

**CHAPTER 1078****INSURANCE DIVISION — REGULATED INDUSTRIES***S.F. 2179*

**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, perpetual care cemeteries, funeral services and merchandise, and cemetery merchandise, and providing an effective date.

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

Section 1. Section 523A.20, Code Supplement 1991, is amended to read as follows:

**523A.20 INSURANCE DIVISION'S REGULATORY FUND.**

The insurance division may authorize the creation of a special revenue fund in the state treasury, to be known as the insurance division regulatory fund. Commencing July 1, 1990, and annually thereafter, the commissioner shall allocate from the fees paid pursuant to section 523A.2, one dollar for each agreement reported on an establishment permit holder's annual report for deposit to the regulatory fund. The remainder of the fees collected pursuant to section 523A.2 shall be deposited into the general fund of the state. However, if the balance of the regulatory fund on that July 1 exceeds two hundred thousand dollars, the allocation to the regulatory fund shall not be made and the total sum of the fees paid pursuant to section 523A.2 shall be deposited in the general fund of the state. In addition, on May 1 of 1994 and 1995, the commissioner, to the extent necessary to fund audits, investigations, and receiverships, shall assess establishment permit holders five dollars for each agreement reported on the establishment permit holder's annual report of sales executed during the preceding year, which shall be deposited in the insurance division regulatory fund. The moneys in the regulatory fund shall be retained in the fund. The moneys are appropriated and, subject to authorization by the commissioner, may be used to pay auditors, audit expenses, investigative expenses, and the expenses of receiverships established pursuant to section 523A.19. An annual assessment shall not be imposed if the current balance of the fund exceeds two hundred thousand dollars.

Sec. 2. Section 523C.3, subsection 2, paragraph b, Code 1991, is amended to read as follows:

b. A surety bond, a copy of the receipt from the treasurer of state that a cash deposit has been made, or a copy of a custodial agreement as provided in section 523C.5.

Sec. 3. Section 523C.5, Code 1991, is amended to read as follows:

**523C.5 REQUIRED BOND, CASH DEPOSIT, OR CUSTODIAL ACCOUNT.**

1. To assure the faithful performance of obligations under residential service contracts issued and outstanding in this state, a service company shall, prior to the issuance or renewal of a license, file with the commissioner a surety bond in the amount of one hundred thousand dollars, which has been issued by an authorized surety company and approved by the commissioner as to issuer, form, and contents or establish a custodial account in the amount of one hundred thousand dollars at an authorized depository. The bond or custodial account shall not be canceled or be subject to cancellation unless thirty days' advance notice in writing is filed with the commissioner. Notwithstanding chapter 17A, if a bond or custodial account is canceled for any reason and a new bond or notice that a new custodial account has been established in the required amount is not received by the commissioner on or before the effective date of cancellation, the license of the service company is automatically revoked as of the date the bond or custodial account ceases to be in effect. A service company whose license is revoked under this section may file an application for a new license pursuant to section 523C.3.

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

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

The commissioner may by rule designate institutions authorized to act as a depository under this section and establish requirements for custodians, custodial agreements, custodial accounts, or the method of valuing noncash assets held in a custodial account which the commissioner believes necessary to protect the holders of residential service contracts issued and outstanding in this state.

2. In lieu of the bond or custodial account required by this section, the service company may deposit with the treasurer of state a cash deposit in the same amount. The treasurer of state shall not refund a deposit until sixty days after the service company has ceased doing business in this state, a bond has been filed with the commissioner which complies with this section, or a custodial account is established which complies with this section.

Sec. 4. Section 523C.6, unnumbered paragraph 2, Code 1991, is amended to read as follows:

For purposes of this chapter, "net worth" means the excess of all assets over all liabilities including required reserves, but excluding assets held in a custodial account under section 523C.5, computed in accordance with generally accepted accounting principles. At least twenty thousand dollars of net worth shall consist of paid-in capital.

Sec. 5. Section 523C.8, Code 1991, is amended by striking the section and inserting in lieu thereof the following:

#### 523C.8 REBATES AND COMMISSIONS.

A service company shall not pay a commission 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 marketing 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 real estate commission generated by the underlying real property transaction. This section also does not prohibit bona fide payments or reimbursements for inspection fees, if an inspection of the property to be the subject of a residential service contract is required by a service company and if the inspection fee is reasonably related to the services performed.

Sec. 6. Section 523C.11, Code 1991, is amended to read as follows:

#### 523C.11 RESERVE ACCOUNT.

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

2. The depository shall make its records concerning the service company reserve accounts available to the commissioner or a designee for inspection on the premises of the depository and, upon request, shall produce documents and records which the commissioner determines are necessary to verify the value and safety of the assets of the reserve account.

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

4. The commissioner may by rule designate institutions authorized to act as a depository under this section and may establish requirements for reserve accounts, reserve account agreements, or the method of valuing marketable securities which the commissioner believes necessary to protect the holders of residential service contracts issued and outstanding in this state.

4. For purposes of this section, aggregate annual fees does not include the annual fees collected on residential service contracts for which the service company has purchased contractual liability insurance which demonstrates to the satisfaction of the commissioner that one

hundred percent of the service company's claim exposure related to such service contracts is covered by the insurance. The contractual liability insurance must be obtained from an insurer authorized to do business in this state and shall contain the following provisions:

a. If the service company is unable to fulfill its obligations under its contracts issued in this state for any reason, including insolvency, bankruptcy, or dissolution, the contractual liability insurer will pay losses and unearned premiums under such plans directly to the persons making claims under the contracts.

b. The insurer issuing the policy shall assume full responsibility for the administration of claims in the event of the inability of the association to do so.

c. The insurer shall not cancel or refuse to renew the policy unless sixty days' written notice has been given to the commissioner by the insurer before the date of the cancellation or non-renewal.

Sec. 7. Section 523C.13, unnumbered paragraph 1, Code 1991, is amended to read as follows:

The commissioner shall adopt rules which regulate residential service contracts to prohibit misrepresentation, false advertising, defamation, boycotts, coercion, intimidation, false statements and entries and unfair discrimination or practices. If the commissioner finds that a person has violated the rules adopted under this section, the commissioner shall issue an order to that person to cease and desist and may order any or all of the following:

Sec. 8. NEW SECTION. 523C.18 VIOLATIONS.

A person who willfully violates section 523C.5 is, upon conviction, guilty of a class "D" felony.

Sec. 9. NEW SECTION. 523C.19 CEASE AND DESIST ORDERS.

If an investigation provides reasonable evidence that a person violated any provision of this chapter or any rule adopted pursuant to this chapter, the commissioner may issue an order directed at the person to cease and desist from engaging in the act or practice resulting in the violation.

Sec. 10. Section 523D.3, subsection 2, Code Supplement 1991, is amended to read as follows:

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

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

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

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

Sec. 11. Section 523D.5, subsection 1, paragraph f, Code Supplement 1991, is amended to read as follows:

f. If the new facility or proposed expansion offers a promise to provide nursing or health care services to residents in the future pursuant to contracts effective for the life of the resident or a period in excess of one year in consideration for an entrance fee, an actuarial forecast in a form satisfactory to the commissioner, which identifies the qualifications of the actuaries or actuaries preparing the forecast.

Sec. 12. Section 523E.1, subsection 4, unnumbered paragraph 2, Code 1991, is amended to read as follows:

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. 13. Section 523E.20, Code Supplement 1991, is amended to read as follows:  
523E.20 INSURANCE DIVISION'S REGULATORY FUND.

The insurance division may authorize the creation of a special revenue fund in the state treasury, to be known as the insurance division regulatory fund. Commencing July 1, 1990, and annually thereafter, the commissioner shall allocate from the fees paid pursuant to section 523E.2, one dollar for each agreement reported on an establishment permit holder's annual report for deposit to the regulatory fund. The remainder of the fees collected pursuant to section 523E.2 shall be deposited into the general fund of the state. In addition, on May 1 of 1994 and 1995, the commissioner, to the extent necessary to fund audits, investigations, and receiverships, shall assess establishment permit holders five dollars for each agreement reported on the establishment permit holder's annual report of sales executed during the preceding year, which shall be deposited in the insurance division regulatory fund. However, if the balance of the regulatory fund on that July 1 exceeds two hundred thousand dollars, the allocation to the regulatory fund shall not be made and the total sum of the fees paid pursuant to section 523E.2 shall be deposited in the general fund of the state. The moneys in the regulatory fund shall be retained in the fund. The moneys are appropriated and, subject to authorization by the commissioner, may be used to pay auditors, audit expenses, investigative expenses, and the expenses of receiverships established pursuant to section 523E.19. An annual assessment shall not be imposed if the current balance of the fund exceeds two hundred thousand dollars.

Sec. 14. Section 566A.7, Code 1991, is amended to read as follows:  
566A.7 COMMISSION OR BONUS UNLAWFUL.

It shall be unlawful for any organization subject to the provisions of this chapter to pay or offer to pay to, or for any person, firm or corporation to receive directly or indirectly a commission or bonus or rebate or other thing of value, for or in connection with the sale of any interment space, lot or part thereof, in any cemetery described in section 566A.1 of this chapter. The provisions of this section shall not apply to a person regularly employed and supervised by such organization or to a person, firm, corporation, or other entity licensed under chapter 523A or 523E that contracts with the cemetery to sell interment spaces or lots. The conduct of any person, firm, corporation, or other entity described in this section is the direct responsibility of the cemetery.

Sec. 15. Section 14 of this Act, being deemed of immediate importance, is effective upon enactment.

Approved April 14, 1992