

4/10/95 Referred Back Commerce

FILED MAR 20 1995

SENATE FILE 421
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 284)

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

A BILL FOR

1 An Act relating to entities and subject matter under the
2 regulatory authority of the securities bureau of the division
3 of insurance.

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

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S.F. 421

1 Section 1. Section 502.102, subsection 14, Code 1995, is
2 amended to read as follows:

3 14. "Security" means any note; stock; treasury stock;
4 bond; debenture; evidence of indebtedness; certificate of
5 interest or participation in a profit sharing agreement;
6 collateral trust certificate; preorganization certificate or
7 subscription; transferable share; investment contract; voting
8 trust certificate; certificate of deposit for a security;
9 fractional undivided interest in an oil, gas, or other mineral
10 lease or in payments out of production under such a lease,
11 right, or royalty; interest in a limited liability company;
12 or, in general, any interest or instrument commonly known as a
13 "security", or any certificate of interest or participation
14 in, temporary or interim certificate for, receipt for,
15 guarantee of, or warrant or right to subscribe to or purchase,
16 any of the foregoing. "Security" does not include an
17 insurance or endowment policy or annuity contract under which
18 an insurance company promises to pay money either in a lump
19 sum or periodically for life or for some other specified
20 period.

21 Sec. 2. Section 502.202, subsection 1, Code 1995, is
22 amended to read as follows:

23 1. Any security, including a revenue obligation, issued or
24 guaranteed by the United States, any state, any political
25 subdivision of a state, or any agency or corporate or other
26 instrumentality of one or more of the foregoing; or any
27 certificate of deposit for any of the foregoing; but this
28 exemption shall not include any revenue obligation payable
29 from payments to be made in respect of property or money used
30 under a lease, sale or loan arrangement by or for a
31 nongovernmental industrial or commercial enterprise, unless
32 such payments are or will be made or unconditionally
33 guaranteed by a person whose securities are exempt from
34 registration under this chapter by (a) this section,
35 subsection 7, or 8, or 18, (b) subsection 9 of this section,

1 provided the issuer first files with the administrator a
2 written notice specifying the terms of the offer and the
3 administrator does not by order disallow the exemption within
4 fifteen days thereafter.

5 Sec. 3. Section 502.202, subsection 8, Code 1995, is
6 amended to read as follows:

7 8. Any security listed or approved for listing upon notice
8 of issuance on the New York Stock Exchange, the American Stock
9 Exchange, ~~the-Midwest-Stock-Exchange,-the-Pacific-Coast-Stock~~
10 ~~Exchange,~~ or any other national securities exchange registered
11 under the Securities Exchange Act of 1934 and designated by
12 rule of the administrator; any other security of the same
13 issuer which is of senior or substantially equal rank; any
14 security called for by subscription rights or warrants so
15 listed or approved; or any warrant or right to purchase or
16 subscribe to any of the foregoing.

17 Sec. 4. Section 502.203, subsection 2, paragraph b, Code
18 1995, is amended by striking the paragraph and inserting in
19 lieu thereof the following:

20 b. The security was issued by an issuer which has a class
21 of securities subject to registration under section 12 of the
22 Securities Exchange Act of 1934 and has been subject to the
23 reporting requirements of section 13 or 15(d) of the
24 Securities Exchange Act of 1934 for not less than one hundred
25 eighty days before the transaction.

26 Sec. 5. Section 502.206, subsection 4, Code 1995, is
27 amended to read as follows:

28 4. The registrant shall notify the administrator promptly
29 ~~by telephone or telegram~~ in writing, which may be by
30 electronic, telegraphic, or facsimile transmission, of the
31 date and time when the federal registration statement became
32 effective and the content of the price amendment, if any, and
33 shall file a post-effective amendment promptly containing the
34 information and documents in the price amendment. "Price
35 amendment" means the final federal amendment which includes a

1 statement of the offering price, underwriting and selling
2 discounts or commissions, amount of proceeds, conversion
3 rates, call prices and other matters dependent upon the
4 offering price. Upon failure to receive the required
5 notification and post-effective amendment with respect to the
6 price amendment, the administrator may enter a stop order,
7 without notice or hearing, retroactively denying the
8 effectiveness to the registration statement or suspending its
9 effectiveness until compliance with this subsection is
10 effected, if the administrator promptly notifies the
11 registrant ~~by telephone or telegram~~ of the issuance of such
12 order. If the registrant proves compliance with the
13 requirements of this subsection as to notice and post-
14 effective amendment the stop order shall be vacated as of the
15 time of its entry. The administrator may by rule or order
16 waive any of the conditions specified in subsection 2 or 3.

17 Sec. 6. Section 502.301, subsection 1, paragraph b,
18 subparagraph (1), Code 1995, is amended to read as follows:

19 (1) The broker-dealer effects transactions in this state
20 exclusively with or through the issuers of the securities
21 involved in the transaction, other broker-dealers, banks,
22 trust companies, insurance companies, or investment companies
23 as defined in the Investment Company Act of 1940, pension or
24 profit sharing trusts, or other financial institutions ~~or~~
25 ~~institutional-buyers~~, whether acting for themselves or as
26 trustees;

27 Sec. 7. Section 502.302, subsection 1, Code 1995, is
28 amended to read as follows:

29 1. A broker-dealer or agent may obtain an initial or
30 renewal license by filing with the administrator, or an
31 organization which the administrator by rule designates, an
32 application together with a consent to service of process
33 pursuant to section 502.609 and the appropriate filing fee.
34 The application shall contain the information the
35 administrator requires by rule concerning the applicant's form

1 and place of organization, proposed method of doing business
2 and financial condition, the qualifications and experience of
3 the applicant, including, in the case of a broker-dealer, the
4 qualifications and experience of any partner, officer,
5 director or controlling person, any injunction or
6 administrative order or conviction of a misdemeanor involving
7 securities and any conviction of a felony, and any other
8 matters which the administrator determines are relevant to the
9 application. If no denial order is in effect and no
10 proceeding is pending under section 502.304, registration
11 becomes effective at noon of the ~~thirtieth~~ sixtieth day after
12 a completed application or an amendment completing the
13 application is filed, unless waived by the applicant. The
14 administrator may by rule or order specify an earlier
15 effective date.

16 Sec. 8. Section 502.304, subsection 1, Code 1995, is
17 amended by adding the following new paragraph:

18 NEW PARAGRAPH. n. Has done either of the following:

19 (1) Refused to allow or otherwise impeded the adminis-
20 trator or an employee of the securities bureau from conducting
21 an audit, examination, inspection, or investigation provided
22 for under section 502.303 or 502.603, including by withholding
23 or concealing material information from, or refusing to
24 furnish material information to, the administrator or an
25 employee of the bureau.

26 (2) Refused the administrator, or an employee of the
27 securities bureau, access to any office or location within an
28 office to conduct an audit, examination, inspection, or
29 investigation.

30 Sec. 9. Section 502.304, subsection 2, Code 1995, is
31 amended to read as follows:

32 2. The administrator ~~may~~ shall not institute a suspension
33 or revocation proceeding under subsection 1, paragraphs "c"
34 through "f", on the basis of a fact known to the administrator
35 when registration became effective, unless the proceeding is

1 instituted within ~~sixty~~ ninety days after the effective date.

2 Sec. 10. Section 502.304, subsection 4, is amended to read
3 as follows:

4 4. a. If the administrator finds that any registrant or
5 applicant for registration is no longer in existence or has
6 ceased to do business as a broker-dealer, or agent, or is
7 subject to an adjudication of mental incompetence or to the
8 control of a committee, conservator, or guardian, or cannot be
9 located after search, the administrator may by order revoke
10 the registration or application.

11 b. If the administrator finds that the applicant or
12 registrant has abandoned the application or registration, the
13 administrator may enter an order of abandonment, and take the
14 appropriate action to reflect that within the licensing
15 system. The administrator may enter an order under this
16 paragraph, if the notice is sent to the applicant or
17 registrant, and either the administrator does not receive a
18 response from the applicant or registrant, or action is not
19 taken by the applicant or registrant within the time specified
20 by the administrator.

21 Sec. 11. Section 502.304, subsection 5, Code 1995, is
22 amended to read as follows:

23 5. Withdrawal from registration as a broker-dealer or
24 agent becomes effective thirty days after receipt of an
25 application to withdraw or within such shorter period of time
26 as the administrator may by order determine, unless a
27 revocation or suspension proceeding is pending when the
28 application is filed or a proceeding to revoke or suspend or
29 deny or to impose conditions upon the withdrawal is instituted
30 within thirty days after the application is filed. If a
31 proceeding is pending or instituted, withdrawal becomes
32 effective at such time and upon such conditions as the
33 administrator by order determines. If no proceeding is
34 pending or instituted and withdrawal automatically becomes
35 effective, the administrator may nevertheless institute a

1 revocation or suspension proceeding under subsection 1,
2 paragraph "b", within one year after withdrawal became
3 effective and enter a revocation or suspension order as of the
4 last date on which registration was effective.

5 Sec. 12. Section 502.502, Code 1995, is amended by adding
6 the following new subsection:

7 NEW SUBSECTION. 7. A copy of any suit filed under this
8 section shall be served upon the administrator within five
9 business days of the filing in the form and manner prescribed
10 by the administrator by rule or order, provided that the
11 failure to comply with this provision shall not invalidate the
12 action which is the subject of the suit.

13 Sec. 13. Section 502.604, subsection 2, Code 1995, is
14 amended to read as follows:

15 2. Bring an action in the district court to enjoin the act
16 or practice and to enforce compliance with this chapter or a
17 rule or order adopted or issued pursuant to this chapter.
18 Upon a proper showing a permanent or temporary injunction,
19 restraining order, or writ of mandamus shall be granted and a
20 receiver or conservator may be appointed for the defendant or
21 the defendant's assets. In addition, upon a proper showing by
22 the administrator, the court may enter an order of rescission,
23 restitution, or disgorgement directed at any person who has
24 engaged in an act constituting a violation of this chapter, or
25 a rule or order adopted or issued pursuant to this chapter,
26 and may order the payment of prejudgment and post-judgment
27 interest. The administrator shall not be required to post a
28 bond.

29 Sec. 14. Section 523A.11, Code 1995, is amended to read as
30 follows:

31 523A.11 INVESTIGATIONS.

32 The attorney general or the commissioner may, for the
33 purpose of discovering violations of this chapter or any rules
34 adopted under this chapter:

35 1. Investigate the business and examine the books, ac-

1 counts, records, and files used by every permit holder under
2 this chapter.

3 2. Notwithstanding chapter 22, keep confidential the
4 information obtained in the course of an investigation.
5 However, if the attorney general or the commissioner
6 determines that it is necessary or appropriate in the public
7 interest or for the protection of consumers, the attorney
8 general or commissioner may share information with other
9 attorneys general, commissioners, regulatory authorities, or
10 governmental agencies, or may publish information concerning a
11 violation of this chapter or a rule or order under this
12 chapter.

13 ~~2.~~ 3. Administer oaths and affirmations, subpoena
14 witnesses, receive evidence, and require the production of
15 documents and records in connection with an investigation or
16 proceeding being conducted pursuant to this chapter.

17 ~~3.~~ 4. Apply to the district court for issuance of an order
18 requiring a person's appearance before the commissioner or
19 attorney general, or a designee of either or both, in cases
20 where the person has refused to obey a subpoena issued by the
21 commissioner or attorney general. The person may also be
22 required to produce documentary evidence germane to the
23 subject of the investigation. Failure to obey a court order
24 under this subsection constitutes contempt of court.

25 Sec. 15. Section 523B.8, subsection 1, unnumbered para-
26 graph 1, Code 1995, is amended to read as follows:

27 If it appears to the administrator that a person has
28 engaged, is engaging, or is about to engage in any act or
29 practice constituting a violation of this chapter or a rule or
30 order adopted or issued under this chapter, the administrator
31 may issue an order directed at the person requiring the person
32 to cease and desist from engaging in the act or practice. The
33 person named in the order may, within fourteen days after
34 receipt of the date of the issuance of the order, file a
35 written request for a hearing. The hearing shall be held in

1 accordance with chapter 17A.

2 Sec. 16. Section 523B.8, subsection 4, Code 1995, is
3 amended to read as follows:

4 4. If it appears to the administrator that a person has
5 engaged, is engaged, or is about to engage in any act or
6 practice constituting a violation of this chapter, or of a
7 rule or order adopted or issued under this chapter, the
8 administrator may take either or both of the following
9 actions:

10 a. ~~Notify the attorney general who shall bring~~ Bring an
11 action in the district court to enjoin the acts or practices
12 constituting the violation and to enforce compliance with this
13 chapter or any rule or order adopted or issued pursuant to
14 this chapter. Upon a proper showing a permanent or temporary
15 injunction shall be granted and a receiver or conservator may
16 be appointed for the defendant or the defendant's assets.

17 b. ~~Sue on behalf of a purchaser to enforce the purchaser's~~
18 ~~rights.~~ Bring an action in district court and upon proper
19 showing by the administrator, the court may enter an order of
20 rescission, restitution, or disgorgement, directed at any
21 person who has engaged in an act constituting a violation of
22 this chapter, or a rule or order adopted or issued pursuant to
23 this chapter, and may order the payment of prejudgment and
24 post-judgment interest. The administrator shall not be
25 required to post bond.

26 Sec. 17. Section 523E.11, Code 1995, is amended to read as
27 follows:

28 523E.11 INVESTIGATIONS.

29 The attorney general or the commissioner may, for the
30 purpose of discovering violations of this chapter or any rules
31 adopted under this chapter:

32 1. Investigate the business and examine the books,
33 accounts, records, and files used by every permit holder under
34 this chapter.

35 2. Notwithstanding chapter 22, keep confidential the

1 information obtained in the course of an investigation.
2 However, if the attorney general or the commissioner
3 determines that it is necessary or appropriate in the public
4 interest or for the protection of consumers, the attorney
5 general or the commissioner may share information with other
6 attorneys general, commissioners, regulatory authorities, or
7 governmental agencies or may publish information concerning a
8 violation of this chapter or a rule or order under this
9 chapter.

10 2- 3. Administer oaths and affirmations, subpoena
11 witnesses, receive evidence, and require the production of
12 documents and records in connection with an investigation or
13 proceeding being conducted pursuant to this chapter.

14 3- 4. Apply to the district court for issuance of an order
15 requiring a person's appearance before the commissioner or
16 attorney general, or a designee of either or both, in cases
17 where the person has refused to obey a subpoena issued by the
18 commissioner or attorney general. The person may also be
19 required to produce documentary evidence germane to the
20 subject of the investigation. Failure to obey a court order
21 under this subsection constitutes contempt of court.

22 EXPLANATION

23 This bill amends a number of provisions in chapters 502,
24 523A, 523B, and 523E under the regulatory authority of the
25 securities bureau of the division of insurance. The bill
26 makes the following amendments:

27 Section 502.102 is amended to include an interest in a
28 limited liability company within the definition of "security"
29 under chapter 502.

30 Section 502.202 exempts securities issued or guaranteed by
31 a governmental organization from requirements related to
32 registration and filing sales and advertising literature.
33 This bill provides that the exemption applies to any revenue
34 obligation payable from payments relating to property or money
35 used under a lease, sale, or loan arrangement by or for a

1 nongovernmental industrial or commercial enterprise which are
2 made or unconditionally guaranteed by a person whose
3 securities are exempt from registration under subsection 18
4 which refers to a security designated or approved for
5 designation upon notice of issuance on the national
6 association of securities dealers automated
7 quotations--national market system (NASDAQ/NMS).

8 Section 502.202 provides that securities listed upon notice
9 of issuance on the Midwest Stock Exchange and the Pacific
10 Coast Stock Exchange are exempt from requirements relating to
11 registration and filing sales and advertising literature.
12 This bill eliminates the reference to the Midwest Stock
13 Exchange and the Pacific Stock Exchange.

14 Section 502.203 provides that certain transactions are
15 exempt from requirements relating to registration and the
16 filing of promotional and sales literature. The bill
17 eliminates a provision exempting securities issued by an
18 issuer which has a class of securities currently registered
19 under the Securities Exchange Act of 1934, and adds an
20 exemption for a security issued by an issuer which has a class
21 of securities subject to registration under section 12 of the
22 Securities Exchange Act of 1934 and has been subject to the
23 reporting requirements of section 13 or 15(d) of the
24 Securities Exchange Act of 1934 for not less than 180 days
25 before the transaction.

26 Section 502.206 provides for registration by coordination.
27 The bill eliminates a provision requiring a registrant to
28 notify the administrator of the securities bureau by telephone
29 or telegram, and adds that the notification must be in
30 writing, which may be by electronic, telegraphic, or facsimile
31 transmission.

32 Section 502.301 provides that an out-of-state broker-dealer
33 may effect transactions in this state with certain persons in
34 Iowa without being licensed. This bill eliminates
35 institutional buyers as persons with whom the out-of-state

1 broker may act.

2 Section 502.302 provides for registration procedures. The
3 section provides that registration becomes effective at noon
4 of the thirtieth day after a completed application is filed,
5 unless the bureau takes other action. This bill changes the
6 thirtieth-day requirement to a sixtieth-day requirement.

7 Section 502.304 provides for the denial, revocation,
8 suspension, or withdrawal of a registration. The bill adds a
9 new ground for disciplinary action, including a refusal to
10 allow the bureau to conduct an audit, examination, inspection,
11 or investigation as provided in the chapter, or a refusal to
12 allow access to an office or location in order to conduct an
13 audit, examination, inspection, or investigation.

14 Section 502.304 currently provides that the bureau cannot
15 institute a disciplinary action against a person involving a
16 revocation or suspension of a registration for certain
17 purposes on the basis of a fact known to the bureau when the
18 registration became effective unless the proceeding is
19 instituted within 60 days after the effective date of the
20 registration. The bill increases this time to 90 days.

21 Section 502.304 is amended to provide that if the
22 administrator finds that the applicant or registrant has
23 abandoned the application or registration, the administrator
24 may enter an order of abandonment and take the appropriate
25 action to reflect that within the licensing system.

26 Section 502.304 provides for a person's withdrawal from
27 registration as a broker-dealer to become effective on a date
28 determined by the bureau if there is no proceeding to revoke
29 or suspend the registration. This bill provides that a
30 proceeding may include denial of a registration and the date
31 of denial may be determined by the bureau.

32 Section 502.502 provides for fraudulent practices. The
33 bill provides that a copy of any suit filed under the section
34 must be served upon the bureau within five business days of
35 the filing in a form and manner prescribed by the bureau.

1 Section 502.604 provides for cease and desist orders and
2 injunctions. The bill provides that a court may enter
3 prejudgment and post-judgment interest against a defendant.

4 Chapter 523A regulates funeral services and merchandise.
5 Section 523A.11 provides for investigations by the attorney
6 general or the commissioner of insurance. The bill provides
7 that information obtained in the course of an investigation is
8 not subject to the public records law.

9 The bill amends chapter 523B which regulates business
10 opportunity promotions. Section 523B.8 provides that the
11 bureau may issue an order directing a person to cease and
12 desist from engaging in an act or practice which is a
13 violation of the chapter. The bill provides that the person
14 named in the order has 14 days from the date of issuance
15 rather than the date of receipt to file a request for a
16 hearing. Section 523B.8 provides that if it appears to the
17 bureau that a person is violating the chapter or a rule or
18 order adopted or issued under the chapter the administrator
19 may notify the attorney general who is required to bring an
20 action in district court. The bill provides that the bureau
21 may bring the action directly. The bill also provides that
22 the court may enter an order of rescission, restitution, or
23 disgorgement, as well as prejudgment and post-judgment
24 interest against a defendant.

25 Finally, the bill amends chapter 523E which regulates
26 cemetery merchandising. Section 523E.11 provides that the
27 attorney general or the commissioner of insurance may conduct
28 investigations of businesses regulated under the chapter.
29 This bill provides that information obtained in the course of
30 an investigation is not subject to the public records law.

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Palmer
Lusk
Redfern

SSB-284
Commerce

Succeeded By

SENATE/FILE 421

BY (PROPOSED COMMITTEE ON
COMMERCE BILL BY
CHAIRPERSON DELUHERY)

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

A BILL FOR

1 An Act relating to entities and subject matter under the
2 regulatory authority of the securities bureau of the division
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4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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7 subscription; transferable share; investment contract; voting
8 trust certificate; certificate of deposit for a security;
9 fractional undivided interest in an oil, gas, or other mineral
10 lease or in payments out of production under such a lease,
11 right, or royalty; interest in a limited liability company;
12 or, in general, any interest or instrument commonly known as a
13 "security", or any certificate of interest or participation
14 in, temporary or interim certificate for, receipt for,
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27 certificate of deposit for any of the foregoing; but this
28 exemption shall not include any revenue obligation payable
29 from payments to be made in respect of property or money used
30 under a lease, sale or loan arrangement by or for a
31 nongovernmental industrial or commercial enterprise, unless
32 such payments are or will be made or unconditionally
33 guaranteed by a person whose securities are exempt from
34 registration under this chapter by (a) this section,
35 subsection 7, or 8, or 18, (b) subsection 9 of this section,

1 provided the issuer first files with the administrator a
2 written notice specifying the terms of the offer and the
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4 fifteen days thereafter.

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33 shall file a post-effective amendment promptly containing the
34 information and documents in the price amendment. "Price
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2 discounts or commissions, amount of proceeds, conversion
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4 offering price. Upon failure to receive the required
5 notification and post-effective amendment with respect to the
6 price amendment, the administrator may enter a stop order,
7 without notice or hearing, retroactively denying the
8 effectiveness to the registration statement or suspending its
9 effectiveness until compliance with this subsection is
10 effected, if the administrator promptly notifies the
11 registrant ~~by telephone or telegram~~ of the issuance of such
12 order. If the registrant proves compliance with the
13 requirements of this subsection as to notice and post-
14 effective amendment the stop order shall be vacated as of the
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33 pursuant to section 502.609 and the appropriate filing fee.
34 The application shall contain the information the
35 administrator requires by rule concerning the applicant's form

1 and place of organization, proposed method of doing business
2 and financial condition, the qualifications and experience of
3 the applicant, including, in the case of a broker-dealer, the
4 qualifications and experience of any partner, officer,
5 director or controlling person, any injunction or
6 administrative order or conviction of a misdemeanor involving
7 securities and any conviction of a felony, and any other
8 matters which the administrator determines are relevant to the
9 application. If no denial order is in effect and no
10 proceeding is pending under section 502.304, registration
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24 furnish material information to, the administrator or employee
25 of the bureau.

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8 control of a committee, conservator, or guardian, or cannot be
9 located after search, the administrator may by order revoke
10 the registration or application.

11 b. If the administrator finds that the applicant or
12 registrant has abandoned the application or registration, the
13 administrator may enter an order of abandonment, and take the
14 appropriate action to reflect that within the licensing
15 system. The administrator may enter an order under this
16 paragraph, if the notice is sent to the applicant or
17 registrant, and either the administrator does not receive a
18 response from the applicant or registrant, or action is not
19 taken by the applicant or registrant within the time specified
20 by the administrator.

21 Sec. 11. Section 502.304, subsection 5, Code 1995, is
22 amended to read as follows:

23 5. Withdrawal from registration as a broker-dealer or
24 agent becomes effective thirty days after receipt of an
25 application to withdraw or within such shorter period of time
26 as the administrator may by order determine, unless a
27 revocation or suspension proceeding is pending when the
28 application is filed or a proceeding to revoke or suspend or
29 deny or to impose conditions upon the withdrawal is instituted
30 within thirty days after the application is filed. If a
31 proceeding is pending or instituted, withdrawal becomes
32 effective at such time and upon such conditions as the
33 administrator by order determines. If no proceeding is
34 pending or instituted and withdrawal automatically becomes
35 effective, the administrator may nevertheless institute a

1 revocation or suspension proceeding under subsection 1,
2 paragraph "b", within one year after withdrawal became
3 effective and enter a revocation or suspension order as of the
4 last date on which registration was effective.

5 Sec. 12. Section 502.502, Code 1995, is amended by adding
6 the following new subsection:

7 NEW SUBSECTION. 7. A copy of any suit filed under this
8 section shall be served upon the administrator within five
9 business days of the filing in the form and manner prescribed
10 by the administrator by rule or order, provided that the
11 failure to comply with this provision shall not invalidate the
12 action which is the subject of the suit.

13 Sec. 13. Section 502.604, subsection 2, Code 1995, is
14 amended to read as follows:

15 2. Bring an action in the district court to enjoin the act
16 or practice and to enforce compliance with this chapter or a
17 rule or order adopted or issued pursuant to this chapter.
18 Upon a proper showing a permanent or temporary injunction,
19 restraining order, or writ of mandamus shall be granted and a
20 receiver or conservator may be appointed for the defendant or
21 the defendant's assets. In addition, upon a proper showing by
22 the administrator, the court may enter an order of rescission,
23 restitution, or disgorgement directed at any person who has
24 engaged in an act constituting a violation of this chapter, or
25 a rule or order adopted or issued pursuant to this chapter,
26 and may order the payment of prejudgment and post-judgment
27 interest. The administrator shall not be required to post a
28 bond.

29 Sec. 14. Section 523A.11, Code 1995, is amended to read as
30 follows:

31 523A.11 INVESTIGATIONS.

32 The attorney general or the commissioner may, for the
33 purpose of discovering violations of this chapter or any rules
34 adopted under this chapter:

35 1. Investigate the business and examine the books, ac-

1 counts, records, and files used by every permit holder under
2 this chapter.

3 2. Notwithstanding chapter 22, keep confidential the
4 information obtained in the course of an investigation.
5 However, if the attorney general or the commissioner
6 determines that it is necessary or appropriate in the public
7 interest or for the protection of consumers, the attorney
8 general or commissioner may share information with other
9 attorneys general, commissioners, regulatory authorities, or
10 governmental agencies, or may publish information concerning a
11 violation of this chapter or a rule or order under this
12 chapter.

13 ~~2-~~ 3. Administer oaths and affirmations, subpoena
14 witnesses, receive evidence, and require the production of
15 documents and records in connection with an investigation or
16 proceeding being conducted pursuant to this chapter.

17 ~~3-~~ 4. Apply to the district court for issuance of an order
18 requiring a person's appearance before the commissioner or
19 attorney general, or a designee of either or both, in cases
20 where the person has refused to obey a subpoena issued by the
21 commissioner or attorney general. The person may also be
22 required to produce documentary evidence germane to the
23 subject of the investigation. Failure to obey a court order
24 under this subsection constitutes contempt of court.

25 Sec. 15. Section 523B.8, subsection 1, unnumbered para-
26 graph 1, Code 1995, is amended to read as follows:

27 If it appears to the administrator that a person has
28 engaged, is engaging, or is about to engage in any act or
29 practice constituting a violation of this chapter or a rule or
30 order adopted or issued under this chapter, the administrator
31 may issue an order directed at the person requiring the person
32 to cease and desist from engaging in the act or practice. The
33 person named in the order may, within fourteen days after
34 receipt of the date of the issuance of the order, file a
35 written request for a hearing. The hearing shall be held in

1 accordance with chapter 17A.

2 Sec. 16. Section 523B.8, subsection 4, Code 1995, is
3 amended to read as follows:

4 4. If it appears to the administrator that a person has
5 engaged, is engaged, or is about to engage in any act or
6 practice constituting a violation of this chapter, or of a
7 rule or order adopted or issued under this chapter, the
8 administrator may take either or both of the following
9 actions:

10 a. ~~Notify-the-attorney-general-who-shall-bring~~ Bring an
11 action in the district court to enjoin the acts or practices
12 constituting the violation and to enforce compliance with this
13 chapter or any rule or order adopted or issued pursuant to
14 this chapter. Upon a proper showing a permanent or temporary
15 injunction shall be granted and a receiver or conservator may
16 be appointed for the defendant or the defendant's assets.

17 b. ~~Sue-on-behalf-of-a-purchaser-to-enforce-the-purchaser's~~
18 ~~rights.~~ Bring an action in district court and upon proper
19 showing by the administrator, the court may enter an order of
20 rescission, restitution, or disgorgement, directed at any
21 person who has engaged in an act constituting a violation of
22 this chapter, or a rule or order adopted or issued pursuant to
23 this chapter, and may order the payment of prejudgment and
24 post-judgment interest. The administrator shall not be
25 required to post bond.

26 Sec. 17. Section 523E.11, Code 1995, is amended to read as
27 follows:

28 523E.11 INVESTIGATIONS.

29 The attorney general or the commissioner may, for the
30 purpose of discovering violations of this chapter or any rules
31 adopted under this chapter:

32 1. Investigate the business and examine the books,
33 accounts, records, and files used by every permit holder under
34 this chapter.

35 2. Notwithstanding chapter 22, keep confidential the

1 information obtained in the course of an investigation.
2 However, if the attorney general or the commissioner
3 determines that it is necessary or appropriate in the public
4 interest or for the protection of consumers, the attorney
5 general or the commissioner may share information with other
6 attorneys general, commissioners, regulatory authorities, or
7 governmental agencies or may publish information concerning a
8 violation of this chapter or a rule or order under this
9 chapter.

10 ~~2-~~ 3. Administer oaths and affirmations, subpoena
11 witnesses, receive evidence, and require the production of
12 documents and records in connection with an investigation or
13 proceeding being conducted pursuant to this chapter.

14 ~~3-~~ 4. Apply to the district court for issuance of an order
15 requiring a person's appearance before the commissioner or
16 attorney general, or a designee of either or both, in cases
17 where the person has refused to obey a subpoena issued by the
18 commissioner or attorney general. The person may also be
19 required to produce documentary evidence germane to the
20 subject of the investigation. Failure to obey a court order
21 under this subsection constitutes contempt of court.

22 EXPLANATION

23 This bill amends a number of provisions in chapters 502,
24 523A, 523B, and 523E under the regulatory authority of the
25 securities bureau of the division of insurance. The bill
26 makes the following amendments:

27 Section 502.102 is amended to include an interest in a
28 limited liability company within the definition of "security"
29 under chapter 502.

30 Section 502.202 exempts securities issued or guaranteed by
31 a governmental organization from requirements related to
32 registration and filing sales and advertising literature.
33 This bill provides that the exemption applies to any revenue
34 obligation payable from payments relating to property or money
35 used under a lease, sale, or loan arrangement by or for a

1 nongovernmental industrial or commercial enterprise which are
2 made or unconditionally guaranteed by a person whose
3 securities are exempt from registration under subsection 18
4 which refers to a security designated or approved for
5 designation upon notice of issuance on the national
6 association of securities dealers automated
7 quotations--national market system (NASDAQ/NMS).

8 Section 502.202 provides that securities listed upon notice
9 of issuance on the Midwest Stock Exchange and the Pacific
10 Coast Stock Exchange are exempt from requirements relating to
11 registration and filing sales and advertising literature.
12 This bill eliminates the reference to the Midwest Stock
13 Exchange and the Pacific Stock Exchange.

14 Section 502.203 provides that certain transactions are
15 exempt from requirements relating to registration and the
16 filing of promotional and sales literature. The bill
17 eliminates a provision exempting securities issued by an
18 issuer which has a class of securities currently registered
19 under the Securities Exchange Act of 1934, and adds an
20 exemption for a security issued by an issuer which has a class
21 of securities subject to registration under section 12 of the
22 Securities Exchange Act of 1934 and has been subject to the
23 reporting requirements of section 13 or 15(d) of the
24 Securities Exchange Act of 1934 for not less than 180 days
25 before the transaction.

26 Section 502.206 provides for registration by coordination.
27 The bill eliminates a provision requiring a registrant to
28 notify the administrator of the securities bureau by telephone
29 or telegram, and adds that the notification must be in
30 writing, which may be by electronic, telegraphic, or facsimile
31 transmission.

32 Section 502.301 provides that an out-of-state broker-dealer
33 may effect transactions in this state with certain persons in
34 Iowa without being licensed. This bill eliminates
35 institutional buyers as persons with whom the out-of-state

1 broker may act.

2 Section 502.302 provides for registration procedures. The
3 section provides that registration becomes effective at noon
4 of the thirtieth day after a completed application is filed,
5 unless the bureau takes other action. This bill changes the
6 thirtieth-day requirement to a sixtieth-day requirement.

7 Section 502.304 provides for the denial, revocation,
8 suspension, or withdrawal of a registration. The bill adds a
9 new ground for disciplinary action, including a refusal to
10 allow the bureau to conduct an audit, examination, inspection,
11 or investigation as provided in the chapter, or a refusal to
12 allow access to an office or location in order to conduct an
13 audit, examination, inspection, or investigation.

14 Section 502.304 currently provides that the bureau cannot
15 institute a disciplinary action against a person involving a
16 revocation or suspension of a registration for certain
17 purposes on the basis of a fact known to the bureau when the
18 registration became effective unless the proceeding is
19 instituted within 60 days after the effective date of the
20 registration. The bill increases this time to 90 days.

21 Section 502.304 is amended to provide that if the
22 administrator finds that the applicant or registrant has
23 abandoned the application or registration, the administrator
24 may enter an order of abandonment and take the appropriate
25 action to reflect that within the licensing system.

26 Section 502.304 provides for a person's withdrawal from
27 registration as a broker-dealer to become effective on a date
28 determined by the bureau if there is no proceeding to revoke
29 or suspend the registration. This bill provides that a
30 proceeding may include denial of a registration and the date
31 of denial may be determined by the bureau.

32 Section 502.502 provides for fraudulent practices. The
33 bill provides that a copy of any suit filed under the section
34 must be served upon the bureau within five business days of
35 the filing in a form and manner prescribed by the bureau.

1 Section 502.604 provides for cease and desist orders and
2 injunctions. The bill provides that a court may enter
3 prejudgment and post-judgment interest against a defendant.

4 Chapter 523A regulates funeral services and merchandise.
5 Section 523A.11 provides for investigations by the attorney
6 general or the commissioner of insurance. The bill provides
7 that information obtained in the course of an investigation is
8 not subject to the public records law.

9 The bill amends chapter 523B which regulates business
10 opportunity promotions. Section 523B.8 provides that the
11 bureau may issue an order directing a person to cease and
12 desist from engaging in an act or practice which is a
13 violation of the chapter. The bill provides that the person
14 named in the order has 14 days from the date of issuance
15 rather than the date of receipt to file a request for a
16 hearing. Section 523B.8 provides that if it appears to the
17 bureau that a person is violating the chapter or a rule or
18 order adopted or issued under the chapter the administrator
19 may notify the attorney general who is required to bring an
20 action in district court. The bill provides that the bureau
21 may bring the action directly. The bill also provides that
22 the court may enter an order of rescission, restitution, or
23 disgorgement, as well as prejudgment and post-judgment
24 interest against a defendant.

25 Finally, the bill amends chapter 523E which regulates
26 cemetery merchandising. Section 523E.11 provides that the
27 attorney general or the commissioner of insurance may conduct
28 investigations of businesses regulated under the chapter.
29 This bill provides that information obtained in the course of
30 an investigation is not subject to the public records law.

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