

e. Charging an amount to a customer's credit card for damage to, or loss of use of, a rental vehicle after the customer has left the location where the rental vehicle was returned, unless the customer has authorized the specific charge, in a specific amount, to be charged to the customer's credit card. This subsection does not apply to a block in the amount of one dollar obtained for authorized charge amounts.

9. Assessment of additional driver fees for licensed drivers who are spouses or business associates engaged in business activities with the customer to whom the vehicle is rented, other than charges for a person who does not satisfy the rental company's minimum age requirement, if applicable.

Sec. 8. NEW SECTION. 516D.8 RULES.

The attorney general shall prescribe forms and adopt rules pursuant to chapter 17A as necessary to administer this chapter.

Sec. 9. NEW SECTION. 516D.9 ENFORCEMENT.

A violation of this chapter or any rules adopted by the attorney general pursuant to this chapter is a violation of section 714.16, subsection 2, paragraph "a". The provisions of section 714.16, including, but not limited to, provisions relating to investigation, injunctive relief, and penalties, apply to violations of this chapter.

Sec. 10. Chapter 516C is repealed.

Approved May 28, 1991

CHAPTER 205

REGULATION OF BUSINESS OPPORTUNITY PROMOTIONS, RETIREMENT COMMUNITIES, AND LOAN BROKERS

S.F. 519

AN ACT relating to entities and subject matter subject to regulation under the regulated industries unit of the division of insurance, including business opportunity promotions, continuing care and senior adult congregate living retirement communities, and loan brokers, establishing certain fees, and making penalties applicable.

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

DIVISION I

Section 1. Section 523B.1, Code 1991, is amended by striking the section and inserting in lieu thereof the following:

523B.1 DEFINITIONS.

1. "Administrator" means the commissioner of insurance or the deputy appointed under section 502.601.

2. "Advertising" means a circular, prospectus, advertisement, or other material, or a communication by radio, television, pictures, or similar means used in connection with an offer or sale of a business opportunity.

3. a. "Business opportunity" means a contract or agreement, between a seller and purchaser, express or implied, orally or in writing, at an initial investment exceeding five hundred dollars, where the parties agree that the seller or a person recommended by the seller is to provide to the purchaser any products, equipment, supplies, materials, or services for the purpose of enabling the purchaser to start a business, and the seller represents, directly or indirectly, orally or in writing, any of the following:

(1) The seller or a person recommended by the seller will provide locations or assist the purchaser in finding locations for the use or operation of vending machines, racks, display cases, or other similar devices, on premises which are not owned or leased by the purchaser or seller.

(2) The seller or a person recommended by the seller will provide or assist the purchaser in finding outlets or accounts for the purchaser's products or services.

(3) The seller or a person specified by the seller will purchase any or all products made, produced, fabricated, grown, bred, or modified by the purchaser.

(4) The purchaser will derive income from the business which exceeds the price paid to the seller.

(5) The seller will refund all or part of the price paid to the seller, or repurchase any of the products, equipment, or supplies provided by the seller or a person recommended by the seller, if the purchaser is dissatisfied with the business.

(6) The seller will provide a marketing plan.

b. "Business opportunity" does not include any of the following:

(1) An offer or sale of an ongoing business operated by the seller which is to be sold in its entirety.

(2) An offer or sale of a business opportunity to an ongoing business where the seller will provide products, equipment, supplies, or services which are substantially similar to the products, equipment, supplies, or services sold by the purchaser in connection with the purchaser's ongoing business.

(3) An offer or sale of a business opportunity which involves a marketing plan made in conjunction with the licensing of a federally registered trademark or federally registered service mark provided that the seller has a minimum net worth of one million dollars as determined on the basis of the seller's most recent audited financial statement prepared within thirteen months of the first offer in this state. Net worth may be determined on a consolidated basis if the seller is at least eighty percent owned by one person and that person expressly guarantees the obligations of the seller with regard to the offer or sale of a business opportunity claimed to be excluded under this subparagraph.

(4) An offer or sale of a business opportunity by an executor, administrator, sheriff, receiver, trustee in bankruptcy, guardian, or conservator, or a judicial offer or sale of a business opportunity.

(5) The renewal or extension of a business opportunity contract or agreement entered into under this chapter or prior to July 1, 1981.

4. "Franchise" means a contract or agreement between a seller and a purchaser, express or implied, orally or in writing, where the parties agree to both of the following:

(a) A franchisee is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan prescribed in substantial part by a franchisor.

(b) The operation of the franchisee's business pursuant to such a plan is substantially associated with the franchisor's business and trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the franchisor or its affiliate.

For the purposes of this subsection, "franchisee" means a person to whom a franchise is granted and "franchisor" means a person who grants a franchise.

4A. "Initial investment" means the total amount a purchaser is obligated to pay under the terms of the business opportunity contract either prior to or at the time of the delivery of the merchandise or services or within six months of the purchaser commencing operation of the business opportunity. However, if payment is over a period of time, "initial investment" means the sum of the downpayment and the total monthly payments specified in the contract.

5. "Marketing plan" means advice or training, provided to the purchaser by the seller or a person recommended by the seller, pertaining to the sale of any products, equipment, supplies, or services. The advice or training may include, but is not limited to, preparing or providing any of the following:

a. Promotional literature, brochures, pamphlets, or advertising materials.

b. Training regarding the promotion, operation, or management of the business opportunity.

c. Operational, managerial, technical, or financial guidelines or assistance.

6. "Offer" or "offer to sell" means an attempt to dispose of a business opportunity for value, or solicitation of an offer to purchase a business opportunity.

7. "Ongoing business" means an existing business that for at least six months prior to the offer, has been operated from a specific location, has been open for business to the general public, and has substantially all of the equipment and supplies necessary for operating the business.

8. "Person" means an individual, corporation, trust, partnership, incorporated or unincorporated association, or any other legal entity, provided, however, person does not include a government or governmental subdivision or agency.

9. "Purchaser" means a person who enters into a contract or agreement for the acquisition of a business opportunity or a person to whom an offer to sell a business opportunity is directed.

10. "Sale" or "sell" includes every contract or agreement of sale, contract to sell, or disposition of, a business opportunity or interest in a business opportunity for value.

11. "Seller" means a person who sells or offers to sell a business opportunity or an agent or other person who directly or indirectly acts on behalf of such a person. "Seller" does not include the media in or by which an advertisement appears or is disseminated.

Sec. 2. Section 523B.2, Code 1991, is amended by striking the section and inserting in lieu thereof the following:

523B.2 REGISTRATION.

1. **REQUIREMENT.** It is unlawful to offer or sell a business opportunity in this state unless the business opportunity is registered under this chapter or is exempt under section 523B.3.

2. **DISCLOSURE.** a. To register a business opportunity, the seller shall file with the administrator one of the disclosure documents as provided in paragraph "b" with the appropriate cover sheet as required by subsection 8, paragraph "b", a consent to service of process as specified in subsection 3, and the appropriate fee as required by subsection 7.

b. The disclosure document required in paragraph "a" shall be in one of the following forms:

(1) A uniform franchise offering circular prepared in accordance with the guidelines adopted by the north American securities administrators association, inc., as amended through September 21, 1983. The administrator may by rule adopt any amendment to the uniform franchise offering circular that has been adopted by the north American securities administrators association, inc.

(2) A disclosure document prepared pursuant to the federal trade commission rule entitled "Disclosure requirements and prohibitions concerning franchising and business opportunity ventures", 16 C.F.R. § 436 (1979). The administrator may by rule adopt any amendment to the disclosure document prepared pursuant to 16 C.F.R. § 436 (1979), that has been adopted by the federal trade commission.

(3) A disclosure document prepared pursuant to subsection 8.

3. **CONSENT TO SERVICE.** A seller shall file, on a form as the administrator may prescribe, an irrevocable consent appointing the administrator or the administrator's successor in office to be the seller's attorney to receive service of any lawful process in a noncriminal suit, action, or proceeding against the seller or the seller's successor, executor, or administrator which arises under this chapter after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. Service may be made by leaving a copy of the process in the office of the administrator, but is not effective unless the plaintiff or petitioner, who may be the administrator or the attorney general, in a suit, action, or proceeding, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant's or respondent's address on file with the administrator, and the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return date of the process, if any, or within such further time as the court allows.

4. **EFFECTIVE DATE.** A registration automatically becomes effective upon the expiration of the tenth full business day after the complete filing, provided that no order has been issued or proceeding is pending under subsection 10. The administrator may by order waive

or reduce the time period prior to effectiveness, provided that a complete filing has been made. The administrator may by order defer the effective date until the expiration of the tenth full business day after the filing of an amendment.

5. **PERIOD.** The registration is effective for one year commencing on the date the registration becomes effective and may be renewed annually upon the filing of a current disclosure document accompanied by any documents or information that the administrator may by rule or order require. Failure to renew upon the close of the one-year period of effectiveness will result in expiration of the registration. The administrator may by rule or order require the filing of a sales report.

6. **FILING RULE.** The administrator may by rule require the filing of all proposed literature or advertising prior to its use.

7. **FILING FEE.** The seller shall pay a five hundred dollar filing fee with the initial disclosure statement filed under subsection 2 and a two hundred fifty dollar annual renewal fee. The administrator shall by rule periodically revise these fees to ensure that they defray the costs of administration of this chapter.

8. **DISCLOSURE REQUIREMENTS.**

a. It is unlawful to offer or sell a business opportunity required to be registered pursuant to this chapter unless a written disclosure document as filed under subsection 2 is delivered to each purchaser at least ten business days prior to the earlier of the execution by a purchaser of a contract or agreement imposing a binding legal obligation on the purchaser or the payment by a purchaser of any consideration in connection with the offer or sale of the business opportunity.

b. The disclosure document shall have a cover sheet which is entitled, in at least ten-point bold type, "DISCLOSURE REQUIRED BY IOWA LAW." Under the title shall appear the following statement in at least ten-point type: "The registration of this business opportunity does not constitute approval, recommendation, or endorsement by the state of Iowa. The information contained in this disclosure document has not been verified by this state. If you have any questions or concerns about this investment, seek professional advice before you sign a contract or make any payment. You are to be provided ten (10) business days to review this document before signing a contract or agreement or making any payment to the seller or the seller's representative."

The seller's name and principal business address, along with the date of the disclosure document, shall also be provided on the cover sheet. No other information shall appear on the cover sheet.

c. Unless the seller uses a disclosure document as provided in subsection 2, paragraphs "a" and "b", the disclosure document shall contain the following information:

(1) The names and residential addresses of those salespersons who will engage in the offer or sale of the business opportunity in this state.

(2) The name of the seller, whether the seller is doing business as an individual, partnership, corporation, or other entity; the names under which the seller has done, is doing, or intends to do business; and the name of any parent or affiliated company that will engage in business transactions with purchasers or that will take responsibility for statements made by the seller.

(3) The names, addresses, and titles of the seller's officers, directors, trustees, general managers, principal executives, agents, and any other persons charged with responsibility for the seller's business activities relating to the sale of the business opportunity.

(4) Prior business experience of the seller relating to business opportunities including all of the following:

(a) The name, address, and a description of any business opportunity previously offered by the seller.

(b) The length of time the seller has offered each such business opportunity.

(c) The length of time the seller has conducted the business opportunity currently being offered to the purchaser.

(5) With respect to each person identified in subparagraph (3), all of the following:

(a) A description of the person's business experience for the ten-year period preceding the filing date of this disclosure document. The description of business experience shall list principal occupations and employers.

(b) A listing of the person's educational and professional background, including the names of schools attended and degrees received, and any other information that will demonstrate sufficient knowledge and experience to perform the services proposed.

(6) Whether any of the following apply to the seller or any person identified in subparagraph (3):

(a) The seller or other person has been convicted of a felony, pleaded nolo contendere to a felony charge, or has been the subject of a criminal, civil, or administrative proceeding alleging the violation of a business opportunity law, securities law, commodities law, or franchise law, or alleging fraud or deceit, embezzlement, fraudulent conversion, restraint of trade, an unfair or deceptive practice, misappropriation of property, or making comparable allegations.

(b) The seller or other person has filed for bankruptcy, been adjudged bankrupt, or been reorganized due to insolvency, or was an owner, principal officer, or general partner of a person, or any other person that has filed for bankruptcy or was adjudged bankrupt, or been reorganized due to insolvency during the last seven years.

(7) The name of any person identified in subparagraph (6), the nature of and the parties to the action or proceeding, the court or other forum, the date of the institution of the action, the docket references to the action, the current status of the action or proceeding, the terms and conditions of any order or decree, and the penalties or damages assessed and terms of settlement.

(8) The initial payment required, or if the exact amount cannot be determined, a detailed estimate of the amount of the initial payment to be made to the seller.

(9) A detailed description of the actual services the seller agrees to perform for the purchaser.

(10) A detailed description of any training the seller agrees to provide for the purchaser.

(11) A detailed description of services the seller agrees to perform in connection with the placement of equipment, products, or supplies at a location, as well as any agreement necessary in order to locate or operate equipment, products, or supplies on premises which are not owned or leased by the purchaser or seller.

(12) A detailed description of any license or permit that will be necessary in order for the purchaser to engage in or operate the business opportunity.

(13) The business opportunity seller that is required to secure a bond pursuant to section 523B.4 shall include in the disclosure document the following statement: "As required by the State of Iowa, the seller has secured a bond issued by [insert name and address of surety company], a surety company, authorized to do business in this state. Before signing a contract or agreement to purchase this business opportunity, you should check with the surety company to determine the bond's current status."

(14) Any representations made by the seller to the purchaser concerning sales or earnings that may be made from this business opportunity, including, but not limited to the following:

(a) The bases or assumptions for any actual, average, projected, or forecasted sales, profits, income, or earnings.

(b) The total number of purchasers who, within a period of three years of the date of the disclosure document, purchased a business opportunity involving the product, equipment, supplies, or services being offered to the purchaser.

(c) The total number of purchasers who, within three years of the date of the disclosure document, purchased a business opportunity involving the product, equipment, supplies, or services being offered to the purchaser who, to the seller's knowledge, have actually received earnings in the amount or range specified.

(15) A detailed description of the elements of a guarantee made by a seller to a purchaser. The description shall include, but is not limited to, the duration, terms, scope, conditions, and limitations of the guarantee.

(16) A statement including all of the following:

(a) The total number of business opportunities that are the same or similar in nature to those being sold or organized by the seller.

(b) The names and addresses of purchasers who have requested a refund or rescission from the seller within the last twelve months and the number of those who have received the refund or rescission.

(c) The total number of business opportunities the seller intends to sell in this state within the next twelve months.

(d) The total number of purchasers known to the seller to have failed in the business opportunity.

(17) A statement describing any contractual restrictions, prohibitions, or limitations on the purchaser's conduct. Attach a copy of all business opportunities and other contracts or agreements proposed for use or in use in this state including, without limitation, all lease agreements, option agreements, and purchase agreements.

(18) The rights and obligations of the seller and the purchaser regarding termination of the business opportunity contract or agreement.

(19) A statement accurately describing the grounds upon which the purchaser may initiate legal action to terminate the business opportunity contract or agreement.

(20) A copy of the most recent audited financial statement of the seller, prepared within thirteen months of the first offer in this state, together with a statement of any material changes in the financial condition of the seller from that date. The administrator may allow the seller to submit a limited review in order to satisfy the requirements of subparagraph (13).

(21) A list of the states in which this business opportunity is registered.

(22) A list of the states in which this disclosure document is on file.

(23) A list of the states which have denied, suspended, or revoked the registration of this business opportunity.

(24) A section entitled "Risk Factors" containing a series of short concise statements summarizing the principal factors which make this business opportunity a high risk or one of a speculative nature. Each statement shall include a cross-reference to the page on which further information regarding that risk factor can be found in the disclosure document.

(25) Any additional information as the administrator may require by rule or order.

9. CONTRACT OR AGREEMENT PROVISIONS.

a. It is unlawful to offer or sell a business opportunity required to be registered unless the business opportunity contract or agreement is in writing and a copy of the contract or agreement is given to the purchaser at the time the purchaser signs the contract or agreement.

b. The contract or agreement is subject to this chapter and section 714.16.

c. Contracts or agreements shall set forth in at least ten-point type or equivalent size, if handwritten, all of the following:

(1) The terms and conditions of any and all payments due to the seller.

(2) The seller's principal business address and the name and address of the seller's agent in this state authorized to receive service of process.

(3) The business form of the seller, whether corporate, partnership, or otherwise.

(4) The delivery date, or when the contract provides for a periodic delivery of items to the purchaser, the approximate delivery date of the product, equipment, or supplies the seller is to deliver to the purchaser to enable the purchaser to start business.

(5) Whether the product, equipment, or supplies are to be delivered to the purchaser's home or business address or are to be placed or caused to be placed by the seller at locations owned or managed by persons other than the purchaser.

(6) A statement that accurately states the purchaser's right to void the contract under the circumstances and in the manner set forth in section 523B.6.

(7) The cancellation statement appearing in section 82.3.

10. DENIAL, SUSPENSION, OR REVOCATION OF REGISTRATION.

a. The administrator may issue an order denying effectiveness to, or suspending or revoking the effectiveness of, any registration if the administrator finds that the order is in the public interest and any of the following:

(1) The registration as of its effective date or as of any earlier date in the case of an order denying effectiveness, any amendment as of its effective date, or any report is incomplete in any material respect or contains any statement which is, in the light of the circumstances under which it was made, determined by the administrator to be false or misleading with respect to any material fact.

(2) Any provision of this chapter or any rule, order, or condition lawfully imposed under this chapter has been willfully violated, in connection with the business opportunity, by either of the following:

(a) The person filing the registration.

(b) The seller, any partner, officer, or director of the seller, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the seller, but only if the person filing the registration is directly or indirectly controlled by or acting for the seller.

(3) The business opportunity registered or sought to be registered is the subject of an administrative order denying, suspending, or revoking a registration or a permanent or temporary injunction of any court of competent jurisdiction. However, the administrator shall not do either of the following:

(a) Institute a proceeding against an effective registration under this paragraph more than one year from the date of the order or injunction relied on.

(b) Enter an order under this paragraph on the basis of an order or injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for an order under this section.

(4) The seller's enterprise or method of business, or that of the business opportunity, includes or would include activities which are or would be illegal where performed.

(5) The business opportunity or the offering of a business opportunity has worked or tended to work a fraud upon purchasers or would operate to work such a fraud.

(6) There has been a failure to file any documents or information required under subsection 2.

(7) The seller has failed to pay the proper filing fee. However, the administrator shall vacate any order issued pursuant to this subparagraph when the deficiency has been corrected.

(8) The seller's literature or advertising is misleading, incorrect, incomplete, or deceptive.

b. The administrator shall not institute a proceeding under this subsection against an effective registration on the basis of a fact or transaction known to the administrator when the registration became effective unless the proceeding is instituted thirty days after the effective date of the registration.

c. (1) The administrator may by order summarily postpone or suspend the effectiveness of the registration pending final determination of a proceeding under this subsection.

(2) Upon the entry of a summary order, the administrator shall promptly notify the seller that the order has been entered and of the reasons for entering the order and that within fifteen days after the receipt of a written request the matter will be set down for hearing.

(3) If no hearing is requested the order will remain in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator may modify or vacate the order or extend the order until final determination.

d. A summary order shall not be entered under any part of this subsection, except under subparagraph (1) of paragraph "c", without appropriate notice to the seller, an opportunity for hearing, and written findings of fact and conclusions of law in accordance with chapter 17A.

e. The administrator may vacate or modify an order issued under this subsection if the administrator finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so.

Sec. 3. Section 523B.3, Code 1991, is amended by striking the section and inserting in lieu thereof the following:

523B.3 EXEMPTIONS FROM REGISTRATION AND DISCLOSURE.

1. **TYPES OF EXEMPTIONS.** The following business opportunities are exempt from the requirements of section 523B.2:

a. The offer or sale of a business opportunity if the purchaser is a bank, savings and loan association, trust company, insurance company, credit union, or investment company as defined by the federal Investment Company Act of 1940, a pension or profit-sharing trust, or other financial institution or institutional buyer, or a dealer registered pursuant to chapter 502, whether the purchaser is acting for itself or in a fiduciary capacity.

b. The offer or sale of a business opportunity which is defined as a franchise under section 523B.1, subsection 4, provided that the seller delivers to each purchaser at the earlier of the first personal meeting between the seller and the purchaser, or ten business days prior to the earlier of the execution by a purchaser of a contract or agreement imposing a binding legal obligation on the purchaser or the payment by a purchaser of any consideration in connection with the offer or sale of the business opportunity, one of the following disclosure documents:

(1) A uniform franchise-offering circular prepared in accordance with the guidelines adopted by the north American securities administrators association, inc., as amended through September 21, 1983.

(2) A disclosure document prepared pursuant to the federal trade commission rule entitled "Disclosure requirements and prohibitions concerning franchising and business opportunity ventures", 16 C.F.R. § 436 (1979).

For the purposes of this paragraph, a personal meeting means a face-to-face meeting between the purchaser and the seller or their representatives, which is held for the purpose of discussing the offer or sale of a business opportunity. The administrator may by rule adopt any amendment to the uniform franchise-offering circular that has been adopted by the north American securities administrators association, inc., or any amendment to the disclosure document prepared pursuant to the federal trade commission rule entitled "Disclosure requirements and prohibitions concerning franchising and business opportunity ventures", 16 C.F.R. § 436 (1979), that has been adopted by the federal trade commission.

c. The offer or sale of a business opportunity for which the cash payment made by a purchaser does not exceed five hundred dollars and the payment is made for the not-for-profit sale of sales demonstration equipment, material, or samples, or the payment is made for product inventory sold to the purchaser at a bona fide wholesale price.

d. The offer or sale of a business opportunity which the administrator exempts by order or a class of business opportunities which the administrator exempts by rule upon the finding that the exemption would not be contrary to public interest and that registration would not be necessary or appropriate for the protection of purchasers.

2. **DENIAL OR REVOCATION OF EXEMPTIONS.**

a. The administrator may by order deny or revoke an exemption specified in this section with respect to a particular offering of one or more business opportunities. An order shall not be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law.

b. If the public interest or the protection of purchasers so requires, the administrator may by order summarily deny or revoke any of the specified exemptions pending final determination of any proceedings under this section. Upon entry of the order, the administrator shall promptly notify all interested parties that it has been entered and of the reasons for entering the order and that within fifteen days of the receipt of a written request the matter will be set down for hearing. If a hearing is not requested the order shall remain in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator shall not modify or vacate the order or extend it until final determination.

c. An order under this section shall not operate retroactively.

d. A person does not violate section 523B.2 by reason of an offer or sale effected after the entry of an order under paragraph "b" if the person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the order.

3. **BURDEN OF PROOF.** In an administrative, civil, or criminal proceeding related to this chapter, the burden of proving an exemption, an exception from a definition, or an exclusion from this chapter, is upon the person claiming it.

Sec. 4. Section 523B.4, Code 1991, is amended by striking the section and inserting in lieu thereof the following:

523B.4 MINIMUM NET WORTH OR BOND REQUIREMENT.

1. In connection with an offer or sale of a business opportunity, a seller shall not make or use any of the representations set forth in section 523B.1, subsection 3, paragraph "a", subparagraphs (4) and (5), unless the seller has at all times a minimum net worth of twenty-five thousand dollars as determined in accordance with generally accepted accounting principles. In lieu of the minimum net worth requirement, the administrator may, by rule or order, require a business opportunity seller to obtain a surety bond issued by a surety company authorized to do business in this state. The surety bond must be in an amount not less than twenty-five thousand dollars and shall be for the benefit of any purchaser. The administrator may by rule or order increase the amount of the 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 bond.

2. If the seller is required to obtain a surety bond, the seller shall maintain a surety bond for the duration of the guarantee or representation giving rise to the surety bond requirement. Upon expiration of the period of the guarantee, the seller may allow the surety bond to lapse if the seller gives notice to the administrator and all business opportunity purchasers in this state at least thirty days prior to the lapse of the bond.

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

523B.5 ADMINISTRATIVE FILES AND OPINIONS.

1. A document is filed when the document is received by the administrator.

2. The administrator shall keep a register of all applications for registration and disclosure documents which are or have been effective under this chapter and all orders which have been entered under this chapter.

3. Unless otherwise provided by law, a registration statement, filing, application, or report filed with the administrator is open for public inspection.

4. The administrator may honor a written request from an interested person for an interpretative opinion upon the payment of a fee of one hundred dollars.

Sec. 6. Section 523B.7, Code 1991, is amended by striking the section and inserting in lieu thereof the following:

523B.7 LIABILITY — REMEDIES.

1. a. A person who violates section 523B.4 or section 523B.2, subsection 1, 8, or 9, is liable to the purchaser in an action for rescission of the agreement, or for recovery of all money or other valuable consideration paid for the business opportunity, and for actual damages together with interest as determined pursuant to section 668.13 from the date of sale, reasonable attorney's fees, and court costs.

b. A person who violates section 523B.12, subsection 2 or 3, is liable to the purchaser who may sue either at law or in equity for rescission, or for recovery of all money or other valuable consideration paid for the business opportunity, and for the recovery of treble damages together with interest as determined pursuant to section 668.13 from the date of sale, reasonable attorney's fees, and court costs.

c. A person who violates section 523B.2, subsection 8, or section 523B.12, subsection 2 or 3, or who breaches a business opportunity contract or agreement or an obligation arising under the contract or agreement, is liable to the purchaser who may sue the surety of the seller's bond, either at law or in equity, to recover all money or other valuable consideration paid for

the business opportunity and actual damages, together with interest as determined pursuant to section 668.13 from the date of sale, reasonable attorney's fees, and court costs. The liability of the surety shall not exceed the amount of the bond.

2. Every person who directly or indirectly controls a party liable under this section, every partner in a partnership so liable, every principal executive officer or director of a corporation so liable, every person occupying a similar status in, or performing similar functions for, and every employee of, a party so liable who materially aids in the act or transaction constituting the violation is also liable jointly and severally with and to the same extent as the party, unless the person liable as a result of the person's relationship with the liable party as defined under this section proves that the person did not know, and in the exercise of reasonable care could not have known of the existence of the facts giving rise to the alleged liability. Among the persons held liable, a party paying more than the party's percentage share of damages may recover judgment for contribution upon motion to the court or in a separate action.

3. An action shall not be maintained under this section unless commenced within three years after the act or transaction constituting the violation, or within one year after the discovery of the facts constituting the violation, whichever period later expires.

4. The rights and remedies available pursuant to this chapter are in addition to any other rights or remedies that may exist at law or in equity.

Sec. 7. Section 523B.8, subsection 2, Code 1991, is amended by striking the subsection and inserting in lieu thereof the following:

2. a. The administrator may do any of the following:

(1) Make public or private investigations within or outside of this state as the administrator deems necessary to determine whether a person has violated or is about to violate a provision of this chapter or a rule or order under this chapter, or to aid in the enforcement of this chapter or in the prescribing of rules and forms under this chapter.

(2) Require or permit a person to file a statement, under oath or otherwise as the administrator determines, as to all the facts and circumstances concerning the matter to be investigated.

(3) Publish information concerning a violation of this chapter or a violation of a rule or order under this chapter.

b. For the purpose of an investigation or proceeding under this chapter, the administrator or an officer designated by the administrator may administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses, take evidence and require the production of books, papers, correspondence, memoranda, agreements, or other documents or records which the administrator deems relevant or material to the inquiry.

c. If a person resists or refuses to obey a subpoena issued to that person, the district court upon application by the administrator may issue to the person an order requiring the person to appear before the administrator, to produce documentary evidence if so ordered, or to give evidence related to the matter under investigation. Failure to obey the order of the court is punishable as a contempt of court.

d. A person is not excused from attending and testifying or from producing a document or record before the administrator or an officer designated by the administrator, on the grounds that the testimony or evidence, documentary or otherwise, required by the administrator may tend to incriminate the person or subject the person to a penalty or forfeiture. However, an individual shall not be prosecuted or subjected to a penalty or forfeiture on account of a transaction, matter, or thing concerning which the person is compelled, after claiming the person's privilege against self-incrimination, to testify or produce, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt related to such testimony.

Sec. 8. Section 523B.11, subsection 1, Code 1991, is amended by striking the subsection and inserting in lieu thereof the following:

1. A seller who willfully violates section 523B.4, section 523B.2, subsection 1, 8, or 9, or section 523B.12, subsection 2, who willfully violates a rule under this chapter, who willfully

violates an order of which the person has notice, or who violates section 523B.12, subsection 1, knowing that the statement made was false or misleading in any material respect, upon conviction, is guilty of a class "D" felony. Each of the acts specified constitutes a separate offense and a prosecution or conviction for any one of such offenses does not bar prosecution or conviction for any other offense.

Sec. 9. NEW SECTION. 523B.12 FRAUDULENT PRACTICES.

1. MISLEADING FILINGS. It is unlawful to make or cause to be made, in a document filed with the administrator or in a proceeding under this chapter, a statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in a material respect or, in connection with such a statement, to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading.

2. UNLAWFUL REPRESENTATIONS. The fact that an application for registration has been filed or the fact that a business opportunity is effectively registered does not constitute a finding by the administrator that a document filed under this chapter is true, complete, and not misleading. The fact that an application for registration has been filed, that a business opportunity is effectively registered, or that an exemption or exception is available for a business opportunity does not mean that the administrator has passed in any way upon the merits or qualifications of, or recommended or given approval to, a person or business opportunity. It is unlawful to make, or cause to be made, to a purchaser, any representation inconsistent with this subsection.

3. ADVERTISING. It is unlawful for a seller, in connection with the offer or sale of a business opportunity in this state, to publish, circulate, or use advertising which contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

Sec. 10. NEW SECTION. 523B.13 SCOPE — SERVICE OF PROCESS.

1. The provisions of this chapter concerning sales and offers to sell apply to persons who sell or offer to sell a business opportunity when any of the following apply:

- a. An offer to sell is made in this state.
- b. An offer to purchase is made and accepted in this state.
- c. The purchaser is domiciled in this state and the business opportunity is or will be operated in this state.

2. For the purpose of this section, an offer to sell is made in this state, whether or not either party is then present in this state, when either of the following apply:

- a. The offer originates from this state.
- b. The offer is directed by the offeror to this state and received at the place to which the offer is directed or at a post office in this state in the case of a mailed offer.

3. For the purpose of this section, an offer to sell is accepted in this state when both of the following occur:

- a. The acceptance is communicated to the offeror in this state.
- b. The acceptance has not previously been communicated to the offeror, orally, or in writing, outside this state. For the purpose of this section the acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state, and the acceptance is received at the place to which it is directed or at a post office in this state in the case of a mailed acceptance.

4. An offer to sell is not made in this state under either of the following circumstances:

- a. If the offer appears in a bona fide newspaper or other publication of general circulation which is not published in this state, or which is published in this state but has had more than two-thirds of its circulation outside this state during the past twelve months.
- b. If the offer is made on a radio or television program originating outside this state which is received in this state.

5. A person who engages in conduct prohibited or made actionable under this chapter and who has not filed a consent to service of process is deemed to have appointed the administrator to be the person's attorney for purposes of service of any lawful process in a noncriminal suit, action, or proceeding against the person or the person's successor, executor, or administrator, which is the result of that conduct and which is brought under this chapter or is pursuant to a rule or order under this chapter. Service shall be made by leaving a copy of the process in the office of the administrator. The service is effective after both of the following have occurred:

a. The plaintiff, who may be the administrator, in a suit, action, or proceeding instituted by the administrator, sends notice of the service and a copy of the process by certified or registered mail to the defendant's or respondent's last known address or takes other steps which are reasonably calculated to give actual notice.

b. The plaintiff's affidavit of compliance with this subsection is filed on or before the return day of the process, if any, or within such further time as the court allows.

6. When process is served under this section, the court, or the administrator in a proceeding before the administrator, shall order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend.

DIVISION II

Sec. 11. Section 523D.1, Code 1991, is amended by striking the section and inserting in lieu thereof the following:

523D.1 DEFINITIONS.

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

1. "Commissioner" means the commissioner of insurance or the deputy appointed under section 502.601.

2. "Continuing care" means housing together with supportive services, nursing services, medical services, or other health related services, furnished to a resident, regardless of whether or not the lodging and services are provided at the same location, with or without other periodic charges, and pursuant to one or more contracts effective for the life of the resident or a period in excess of one year, including mutually cancellable contracts, and in consideration of an entrance fee.

3. "Continuing care retirement community" means a facility which provides continuing care to residents other than residents related by consanguinity or affinity to the person furnishing their care.

4. "Entrance fee" means an initial or deferred transfer to a provider of a sum of money or other property made or promised to be made as full or partial consideration for acceptance of a specified individual in a facility if the amount exceeds either of the following:

a. Five thousand dollars.

b. The sum of the regular periodic charges for six months of residency.

5. "Facility" means the place or places in which a provider undertakes to provide continuing care or senior adult congregate living services to an individual.

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

7. "New construction" means construction of a new facility or the expansion of an existing facility if the expansion involves an increase in the number of living units in excess of twenty-five percent.

8. "Provider" means a person undertaking through a lease or other type of agreement to provide care in a continuing care retirement community or senior adult congregate living facility, even if that person does not own the facility.

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

10. "Senior adult congregate living facility" means a facility which provides senior adult congregate living services to residents other than residents related by consanguinity or affinity to the person furnishing their care.

11. "Senior adult congregate living services" means housing and one or more supportive services furnished to a resident, with or without other periodic charges, in consideration of an entrance fee.

12. "Supportive services" includes but is not limited to one or any combination of the following services: laundry, maintenance, housekeeping, emergency nursing care, activity services, security, dining options, transportation, beauty and barber services, health care, and personal care, including personal hygiene, eating, bathing, dressing, and supervised medication administration.

Sec. 12. Section 523D.3, subsection 1, Code 1991, is amended by striking the subsection and inserting in lieu thereof the following:

1. At the time of, or prior to, the execution of a contract to provide continuing care or senior adult congregate living services, or at the time of, or prior to the provider's acceptance of part or all of the entrance fee by or on behalf of a prospective resident, whichever occurs first, the provider shall deliver a disclosure statement to the person, and to the person's personal representative if one is appointed, with whom the contract is to be entered into. Unless incorporated by reference, in whole or in part, the disclosure statement shall not constitute part of the contract between the resident and provider. The disclosure statement shall contain all of the following information unless the information is in the contract, a copy of which must be attached to the statement:

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

b. The names and business addresses of the officers, directors, trustees, managing or general partners, and any person having a ten percent or greater equity or beneficial interest in the provider and a description of such person's interest in or occupation with the provider.

c. With respect to each person covered by paragraph "b", and if the facility will be managed on a day-to-day basis by a person identified pursuant to paragraph "b", or with respect to the proposed manager, the following information:

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

(2) The name and address of any professional service, or other entity in which the person has, or which has in the person, a ten percent or greater interest and which has provided goods, leases, or services to the facility of a value of five hundred dollars or more within the prior twelve months or which has contracted to provide goods, leases, or services to the facility of a value of five hundred dollars or more within a year, including a description of the goods, leases, or services and their actual or anticipated cost to the facility or provider.

(3) A description of any matter resulting in the person's conviction of a felony or a plea of nolo contendere to a felony charge, or a description of any matter where the person was found to be liable or enjoined in a civil action by final judgment if the felony or civil action involved fraud, embezzlement, fraudulent conversion, misappropriation of property, or a similar felony involving theft or dishonesty.

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

d. A statement, if applicable, containing the following:

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

(2) The nature of the affiliation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

k. Other material information concerning the facility or the provider required by the division of insurance or which the provider wishes to include.

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

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

Sec. 13. Section 523D.3, subsection 3, Code 1991, is amended by striking the subsection and inserting in lieu thereof the following:

3. In the event an amendment is filed with the division of insurance pursuant to subsection 4, the provider shall deliver a copy of the amendment or the amended disclosure statement to a prospective resident and to a prospective resident's personal representative if one is appointed prior to the provider's acceptance of part or all of the entrance fee or the execution of the continuing care or senior congregate living services contract by the prospective resident.

Sec. 14. Section 523D.5, Code 1991, is amended by striking the section and inserting in lieu thereof the following:

523D.5 NEW CONSTRUCTION.

1. **FILING WITH INSURANCE DIVISION.** A provider shall not enter into a contract to provide continuing care or senior adult congregate living services that applies to a living unit that is part of a new facility or proposed expansion that is or will be located in this state unless the person has submitted an application on a form as required by the division of insurance accompanied by a fee of two hundred fifty dollars. The application at a minimum must include the following information:

a. A description of the new facility or the proposed expansion, including a description of the goods and services that will be offered to prospective residents.

b. A statement of the financial resources of the provider available for this project.

c. A statement of the capital expenditures necessary to accomplish this project.

d. A statement of financial feasibility for the new facility or proposed expansion in a form satisfactory to the commissioner, which includes a statement of future funding sources and shall identify the qualifications of the person or persons preparing the study.

e. A statement of the market feasibility for the new facility or proposed expansion in a form satisfactory to the commissioner, which identifies the qualifications of the person or persons preparing the study.

f. If the new facility or proposed expansion offers a promise to provide nursing or health care services to residents in the future, an actuarial forecast in a form satisfactory to the commissioner, which identifies the qualifications of the actuary or actuaries preparing the forecast.

g. Copies of the escrow agreements executed pursuant to this chapter or proof that an escrow is not required.

2. DETERMINATION OF FEASIBILITY.

a. Existing facilities. If a filing is made under this section for an expansion of an existing facility, the determination of feasibility shall be based on consolidated information for the existing facility and the proposed expansion.

b. New facilities. If a filing is made under this section for a new facility, not part of an existing facility that will be constructed in more than one stage or phase, the initial stage or phase must evidence feasibility independent of any subsequent stage or phase and contain all of the facilities or components necessary to provide residents with all of the services and amenities promised by the provider.

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.

4. **ESCROW REQUIREMENTS.** Unless proof has been submitted to the commissioner that conditions for the release of escrowed funds set forth in this section have already been met, the provider shall establish an interest-bearing escrow account at a state or federally

regulated financial institution located within this state to receive any deposits or entrance fees or portions of deposits or fees for a living unit which has not been previously occupied by a resident for which an entry fee arrangement is used. The escrow account agreement shall be entered into between the financial institution and the provider with the financial institution as the escrow agent and as a fiduciary for the resident or prospective resident. The agreement shall state that the purpose of the escrow account is to protect the resident or prospective resident and that the funds deposited shall be kept and maintained in an account separate and apart from the provider's business accounts.

5. **RELEASE OF ESCROWED FUNDS.** Funds held in escrow shall be released only as follows:

a. If the provider fails to meet the requirements for release of funds held in escrow pursuant to this section within a time period specified in the escrow agreement, which shall not exceed thirty-six months, these funds shall be returned by the escrow agent to the persons who have made payment to the provider.

b. Upon notice from the provider that a resident is entitled to a refund, the escrow agent shall refund the amount directly to the resident. The amount of the refund shall be included in the provider's notice to the escrow agent and shall be determined in compliance with this chapter and any applicable terms of the resident's contract.

c. Except as provided by paragraphs "a" and "b", amounts held in escrow shall be released only upon approval of the commissioner. The commissioner shall approve the release of funds only upon a determination that at least one of the following conditions has been satisfied:

(1) The facility has a minimum of fifty percent of the units reserved for which the provider is charging an entrance fee and the aggregate amount of the entrance fees received by or pledged to the provider, plus anticipated proceeds from any long-term financing commitment, plus funds from all other sources in the actual possession of the provider, equal not less than ninety percent of the aggregate cost of constructing or purchasing, equipping, and furnishing the facility.

(2) The resident has moved into the living unit, the cancellation period required by section 523D.6, subsection 2, has expired, construction of the facility or the portion of the facility under construction is complete, the facility has been adequately equipped and furnished, a certificate of occupancy or the equivalent has been issued by the appropriate local jurisdiction, and the provider has been issued all the appropriate licenses or permits needed to operate the facility and provide all of the promised services.

d. Upon receipt by the escrow agent of a request by the provider for the release of these escrowed funds, the escrow agent shall approve release of the funds within five working days unless the escrow agent finds that the requirements of this section have not been met and notifies the provider of the basis for this finding. The request for release of the escrowed funds shall be accompanied by any documentation the escrow agent requires.

Sec. 15. Section 523D.6, Code 1991, is amended by striking the section and inserting in lieu thereof the following:

523D.6 CONTRACTS.

1. **DISCLOSURE.** In addition to any other provisions prescribed by rules adopted under this chapter, each contract providing for continuing care or senior adult congregate living services by a provider shall be written in nontechnical language easily understood by a lay person and shall include all of the following:

a. The name and business address of the provider.

b. The name and address of the facility or facilities.

c. The identification of the living unit which the prospective resident will occupy.

d. A description of the total consideration paid by the resident, including the value of all property transferred.

e. A list of all of the continuing care or senior adult congregate living services which are to be provided by the provider to each resident. The list shall clearly identify the manner in which continuing care or senior adult congregate living services will be provided, including a statement whether the items will be provided for a designated time period or for life, and

shall indicate which continuing care and senior adult congregate living services, if any, will be provided through an affiliate or third party. The description of any service charges or fees shall, in the event of multiple residents, be provided on an individual basis and shall include a description of any additional charges that will be assessed for occupancy by more than one resident.

f. A statement of the policy of the facility with regard to any health or financial conditions upon which the provider may require the resident to relinquish the resident's space in the designated facility.

g. A statement of the policy of the facility with regard to the health and financial conditions required for a person to continue as a resident.

h. A statement of the policy of the facility with regard to the conditions under which the resident is permitted to remain in the facility in the event of financial difficulties affecting the resident.

i. A statement of the terms concerning the entry of a person to the living unit and the consequences if a person does not meet the requirements for entry.

j. A statement of the policy of the facility with regard to changes in accommodations and a description of the procedures to be followed by the provider when the provider temporarily or permanently changes the resident's accommodations within the facility, transfers the resident from one level of care to another, or transfers the resident to another health facility.

k. A description in clear and understandable language, in at least ten-point type, of the terms governing the refund of any portion of the entrance fee in the event of discharge by the provider, or cancellation by the resident, and a statement that the provider shall not dismiss or discharge a resident from a facility prior to the expiration of a resident contract without just cause and sixty days written notice of intent to cancel. The notice of dismissal or discharge shall only be given upon a good faith determination that just cause exists, and the notice shall be given in writing, signed by the medical director, if any, and the administrator of the facility. In an emergency situation only such notice as is reasonable under the circumstances is required.

l. A description in clear and understandable language, in at least ten-point type, whether monthly fees, if charged, are subject to periodic increases.

m. A description of the facility's policies and procedures for handling grievances between the provider and residents.

n. A statement that residents living in the facility have the right of self-organization.

o. A statement that a prospective resident or resident shall be given the opportunity to appoint a personal representative in the prospective resident's or resident's contract. The personal representative shall receive copies of the contract and all notices, disclosures, or forms required by this chapter to be delivered to a prospective resident or resident. A personal representative appointed under this section has no legal authority to make any decision for the prospective resident appointing the person to be a personal representative. The personal representative may advise the prospective resident or resident as to the materials provided. A personal representative shall not be affiliated or associated with a provider or any person identified in section 523D.3, subsection 1, paragraph "b" or "c", and shall not be a prospective resident or resident.

p. A statement that if a resident dies or through illness, injury, or incapacity is precluded from becoming a resident under the terms of the contract before occupying the living unit, the contract is automatically rescinded and the resident or the resident's legal representative shall receive a full refund of all payments of money or transferred property to the facility, except those costs specifically incurred by the facility at the request of the resident and set forth in writing in a separate addendum, signed by both parties to the contract.

q. A statement that a resident has the right to rescind a contract for continuing care or senior adult congregate living services, without penalty or forfeiture, within three business days of the date the contract was executed or within thirty days after the date the resident received the disclosure statement required by section 523D.3, whichever is later.

2. CANCELLATION. The contract required by this section shall state the terms under which the contract can be canceled by the provider or the resident, including a statement of the refund rights of a resident, and shall include a completed, easily detachable form in duplicate, captioned "Notice of Cancellation", as an attachment, in ten-point boldface type, containing the following information and statements in substantially the following form and language:

NOTICE OF CANCELLATION

Date contract was executed.

Date disclosure statement was provided to resident.

You may rescind and cancel your contract, without any penalty or obligation, within three business days of the date the contract was executed or within thirty days after the date you received the disclosure statement required by Iowa Code section 523D.3, whichever is later. You are not required to move into the facility before the expiration of this cancellation period. However, if you do, the provider may retain the reasonable value of care and services actually provided to you, the resident, prior to your vacating the provider's facility. If you cancel this contract and you have already moved into the provider's facility, you must vacate your living unit within ten days after receipt by the provider of your cancellation notice.

If you cancel this contract, any payments of money or transfers of property you made to the provider must be returned as soon as reasonably possible by the provider following receipt by the provider of your cancellation notice, and any security interest arising out of the transaction is canceled, except that, as stated above, the provider may retain the reasonable value of care and services actually provided to you prior to your vacating the provider's facility.

To cancel this contract, mail by certified mail or hand deliver a signed and dated copy of this cancellation notice or any other written notice clearly indicating your intent to cancel the contract, or send a telegram, to _____ (name of provider) at _____ (address of provider's place of business). Your cancellation is effective upon mailing by certified mail, when transmitted by telegraph, or when actual notice is given to the provider, whichever is earlier.

I hereby cancel this contract.

(Date)

(Resident's signature)

Sec. 16. NEW SECTION. 523D.12 FILINGS AND INVESTIGATIONS.

1. The annual filing, and any amendments to the annual filing, shall be signed by the chief executive officer, stating that to the best of the officer's knowledge and belief, the items are correct.

2. The commissioner or the attorney general may, for the purpose of discovering or investigating violations of this chapter or rules adopted pursuant to this chapter do any or all of the following:

a. Investigate the business and examine the books, accounts, records, and files used by a provider. With the exception of an examination involving new construction, an examination involving a complaint by a resident or a prospective resident or where good cause exists for the lack of prior notice, as determined by the commissioner, the division of insurance shall provide at least seven days' prior notice to the facility before conducting an on-site examination.

b. Administer oaths and affirmations, subpoena witnesses, receive evidence, and require the production of documents and records in connection with an investigation or proceeding being conducted pursuant to this chapter.

c. Apply to the district court for issuance of an order requiring a person's appearance before the commissioner or attorney general. The person may also be required to produce documentary evidence germane to the subject of the investigation. Failure to obey a court order under this subsection constitutes contempt of court.

Sec. 17. NEW SECTION. 523D.13 COMPLIANCE ORDERS.

Upon the commissioner's determination that a provider has violated a provision of this chapter or a rule adopted pursuant to this chapter, the commissioner may issue an order requiring a provider to cease and desist from an unlawful practice or to take other affirmative action as in the judgment of the commissioner is necessary to comply with the requirements of this chapter. The person named in the order may, within fourteen days after receipt of the order, file a written request for a hearing. The hearing shall be held in accordance with chapter 17A. If a hearing is not requested, the order shall become permanent.

Sec. 18. NEW SECTION. 523D.14 INJUNCTIONS.

The attorney general may petition the district court in any county of the state for an injunction to restrain a person subject to this chapter and any agents, employees, or associates of the person from engaging in conduct or practices in violation of this chapter or rules adopted pursuant to this chapter. In a proceeding for an injunction, the attorney general may apply to the court for the issuance of a subpoena to require the appearance of a defendant and the defendant's agents and any documents, books, or records germane to the hearing upon the petition for an injunction. Upon proof of any of the violations described in the petition for injunction, the court may grant the injunction.

DIVISION III

Sec. 19. Section 535C.2, Code 1991, is amended by striking the section and inserting in lieu thereof the following:

1. "Administrator" means the commissioner of insurance or the deputy administrator appointed pursuant to section 502.601.

2. "Advance fee" means consideration including a payment, fee, or deposit, which is assessed or collected prior to the closing of a loan. 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.

3. "Bona fide third-party fee" means a fee charged for one or more of the following:

a. A credit report or appraisal.

b. Providing security of title services for a loan secured by real property, including but not limited to a title examination, an abstract of title, title insurance, or a property survey.

4. "Borrower" means a person who seeks the services of a loan broker.

5. "Financial statement" means a document evidencing the financial position of the loan broker as required by section 535C.3A.

6. "Loan" means an agreement to advance property, including but not limited to money, in return for the promise that payment will be made for the use of the property.

7. "Loan broker" or "broker" means a person who in return for an advance fee, promises to obtain a loan or assist in obtaining a loan for another from a third person, or who promises to consider making a loan 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.

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 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 for a borrower.
 - b. Assist the borrower in obtaining a loan.
 - c. Consider making a loan to the borrower.
9. "Records" means books, papers, documents, accounts, agreements, memoranda, electronic records of accounts, or correspondence relating to a matter regulated under this chapter.
10. "Successful procurement of a loan" means the receipt by a borrower of the loan proceeds.

Sec. 20. NEW SECTION. 535C.3A FINANCIAL STATEMENT.

A loan broker shall file a financial statement with the administrator. The statement shall be prepared according to generally accepted accounting principles. The statement shall contain all of the following:

- 1. A copy of the loan broker's balance sheet prepared within one hundred twenty days prior to the most recent filing of a disclosure statement as provided in section 535C.5.
- 2. A profit and loss statement, and a statement of changes in the broker's financial position for each fiscal year that the broker and the broker's predecessor were in business. However, the statement of changes need not cover more than the three fiscal years preceding the date that the broker's balance sheet was prepared.
- 3. If prepared, a copy of the broker's most recent audited financial statement.

Sec. 21. Section 535C.5, subsections 1 through 3, Code 1991, are amended to read as follows:

1. Before advertising or making other oral or written representations, or acting as a loan broker in this state, a loan broker shall file with the administrator copies of the all of the following:

- a. The disclosure statement required under section 535C.3, the,
- b. The most recent financial statement of the broker, and either of the following: required under section 535C.3A.
- a c. The Either a bond required under section 535C.4.
- b. The or a formal notification from the financial institution that the trust account required under section 535C.4 is established.
- d. An irrevocable consent, in a form prescribed by the commissioner of insurance, appointing the administrator to be the loan broker's agent to receive service of process in any suit or action against the broker arising from a violation of a provision of this chapter or a rule adopted pursuant to this chapter.

2. The broker shall amend these filings no less than annually and, in addition, shall file amendments within forty-five days of any material change in the following:

- a. The status of the bond or account.
- b. The financial statement of the broker.
- c. Information required by the disclosure statement.

PARAGRAPH DIVIDED. A broker who does not file the copies required is guilty of a serious misdemeanor.

3. In addition to other required filings, an annual filing shall be made not later than July 1. The broker shall pay a one hundred fifty dollar filing fee with the initial disclosure statement filed under subsection 1. The annual filing shall be accompanied by a filing fee of one hundred dollars. A twenty-five dollar fee shall be charged for each amendment under subsection 2.

Sec. 22. Section 535C.7, Code 1991, is amended to read as follows:

535C.7 WRITTEN AGREEMENTS REQUIRED.

A loan brokerage agreement shall be in writing, ~~and contain a description of the services that the broker agrees to perform for the borrower, and the conditions under which the borrower is obligated to pay the broker.~~ The agreement shall be signed by the broker and the borrower. The broker shall give the borrower a copy of the agreement when the borrower signs the agreement.

Sec. 23. Section 535C.11, Code 1991, is amended to read as follows:

535C.11 APPLICABILITY.

This chapter does not apply to ~~any activities or arrangements expressly approved or regulated by any regulatory body or officer acting under authority of this state, other than the administrator, or of the United States the administrator under other law, or the banking division or savings and loan division in the department of commerce.~~

Sec. 24. NEW SECTION. 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. 25. NEW SECTION. 535C.13 ADMINISTRATIVE ACTIONS.

1. The administrator shall implement this chapter, and may take actions which the administrator deems appropriate for the protection of borrowers, including but not limited to conducting an investigation or examination to determine if a violation of this chapter or a rule adopted pursuant to this chapter has been or may be committed.

2. In conducting an investigation or proceeding under this chapter, the administrator or an officer designated by the administrator may administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses, take evidence, and require the production of materials including records which the administrator deems relevant to the inquiry.

3. Notwithstanding chapter 22, information obtained in the course of an investigation or examination shall be kept confidential by the administrator unless any of the following are applicable:

- a. An order of prohibition has been issued pursuant to section 535C.5.
- b. The administrator is called as a witness to testify in a criminal or civil proceeding.

Upon determining that it is necessary or appropriate to the public interest or for the protection of borrowers, the administrator may disseminate information concerning a violation of this chapter or a rule adopted pursuant to this chapter, by publishing the information or sharing the information with the appropriate agency or regulatory authority.

Sec. 26. NEW SECTION. 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.

Sec. 27. NEW SECTION. 535C.16 SCOPE OF THE ACT.

1. The provisions of this Act apply to agreements and offers by any person to act as a loan broker when any of the following apply:

- a. The offer to act as a loan broker is made or accepted in this state.

- b. The agreement is solicited or entered into in this state.
2. For the purpose of this section, an offer is made in this state, whether or not either party is then present in this state, when either of the following apply:
 - a. The offer originates from this state.
 - b. The offer is directed by the offeror to this state and received at the place to which it is directed or at any post office in this state in the case of a mailed offer.
3. For the purpose of this section, an offer is accepted in this state when either of the following occur:
 - a. The acceptance is communicated to the offeror in this state.
 - b. The acceptance has not previously been communicated to the offeror, orally, or in writing, outside this state; and acceptance is communicated to the offeror in this state, whether or not either party is then present in this state when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed or at any post office in this state in the case of a mailed acceptance.
4. An offer is not made in this state in either of the following circumstances:
 - a. The offer is in a newspaper which the publisher circulates or is circulated on the publisher's behalf in this state, which is in any other publication of general, regular, and paid circulation which is not published in this state, or which is published in this state but has had more than two-thirds of its circulation outside this state during the past twelve months.
 - b. The offer is on a radio or television program originating outside this state and received in this state.

Approved May 28, 1991

CHAPTER 206

SHELBY TENNANT SCHOOL DISTRICT INCOME SURTAX

S.F. 533

AN ACT relating to the rate of the Shelby Tennant community school district income surtax and the refund of any excess income surtax paid and providing effective and applicability dates.

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

Section 1. Notwithstanding the income surtax rate certified by the board of directors of the Shelby Tennant community school district to the department of management, or by the department of management to the department of revenue and finance, or printed in the 1990 state individual income tax booklet, the income surtax rate under the school enrichment tax imposed pursuant to chapter 442 for the Shelby Tennant community school district for the tax year beginning in the 1990 calendar year is five and sixty-five hundredths percent. Any individual subject to the five and sixty-five hundredths percent Shelby Tennant community school district income surtax who pays an amount of income surtax in excess of what was due at the rate of five and sixty-five hundredths percent is entitled to a refund of such excess. The department of revenue and finance shall review all individual income tax returns of those individuals who are subject to the Shelby Tennant community school district income surtax and shall refund any excess income surtax paid. An individual who has paid such excessive income surtax is not required to file a claim for refund. An individual subject to the income surtax who did not pay the income surtax determined at the rate printed in the 1990 state individual income tax booklet shall not be assessed a penalty or interest unless the amount of income surtax paid is less than the amount determined under the five and sixty-five hundredths percent.