

the Commerce 4/21/91 Dr. Case 4/1/91

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SENATE FILE 519
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 329)

Passed Senate, Date 3/28/91 (4942) Passed House, Date 5/2/91 (Sp. 200-1)
Vote: Ayes 47 Nays 0 Vote: Ayes 12 Nays 25

Approved May 28, 1991

*Repassed Senate as amended by House
5/2/91 (Sp. 1622)
45-0*

A BILL FOR

1 An Act relating to entities and subject matter subject to
2 regulation under the regulated industries unit of the division
3 of insurance, including business opportunity promotions,
4 continuing care and senior adult congregate living retirement
5 communities, and loan brokers, establishing certain fees, and
6 making penalties applicable.

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

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519

DIVISION I

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

5 523B.1 DEFINITIONS.

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

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

12 3. a. "Business opportunity" means a contract or
13 agreement, between a seller and purchaser, express or implied,
14 orally or in writing, where the parties agree that the seller
15 or a person recommended by the seller is to provide to the
16 purchaser any products, equipment, supplies, materials, or
17 services for the purpose of enabling the purchaser to start a
18 business, and the seller represents, directly or indirectly,
19 orally or in writing, any of the following:

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

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

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

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

33 (5) The seller will refund all or part of the price paid
34 to the seller, or repurchase any of the products, equipment,
35 or supplies provided by the seller or a person recommended by

1 the seller, if the purchaser is dissatisfied with the
2 business.

3 (6) The seller will provide a marketing plan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 8. "Person" means an individual, corporation, trust,
34 partnership, incorporated or unincorporated association, or
35 any other legal entity.

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

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

8 11. "Seller" means a person who sells or offers to sell a
9 business opportunity or an agent or other person who directly
10 or indirectly acts on behalf of such a person.

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

13 523B.2 REGISTRATION.

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

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

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

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

34 (2) A disclosure document prepared pursuant to the federal
35 trade commission rule entitled "Disclosure requirements and

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

6 (3) A disclosure document prepared pursuant to subsection
7 8.

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

28 4. EFFECTIVE DATE. A registration automatically becomes
29 effective upon the expiration of the tenth full business day
30 after the complete filing, provided that no order has been
31 issued or proceeding is pending under subsection 10. The
32 administrator may by order waive or reduce the time period
33 prior to effectiveness, provided that a complete filing has
34 been made. The administrator may by order defer the effective
35 date until the expiration of the tenth full business day after

1 the filing of an amendment.

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

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

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

20 8. DISCLOSURE REQUIREMENTS.

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

30 b. The disclosure document shall have a cover sheet which
31 is entitled, in at least ten-point bold type, "DISCLOSURE
32 REQUIRED BY IOWA LAW." Under the title shall appear the
33 following statement in at least ten-point type: "The
34 registration of this business opportunity does not constitute
35 approval, recommendation, or endorsement by the state of Iowa.

1 The information contained in this disclosure document has not
2 been verified by this state. If you have any questions or
3 concerns about this investment, seek professional advice
4 before you sign a contract or make any payment. You are to be
5 provided ten (10) business days to review this document before
6 signing a contract or agreement or making any payment to the
7 seller or the seller's representative."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (7) The name of any person identified in subparagraph (6),
32 the nature of and the parties to the action or proceeding, the
33 court or other forum, the date of the institution of the
34 action, the docket references to the action, the current
35 status of the action or proceeding, the terms and conditions

1 of any order or decree, and the penalties or damages assessed
2 and terms of settlement.

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

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

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

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

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

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

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

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

34 (b) The total number of purchasers who, within a period of
35 three years of the date of the disclosure document, purchased

1 a business opportunity involving the product, equipment,
2 supplies, or services being offered to the purchaser.

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

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

13 (16) A statement including all of the following:

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

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

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

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

25 (17) A statement describing any contractual restrictions,
26 prohibitions, or limitations on the purchaser's conduct.

27 Attach a copy of all business opportunities and other
28 contracts or agreements proposed for use or in use in this
29 state including, without limitation, all lease agreements,
30 option agreements, and purchase agreements.

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

34 (19) A statement accurately describing the grounds upon
35 which the purchaser may initiate legal action to terminate the

1 business opportunity contract or agreement.

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

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

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

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

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

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

23 9. CONTRACT OR AGREEMENT PROVISIONS.

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

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

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

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

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

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

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

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

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

18 (7) The cancellation statement appearing in section 82.3.

19 10. DENIAL, SUSPENSION, OR REVOCATION OF REGISTRATION.

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

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

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

35 (a) The person filing the registration.

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

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

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

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

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

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

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

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

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

34 b. The administrator shall not institute a proceeding
35 under this subsection against an effective registration on the

1 basis of a fact or transaction known to the administrator when
 2 the registration became effective unless the proceeding is
 3 instituted within the next thirty days.

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

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

12 (3) If no hearing is requested the order will remain in
 13 effect until it is modified or vacated by the administrator.
 14 If a hearing is requested or ordered, the administrator, after
 15 notice of an opportunity for hearing to the seller, may modify
 16 or vacate the order or extend the order until final
 17 determination.

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

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

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

29 523B.3 EXEMPTIONS FROM REGISTRATION AND DISCLOSURE.

30 1. TYPES OF EXEMPTIONS. The following business
 31 opportunities are exempt from the requirements of section
 32 523B.2:

33 a. The offer or sale of a business opportunity for which
 34 the purchaser is required to make a payment to the seller or a
 35 person recommended by the seller not to exceed two hundred

1 fifty dollars during the period from any time before
2 commencing operation to within six months after commencing
3 operation of the business opportunity.

4 b. The offer or sale of a business opportunity if the
5 purchaser is a bank, savings and loan association, trust
6 company, insurance company, credit union, or investment
7 company as defined by the federal Investment Company Act of
8 1940, a pension or profit-sharing trust, or other financial
9 institution or institutional buyer, or a dealer registered
10 pursuant to chapter 502, whether the purchaser is acting for
11 itself or in a fiduciary capacity.

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

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

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

30 For the purposes of this paragraph, a personal meeting
31 means a face-to-face meeting between the purchaser and the
32 seller or their representatives, which is held for the purpose
33 of discussing the offer or sale of a business opportunity.
34 The administrator may by rule adopt any amendment to the
35 uniform franchise-offering circular that has been adopted by

1 the north American securities administrators association,
2 inc., or any amendment to the disclosure document prepared
3 pursuant to the federal trade commission rule entitled
4 "Disclosure requirements and prohibitions concerning
5 franchising and business opportunity ventures", 16 C.F.R. §
6 436 (1979), that has been adopted by the federal trade
7 commission.

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

14 e. The offer or sale of a business opportunity which the
15 administrator exempts by order or a class of business oppor-
16 tunities which the administrator exempts by rule upon the
17 finding that the exemption would not be contrary to public
18 interest and that registration would not be necessary or ap-
19 propriate for the protection of purchasers.

20 2. DENIAL OR REVOCATION OF EXEMPTIONS.

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

27 b. If the public interest or the protection of purchasers
28 so requires, the administrator may by order summarily deny or
29 revoke any of the specified exemptions pending final deter-
30 mination of any proceedings under this section. Upon entry of
31 the order, the administrator shall promptly notify all
32 interested parties that it has been entered and of the reasons
33 for entering the order and that within fifteen days of the
34 receipt of a written request the matter will be set down for
35 hearing. If a hearing is not requested the order shall remain

1 in effect until it is modified or vacated by the
2 administrator. If a hearing is requested or ordered, the
3 administrator, after notice of an opportunity for hearing to
4 all interested persons, shall not modify or vacate the order
5 or extend it until final determination.

6 c. An order under this section shall not operate retro-
7 actively.

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

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

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

19 523B.4 MINIMUM NET WORTH OR BOND REQUIREMENT.

20 1. In connection with an offer or sale of a business
21 opportunity, a seller shall not make or use any of the repre-
22 sentations set forth in section 523B.1, subsection 3,
23 paragraph "a", subparagraphs (4) and (5), unless the seller
24 has at all times a minimum net worth of twenty-five thousand
25 dollars as determined in accordance with generally accepted
26 accounting principles. In lieu of the minimum net worth
27 requirement, the administrator may, by rule or order, require
28 a business opportunity seller to obtain a surety bond issued
29 by a surety company authorized to do business in this state.
30 The surety bond must be in an amount not less than twenty-five
31 thousand dollars and shall be for the benefit of any
32 purchaser. The administrator may by rule or order increase
33 the amount of the bond for the protection of purchasers and
34 may require the seller to file reports of all sales in this
35 state to determine the appropriate amount of bond.

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

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

11 523B.5A ADMINISTRATIVE FILES AND OPINIONS.

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

14 2. The administrator shall keep a register of all appli-
15 cations for registration and disclosure documents which are or
16 have been effective under this chapter and all orders which
17 have been entered under this chapter.

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

21 4. The administrator may honor a written request from an
22 interested person for an interpretative opinion upon the pay-
23 ment of a fee of one hundred dollars.

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

26 523B.7 LIABILITY -- REMEDIES.

27 1. a. A person who violates section 523B.4 or section
28 523B.2, subsection 1, 8, or 9, is liable to the purchaser in
29 an action for rescission of the agreement, or for recovery of
30 all money or other valuable consideration paid for the
31 business opportunity, and for actual damages together with
32 interest as determined pursuant to section 668.13 from the
33 date of sale, reasonable attorney's fees, and court costs.

34 b. A person who violates section 523B.12, subsection 2 or
35 3, is liable to the purchaser who may sue either at law or in

1 equity for rescission, or for recovery of all money or other
2 valuable consideration paid for the business opportunity, and
3 for the recovery of treble damages together with interest as
4 determined pursuant to section 668.13 from the date of sale,
5 reasonable attorney's fees, and court costs.

6 c. A person who violates section 523B.2, subsection 8, or
7 section 523B.12, subsection 2 or 3, or who breaches a business
8 opportunity contract or agreement or an obligation arising
9 under the contract or agreement, is liable to the purchaser
10 who may sue the surety of the seller's bond, either at law or
11 in equity, to recover all money or other valuable
12 consideration paid for the business opportunity and actual
13 damages, together with interest as determined pursuant to
14 section 668.13 from the date of sale, reasonable attorney's
15 fees, and court costs. The liability of the surety shall not
16 exceed the amount of the bond.

17 2. Every person who directly or indirectly controls a
18 party liable under this section, every partner in a
19 partnership so liable, every principal executive officer or
20 director of a corporation so liable, every person occupying a
21 similar status in, or performing similar functions for, and
22 every employee of, a party so liable who materially aids in
23 the act or transaction constituting the violation is also
24 liable jointly and severally with and to the same extent as
25 the party, unless the person liable as a result of the
26 person's relationship with the liable party as defined under
27 this section proves that the person did not know, and in the
28 exercise of reasonable care could not have known of the
29 existence of the facts constituting the alleged liability.

30 Among the persons held liable, a party paying more than the
31 party's percentage share of damages may recover judgment for
32 contribution upon motion to the court or in a separate action.

33 3. An action shall not be maintained under this section
34 unless commenced within three years after the act or
35 transaction constituting the violation, or within one year

1 after the discovery of the facts constituting the violation,
2 whichever period later expires.

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

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

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

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

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

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

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

30 c. If a person resists or refuses to obey a subpoena
31 issued to that person, the district court upon application by
32 the administrator may issue to the person an order requiring
33 the person to appear before the administrator, to produce
34 documentary evidence if so ordered, or to give evidence
35 related to the matter under investigation. Failure to obey

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

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

18 1. A seller who willfully violates section 523B.4, section
19 523B.2, subsection 1, 8, or 9, or section 523B.12, subsection
20 2, who willfully violates a rule under this chapter, who
21 willfully violates an order of which the person has notice, or
22 who violates section 523B.12, subsection 1, knowing that the
23 statement made was false or misleading in any material
24 respect, is subject to a fine of not more than ten thousand
25 dollars or imprisonment not to exceed five years, or both, for
26 each offense. Each of the acts specified constitutes a
27 separate offense and a prosecution or conviction for any one
28 of such offenses does not bar prosecution or conviction for
29 any other offense.

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

31 1. MISLEADING FILINGS. It is unlawful to make or cause to
32 be made, in a document filed with the administrator or in a
33 proceeding under this chapter, a statement which is, at the
34 time and in the light of the circumstances under which it is
35 made, false or misleading in a material respect or, in

1 connection with such a statement, to omit to state a material
2 fact necessary in order to make the statement made, in the
3 light of the circumstances under which it is made, not
4 misleading.

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

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

25 Sec. 10. NEW SECTION. 523B.13 SCOPE -- SERVICE OF
26 PROCESS.

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

30 a. An offer to sell is made in this state.

31 b. An offer to purchase is made and accepted in this
32 state.

33 c. The purchaser is domiciled in this state and the
34 business opportunity is or will be operated in this state.

35 2. For the purpose of this section, an offer to sell is

1 made in this state, whether or not either party is then
2 present in this state, when either of the following apply:

3 a. The offer originates from this state.

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

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

9 a. The acceptance is communicated to the offeror in this
10 state.

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

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

22 a. If the offer appears in a bona fide newspaper or other
23 publication of general circulation which is not published in
24 this state, or which is published in this state but has had
25 more than two-thirds of its circulation outside this state
26 during the past twelve months.

27 b. If the offer is made on a radio or television program
28 originating outside this state which is received in this
29 state.

30 5. A person who engages in conduct prohibited or made
31 actionable under this chapter and who has not filed a consent
32 to service of process is deemed to have appointed the
33 administrator to be the person's attorney for purposes of
34 service of any lawful process in a noncriminal suit, action,
35 or proceeding against the person or the person's successor,

1 executor, or administrator, which is the result of that
2 conduct and which is brought under this chapter or is pursuant
3 to a rule or order under this chapter. Service shall be made
4 by leaving a copy of the process in the office of the
5 administrator. The service is effective after both of the
6 following have occurred:

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

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

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

21 DIVISION II

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

24 523D.1 DEFINITIONS.

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

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

29 2. "Continuing care" means housing together with
30 supportive services, nursing services, medical services, or
31 other health related services, furnished to a resident,
32 regardless of whether or not the lodging and services are
33 provided at the same location, with or without other periodic
34 charges, and pursuant to one or more contracts effective for
35 the life of the resident or a period in excess of one year,

1 including mutually cancellable contracts, and in consideration
2 of an entrance fee.

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

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

12 a. Five thousand dollars.

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

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

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

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

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

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

33 10. "Senior adult congregate living facility" means a
34 facility which provides senior adult congregate living
35 services to residents other than residents related by

1 consanguinity or affinity to the person furnishing their care.

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

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

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

16 1. At the time of, or prior to, the execution of a
17 contract to provide continuing care or senior adult congregate
18 living services, or at the time of, or prior to the provider's
19 acceptance of part or all of the entrance fee by or on behalf
20 of a prospective resident, whichever occurs first, the
21 provider shall deliver a disclosure statement to the person,
22 and to the person's personal representative if one is
23 appointed, with whom the contract is to be entered into, which
24 shall contain all of the following information unless the
25 information is in the contract, a copy of which must be
26 attached to the statement:

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

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

35 c. With respect to each person covered by paragraph "b",

1 and if the facility will be managed on a day-to-day basis by a
2 person identified pursuant to paragraph "b", or with respect
3 to the proposed manager, the following information:

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

7 (2) The name and address of any professional service, or
8 other entity in which the person has, or which has in the
9 person, a ten percent or greater interest and which will or
10 may provide goods, leases, or services to the facility of a
11 value of five hundred dollars or more within a year, including
12 a description of the goods, leases, or services and their
13 probable or anticipated cost to the facility or provider.

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

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

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

34 (1) Whether the provider is or ever has been affiliated
35 with a for-profit organization or with a religious,

1 charitable, or other nonprofit organization.

2 (2) The nature of the affiliation.

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

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

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

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

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

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

34 i. Certified financial statements of the provider, for all
35 parts of an operation covered by the contract, including the

1 health center or nursing home portion of the continuing care
2 retirement community, if those services are included in the
3 contract, but the disclosure statement may exclude services or
4 operations not provided to residents as senior adult
5 congregate living services under the contract, including the
6 following:

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

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

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

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

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

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

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

34 (5) A projection of estimated income from fees and charges
35 other than entrance fees, showing individual rates presently

1 anticipated to be charged and including a description of the
2 assumptions used for calculating the estimated occupancy rate
3 of the facility and the effect on the income of the facility
4 of government subsidies for health care services, if any, to
5 be provided pursuant to contracts for continuing care or
6 senior adult congregate living services.

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

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

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

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

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

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

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

30 3. From the date an annual disclosure statement is filed
31 until the date the next succeeding annual disclosure statement
32 is filed with the division of insurance and prior to the
33 provider's acceptance of part or all of the entrance fee or
34 the execution of the continuing care or senior adult
35 congregate living services contract by the resident, whichever

1 occurs first, the provider shall deliver the current annual
2 disclosure statement to current and prospective residents with
3 whom the continuing care or senior adult congregate living
4 services contract is or may be entered into and to a
5 resident's or prospective resident's personal representative,
6 if one is appointed.

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

9 523D.5 NEW CONSTRUCTION.

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

- 19 a. A description of the new facility or the proposed
20 expansion, including a description of the goods and services
21 that will be offered to prospective residents.
- 22 b. A statement of the financial resources of the provider
23 available for this project.
- 24 c. A statement of the capital expenditures necessary to
25 accomplish this project.
- 26 d. A statement of financial feasibility for the new
27 facility or proposed expansion in a form satisfactory to the
28 commissioner, which includes a statement of future funding
29 sources and shall identify the qualifications of the person or
30 persons preparing the study.
- 31 e. A statement of the market feasibility for the new
32 facility or proposed expansion in a form satisfactory to the
33 commissioner, which identifies the qualifications of the
34 person or persons preparing the study.
- 35 f. If the new facility or proposed expansion offers a

1 promise to provide nursing or health care services to
2 residents in the future, an actuarial forecast in a form
3 satisfactory to the commissioner, which identifies the
4 qualifications of the actuary or actuaries preparing the
5 forecast.

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

8 2. DETERMINATION OF FEASIBILITY.

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

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

21 3. CONSTRUCTION. New construction shall not begin until
22 the filing required by this section has been made and at least
23 fifty percent of the proposed number of independent living
24 units in the initial stage or phase have been reserved
25 pursuant to executed contracts and at least ten percent of the
26 entrance fees required by those contracts are held in escrow
27 pursuant to this chapter.

28 4. ESCROW REQUIREMENTS. Unless proof has been submitted
29 to the commissioner that conditions for the release of
30 escrowed funds set forth in this section have already been
31 met, the provider shall establish an interest-bearing escrow
32 account at a state or federally regulated financial
33 institution located within this state to receive any deposits
34 or entrance fees or portions of deposits or fees for a living
35 unit which has not been previously occupied by a resident for

1 which an entry fee arrangement is used. The escrow account
2 agreement shall be entered into between the financial
3 institution and the provider with the financial institution as
4 the escrow agent and as a fiduciary for the resident or
5 prospective resident. The agreement shall state that the
6 purpose of the escrow account is to protect the resident or
7 prospective resident and that the funds deposited shall be
8 kept and maintained in an account separate and apart from the
9 provider's business accounts.

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

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

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

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

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

1 or purchasing, equipping, and furnishing the facility.

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

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

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

21 523D.6 CONTRACTS.

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

28 a. The name and business address of the provider.

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

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

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

34 e. A list of all of the continuing care or senior adult
35 congregate living services which are to be provided by the

1 provider to each resident. The list shall clearly identify
2 the manner in which continuing care or senior adult congregate
3 living services will be provided, including a statement
4 whether the items will be provided for a designated time
5 period or for life, and shall indicate which continuing care
6 and senior adult congregate living services, if any, will be
7 provided through an affiliate or third party. The description
8 of any service charges or fees shall, in the event of multiple
9 residents, be provided on an individual basis and shall
10 include a description of any additional charges that will be
11 assessed for occupancy by more than one resident.

12 f. A description of the health and financial conditions
13 upon which the provider may require the resident to relinquish
14 the resident's space in the designated facility.

15 g. A description of the health and financial conditions
16 required for a person to continue as a resident.

17 h. A description of the conditions under which the
18 resident is permitted to remain in the facility in the event
19 of financial difficulties affecting the resident.

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

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

30 k. A description in clear and understandable language, in
31 at least ten-point type, of the terms governing the refund of
32 any portion of the entrance fee in the event of discharge by
33 the provider, or cancellation by the resident, and a statement
34 that the provider shall not dismiss or discharge a resident
35 from a facility prior to the expiration of a resident contract

1 without just cause and sixty days written notice of intent to
2 cancel. The notice of dismissal or discharge shall only be
3 given upon a good faith determination that a just cause
4 exists, and the notice shall be given in writing, signed by
5 the medical director, if any, and the administrator of the
6 facility. In an emergency situation only such notice as is
7 reasonable under the circumstances is required.

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

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

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

15 o. A statement that a prospective resident or resident
16 shall be given the opportunity to appoint a personal
17 representative in the prospective resident's or resident's
18 contract. The personal representative shall receive copies of
19 the contract and all notices, disclosures, or forms required
20 by this chapter to be delivered to a prospective resident or
21 resident. A personal representative appointed under this
22 section has no legal authority to make any decision for the
23 prospective resident appointing the person to be a personal
24 representative. The personal representative may advise the
25 prospective resident or resident as to the materials provided.
26 A personal representative shall not be affiliated or
27 associated with a provider or any person identified in section
28 523D.3, subsection 1, paragraph "b" or "c", and shall not be a
29 prospective resident or resident.

30 p. A statement that if a resident dies or through illness,
31 injury, or incapacity is precluded from becoming a resident
32 under the terms of the contract before occupying the living
33 unit, the contract is automatically rescinded and the resident
34 or the resident's legal representative shall receive a full
35 refund of all payments of money or transferred property to the

1 facility, except those costs specifically incurred by the
2 facility at the request of the resident and set forth in
3 writing in a separate addendum, signed by both parties to the
4 contract.

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

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

19 NOTICE OF CANCELLATION

20 _____

21 Date contract was executed.

22 _____

23 Date disclosure statement was provided to resident.

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

1 of your cancellation notice.

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

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

20 I hereby cancel this contract.

21 _____

22 (Date)

23 _____

24 (Resident's signature)

25 Sec. 16. NEW SECTION. 523D.12 REPORTS AND
26 INVESTIGATIONS.

27 1. The commissioner may, by rule, require providers to
28 file an annual statement or report with the division within
29 four months after the end of the fiscal year of that provider.
30 If required, the statements and reports shall be in a form and
31 contain information required by the division's rules.

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

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

5 a. Investigate the business and examine the books,
6 accounts, records, and files used by a provider.

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

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

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

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

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

30 The attorney general may petition the district court in any
31 county of the state for an injunction to restrain a person
32 subject to this chapter and any agents, employees, or
33 associates of the person from engaging in conduct or practices
34 in violation of this chapter or rules adopted pursuant to this
35 chapter. In a proceeding for an injunction, the attorney

1 general may apply to the court for the issuance of a subpoena
2 to require the appearance of a defendant and the defendant's
3 agents and any documents, books, or records germane to the
4 hearing upon the petition for an injunction. Upon proof of
5 any of the violations described in the petition for
6 injunction, the court may grant the injunction.

7 DIVISION III

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

10 1. "Administrator" means the commissioner of insurance or
11 the deputy administrator appointed pursuant to section
12 502.601.

13 2. "Advance fee" means consideration including a payment,
14 fee, or deposit, which is assessed or collected prior to the
15 closing of a loan. An advance fee includes, but is not
16 limited to, money assessed or collected for processing, for an
17 appraisal, for a credit check, for a consultation, or for
18 expenses.

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

21 a. A credit report or appraisal.

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

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

28 5. "Financial statement" means a document evidencing the
29 financial position of the loan broker as required by section
30 535C.3A.

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

34 7. "Loan broker" or "broker" means a person who in return
35 for an advance fee, promises to obtain a loan or assist in

1 obtaining a loan for another from a third person, or who
2 promises to consider making a loan to a person. A loan broker
3 does not include any of the following:

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

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

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

12 d. A person whose fee is entirely contingent on the
13 successful procurement of a loan from a third person, if the
14 borrower has not paid a fee prior to the closing of a loan
15 other than a bona fide third-party fee.

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

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

23 g. A bank incorporated under chapter 524.

24 h. A credit union incorporated under chapter 533.

25 i. A savings and loan association or savings bank
26 incorporated under chapter 534.

27 j. A mortgage broker or mortgage banker licensed under
28 chapter 535B.

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

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

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

34 a. Obtain a loan for a borrower.

35 b. Assist the borrower in obtaining a loan.

1 c. Consider making a loan to the borrower.

2 9. "Records" means books, papers, documents, accounts,
3 agreements, memoranda, electronic records of accounts, or
4 correspondence relating to a matter regulated under this
5 chapter.

6 10. "Successful procurement of a loan" means the receipt
7 by a borrower of the loan proceeds.

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

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

13 1. A copy of the loan broker's balance sheet prepared
14 within one hundred twenty days prior to the most recent filing
15 of a disclosure statement as provided in section 535C.5.

16 2. A profit and loss statement, and a statement of changes
17 in the broker's financial position for each fiscal year that
18 the broker and the broker's predecessor were in business.
19 However, the statement of changes need not cover more than the
20 three fiscal years preceding the date that the broker's
21 balance sheet was prepared.

22 3. If prepared, a copy of the broker's most recent audited
23 financial statement.

24 Sec. 21. Section 535C.5, subsections 1 through 3, Code
25 1991, are amended to read as follows:

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

30 a. The disclosure statement required under section 535C.3,
31 the.

32 b. The most recent financial statement of the broker, and
33 either of the following: required under section 535C.3A.

34 a c. ~~The~~ Either a bond required under section 535C.4,
35 or a formal notification from the financial

1 institution that the trust account required under section
2 535C.4 is established.

3 d. An irrevocable consent, in a form prescribed by the
4 commissioner of insurance, appointing the administrator to be
5 the loan broker's agent to receive service of process in any
6 suit or action against the broker arising from a violation of
7 a provision of this chapter or a rule adopted pursuant to this
8 chapter.

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

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

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

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

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

26 535C.7 WRITTEN AGREEMENTS REQUIRED.

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

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

1 535C.11 APPLICABILITY.

2 This chapter does not apply to any activities or
3 arrangements expressly approved or regulated by any-regulate
4 body-or-officer-acting-under-authority-of-this-state,-other
5 than-the-administrator,-or-of-the-United-States the
6 administrator under other law, or the banking division or
7 savings and loan division in the department of commerce.

8 Sec. 24. NEW SECTION. 535C.12 RECORDS.

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

13 a. The accounts of the broker.

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

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

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

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

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

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

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

5 a. An order of prohibition has been issued pursuant to
6 section 535C.5.

7 b. The administrator is called as a witness to testify in
8 a criminal or civil proceeding.

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

16 Sec. 26. NEW SECTION. 535C.14 MISREPRESENTATION OF
17 GOVERNMENTAL APPROVAL.

18 It is unlawful for a loan broker to represent or imply that
19 the broker has been sponsored, recommended, or approved by, or
20 that the broker's abilities or qualifications have been passed
21 upon by the commissioner, the insurance division, the
22 securities bureau, or the state of Iowa.

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

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

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

29 b. The agreement is solicited or entered into in this
30 state.

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

34 a. The offer originates from this state.

35 b. The offer is directed by the offeror to this state and

1 received at the place to which it is directed or at any post
2 office in this state in the case of a mailed offer.

3 3. For the purpose of this section, an offer is accepted
4 in this state when either of the following occur:

5 a. The acceptance is communicated to the offeror in this
6 state.

7 b. The acceptance has not previously been communicated to
8 the offeror, orally, or in writing, outside this state; and
9 acceptance is communicated to the offeror in this state,
10 whether or not either party is then present in this state when
11 the offeree directs it to the offeror in this state reasonably
12 believing the offeror to be in this state and it is received
13 at the place to which it is directed or at any post office in
14 this state in the case of a mailed acceptance.

15 4. An offer is not made in this state in either of the
16 following circumstances:

17 a. The offer is in a newspaper which the publisher
18 circulates or is circulated on the publisher's behalf in this
19 state, which is in any other publication of general, regular,
20 and paid circulation which is not published in this state, or
21 which is published in this state but has had more than two-
22 thirds of its circulation outside this state during the past
23 twelve months.

24 b. The offer is on a radio or television program
25 originating outside this state and received in this state.

26 EXPLANATION

27 Division I (sections 1-10) of this bill amends portions of
28 chapter 523B, relating to business opportunity promotions.
29 Section 1 provides definitions. Section 2 establishes
30 registration requirements and provides for the disclosure of
31 certain information in connection with the offer or sale of a
32 business opportunity. Section 3 defines those offers or sales
33 of business opportunities which are not subject to the
34 registration and disclosure requirements of section 2
35 (523B.2). Section 4 establishes bonding and minimum net worth

1 requirements for any person selling or offering for sale a
2 business opportunity. Section 5 provides that the
3 administrator is to keep a register of all applications for
4 registration and disclosure documents filed with the
5 administrator. These documents are to be open for public
6 inspection. Section 6 defines the liability of a person who
7 violates certain provisions of chapter 523B and provides that
8 a person may sue for rescission of the agreement, or recover
9 all money or other valuable consideration paid for the
10 business opportunity, and for actual damages, interest as
11 provided by law, reasonable attorney fees, and court costs.
12 The bill provides that a person making unlawful
13 representations or engaging in misleading advertising may be
14 liable for treble damages. Section 7 establishes the
15 authority of the commissioner in investigating any violation
16 of this chapter. Section 8 provides for criminal penalties
17 which may apply as a result of a violation of certain
18 provisions of this chapter. Section 9 defines fraudulent
19 practices for purposes of the chapter. Section 10 defines the
20 scope of the chapter.

21 Division II (sections 11-18) amends portions of the
22 retirement facilities (continuing care and congregate living
23 services) chapter, chapter 523D. Section 11 provides
24 definitions for the chapter. Section 12 establishes
25 information to be provided in a disclosure statement to a
26 person considering entering a facility. Section 13 requires
27 the delivery of the disclosure statement to current and
28 prospective residents. Section 14 requires a person intending
29 to construct a facility regulated under this chapter to file
30 certain information regarding the facility, which filing shall
31 be accompanied by a \$250 fee. The bill provides that the
32 commissioner is to determine the feasibility of the proposed
33 facility and requires certain steps to be taken by the
34 provider prior to the beginning of the construction. Section
35 15 requires certain information to be disclosed in a contract

1 for continuing care or senior adult congregate living
2 services. Section 16 authorizes the commissioner to require
3 reports and conduct audits or other examinations of the
4 financial affairs of the provider for the purpose of
5 protecting the interests of the residents. Section 17
6 authorizes the commissioner to issue a compliance order and
7 section 18 provides for the issuance of an injunction against
8 a provider engaging in conduct in violation of this chapter.
9 Division III (sections 19-28) amends portions of the Iowa
10 loan brokers Act. Section 19 amends the definitions provided
11 in that chapter. Section 20 provides that a loan broker must
12 file certain financial documents with the administrator.
13 Section 21 increases the filing fee of a broker from \$50 to
14 \$150 for the filing of the initial disclosure document, and
15 adds a \$100 filing fee to accompany the required annual
16 filing. It also requires appointment of the commissioner to
17 receive service of process. Section 22 requires a brokerage
18 agreement to include a description of the services the broker
19 agrees to perform. Section 23 provides that the chapter does
20 not apply to activities approved by the commissioner or the
21 banking or savings and loan divisions in the department of
22 commerce. Section 24 requires the loan broker to maintain
23 certain records relating to the activities of the loan broker.
24 Section 25 authorizes the commissioner to investigate a broker
25 and to take actions appropriate for the protection of
26 borrowers. Section 26 provides that it is unlawful for a loan
27 broker to represent or imply that the broker has been
28 recommended or approved by the commissioner or the state.
29 Section 27 provides for the application of the chapter.
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HOUSE AMENDMENT TO
SENATE FILE 519

S-3685

- 1 Amend Senate File 519, as passed by the Senate, as
2 follows:
- 3 1. Page 1, line 14, by inserting after the word
4 "writing," the following: "at an initial investment
5 exceeding five hundred dollars,".
- 6 2. Page 3, by inserting after line 12, the
7 following:
- 8 "4A. "Initial investment" means the total amount a
9 purchaser is obligated to pay under the terms of the
10 business opportunity contract either prior to or at
11 the time of the delivery of the merchandise or
12 services or within six months of the purchaser
13 commencing operation of the business opportunity.
14 However, if payment is over a period of time, "initial
15 investment" means the sum of the downpayment and the
16 total monthly payments specified in the contract."
- 17 3. Page 3, line 35, by inserting after the word
18 "entity" the following: ", provided, however, person
19 does not include a government or governmental
20 subdivision or agency".
- 21 4. Page 4, line 10, by inserting after the word
22 "person." the following: ""Seller" does not include
23 the media in or by which an advertisement appears or
24 is disseminated."
- 25 5. Page 8, line 3, by striking the word "a" and
26 inserting the following: "each".
- 27 6. Page 14, by striking line 3, and inserting the
28 following: "instituted thirty days after the
29 effective date of the registration."
- 30 7. Page 14, line 7, by striking the words "the
31 order" and inserting the following: "a summary
32 order".
- 33 8. Page 14, lines 14 and 15, by striking the
34 words ", after notice of an opportunity for hearing to
35 the seller,".
- 36 9. Page 14, line 18, by striking the word "stop"
37 and inserting the following: "summary".
- 38 10. Page 14, line 20, by striking the word
39 "prior".
- 40 11. By striking page 14, line 33, through page
41 15, line 3.
- 42 12. Page 17, lines 3 and 4, by striking the words
43 ", after notice of an opportunity for hearing to all
44 interested persons,".
- 45 13. Page 18, line 11, by striking the figure
46 "523B.5A" and inserting the following: "523B.5".
- 47 14. Page 19, line 29, by striking the word
48 "constituting" and inserting the following: "giving
49 rise to".
- 50 15. Page 21, by striking lines 24 through 26, and

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Page 2

1 inserting the following: "respect, upon conviction,
2 is guilty of a class "D" felony. Each of the acts
3 specified constitutes a".

4 16. Page 22, line 18, by inserting after the word
5 "unlawful" the following: "for a seller".

6 17. Page 26, line 23, by striking the word "
7 which" and inserting the following: ". Unless
8 incorporated by reference, in whole or in part, the
9 disclosure statement shall not constitute part of the
10 contract between the resident and provider. The
11 disclosure statement".

12 18. Page 27, by striking lines 9 and 10, and
13 inserting the following: "person, a ten percent or
14 greater interest and which has provided goods, leases,
15 or services to the facility of a value of five hundred
16 dollars or more within the prior twelve months or
17 which has contracted to provide goods, leases, or
18 services to the facility of a".

19 19. Page 27, line 13, by striking the word
20 "probable" and inserting the following: "actual".

21 20. Page 29, line 5, by striking the word
22 "including" and inserting the following: "which shall
23 include".

24 21. By striking page 30, line 30, through page
25 31, line 6, and inserting the following:

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

36 22. Page 35, by striking line 12, and inserting
37 the following:

38 "f. A statement of the policy of the facility with
39 regard to any health or financial conditions".

40 23. Page 35, line 15, by striking the words
41 "description of" and inserting the following:
42 "statement of the policy of the facility with regard
43 to".

44 24. Page 35, line 17, by striking the words
45 "description of" and inserting the following:
46 "statement of the policy of the facility with regard
47 to".

48 25. Page 36, line 3, by striking the words "a
49 just" and inserting the following: "just".

50 26. Page 38, line 25, by striking the word

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Page 3

- 1 "REPORTS" and inserting the following: "FILINGS".
- 2 27. Page 38, by striking lines 27 through 31.
- 3 28. Page 39, line 6, by inserting after the word
- 4 "provider." the following: "With the exception of an
- 5 examination involving new construction, an examination
- 6 involving a complaint by a resident or a prospective
- 7 resident or where good cause exists for the lack of
- 8 prior notice, as determined by the commissioner, the
- 9 division of insurance shall provide at least seven
- 10 days' prior notice to the facility before conducting
- 11 an on-site examination."
- 12 29. By renumbering and relettering as necessary.

RECEIVED FROM THE HOUSE

S-3685 FILED MAY 2, 1991

CONCURS (p. 1423)

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Page 3

1 "REPORTS" and inserting the following: "FILINGS".
2 27. Page 38, by striking lines 27 through 31.
3 28. Page 39, line 6, by inserting after the word
4 "provider." the following: "With the exception of an
5 examination involving new construction, an examination
6 involving a complaint by a resident or a prospective
7 resident or where good cause exists for the lack of
8 prior notice, as determined by the commissioner, the
9 division of insurance shall provide at least seven
10 days' prior notice to the facility before conducting
11 an on-site examination."
12 29. By renumbering and relettering as necessary.
By GILL of Woodbury

H-3720 FILED APRIL 18, 1991

Adopted 5/2/91 (p. 2002)

**SENATE FILE 519
FISCAL NOTE**

A fiscal note for Senate File 519 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 519 amends three existing statutes regulated by the Insurance Division of the Department of Commerce. Division I clarifies requirements regarding business opportunity promotions. Division II clarifies requirements regarding retirement facilities (continuing care and congregate living services). Division III clarifies requirements regarding the Iowa Loan Broker's Act. Changes in each of the Divisions include definitions, filing requirements, fees and penalties, and outlining the regulatory authority of the Insurance Commissioner.

FISCAL IMPACT:

Penalty and fee changes in this bill will increase revenues to the General Fund. However, the Division of Insurance estimates increased revenue will be less than \$10,000. No additional staff or expenditures will be required by the Division.

Source: Insurance Division, Department of Commerce

(LSB 1265sv, MAS)

FILED APRIL 19, 1991

BY DENNIS PROUTY, FISCAL DIRECTOR

SENATE FILE 519

H-3720

- 1 Amend Senate File 519, as passed by the Senate, as
2 follows:
- 3 1. Page 1, line 14, by inserting after the word
4 "writing," the following: "at an initial investment
5 exceeding five hundred dollars,".
- 6 2. Page 3, by inserting after line 12, the
7 following:
8 "4A. "Initial investment" means the total amount a
9 purchaser is obligated to pay under the terms of the
10 business opportunity contract either prior to or at
11 the time of the delivery of the merchandise or
12 services or within six months of the purchaser
13 commencing operation of the business opportunity.
14 However, if payment is over a period of time, "initial
15 investment" means the sum of the downpayment and the
16 total monthly payments specified in the contract."
- 17 3. Page 3, line 35, by inserting after the word
18 "entity" the following: ", provided, however, person
19 does not include a government or governmental
20 subdivision or agency".
- 21 4. Page 4, line 10, by inserting after the word
22 "person." the following: "'Seller" does not include
23 the media in or by which an advertisement appears or
24 is disseminated."
- 25 5. Page 8, line 3, by striking the word "a" and
26 inserting the following: "each".
- 27 6. Page 14, by striking line 3, and inserting the
28 following: "instituted thirty days after the
29 effective date of the registration."
- 30 7. Page 14, line 7, by striking the words "the
31 order" and inserting the following: "a summary
32 order".
- 33 8. Page 14, lines 14 and 15, by striking the
34 words ", after notice of an opportunity for hearing to
35 the seller,".
- 36 9. Page 14, line 18, by striking the word "stop"
37 and inserting the following: "summary".
- 38 10. Page 14, line 20, by striking the word
39 "prior".
- 40 11. By striking page 14, line 33, through page
41 15, line 3.
- 42 12. Page 17, lines 3 and 4, by striking the words
43 ", after notice of an opportunity for hearing to all
44 interested person,".
- 45 13. Page 18, line 11, by striking the figure
46 "523B.5A" and inserting the following: "523B.5".
- 47 14. Page 19, line 29, by striking the word
48 "constituting" and inserting the following: "giving
49 rise to".
- 50 15. Page 21, by striking lines 24 through 26, and

H-3720

Page 2

1 inserting the following: "respect, upon conviction,
2 is guilty of a class "D" felony. Each of the acts
3 specified constitutes a".

4 16. Page 22, line 18, by inserting after the word
5 "unlawful" the following: "for a seller".

6 17. Page 26, line 23, by striking the word "
7 which" and inserting the following: ". Unless
8 incorporated by reference, in whole or in part, the
9 disclosure statement shall not constitute part of the
10 contract between the resident and provider. The
11 disclosure statement".

12 18. Page 27, by striking lines 9 and 10, and
13 inserting the following: "person, a ten percent or
14 greater interest and which has provided goods, leases,
15 or services to the facility of a value of five hundred
16 dollars or more within the prior twelve months or
17 which has contracted to provide goods, leases, or
18 services to the facility of a".

19 19. Page 27, line 13, by striking the word
20 "probable" and inserting the following: "actual".

21 20. Page 29, line 5, by striking the word
22 "including" and inserting the following: "which shall
23 include".

24 21. By striking page 30, line 30, through page
25 31, line 6, and inserting the following:

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

36 22. Page 35, by striking line 12, and inserting
37 the following:

38 "f. A statement of the policy of the facility with
39 regard to any health or financial conditions".

40 23. Page 35, line 15, by striking the words
41 "description of" and inserting the following:
42 "statement of the policy of the facility with regard
43 to".

44 24. Page 35, line 17, by striking the words
45 "description of" and inserting the following:
46 "statement of the policy of the facility with regard
47 to".

48 25. Page 36, line 3, by striking the words "a
49 just" and inserting the following: "just".

50 26. Page 38, line 25, by striking the word

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SSB 329

Commerce

SENATE/HOUSE FILE 519
BY (PROPOSED DEPARTMENT OF
COMMERCE/INSURANCE
DIVISION BILL)

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

A BILL FOR

1 An Act relating to entities and subject matter subject to
2 regulation under the regulated industries unit of the division
3 of insurance, including business opportunity promotions,
4 continuing care and senior adult congregate living retirement
5 communities, and loan brokers, establishing certain fees, and
6 making penalties applicable.

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

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1

DIVISION I

2

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

3

523B.1 DEFINITIONS.

4

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

5

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, 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

1 the seller, if the purchaser is dissatisfied with the
2 business.

3 (6) The seller will provide a marketing plan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 8. "Person" means an individual, corporation, trust,
34 partnership, incorporated or unincorporated association, or
35 any other legal entity.

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

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

8 11. "Seller" means a person who sells or offers to sell a
9 business opportunity or an agent or other person who directly
10 or indirectly acts on behalf of such a person.

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

13 523B.2 REGISTRATION.

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

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

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

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

34 (2) A disclosure document prepared pursuant to the federal
35 trade commission rule entitled "Disclosure requirements and

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

6 (3) A disclosure document prepared pursuant to subsection
7 8.

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

28 4. EFFECTIVE DATE. A registration automatically becomes
29 effective upon the expiration of the tenth full business day
30 after the complete filing, provided that no order has been
31 issued or proceeding is pending under subsection 10. The
32 administrator may by order waive or reduce the time period
33 prior to effectiveness, provided that a complete filing has
34 been made. The administrator may by order defer the effective
35 date until the expiration of the tenth full business day after

1 the filing of an amendment.

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

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

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

20 8. DISCLOSURE REQUIREMENTS.

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

30 b. The disclosure document shall have a cover sheet which
31 is entitled, in at least ten-point bold type, "DISCLOSURE
32 REQUIRED BY IOWA LAW." Under the title shall appear the
33 following statement in at least ten-point type: "The
34 registration of this business opportunity does not constitute
35 approval, recommendation, or endorsement by the state of Iowa.

1 The information contained in this disclosure document has not
2 been verified by this state. If you have any questions or
3 concerns about this investment, seek professional advice
4 before you sign a contract or make any payment. You are to be
5 provided ten (10) business days to review this document before
6 signing a contract or agreement or making any payment to the
7 seller or the seller's representative."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (7) The name of any person identified in subparagraph (6),
32 the nature of and the parties to the action or proceeding, the
33 court or other forum, the date of the institution of the
34 action, the docket references to the action, the current
35 status of the action or proceeding, the terms and conditions

1 of any order or decree, and the penalties or damages assessed
2 and terms of settlement.

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

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

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

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

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

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

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

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

34 (b) The total number of purchasers who, within a period of
35 three years of the date of the disclosure document, purchased

1 a business opportunity involving the product, equipment,
2 supplies, or services being offered to the purchaser.

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

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

13 (16) A statement including all of the following:

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

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

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

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

25 (17) A statement describing any contractual restrictions,
26 prohibitions, or limitations on the purchaser's conduct.

27 Attach a copy of all business opportunities and other
28 contracts or agreements proposed for use or in use in this
29 state including, without limitation, all lease agreements,
30 option agreements, and purchase agreements.

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

34 (19) A statement accurately describing the grounds upon
35 which the purchaser may initiate legal action to terminate the

1 business opportunity contract or agreement.

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

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

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

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

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

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

23 9. CONTRACT OR AGREEMENT PROVISIONS.

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

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

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

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

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

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

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

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

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

18 (7) The cancellation statement appearing in section 82.2.

19 10. DENIAL, SUSPENSION, OR REVOCATION OF REGISTRATION.

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

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

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

35 (a) The person filing the registration.

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

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

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

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

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

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

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

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

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

34 b. The administrator shall not institute a proceeding
35 under this subsection against an effective registration on the

1 basis of a fact or transaction known to the administrator when
2 the registration became effective unless the proceeding is
3 instituted within the next thirty days.

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

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

12 (3) If no hearing is requested the order will remain in
13 effect until it is modified or vacated by the administrator.
14 If a hearing is requested or ordered, the administrator, after
15 notice of an opportunity for hearing to the seller, may modify
16 or vacate the order or extend the order until final
17 determination.

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

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

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

29 523B.3 EXEMPTIONS FROM REGISTRATION AND DISCLOSURE.

30 1. TYPES OF EXEMPTIONS. The following business
31 opportunities are exempt from the requirements of section
32 523B.2:

33 a. The offer or sale of a business opportunity for which
34 the purchaser is required to make a payment to the seller or a
35 person recommended by the seller not to exceed two hundred

1 fifty dollars during the period from any time before
2 commencing operation to within six months after commencing
3 operation of the business opportunity.

4 b. The offer or sale of a business opportunity if the
5 purchaser is a bank, savings and loan association, trust
6 company, insurance company, credit union, or investment
7 company as defined by the federal Investment Company Act of
8 1940, a pension or profit-sharing trust, or other financial
9 institution or institutional buyer, or a dealer registered
10 pursuant to chapter 502, whether the purchaser is acting for
11 itself or in a fiduciary capacity.

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

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

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

30 For the purposes of this paragraph, a personal meeting
31 means a face-to-face meeting between the purchaser and the
32 seller or their representatives, which is held for the purpose
33 of discussing the offer or sale of a business opportunity.
34 The administrator may by rule adopt any amendment to the
35 uniform franchise-offering circular that has been adopted by

1 the north American securities administrators association,
2 inc., or any amendment to the disclosure document prepared
3 pursuant to the federal trade commission rule entitled
4 "Disclosure requirements and prohibitions concerning
5 franchising and business opportunity ventures", 16 C.F.R. §
6 436 (1979), that has been adopted by the federal trade
7 commission.

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

14 e. The offer or sale of a business opportunity which the
15 administrator exempts by order or a class of business oppor-
16 tunities which the administrator exempts by rule upon the
17 finding that the exemption would not be contrary to public
18 interest and that registration would not be necessary or ap-
19 propriate for the protection of purchasers.

20 2. DENIAL OR REVOCATION OF EXEMPTIONS.

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

27 b. If the public interest or the protection of purchasers
28 so requires, the administrator may by order summarily deny or
29 revoke any of the specified exemptions pending final deter-
30 mination of any proceedings under this section. Upon entry of
31 the order, the administrator shall promptly notify all
32 interested parties that it has been entered and of the reasons
33 for entering the order and that within fifteen days of the
34 receipt of a written request the matter will be set down for
35 hearing. If a hearing is not requested the order shall remain

1 in effect until it is modified or vacated by the
2 administrator. If a hearing is requested or ordered, the
3 administrator, after notice of an opportunity for hearing to
4 all interested persons, shall not modify or vacate the order
5 or extend it until final determination.

6 c. An order under this section shall not operate retro-
7 actively.

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

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

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

19 523B.4 MINIMUM NET WORTH OR BOND REQUIREMENT.

20 1. In connection with an offer or sale of a business
21 opportunity, a seller shall not make or use any of the repre-
22 sentations set forth in section 523B.1, subsection 3,
23 paragraph "a", subparagraphs (4) and (5), unless the seller
24 has at all times a minimum net worth of twenty-five thousand
25 dollars as determined in accordance with generally accepted
26 accounting principles. In lieu of the minimum net worth
27 requirement, the administrator may, by rule or order, require
28 a business opportunity seller to obtain a surety bond issued
29 by a surety company authorized to do business in this state.
30 The surety bond must be in an amount not less than twenty-five
31 thousand dollars and shall be for the benefit of any
32 purchaser. The administrator may by rule or order increase
33 the amount of the bond for the protection of purchasers and
34 may require the seller to file reports of all sales in this
35 state to determine the appropriate amount of bond.

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

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

11 523B.5A ADMINISTRATIVE FILES AND OPINIONS.

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

14 2. The administrator shall keep a register of all appli-
15 cations for registration and disclosure documents which are or
16 have been effective under this chapter and all orders which
17 have been entered under this chapter.

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

21 4. The administrator may honor a written request from an
22 interested person for an interpretative opinion upon the pay-
23 ment of a fee of one hundred dollars.

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

26 523B.7 LIABILITY -- REMEDIES.

27 1. a. A person who violates section 523B.4 or section
28 523B.2, subsection 1, 8, or 9, is liable to the purchaser in
29 an action for rescission of the agreement, or for recovery of
30 all money or other valuable consideration paid for the
31 business opportunity, and for actual damages together with
32 interest as determined pursuant to section 668.13 from the
33 date of sale, reasonable attorney's fees, and court costs.

34 b. A person who violates section 523B.12, subsection 2 or
35 3, is liable to the purchaser who may sue either at law or in

1 equity for rescission, or for recovery of all money or other
2 valuable consideration paid for the business opportunity, and
3 for the recovery of treble damages together with interest as
4 determined pursuant to section 668.13 from the date of sale,
5 reasonable attorney's fees, and court costs.

6 c. A person who violates section 523B.2, subsection 8, or
7 section 523B.12, subsection 2 or 3, or who breaches a business
8 opportunity contract or agreement or an obligation arising
9 under the contract or agreement, is liable to the purchaser
10 who may sue the surety of the seller's bond, either at law or
11 in equity, to recover all money or other valuable
12 consideration paid for the business opportunity and actual
13 damages, together with interest as determined pursuant to
14 section 668.13 from the date of sale, reasonable attorney's
15 fees, and court costs. The liability of the surety shall not
16 exceed the amount of the bond.

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

33 3. An action shall not be maintained under this section
34 unless commenced within three years after the act or
35 transaction constituting the violation, or within one year

1 after the discovery of the facts constituting the violation,
2 whichever period later expires.

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

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

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

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

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

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

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

30 c. If a person resists or refuses to obey a subpoena
31 issued to that person, the district court upon application by
32 the administrator may issue to the person an order requiring
33 the person to appear before the administrator, to produce
34 documentary evidence if so ordered, or to give evidence
35 related to the matter under investigation. Failure to obey

1 the order of the court is punishable as a contempt of court.

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

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

18 1. A seller who willfully violates section 523B.4, section
19 523B.2, subsection 1, 8, or 9, or section 523B.12, subsection
20 2, who willfully violates a rule under this chapter, who
21 willfully violates an order of which the person has notice, or
22 who violates section 523B.12, subsection 1, knowing that the
23 statement made was false or misleading in any material
24 respect, is subject to a fine of not more than ten thousand
25 dollars or imprisonment not to exceed five years, or both, for
26 each offense. Each of the acts specified constitutes a
27 separate offense and a prosecution or conviction for any one
28 of such offenses does not bar prosecution or conviction for
29 any other offense.

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

31 1. MISLEADING FILINGS. It is unlawful to make or cause to
32 be made, in a document filed with the administrator or in a
33 proceeding under this chapter, a statement which is, at the
34 time and in the light of the circumstances under which it is
35 made, false or misleading in a material respect or, in

1 connection with such a statement, to omit to state a material
2 fact necessary in order to make the statement made, in the
3 light of the circumstances under which it is made, not
4 misleading.

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

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

25 Sec. 10. NEW SECTION. 523B.13 SCOPE -- SERVICE OF
26 PROCESS.

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

30 a. An offer to sell is made in this state.

31 b. An offer to purchase is made and accepted in this
32 state.

33 c. The purchaser is domiciled in this state and the
34 business opportunity is or will be operated in this state.

35 2. For the purpose of this section, an offer to sell is

1 made in this state, whether or not either party is then
2 present in this state, when either of the following apply:

3 a. The offer originates from this state.

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

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

9 a. The acceptance is communicated to the offeror in this
10 state.

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

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

22 a. If the offer appears in a bona fide newspaper or other
23 publication of general circulation which is not published in
24 this state, or which is published in this state but has had
25 more than two-thirds of its circulation outside this state
26 during the past twelve months.

27 b. If the offer is made on a radio or television program
28 originating outside this state which is received in this
29 state.

30 5. A person who engages in conduct prohibited or made
31 actionable under this chapter and who has not filed a consent
32 to service of process is deemed to have appointed the
33 administrator to be the person's attorney for purposes of
34 service of any lawful process in a noncriminal suit, action,
35 or proceeding against the person or the person's successor,

1 executor, or administrator, which is the result of that
2 conduct and which is brought under this chapter or is pursuant
3 to a rule or order under this chapter. Service shall be made
4 by leaving a copy of the process in the office of the
5 administrator. The service is effective after both of the
6 following have occurred:

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

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

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

21 DIVISION II

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

24 523D.1 DEFINITIONS.

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

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

29 2. "Continuing care" means housing together with
30 supportive services, nursing services, medical services, or
31 other health related services, furnished to a resident,
32 regardless of whether or not the lodging and services are
33 provided at the same location, with or without other periodic
34 charges, and pursuant to one or more contracts effective for
35 the life of the resident or a period in excess of one year,

1 including mutually cancellable contracts, and in consideration
2 of an entrance fee.

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

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

12 a. Five thousand dollars.

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

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

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

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

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

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

33 10. "Senior adult congregate living facility" means a
34 facility which provides senior adult congregate living
35 services to residents other than residents related by

1 consanguinity or affinity to the person furnishing their care.

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

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

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

16 1. At the time of, or prior to, the execution of a
17 contract to provide continuing care or senior adult congregate
18 living services, or at the time of, or prior to the provider's
19 acceptance of part or all of the entrance fee by or on behalf
20 of a prospective resident, whichever occurs first, the
21 provider shall deliver a disclosure statement to the person,
22 and to the person's personal representative if one is
23 appointed, with whom the contract is to be entered into, which
24 shall contain all of the following information unless the
25 information is in the contract, a copy of which must be
26 attached to the statement:

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

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

35 c. With respect to each person covered by paragraph "b",

1 and if the facility will be managed on a day-to-day basis by a
2 person identified pursuant to paragraph "b", or with respect
3 to the proposed manager, the following information:

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

7 (2) The name and address of any professional service, or
8 other entity in which the person has, or which has in the
9 person, a ten percent or greater interest and which will or
10 may provide goods, leases, or services to the facility of a
11 value of five hundred dollars or more within a year, including
12 a description of the goods, leases, or services and their
13 probable or anticipated cost to the facility or provider.

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

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

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

34 (1) Whether the provider is or ever has been affiliated
35 with a for-profit organization or with a religious,

1 charitable, or other nonprofit organization.

2 (2) The nature of the affiliation.

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

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

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

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

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

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

34 i. Certified financial statements of the provider, for all
35 parts of an operation covered by the contract, including the

1 health center or nursing home portion of the continuing care
2 retirement community, if those services are included in the
3 contract, but the disclosure statement may exclude services or
4 operations not provided to residents as senior adult
5 congregate living services under the contract, including the
6 following:

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

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

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

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

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

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

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

34 (5) A projection of estimated income from fees and charges
35 other than entrance fees, showing individual rates presently

1 anticipated to be charged and including a description of the
2 assumptions used for calculating the estimated occupancy rate
3 of the facility and the effect on the income of the facility
4 of government subsidies for health care services, if any, to
5 be provided pursuant to contracts for continuing care or
6 senior adult congregate living services.

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

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

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

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

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

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

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

30 3. From the date an annual disclosure statement is filed
31 until the date the next succeeding annual disclosure statement
32 is filed with the division of insurance and prior to the
33 provider's acceptance of part or all of the entrance fee or
34 the execution of the continuing care or senior adult
35 congregate living services contract by the resident, whichever

1 occurs first, the provider shall deliver the current annual
2 disclosure statement to current and prospective residents with
3 whom the continuing care or senior adult congregate living
4 services contract is or may be entered into and to a
5 resident's or prospective resident's personal representative,
6 if one is appointed.

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

9 523D.5 NEW CONSTRUCTION.

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

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

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

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

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

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

35 f. If the new facility or proposed expansion offers a

1 promise to provide nursing or health care services to
2 residents in the future, an actuarial forecast in a form
3 satisfactory to the commissioner, which identifies the
4 qualifications of the actuary or actuaries preparing the
5 forecast.

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

8 2. DETERMINATION OF FEASIBILITY.

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

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

21 3. CONSTRUCTION. New construction shall not begin until
22 the filing required by this section has been made and at least
23 fifty percent of the proposed number of independent living
24 units in the initial stage or phase have been reserved
25 pursuant to executed contracts and at least ten percent of the
26 entrance fees required by those contracts are held in escrow
27 pursuant to this chapter.

28 4. ESCROW REQUIREMENTS. Unless proof has been submitted
29 to the commissioner that conditions for the release of
30 escrowed funds set forth in this section have already been
31 met, the provider shall establish an interest-bearing escrow
32 account at a state or federally regulated financial
33 institution located within this state to receive any deposits
34 or entrance fees or portions of deposits or fees for a living
35 unit which has not been previously occupied by a resident for

1 which an entry fee arrangement is used. The escrow account
2 agreement shall be entered into between the financial
3 institution and the provider with the financial institution as
4 the escrow agent and as a fiduciary for the resident or
5 prospective resident. The agreement shall state that the
6 purpose of the escrow account is to protect the resident or
7 prospective resident and that the funds deposited shall be
8 kept and maintained in an account separate and apart from the
9 provider's business accounts.

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

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

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

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

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

1 or purchasing, equipping, and furnishing the facility.

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

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

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

21 523D.6 CONTRACTS.

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

28 a. The name and business address of the provider.

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

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

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

34 e. A list of all of the continuing care or senior adult
35 congregate living services which are to be provided by the

1 provider to each resident. The list shall clearly identify
2 the manner in which continuing care or senior adult congregate
3 living services will be provided, including a statement
4 whether the items will be provided for a designated time
5 period or for life, and shall indicate which continuing care
6 and senior adult congregate living services, if any, will be
7 provided through an affiliate or third party. The description
8 of any service charges or fees shall, in the event of multiple
9 residents, be provided on an individual basis and shall
10 include a description of any additional charges that will be
11 assessed for occupancy by more than one resident.

12 f. A description of the health and financial conditions
13 upon which the provider may require the resident to relinquish
14 the resident's space in the designated facility.

15 g. A description of the health and financial conditions
16 required for a person to continue as a resident.

17 h. A description of the conditions under which the
18 resident is permitted to remain in the facility in the event
19 of financial difficulties affecting the resident.

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

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

30 k. A description in clear and understandable language, in
31 at least ten-point type, of the terms governing the refund of
32 any portion of the entrance fee in the event of discharge by
33 the provider, or cancellation by the resident, and a statement
34 that the provider shall not dismiss or discharge a resident
35 from a facility prior to the expiration of a resident contract

1 without just cause and sixty days written notice of intent to
2 cancel. The notice of dismissal or discharge shall only be
3 given upon a good faith determination that a just cause
4 exists, and the notice shall be given in writing, signed by
5 the medical director, if any, and the administrator of the
6 facility. In an emergency situation only such notice as is
7 reasonable under the circumstances is required.

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

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

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

15 o. A statement that a prospective resident or resident
16 shall be given the opportunity to appoint a personal
17 representative in the prospective resident's or resident's
18 contract. The personal representative shall receive copies of
19 the contract and all notices, disclosures, or forms required
20 by this chapter to be delivered to a prospective resident or
21 resident. A personal representative appointed under this
22 section has no legal authority to make any decision for the
23 prospective resident appointing the person to be a personal
24 representative. The personal representative may advise the
25 prospective resident or resident as to the materials provided.
26 A personal representative shall not be affiliated or
27 associated with a provider or any person identified in section
28 523D.3, subsection 1, paragraph "b" or "c", and shall not be a
29 prospective resident or resident.

30 p. A statement that if a resident dies or through illness,
31 injury, or incapacity is precluded from becoming a resident
32 under the terms of the contract before occupying the living
33 unit, the contract is automatically rescinded and the resident
34 or the resident's legal representative shall receive a full
35 refund of all payments of money or transferred property to the

1 facility, except those costs specifically incurred by the
2 facility at the request of the resident and set forth in
3 writing in a separate addendum, signed by both parties to the
4 contract.

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

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

19 NOTICE OF CANCELLATION

20 _____

21 Date contract was executed.

22 _____

23 Date disclosure statement was provided to resident.

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

1 of your cancellation notice.

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

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

20 I hereby cancel this contract.

21 _____

22 (Date)

23 _____

24 (Resident's signature)

25 Sec. 16. NEW SECTION. 523D.12 REPORTS AND

26 INVESTIGATIONS.

27 1. The commissioner may, by rule, require providers to
28 file an annual statement or report with the division within
29 four months after the end of the fiscal year of that provider.
30 If required, the statements and reports shall be in a form and
31 contain information required by the division's rules.

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

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

5 a. Investigate the business and examine the books,
6 accounts, records, and files used by a provider.

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

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

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

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

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

30 The attorney general may petition the district court in any
31 county of the state for an injunction to restrain a person
32 subject to this chapter and any agents, employees, or
33 associates of the person from engaging in conduct or practices
34 in violation of this chapter or rules adopted pursuant to this
35 chapter. In a proceeding for an injunction, the attorney

1 general may apply to the court for the issuance of a subpoena
2 to require the appearance of a defendant and the defendant's
3 agents and any documents, books, or records germane to the
4 hearing upon the petition for an injunction. Upon proof of
5 any of the violations described in the petition for
6 injunction, the court may grant the injunction.

7
8 DIVISION III

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

11 1. "Administrator" means the commissioner of insurance or
12 the deputy administrator appointed pursuant to section
13 502.601.

14 2. "Advance fee" means consideration including a payment,
15 fee, or deposit, which is assessed or collected prior to the
16 closing of a loan. An advance fee includes, but is not
17 limited to, money assessed or collected for processing, for an
18 appraisal, for a credit check, for a consultation, or for
19 expenses.

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

22 a. A credit report or appraisal.

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

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

29 5. "Financial statement" means a document evidencing the
30 financial position of the loan broker as required by section
31 535C.3A.

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

35 7. "Loan broker" or "broker" means a person who in return
for an advance fee, promises to obtain a loan or assist in

1 obtaining a loan for another from a third person, or who
2 promises to consider making a loan to a person. A loan broker
3 does not include any of the following:

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

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

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

12 d. A person whose fee is entirely contingent on the
13 successful procurement of a loan from a third person, if the
14 borrower has not paid a fee prior to the closing of a loan
15 other than a bona fide third-party fee.

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

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

23 g. A bank incorporated under chapter 524.

24 h. A credit union incorporated under chapter 533.

25 i. A savings and loan association or savings bank
26 incorporated under chapter 534.

27 j. A mortgage broker or mortgage banker licensed under
28 chapter 535B.

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

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

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

34 a. Obtain a loan for a borrower.

35 b. Assist the borrower in obtaining a loan.

1 c. Consider making a loan to the borrower.

2 9. "Records" means books, papers, documents, accounts,
3 agreements, memoranda, electronic records of accounts, or
4 correspondence relating to a matter regulated under this
5 chapter.

6 10. "Successful procurement of a loan" means the receipt
7 by a borrower of the loan proceeds.

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

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

13 1. A copy of the loan broker's balance sheet prepared
14 within one hundred twenty days prior to the most recent filing
15 of a disclosure statement as provided in section 535C.5.

16 2. A profit and loss statement, and a statement of changes
17 in the broker's financial position for each fiscal year that
18 the broker and the broker's predecessor were in business.
19 However, the statement of changes need not cover more than the
20 three fiscal years preceding the date that the broker's
21 balance sheet was prepared.

22 3. If prepared, a copy of the broker's most recent audited
23 financial statement.

24 Sec. 21. Section 535C.5, subsections 1 through 3, Code
25 1991, are amended to read as follows:

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

30 a. The disclosure statement required under section 535C.3,
31 the.

32 b. The most recent financial statement of the broker, ~~and~~
33 ~~either of the following:~~ required under section 535C.3A.

34 a c. The Either a bond required under section 535C.4:

35 b. ~~The~~ or a formal notification from the financial

1 institution that the trust account required under section
2 535C.4 is established.

3 d. An irrevocable consent, in a form prescribed by the
4 commissioner of insurance, appointing the administrator to be
5 the loan broker's agent to receive service of process in any
6 suit or action against the broker arising from a violation of
7 a provision of this chapter or a rule adopted pursuant to this
8 chapter.

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

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

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

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

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

26 535C.7 WRITTEN AGREEMENTS REQUIRED.

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

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

1 535C.11 APPLICABILITY.

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

8 Sec. 24. NEW SECTION. 535C.12 RECORDS.

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

13 a. The accounts of the broker.

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

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

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

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

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

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

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

5 a. An order of prohibition has been issued pursuant to
6 section 535C.5.

7 b. The administrator is called as a witness to testify in
8 a criminal or civil proceeding.

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

16 Sec. 26. NEW SECTION. 535C.14 MISREPRESENTATION OF
17 GOVERNMENTAL APPROVAL.

18 It is unlawful for a loan broker to represent or imply that
19 the broker has been sponsored, recommended, or approved by, or
20 that the broker's abilities or qualifications have been passed
21 upon by the commissioner, the insurance division, the
22 securities bureau, or the state of Iowa.

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

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

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

29 b. The agreement is solicited or entered into in this
30 state.

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

34 a. The offer originates from this state.

35 b. The offer is directed by the offeror to this state and

1 received at the place to which it is directed or at any post
2 office in this state in the case of a mailed offer.

3 3. For the purpose of this section, an offer is accepted
4 in this state when either of the following occur:

5 a. The acceptance is communicated to the offeror in this
6 state.

7 b. The acceptance has not previously been communicated to
8 the offeror, orally, or in writing, outside this state; and
9 acceptance is communicated to the offeror in this state,
10 whether or not either party is then present in this state when
11 the offeree directs it to the offeror in this state reasonably
12 believing the offeror to be in this state and it is received
13 at the place to which it is directed or at any post office in
14 this state in the case of a mailed acceptance.

15 4. An offer is not made in this state in either of the
16 following circumstances:

17 a. The offer is in a newspaper which the publisher
18 circulates or is circulated on the publisher's behalf in this
19 state, which is in any other publication of general, regular,
20 and paid circulation which is not published in this state, or
21 which is published in this state but has had more than two-
22 thirds of its circulation outside this state during the past
23 twelve months.

24 b. The offer is on a radio or television program
25 originating outside this state and received in this state.

26 EXPLANATION

27 Division I (sections 1-10) of this bill amends portions of
28 chapter 523B, relating to business opportunity promotions.
29 Section 1 provides definitions. Section 2 establishes
30 registration requirements and provides for the disclosure of
31 certain information in connection with the offer or sale of a
32 business opportunity. Section 3 defines those offers or sales
33 of business opportunities which are not subject to the
34 registration and disclosure requirements of section 2
35 (523B.2). Section 4 establishes bonding and minimum net worth

1 requirements for any person selling or offering for sale a
2 business opportunity. Section 5 provides that the
3 administrator is to keep a register of all applications for
4 registration and disclosure documents filed with the
5 administrator. These documents are to be open for public
6 inspection. Section 6 defines the liability of a person who
7 violates certain provisions of chapter 523B and provides that
8 a person may sue for rescission of the agreement, or recover
9 all money or other valuable consideration paid for the
10 business opportunity, and for actual damages, interest as
11 provided by law, reasonable attorney fees, and court costs.
12 The bill provides that a person making unlawful
13 representations or engaging in misleading advertising may be
14 liable for treble damages. Section 7 establishes the
15 authority of the commissioner in investigating any violation
16 of this chapter. Section 8 provides for criminal penalties
17 which may apply as a result of a violation of certain
18 provisions of this chapter. Section 9 defines fraudulent
19 practices for purposes of the chapter. Section 10 defines the
20 scope of the chapter.

21 Division II (sections 11-18) amends portions of the
22 retirement facilities (continuing care and congregate living
23 services) chapter, chapter 523D. Section 11 provides
24 definitions for the chapter. Section 12 establishes
25 information to be provided in a disclosure statement to a
26 person considering entering a facility. Section 13 requires
27 the delivery of the disclosure statement to current and
28 prospective residents. Section 14 requires a person intending
29 to construct a facility regulated under this chapter to file
30 certain information regarding the facility, which filing shall
31 be accompanied by a \$250 fee. The bill provides that the
32 commissioner is to determine the feasibility of the proposed
33 facility and requires certain steps to be taken by the
34 provider prior to the beginning of the construction. Section
35 15 requires certain information to be disclosed in a contract

1 for continuing care or senior adult congregate living
2 services. Section 16 authorizes the commissioner to require
3 reports and conduct audits or other examinations of the
4 financial affairs of the provider for the purpose of
5 protecting the interests of the residents. Section 17
6 authorizes the commissioner to issue a compliance order and
7 section 18 provides for the issuance of an injunction against
8 a provider engaging in conduct in violation of this chapter.

9 Division III (sections 19-28) amends portions of the Iowa
10 loan brokers Act. Section 19 amends the definitions provided
11 in that chapter. Section 20 provides that a loan broker must
12 file certain financial documents with the administrator.
13 Section 21 increases the filing fee of a broker from \$50 to
14 \$150 for the filing of the initial disclosure document, and
15 adds a \$100 filing fee to accompany the required annual
16 filing. It also requires appointment of the commissioner to
17 receive service of process. Section 22 requires a brokerage
18 agreement to include a description of the services the broker
19 agrees to perform. Section 23 provides that the chapter does
20 not apply to activities approved by the commissioner or the
21 banking or savings and loan divisions in the department of
22 commerce. Section 24 requires the loan broker to maintain
23 certain records relating to the activities of the loan broker.
24 Section 25 authorizes the commissioner to investigate a broker
25 and to take actions appropriate for the protection of
26 borrowers. Section 26 provides that it is unlawful for a loan
27 broker to represent or imply that the broker has been
28 recommended or approved by the commissioner or the state.
29 Section 27 provides for the application of the chapter.

30

BACKGROUND STATEMENT

31

SUBMITTED BY THE AGENCY

32 This bill is intended to provide better enforcement powers,
33 clarify questions of interpretation and provide greater
34 assurance of statutory compliance.

35

SENATE FILE 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 concriminal 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.

Unless the seller files 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 were 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. 521B.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.

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 5230.3, 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 5230.3, 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 5230.3, 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; and~~

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.

JOE J. WELSH

President of the Senate

ROBERT C. ARNOULD

Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 519, Seventy-fourth General Assembly.

JOHN F. DWYER

Secretary of the Senate

Approved May 28, 1991

TERRY E. BRANSTAD

Governor