

**CHAPTER 60****DIVISION OF INSURANCE – MISCELLANEOUS REGULATORY PROVISIONS***S.F. 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.

l. 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 535C.4.

2. Make accurate and timely filings as required in section 535C.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.
- e. 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 ~~523C~~ 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.

Approved April 28, 1993