that the disciplinary action may be based on any
12 action that could have supported disciplinary action prior to
13 the withdrawal.
14 Code section 502.304 provides that a person directly or
15 indirectly controlling a broker-dealer or agent is subject to
16 the same penalties as the broker-dealer or agent guilty of
17 committing a violation, unless the person proves that the
18 person did not know the facts creating the violation and was
19 not grossly negligent in failing to know the facts.
20 Code section 502.305 requires that a person registered as
21 an investment advisor representative between January 1, 1999,
22 and December 31, 2000, is not required to pass an examination
23 in order to be registered. The bill reduces that period to
24 December 31, 1999.
25 Code section 502.503 provides that a person who aids and
26 abets in an effort to commit fraud is liable to the same
27 extent as the person who commits the fraud.
28 Code section 502.504 provides time limits for rights of
29 action brought under the chapter. The bill provides that the
30 section does not apply to actions filed by the division
31 necessary in order to enjoin the act or practice and to
32 enforce compliance with Code chapter 502 or a rule or order
33 adopted or issued pursuant to the chapter.
34 Code section 502.604 provides that the district court may
35 enjoin an act or practice and enforce compliance with Code

1 chapter 502 or rules adopted under that chapter. The bill
2 provides that the court may grant an asset freeze, accounting,
3 writ of attachment, writ of general or special execution, or
4 other equitable or ancillary relief. The bill also provides
5 that the court may order the division to take charge and
6 control of a party's property, including but not limited to
7 managing rents and profits, collecting debts, and acquiring
8 and disposing of property.
9 Code section 523B.2 provides that it is unlawful to offer
10 or sell a business opportunity in this state unless the
11 business opportunity is registered or exempt from registration
12 under Code chapter 523B. The section provides that the
13 division may issue an order suspending or revoking the
14 registration if the administrator finds that the seller does
15 not have a minimum net worth of $25,000. This bill increases
16 the net worth requirement to $50,000.
17 Code section 523C.6 requires a service company to maintain
18 a minimum net worth. The section defines "net worth" as the
19 excess of all assets over all liabilities including required
20 reserves computed in accordance with generally accepted
21 accounting principles. The bill eliminates this definition.
22 Code section 523C.8 prohibits a service company from paying
23 a commission or other consideration as an inducement or
24 compensation for the issuance, purchase, or acquisition of a
25 residential service contract. The bill provides that the
26 division may adopt rules identifying types of fees, payments,
27 or reimbursements that would not be determined to constitute
28 an inducement or compensation.
29 Code section 523E.6 provides that the seller of cemetery
30 merchandise must comply with Code chapter 555A regulating
31 door-to-door sales. Code section 523E.1 provides that certain
32 requirements relating to placing funds in trust from the sale
33 of cemetery merchandise do not apply to payments for
34 merchandise delivered to the purchaser. The bill eliminates a
35 number of conditions required for delivery.

STATE OF IOWA

Therese M. Vaughan, Commissioner

THOMAS J. VILSACK
GOVERNOR

SALLY J. PEDERSON
LT. GOVERNOR

INSURANCE DIVISI
IOWA DEPARTMENT OF COMMER

MEMORANDUM

To: Members of the 78th General Assembly

From: Craig A. Goettsch
Superintendent of Securities

Re: Securities Bureau Legislation

Date: February 8, 1999

The Insurance Division/ Securities Bureau has filed a mini-omnibus bill that is largely clean up and clarification type of amendments to the statutes for which the Bureau is responsible to administer. Sections 1 through 8 amend chapter 502, the Iowa Uniform Securities Act. Sections 9 through 12 amend chapter 523B, the Iowa Business Opportunities Sales Act, chapter 523C, the Residential Service Contracts Act, and chapter 523E, the Cemetery Merchandise Act. Rather than propose four separate bills, the Securities Bureau has packaged these as one piece of legislation even though there is no overall "theme" to the proposals. We expect this bill to be noncontroversial.

Section 1 adds to the list of exempt cooperatives a reference to chapter 501, which is a recent addition to the laws under which cooperatives might be organized. Not providing a comparable exemption was probably an oversight at the time chapter 501 was adopted.

Section 2 repeals the investment adviser representative filing fee for what are essentially one person offices. The fee is paid for the "firm" only, and not for the "individual" who works for the "firm." Thereby avoiding a duplicative fee situation

Section 3 allows the Bureau to revoke a license of a person who had previously withdrawn for up to one year after the date of withdrawal for any of the enumerated statutory grounds. For example, an agent charged and convicted of felony theft, but who withdrew the license prior to the Bureau being informed could still be revoked. This compares with the two years to act on a license by a self-regulatory organization.

Section 4 provides for licensing sanctions against the controlling persons of a firm or agent for the acts of the firm or agent, unless they were ignorant of the facts, and were not grossly negligent in so being unaware. This makes sure that controlling persons do not avoid responsibility for their action or inactions in providing supervision for the firms agents.

Section 5 corrects the period for which the Bureau proposed to grandfather investment adviser representatives from any examination requirement, returning it to a one-year timeframe. All

persons currently in the business may become licensed without an examination if they get their license within one year of the effective date of the act.

Section 6 makes clear there is joint and several and aider and abettor liability for violations of the basic antifraud provisions and for violations of Bureau cease and desist orders or injunctions.

Section 7 makes clear the statute of limitations only applies to private civil actions, and not to agency litigation. This is similar to case law that has developed on the federal level.

Section 8 expands and makes clear the authority of the court sitting in equity to order certain remedies. In fraud actions to recover investor funds, we want to be sure the courts consider all possible actions to make investors whole.

Section 9 amends Iowa Code section 523B.2(10)(a) to increase the net worth requirement from $25,000 to $50,000. Purchasers are dependent upon sellers and have an interest in their survival. A higher net worth helps ensure that sellers have the ability to stay in business and provide the promised services to purchasers.

Section 10 amends Iowa Code section 523C.6 by deleting the definition of net worth. The Division has received a request to review the definition. The Division believes the definition would be better placed in the administrative rules.

Section 11 amends Iowa Code section 523C.8 to add language authorizing the Division to adopt rules clarifying the categories of conduct which is allowed without violating the prohibition set forth in this section. We have received several inquiries from industry requesting guidance on what is allowed and not allowed under this section. The Division wishes to promote equal application of the provision by all licensees, and will adopt rules to identify the methods allowed.

Section 12 amends Iowa Code section 523E.1(6) to conform to changes made in Iowa Code 523A.1(1) last session. The industry is rapidly developing new products and utilizing different materials to manufacture them. The amendments enhance the ability of the Division to respond to changing factors by adopting the specific approval standards in administrative rules rather than by statute.

H. 3/24/99 Commerce + Reg.
H. 3/31/99 Amend/Do Pass w/H-1337

FILED MAR 1 1 1999

SENATE FILE 406
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 1122)

Passed Senate, (p.729) Date 3/23/99 Passed House, (p.1282) Date 4/14/99
Vote: Ayes 48 Nays 0 Vote: Ayes 94 Nays 0
Approved May 24, 1999
(p.1325) Reported 4-27-99 vote 47-0

A BILL FOR

An Act relating to entities and subject matter under the regulatory authority of the insurance division, including securities, business opportunities, cemetery merchandise and residential service contracts, providing for fees, and establishing penalties.

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

SF 406

TLSB 1307SV 78
da/jw/5

S.F. 471 H.F. _____

Section 1. Section 502.202, subsection 12, paragraph b, unnumbered paragraph 1, Code 1999, is amended to read as follows:

A mutual or cooperative organization, including a cooperative association organized in good faith under and for any of the purposes enumerated in chapters 497, 498, and 499, and 501 that deals in commodities or supplies goods or services in transactions primarily with and for the benefit of its members, if:

Sec. 2. Section 502.302, subsection 3, Code 1999, is amended to read as follows:

3. Every applicant for initial or renewal registration as a broker-dealer or investment adviser shall pay a filing fee of two hundred dollars. Every applicant for initial or renewal registration as an agent or investment adviser representative shall pay a filing fee of thirty dollars. However, an investment adviser representative is not required to pay a filing fee, if the investment adviser is a sole proprietorship or the substantial equivalent and the investment adviser representative is the same individual as the investment adviser. A filing fee is not refundable. Every person acting as a federal covered adviser in this state, except with respect to federal covered advisers whose only clients are those described in section 502.301, subsection 3, paragraph "b", shall pay an initial and renewal notice filing fee of one hundred dollars.

Sec. 3. Section 502.304, subsection 5, Code 1999, is amended to read as follows:

5. Withdrawal from registration as a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective thirty days after receipt of an application to withdraw or within such shorter period of time as the administrator may by order determine, unless a proceeding to deny, suspend, or revoke a registration is pending when the application is filed or a proceeding to deny, suspend, or

1 revoke a registration, or to impose conditions upon the
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3 application is filed. If a proceeding is pending or
4 instituted, withdrawal becomes effective at such time and upon
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8 nevertheless institute a revocation or suspension proceeding
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25 AND EXEMPTION FROM EXAMINATION.
26 The administrator may adopt rules requiring the passage of
27 an examination by an individual who is required to be
28 registered under this chapter as an investment adviser
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32 examination for as long as the person maintains a continuous
33 registration.
34 Sec. 6. Section 502.503, subsection 1, Code 1999, is
35 amended to read as follows:

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2 502.501, 502.502, ~~or~~ 502.502A, or 502.604, partners, principal
3 executive officers or directors of such person, persons
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6 otherwise) who materially aid and abet in the act or
7 transaction constituting the violation, and broker-dealers or
8 agents who materially aid and abet in the act or transaction
9 constituting the violation, are also liable jointly and
10 severally with and to the same extent as such person, unless
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15 know, and in the exercise of reasonable care could not have
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25 the following new subsection:
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34 Upon a proper showing, the court may do all of the following:
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order, ~~or~~ asset freeze, accounting, writ of attachment, writ of general or special execution, writ of mandamus ~~shall be granted and a~~, or other equitable or ancillary relief.

b. Appoint a receiver or conservator ~~may be appointed~~ for the defendant or the defendant's assets. ~~In addition, upon a proper showing by the administrator, the court may enter an order of~~

c. Order the administrator to take charge and control of a party's property, including but not limited to managing rents and profits, collecting debts, and acquiring and disposing of property.

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523C.8 REBATES AND COMMISSIONS.

1. ~~A~~ Except as provided in subsection 2, 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~~

2. This section does not prohibit any of the following:

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26 abets in an effort to commit fraud is liable to the same
27 extent as the person who commits the fraud.
28 Code section 502.504 provides time limits for rights of
29 action brought under the chapter. The bill provides that the
30 section does not apply to actions filed by the division
31 necessary in order to enjoin the act or practice and to
32 enforce compliance with Code chapter 502 or a rule or order
33 adopted or issued pursuant to the chapter.
34 Code section 502.604 provides that the district court may
35 enjoin an act or practice and enforce compliance with Code

1 chapter 502 or rules adopted under that chapter. The bill
2 provides that the court may grant an asset freeze, accounting,
3 writ of attachment, writ of general or special execution, or
4 other equitable or ancillary relief. The bill also provides
5 that the court may order the division to take charge and
6 control of a party's property, including but not limited to
7 managing rents and profits, collecting debts, and acquiring
8 and disposing of property.
9 Code section 523B.2 provides that it is unlawful to offer
10 or sell a business opportunity in this state unless the
11 business opportunity is registered or exempt from registration
12 under Code chapter 523B. The section provides that the
13 division may issue an order suspending or revoking the
14 registration if the administrator finds that the seller does
15 not have a minimum net worth of $25,000. This bill increases
16 the net worth requirement to $50,000.
17 Code section 523C.6 requires a service company to maintain
18 a minimum net worth. The section defines "net worth" as the
19 excess of all assets over all liabilities including required
20 reserves computed in accordance with generally accepted
21 accounting principles. The bill eliminates this definition.
22 Code section 523C.8 prohibits a service company from paying
23 a commission or other consideration as an inducement or
24 compensation for the issuance, purchase, or acquisition of a
25 residential service contract. The bill provides that the
26 division may adopt rules identifying types of fees, payments,
27 or reimbursements that would not be determined to constitute
28 an inducement or compensation.
29 Code section 523E.6 provides that the seller of cemetery
30 merchandise must comply with Code chapter 555A regulating
31 door-to-door sales. Code section 523E.1 provides that certain
32 requirements relating to placing funds in trust from the sale
33 of cemetery merchandise do not apply to payments for
34 merchandise delivered to the purchaser. The bill eliminates a
35 number of conditions required for delivery.

SENATE FILE 406

H-1337

1 Amend Senate File 406, as passed by the Senate, as
2 follows:
3 1. Page 4, by inserting after line 19, the
4 following:
5 "Sec. __. Section 523A.5, subsection 2, Code 1999,
6 is amended by adding the following new paragraph:
7 NEW PARAGRAPH. e. "Prepaid contract" means a
8 written contract or other agreement executed by a
9 seller in which the seller promises to deliver
10 merchandise or services upon the future death of a
11 person named or implied in the agreement.
12 Sec. __. Section 523A.6, Code 1999, is amended to
13 read as follows:
14 523A.6 COMPLIANCE WITH OTHER LAWS.
15 The seller of a prepaid contract for the purchase
16 of funeral services or funeral merchandise shall
17 comply with chapter 555A ~~with respect to all contracts~~
18 ~~that are subject to regulation under this chapter~~. A
19 ~~failure~~ person failing to comply with chapter 555A is
20 subject to the remedies and penalties provided in that
21 chapter."
22 2. Page 6, by inserting after line 26, the
23 following:
24 "Sec. __. Section 523I.6, Code 1999, is amended by
25 adding the following new subsection:
26 NEW SUBSECTION. 4. A cemetery shall provide
27 services necessary for the installation or burial of
28 vaults or other similar merchandise sold by the
29 cemetery. This subsection shall not require the
30 cemetery to provide for opening or closing interment
31 or entombment space, unless an agreement executed by
32 the cemetery expressly provides otherwise."
33 3. Title page, line 3, by inserting after the
34 word "opportunities," the following: "funeral
35 merchandise, funeral services, cemeteries",

By COMMITTEE ON COMMERCE AND
REGULATION
METCALF of Polk, Chairperson

H-1337 FILED MARCH 31, 1999

4/14/99
(P. 1281)

HOUSE AMENDMENT TO
SENATE FILE 406

S-3373

1 Amend Senate File 406, as passed by the Senate, as
2 follows:
3 1. Page 4, by inserting after line 19, the
4 following:
5 "Sec. __. Section 523A.5, subsection 2, Code 1999,
6 is amended by adding the following new paragraph:
7 NEW PARAGRAPH. e. "Prepaid contract" means a
8 written contract or other agreement executed by a
9 seller in which the seller promises to deliver
10 merchandise or services upon the future death of a
11 person named or implied in the agreement.
12 Sec. __. Section 523A.6, Code 1999, is amended to
13 read as follows:
14 523A.6 COMPLIANCE WITH OTHER LAWS.
15 The seller of a prepaid contract for the purchase
16 of funeral services or funeral merchandise shall
17 comply with chapter 555A ~~with respect to all contracts~~
18 ~~that are subject to regulation under this chapter~~. A
19 ~~failure~~ person failing to comply with chapter 555A is
20 subject to the remedies and penalties provided in that
21 chapter."
22 2. Page 6, by inserting after line 26, the
23 following:
24 "Sec. __. Section 523I.6, Code 1999, is amended by
25 adding the following new subsection:
26 NEW SUBSECTION. 4. A cemetery shall provide
27 services necessary for the installation or burial of
28 vaults or other similar merchandise sold by the
29 cemetery. This subsection shall not require the
30 cemetery to provide for opening or closing interment
31 or entombment space, unless an agreement executed by
32 the cemetery expressly provides otherwise."
33 3. Title page, line 3, by inserting after the
34 word "opportunities," the following: "funeral
35 merchandise, funeral services, cemeteries".

RECEIVED FROM THE HOUSE

S-3373 FILED APRIL 14, 1999

Senate Concurred
4-27-99
(P. 1324)

SENATE FILE 406

AN ACT

RELATING TO ENTITIES AND SUBJECT MATTER UNDER THE REGULATORY AUTHORITY OF THE INSURANCE DIVISION, INCLUDING SECURITIES, BUSINESS OPPORTUNITIES, FUNERAL MERCHANDISE, FUNERAL SERVICES, CEMETERIES, CEMETERY MERCHANDISE AND RESIDENTIAL SERVICE CONTRACTS, PROVIDING FOR FEES, AND ESTABLISHING PENALTIES.

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

Section 1. Section 502.202, subsection 12, paragraph b, unnumbered paragraph 1, Code 1999, is amended to read as follows:

A mutual or cooperative organization, including a cooperative association organized in good faith under and for any of the purposes enumerated in chapters 497, 498, and 499, and 501 that deals in commodities or supplies goods or services in transactions primarily with and for the benefit of its members, if:

Sec. 2. Section 502.302, subsection 3, Code 1999, is amended to read as follows:

3. Every applicant for initial or renewal registration as a broker-dealer or investment adviser shall pay a filing fee of two hundred dollars. Every applicant for initial or renewal registration as an agent or investment adviser representative shall pay a filing fee of thirty dollars. However, an investment adviser representative is not required to pay a filing fee, if the investment adviser is a sole proprietorship or the substantial equivalent and the investment adviser representative is the same individual as the investment adviser. A filing fee is not refundable. Every person acting as a federal covered adviser in this state, except with respect to federal covered advisers whose only clients are those described in section 502.301, subsection 3, paragraph "b", shall pay an initial and renewal notice filing fee of one hundred dollars.

Sec. 3. Section 502.304, subsection 5, Code 1999, is amended to read as follows:

5. Withdrawal from registration as a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective thirty days after receipt of an application to withdraw or within such shorter period of time as the administrator may by order determine, unless a proceeding to deny, suspend, or revoke a registration is pending when the application is filed or a proceeding to deny, suspend, or revoke a registration, or to impose conditions upon the withdrawal is instituted within thirty days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the administrator by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the administrator may nevertheless institute a revocation or suspension proceeding under subsection 1~~, paragraph "b",~~ within one year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective.

Sec. 4. Section 502.304, Code 1999, is amended by adding the following new subsection:

NEW SUBSECTION. 5A. A person who directly or indirectly controls a broker-dealer or agent is subject to the same sanctions applicable to an applicant or registrant under this section, unless the person proves that the person did not know, and was not grossly negligent in failing to know, of the existence of facts by reason of which the liability is alleged to exist.

Sec. 5. Section 502.305, Code 1999, is amended to read as follows:

502.305 EXAMINATION OF INVESTMENT ADVISER REPRESENTATIVE AND EXEMPTION FROM EXAMINATION.

The administrator may adopt rules requiring the passage of an examination by an individual who is required to be registered under this chapter as an investment adviser

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representative. However, a person who is registered as an investment adviser representative between January 1, 1999, and December 31, ~~2000~~ 1999, shall not be required to pass an examination for as long as the person maintains a continuous registration.

Sec. 6. Section 502.503, subsection 1, Code 1999, is amended to read as follows:

1. Affiliates of a person liable under section 502.401, 502.501, 502.502, ~~or~~ 502.502A, or 502.604, partners, principal executive officers or directors of such person, persons occupying a similar status or performing similar functions for such person, persons (whether employees of such person or otherwise) who materially aid and abet in the act or transaction constituting the violation, and broker-dealers or agents who materially aid and abet in the act or transaction constituting the violation, are also liable jointly and severally with and to the same extent as such person, unless one of the following applies:

a. With respect to section 502.501, section 502.502, subsections 1 and 5, or section 502.502A, ~~any~~ a person liable ~~hereunder~~ under this subsection proves that the person did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist~~;-and~~.

b. With respect to section 502.401, section 502.502, subsections 2 and 3, and section 502.604 ~~any~~ a person liable ~~hereunder~~ under this subsection proves that the person did not know, and was not grossly negligent in failing to know, of the existence of the facts by reason of which the liability is alleged to exist.

Sec. 7. Section 502.504, Code 1999, is amended by adding the following new subsection:

NEW SUBSECTION. 7. This section shall not apply to actions filed by the administrator pursuant to section 502.604.

Sec. 8. Section 502.604, subsection 2, Code 1999, is amended to read as follows:

2. Bring an action in the district court to enjoin the act or practice and to enforce compliance with this chapter or a rule or order adopted or issued pursuant to this chapter. Upon a proper showing, the court may do all of the following:

a. Grant a permanent or temporary injunction, restraining order, ~~or~~ asset freeze, accounting, writ of attachment, writ of general or special execution, writ of mandamus ~~shall-be granted-and-a~~, or other equitable or ancillary relief.

b. Appoint a receiver or conservator ~~may-be-appointed~~ for the defendant or the defendant's assets. ~~In-addition,-upon-a proper-showing-by-the-administrator,-the-court-may-enter-an order-of~~

c. Order the administrator to take charge and control of a party's property, including but not limited to managing rents and profits, collecting debts, and acquiring and disposing of property.

d. Order the rescission, restitution, or disgorgement directed at any person who has engaged in an act constituting a violation of this chapter, or a rule or order adopted or issued pursuant to this chapter~~,-and-may-order~~.

e. Order the payment of prejudgment and postjudgment interest.

PARAGRAPH DIVIDED. The administrator shall not be required to post a bond.

Sec. 9. Section 523A.5, subsection 2, Code 1999, is amended by adding the following new paragraph:

NEW PARAGRAPH. e. "Prepaid contract" means a written contract or other agreement executed by a seller in which the seller promises to deliver merchandise or services upon the future death of a person named or implied in the agreement.

Sec. 10. Section 523A.6, Code 1999, is amended to read as follows:

523A.6 COMPLIANCE WITH OTHER LAWS.

The seller of a prepaid contract for the purchase of funeral services or funeral merchandise shall comply with chapter 555A ~~with-respect-to-all-contracts-that-are-subject-to regulation-under-this-chapter~~. A ~~failure~~ person failing to

comply with chapter 555A is subject to the remedies and penalties provided in that chapter.

Sec. 11. Section 523B.2, subsection 10, paragraph a, subparagraph (9), Code 1999, is amended to read as follows:

(9) The seller does not have a minimum net worth of ~~twenty-five~~ fifty thousand dollars, as determined in accordance with generally accepted accounting principles. A seller may submit a surety bond in lieu of the net worth requirement. The administrator may by rule or order increase the amount of the net worth or bond for the protection of purchasers and may require the seller to file reports of all sales in this state to determine the appropriate amount of the net worth requirement. The surety bond shall be for the period of the registration, issued by a surety company authorized to do business in this state and for the benefit of any purchaser.

Sec. 12. Section 523C.6, Code 1999, is amended to read as follows:

523C.6 NET WORTH REQUIREMENT.

A service company that has issued or renewed in the aggregate one thousand or less residential service contracts during the preceding calendar year shall maintain a minimum net worth of forty thousand dollars, and the minimum net worth to be maintained shall be increased by an additional twenty thousand dollars for each additional five hundred contracts or fraction thereof issued or renewed, up to a maximum required net worth of four hundred thousand dollars. At least twenty thousand dollars of net worth shall consist of paid-in capital.

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

Sec. 13. Section 523C.8, Code 1999, is amended to read as follows:

523C.8 REBATES AND COMMISSIONS.

1. ~~A~~ Except as provided in subsection 2, 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~~

2. This section does not prohibit any of the following:

a. The payment of an override commission or marketing fee to an employee or commission sales agent who is 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,~~

b. Fees, payments, or reimbursements for a bona fide ~~inspections~~ inspection, if an inspection of the property to be the subject of a residential service contract is required by a service company and if the inspection fee is reasonably related to the services performed.

3. The division may adopt rules identifying types of fees, payments, or reimbursements that do not constitute an inducement or compensation for the issuance, purchase, or acquisition of a residential service contract.

Sec. 14. Section 523E.1, subsection 6, Code 1999, is amended to read as follows:

6. This section does not apply to payments for merchandise delivered to the purchaser. Delivery includes storage in a warehouse ~~under the control of the seller or any other~~ warehouse or storage facility approved by the commissioner ~~when a receipt of ownership in the name of the purchaser is delivered to the purchaser, the merchandise is insured against loss, the merchandise is protected against damage, title has been transferred to the purchaser, the merchandise is appropriately identified and described in a manner that it can be distinguished from other similar items of merchandise~~

~~unless-this-identification-requirement-with-respect-to-bronze merchandise-is-waived-by-the-commissioner-by-rule,-the-method of-storage-allows-for-visual-audits-of-the-merchandise,-and the-annual-reporting-requirements-of-section-523E.2, subsection-1,-are-satisfied.~~

Sec. 15. Section 523I.6, Code 1999, is amended by adding the following new subsection:

NEW SUBSECTION. 4. A cemetery shall provide services necessary for the installation or burial of vaults or other similar merchandise sold by the cemetery. This subsection shall not require the cemetery to provide for opening or closing interment or entombment space, unless an agreement executed by the cemetery expressly provides otherwise.

MARY E. KRAMER
President of the Senate

BRENT SIEGRIST
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 406, Seventy-eighth General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Approved May 24, 1999

THOMAS J. VILSACK
Governor