

Dix, Chair
Johnson
Doderer

HSB 581
COMMERCE AND REGULATION

Succeeded by
SENATE/HOUSE FILE SF/HF 317
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 the regulation of the sale of viatical
2 settlements.

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

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1 Section 1. NEW SECTION. 508E.1 AUTHORITY OF THE
2 COMMISSIONER.

3 The commissioner shall regulate the sale of viatical
4 settlements as provided in this chapter.

5 Sec. 2. NEW SECTION. 508E.2 DEFINITIONS.

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

8 1. "Chronically ill" means any of the following:

9 a. Being unable to perform or maintain at least two
10 activities of daily living, including but not limited to
11 eating, toileting, transferring, bathing, dressing, or
12 continence.

13 b. Requiring substantial supervision to protect the
14 individual from threats to health and safety due to severe
15 cognitive impairment.

16 c. Having a level of disability similar to that described
17 in paragraph "a" as determined by the United States secretary
18 of health and human services.

19 2. "Commissioner" means the commissioner of insurance.

20 3. "Terminally ill" means having an illness or sickness
21 that can reasonably be expected to result in death in twenty-
22 four months or less.

23 4. "Viatical settlement contract" means a written
24 agreement entered into between a viatical settlement provider
25 and a person who owns or is insured under a life insurance
26 policy or certificate, or who owns or is covered under a group
27 life insurance policy. "Viatical settlement contract" does
28 not mean a written agreement entered into between a viator and
29 a person having an insurable interest in the viator's life.

30 5. "Viator" means a person selling a life insurance policy
31 or certificate.

32 Sec. 3. NEW SECTION. 508E.3 VIATICAL SETTLEMENT CONTRACT
33 LIMITATIONS.

34 1. a. Subject to paragraph "b", a viatical settlement
35 contract shall not be entered into until after the contestable

1 period of the life insurance policy or certificate has
2 expired.

3 b. If a viatical settlement contract is entered into
4 during the contestable period of the life insurance policy or
5 certificate, a rebuttable presumption arises that it was the
6 intent of the person entering into such contract with a
7 viatical settlement provider to enter into such contract at
8 the time the life insurance policy or certificate was
9 originally purchased. If such person fails to rebut the
10 presumption, the viatical settlement contract is void.

11 2. A viatical settlement contract shall only be entered
12 into with an individual who is either terminally ill or
13 chronically ill.

14 Sec. 4. NEW SECTION. 508E.4 RULEMAKING AUTHORITY.

15 The commissioner shall adopt rules as necessary to
16 administer this chapter. Rules shall be adopted relating to
17 all of the following:

- 18 1. Advertising standards.
- 19 2. Disclosure.
- 20 3. Examinations.
- 21 4. Insurance company practices.
- 22 5. License requirements.
- 23 6. Prohibited practices.
- 24 7. Refund provisions.
- 25 8. Reporting.
- 26 9. Standards for reasonableness of payment.
- 27 10. Unfair trade practices.
- 28 11. Viatical settlement contracts.

29 EXPLANATION

30 This bill creates new Code chapter 508E and directs the
31 insurance commissioner to regulate the sale of viatical
32 settlement contracts. A viatical settlement involves the sale
33 to a viatical settlement provider of the death benefit under a
34 life insurance policy or certificate by a person who owns or
35 is insured under such a policy or certificate, or by a person

1 who owns or is covered under a group life insurance policy.

2 The bill provides generally that a viatical settlement
3 contract shall not be entered into until after the contestable
4 period of the policy has expired. However, if a viatical
5 settlement contract is entered into during the contestable
6 period of the life insurance policy or certificate, the bill
7 provides that a rebuttable presumption arises that it was the
8 intent of the person entering into such contract with a
9 viatical settlement provider to enter into such contract at
10 the time the life insurance policy or certificate was
11 originally purchased and if the person fails to rebut the
12 presumption, the viatical settlement contract is void. The
13 bill provides that a viatical settlement contract shall only
14 be entered into with an individual who is either terminally
15 ill or chronically ill.

16 The insurance commissioner is directed to adopt rules
17 necessary to administer the chapter, including rules relating
18 to advertising standards, disclosure, examinations, insurance
19 company practices, license requirements, prohibited practices,
20 refund provisions, reporting, standards for reasonableness of
21 payment, unfair trade practices, and viatical settlement
22 contracts.

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FEB 16 2000

Place On Calendar

HOUSE FILE 2317
BY COMMITTEE ON COMMERCE
AND REGULATION

(SUCCESSOR TO HSB 581)

Passed House, Date 3-15-00 (p.770) Passed Senate, Date 3-27-00 (p.860)
Vote: Ayes 95 Nays 0 Vote: Ayes 48 Nays 0

Approved 4-26-00

(p.1256) Retained 4-5-00
Vote 94-0

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HOUSE FILE 2317

H-8332

1 Amend House File 2317 as follows:
2 1. Page 1, line 11, by inserting after the word
3 "regulate" the following: ", but not prohibit,".
4 2. Page 2, line 21, by inserting after the word
5 "ill" the following: ", or as otherwise provided
6 pursuant to rules adopted by the commissioner".

By DIX of Butler

H-8332 FILED MARCH 13, 2000

Adopted 3-15-00 (p.770)

HF 2317

1 Section 1. Section 502.202, subsection 19, Code Supplement
2 1999, is amended by adding the following new paragraph:

3 NEW PARAGRAPH. e. The assignment, transfer, sale, devise,
4 or bequest of the death benefit or ownership of a life
5 insurance policy or contract made by the policyholder or
6 contract owner to a viatical settlement provider, if the
7 viatical settlement transaction complies with chapter 508E,
8 including rules adopted pursuant to that chapter.

9 Sec. 2. NEW SECTION. 508E.1 AUTHORITY OF THE
10 COMMISSIONER.

11 The commissioner shall regulate the sale of viatical
12 settlements as provided in this chapter.

13 Sec. 3. NEW SECTION. 508E.2 DEFINITIONS.

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

16 1. "Chronically ill" means any of the following:

17 a. Being unable to perform or maintain at least two
18 activities of daily living, including but not limited to
19 eating, toileting, transferring, bathing, dressing, or
20 continence.

21 b. Requiring substantial supervision to protect the
22 individual from threats to health and safety due to severe
23 cognitive impairment.

24 c. Having a level of disability similar to that described
25 in paragraph "a" as determined by the United States secretary
26 of health and human services.

27 2. "Commissioner" means the commissioner of insurance.

28 3. "Terminally ill" means having an illness or sickness
29 that can reasonably be expected to result in death in twenty-
30 four months or less.

31 4. "Viatical settlement contract" means a written
32 agreement entered into between a viatical settlement provider
33 and a person who owns or is insured under a life insurance
34 policy or certificate, or who owns or is covered under a group
35 life insurance policy. "Viatical settlement contract" does

1 not mean a written agreement entered into between a viator and
2 a person having an insurable interest in the viator's life.

3 5. "Viator" means a person selling a life insurance policy
4 or certificate.

5 Sec. 4. NEW SECTION. 508E.3 VIATICAL SETTLEMENT CONTRACT
6 LIMITATIONS.

7 1. a. Subject to paragraph "b", a viatical settlement
8 contract shall not be entered into until after the contestable
9 period of the life insurance policy or certificate has
10 expired.

11 b. If a viatical settlement contract is entered into
12 during the contestable period of the life insurance policy or
13 certificate, a rebuttable presumption arises that it was the
14 intent of the person entering into such contract with a
15 viatical settlement provider to enter into such contract at
16 the time the life insurance policy or certificate was
17 originally purchased. If such person fails to rebut the
18 presumption, the viatical settlement contract is void.

19 2. A viatical settlement contract shall only be entered
20 into with an individual who is either terminally ill or
21 chronically ill.

22 Sec. 5. NEW SECTION. 508E.4 RULEMAKING AUTHORITY.

23 The commissioner shall adopt rules as necessary to
24 administer this chapter. Rules shall be adopted relating to
25 all of the following:

- 26 1. Advertising standards.
- 27 2. Disclosure.
- 28 3. Examinations.
- 29 4. Insurance company practices.
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- 31 6. Prohibited practices.
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- 33 8. Reporting.
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- 35 10. Unfair trade practices.

1 11. Viatical settlement contracts.

2 EXPLANATION

3 This bill creates new Code chapter 508E and directs the
4 insurance commissioner to regulate the sale of viatical
5 settlement contracts. A viatical settlement involves the sale
6 to a viatical settlement provider of the death benefit under a
7 life insurance policy or certificate by a person who owns or
8 is insured under such a policy or certificate, or by a person
9 who owns or is covered under a group life insurance policy.

10 The bill amends Code section 502.202 to provide that a
11 transfer, sale, devise, or bequest of the death benefit or
12 ownership of a life insurance policy or contract made by the
13 policyholder to a viatical settlement provider is exempt from
14 securities regulation if such transaction complies with the
15 requirements established in new Code chapter 508E.

16 The bill provides generally that a viatical settlement
17 contract shall not be entered into until after the contestable
18 period of the policy has expired. However, if a viatical
19 settlement contract is entered into during the contestable
20 period of the life insurance policy or certificate, the bill
21 provides that a rebuttable presumption arises that it was the
22 intent of the person entering into such contract with a
23 viatical settlement provider to enter into such contract at
24 the time the life insurance policy or certificate was
25 originally purchased and if the person fails to rebut the
26 presumption, the viatical settlement contract is void. The
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28 be entered into with an individual who is either terminally
29 ill or chronically ill.

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31 necessary to administer the chapter, including rules relating
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1 contracts.

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HOUSE FILE **2317**
BY COMMITTEE ON COMMERCE
AND REGULATION

(SUCCESSOR TO HSB 581)

(As Amended and Passed by the House, March 15, 2000)

Passed House, Date ^(R 1256) 4-5-00 Passed Senate, Date ^(R 860) 3-27-00
Vote: Ayes 94 Nays 0 Vote: Ayes 48 Nays 0
Approved _____

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House Amendments _____

HF 2317

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2 1999, is amended by adding the following new paragraph:

3 NEW PARAGRAPH. e. The assignment, transfer, sale, devise,
4 or bequest of the death benefit or ownership of a life
5 insurance policy or contract made by the policyholder or
6 contract owner to a viatical settlement provider, if the
7 viatical settlement transaction complies with chapter 508E,
8 including rules adopted pursuant to that chapter.

9 Sec. 2. NEW SECTION. 508E.1 AUTHORITY OF THE
10 COMMISSIONER.

11 The commissioner shall regulate, but not prohibit, the sale
12 of viatical settlements as provided in this chapter.

13 Sec. 3. NEW SECTION. 508E.2 DEFINITIONS.

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

16 1. "Chronically ill" means any of the following:

17 a. Being unable to perform or maintain at least two
18 activities of daily living, including but not limited to
19 eating, toileting, transferring, bathing, dressing, or
20 continence.

21 b. Requiring substantial supervision to protect the
22 individual from threats to health and safety due to severe
23 cognitive impairment.

24 c. Having a level of disability similar to that described
25 in paragraph "a" as determined by the United States secretary
26 of health and human services.

27 2. "Commissioner" means the commissioner of insurance.

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30 four months or less.

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6 LIMITATIONS.

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8 contract shall not be entered into until after the contestable
9 period of the life insurance policy or certificate has
10 expired.

11 b. If a viatical settlement contract is entered into
12 during the contestable period of the life insurance policy or
13 certificate, a rebuttable presumption arises that it was the
14 intent of the person entering into such contract with a
15 viatical settlement provider to enter into such contract at
16 the time the life insurance policy or certificate was
17 originally purchased. If such person fails to rebut the
18 presumption, the viatical settlement contract is void.

19 2. A viatical settlement contract shall only be entered
20 into with an individual who is either terminally ill or
21 chronically ill, or as otherwise provided pursuant to rules
22 adopted by the commissioner.

23 Sec. 5. NEW SECTION. 508E.4 RULEMAKING AUTHORITY.

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25 administer this chapter. Rules shall be adopted relating to
26 all of the following:

- 27 1. Advertising standards.
- 28 2. Disclosure.
- 29 3. Examinations.
- 30 4. Insurance company practices.
- 31 5. License requirements.
- 32 6. Prohibited practices.
- 33 7. Refund provisions.
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- 2 11. Viatical settlement contracts.

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HOUSE FILE 2317

S-5178

1 Amend House File 2317, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 1, by inserting before line 1 the
4 following:

"DIVISION I

MOTOR VEHICLE SERVICE CONTRACTS

7 Section 1. Section 321I.1, subsection 1, Code
8 1999, is amended to read as follows:

9 1. "Commissioner" means the commissioner of
10 insurance as provided in section 505.1 or the deputy
11 administrator appointed under section 502.601.

12 Sec. 2. Section 321I.1, Code 1999, is amended by
13 adding the following new subsection:

14 NEW SUBSECTION. 6A. "Record" means information
15 stored or preserved in any medium, including in an
16 electronic or paper format. A record includes but is
17 not limited to documents, books, publications,
18 accounts, correspondence, memoranda, agreements,
19 computer files, film, microfilm, photographs, and
20 audio or visual tapes.

21 Sec. 3. Section 321I.2, subsection 2, Code 1999,
22 is amended to read as follows:.

23 2. The issuer of a reimbursement insurance policy
24 shall not cancel a reimbursement insurance policy
25 unless a written notice has been received by the
26 insurance-division commissioner and by each applicable
27 provider, including automobile dealers and third-party
28 administrators,--which. The notice shall fix the date
29 of cancellation at a date no earlier than ten days
30 after receipt of the notice by the insurance-division
31 commissioner and by the applicable provider. The
32 notice may be made in person or by mail and a post
33 office department receipt of certified or registered
34 mailing shall be deemed proof of receipt of the
35 notice.

36 Sec. 4. Section 321I.3, subsection 2, Code 1999,
37 is amended to read as follows:

38 2. In addition to any other required filings, a
39 true-and-correct an accurate copy of the service
40 contract and the provider's reimbursement insurance
41 policy, the consent to service of process on the
42 commissioner, and such other information as the
43 commissioner requires, shall be filed annually with
44 the commissioner no later than the first day of
45 August. If the first day of August falls on a weekend
46 or a holiday, the date for filing shall be the next
47 business day. In addition to the annual filing, the
48 provider shall promptly file copies of any amended
49 documents if material amendments have been made in the
50 materials on file with the division commissioner. If

S-5178

-1-

S-5178

Page 2

1 an annual filing is made after the first of August and
2 sales have occurred during the period when the
3 provider was in noncompliance with this section, the
4 division commissioner shall assess an additional
5 filing fee that is two times the amount normally
6 required for an annual filing. A fee shall not be
7 charged for interim filings made to keep the materials
8 filed with the division current and accurate. The
9 annual filing shall be accompanied by a filing fee
10 determined by the commissioner which shall be
11 sufficient to defray the costs of administering this
12 chapter.

13 Sec. 5. Section 321I.3, Code 1999, is amended by
14 adding the following new subsection:

15 NEW SUBSECTION. 3. a. A motor vehicle service
16 contract provider shall promptly file the following
17 information with the insurance commissioner:

18 (1) A change in the name or ownership of the
19 provider.

20 (2) The termination of the provider's business.

21 b. The provider is not required to submit a fee as
22 part of this filing.

23 Sec. 6. Section 321I.10, Code 1999, is amended to
24 read as follows:

25 321I.10 MISREPRESENTATIONS OF STATE APPROVAL.

26 ~~It is unlawful for a~~ A motor vehicle service
27 contract provider ~~to~~ shall not represent or imply in
28 any manner that the provider has been sponsored,
29 recommended, or approved or that the provider's
30 abilities or qualifications have in any respect been
31 passed upon by the ~~securities-bureau, the insurance~~
32 ~~division, or the~~ state of Iowa, including the
33 commissioner, the insurance division, or the
34 division's securities bureau.

35 Sec. 7. Section 321I.11, Code 1999, is amended by
36 adding the following new subsection:

37 NEW SUBSECTION. 5A. A motor vehicle service
38 contract provider shall not repair a motor vehicle
39 covered by a motor vehicle service contract with any
40 of the following:

41 a. Used parts, unless the provider receives prior
42 written authorization by the vehicle owner.

43 b. Rebuilt parts, unless the parts are rebuilt
44 according to national standards recognized by the
45 insurance division.

46 Sec. 8. Section 321I.12, subsection 1, unnumbered
47 paragraph 1, Code 1999, is amended to read as follows:

48 A motor vehicle service contract provider shall
49 keep accurate ~~accounts, books, and~~ records concerning
50 transactions regulated under this chapter.

S-5178

-2-

S-5178

Page 3

1 Sec. 9. Section 321I.12, subsection 1, paragraph
2 a, unnumbered paragraph 1, Code 1999, is amended to
3 read as follows:

4 A motor vehicle service contract provider's
5 ~~accounts, books, and~~ records shall include all of the
6 following:

7 Sec. 10. Section 321I.12, subsection 1, paragraphs
8 b and c, Code 1999, are amended to read as follows:

9 b. A motor vehicle service contract provider shall
10 retain all required ~~accounts, books, and~~ records
11 pertaining to a service contract holder for at least
12 two years after the specified period of coverage has
13 expired. A provider discontinuing business in this
14 state shall maintain its records until the provider
15 furnishes the commissioner satisfactory proof that the
16 provider has discharged all obligations to contract
17 holders in this state.

18 c. Motor vehicle service contract providers shall
19 make all ~~accounts, books, and~~ records concerning
20 transactions regulated under the chapter available to
21 the commissioner for the purpose of examination.

22 Sec. 11. Section 321I.14, subsections 1, 2, and 4,
23 Code 1999, are amended to read as follows:

24 1. ~~The administrator of this chapter~~ commissioner
25 may take actions which are necessary or appropriate
26 for the protection of service contract holders or to
27 administer for the effective administration of this
28 chapter. The administrator commissioner may make
29 private and public investigations and examinations as
30 the administrator commissioner deems necessary to
31 determine whether any person has violated or is about
32 to violate this chapter or a rule or order adopted or
33 issued pursuant to this chapter.

34 2. ~~For the purpose of~~ In an investigation or
35 proceeding under this chapter, the administrator
36 commissioner or any officer designated by the
37 administrator commissioner may administer oaths and
38 affirmations, subpoena witnesses and compel their
39 attendance, take evidence, and require the production
40 of ~~books, papers, correspondence, memoranda,~~
41 ~~agreements, or other documents or~~ records which the
42 administrator commissioner deems relevant or material
43 to an inquiry, all of which may be enforced in
44 accordance with chapter 17A.

45 4. ~~If an investigation provides reasonable~~
46 evidence Upon the commissioner's determination that a
47 person violated provider has engaged, is engaging, or
48 is about to engage in any act or practice constituting
49 a violation of this chapter or a rule adopted pursuant
50 to this chapter, the commissioner may issue an a

S-5178

-3-

S-5178

Page 4

1 summary order directed-at directing the person to
2 cease and desist from engaging in the act or practice
3 resulting in the violation or to take other
4 affirmative action as in the judgment of the
5 commissioner is necessary to comply with the
6 requirements of this chapter.

7 a. If a hearing is not timely requested, the
8 summary order becomes final by operation of law. The
9 order shall remain effective from the date of issuance
10 until the date the order becomes final by operation of
11 law or is overturned by a presiding officer or court
12 following a request for hearing. A person who has
13 been issued a summary order under this subsection may
14 contest the order by filing a request for a contested
15 case proceeding as provided in chapter 17A and in
16 accordance with rules adopted by the commissioner.
17 However, the person shall have at least thirty days
18 from the date that the order is issued in order to
19 file the request. Section 17A.18A is inapplicable to
20 a summary order issued under this subsection.

21 b. A person violating a summary order issued under
22 this subsection shall be deemed in contempt of that
23 order. The commissioner may petition the district
24 court to enforce the order as certified by the
25 commissioner. The district court shall adjudge the
26 person in contempt of the order if the court finds
27 after hearing that the person is not in compliance
28 with the order. The court shall assess a civil
29 penalty against the person in an amount not less than
30 three thousand dollars but not greater than ten
31 thousand dollars per violation, and may issue further
32 orders as it deems appropriate.

33 Sec. 12. Section 321I.15, Code 1999, is amended to
34 read as follows:

35 321I.15 AUDITS.

36 The commissioner may examine or cause to be
37 examined the ~~books, papers, records, memoranda, or~~
38 ~~documents~~ of a motor vehicle service contract provider
39 for the purpose of verifying compliance with this
40 chapter. The commissioner may require, by a subpoena,
41 the attendance of the provider, or the provider's
42 representative, and any other witness whom the
43 commissioner deems necessary or expedient, and the
44 production of ~~books, papers, records, memoranda, or~~
45 ~~documents~~ relating in any manner to compliance with
46 this chapter if a provider or witness fails or refuses
47 to produce the documents for examination when
48 requested by the commissioner.

49 Sec. 13. Section 321I.16, Code 1999, is amended to
50 read as follows:

S-5178

-4-

S-5178

Page 5

1 321I.16 VIOLATIONS -- PENALTIES.

2 1. a. Except as provided in paragraph "b", all of
3 the following shall apply:

4 (1) A violation of this chapter or a rule adopted
5 pursuant to this chapter is a violation of section
6 714.16, subsection 2, paragraph "a". The remedies and
7 penalties provided by section 714.16, including but
8 not limited to injunctive relief and civil penalties,
9 apply to violations of this chapter.

10 (2) A person who willfully and knowingly violates
11 this chapter or a rule adopted pursuant to this
12 chapter is, upon conviction, guilty of a class "D"
13 felony.

14 b. A motor vehicle service contract provider who
15 fails to file documents and information with the
16 commissioner as required pursuant to section 321I.3
17 may be subject to a civil penalty. The amount of the
18 civil penalty shall not be more than four hundred
19 dollars plus two dollars for each motor vehicle
20 service contract that the person executed prior to
21 satisfying the filing requirement. However, a person
22 who fails to file information regarding a change in
23 the provider's name or the termination of the
24 provider's business as required pursuant to section
25 321I.3 is subject to a civil penalty of not more than
26 five hundred dollars.

27 2. ~~If the commissioner believes that grounds exist~~
28 ~~for the criminal prosecution of persons-subject-to~~
29 ~~this-chapter a motor vehicle service contract provider~~
30 ~~for violations-of violating this chapter or any other~~
31 ~~law of this state, the commissioner may forward to the~~
32 ~~attorney general or the county attorney the grounds~~
33 ~~for the belief, including all evidence in the~~
34 ~~commissioner's possession,-in-order-that-the-attorney~~
35 ~~general-or-the-county-attorney-may-proceed-with-the~~
36 ~~matter-as for action deemed appropriate by the~~
37 ~~attorney general or county attorney.~~ At the request
38 of the attorney general, the county attorney shall
39 appear and prosecute the action when brought in the
40 county served by the county attorney.

41 ~~3.--A-person-who-willfully-and-knowingly-violates~~
42 ~~this-chapter-or-a-rule-adopted-pursuant-to-this~~
43 ~~chapter-is,-upon-conviction,-guilty-of-a-class-"D"~~
44 ~~felony.~~

45 Sec. 14. Section 321I.9, Code 1999, is repealed.

46 Sec. 15. DIRECTIONS TO THE CODE EDITOR. The Code
47 editor is directed to transfer chapter 321I to or near
48 chapter 523J, and correct internal references as
49 necessary.

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DIVISION II

S-5178

-5-

S-5178

Page 6

1 IOWA UNIFORM SECURITIES ACT

2 Sec. 16. Section 502.304, subsection 1, unnumbered
3 paragraph 1, Code Supplement 1999, is amended to read
4 as follows:

5 The administrator may by order deny, suspend, or
6 revoke a registration or may censure, impose a civil
7 penalty upon, or bar an applicant, registrant, branch
8 manager, assistant branch manager, supervisor, or any
9 officer, director, partner, or person occupying a
10 similar status or performing similar functions for a
11 registrant. A person barred under this subsection may
12 be prohibited by the administrator from employment
13 with a registered broker-dealer or investment adviser.
14 The administrator may restrict the person barred from
15 engaging in any activity for which registration is
16 required. Any action by the administrator under this
17 subsection may be taken if the order is found to be in
18 the public interest and it is found that the applicant
19 or registrant or, in the case of a broker-dealer or
20 investment adviser, a partner, an officer, or a
21 director, a person occupying a similar status or
22 performing similar functions, or a person directly or
23 indirectly controlling the broker-dealer or investment
24 adviser, or a branch manager, assistant branch
25 manager, or supervisor:

26 Sec. 17. Section 502.604, subsection 1, Code
27 Supplement 1999, is amended to read as follows:

28 1. Issue an a summary order directed at the person
29 requiring the person to cease and desist from engaging
30 in such act or practice or to take other affirmative
31 action as in the judgment of the administrator is
32 necessary to comply with the requirements of this
33 chapter.

34 a. If a hearing is not timely requested, the
35 summary order becomes final by operation of law. The
36 order shall remain effective from the date of issuance
37 until the date the order becomes final by operation of
38 law or is overturned by a presiding officer or court
39 following a request for hearing. A person who has
40 been issued a summary order under this subsection may
41 contest the order by filing a request for a contested
42 case proceeding as provided in chapter 17A and in
43 accordance with rules adopted by the administrator.
44 However, the person shall have at least thirty days
45 from the date that the order is issued in order to
46 file the request. Section 17A.18A is inapplicable to
47 a summary order issued under this subsection.

48 b. A person violating a summary order issued under
49 this subsection shall be deemed in contempt of that
50 order. The administrator may petition the district

S-5178

S-5178

Page 7

1 court to enforce the order as certified by the
2 administrator. The district court shall adjudge the
3 person in contempt of the order, if the court finds
4 after hearing that the person is not in compliance
5 with the order. The court shall assess a civil
6 penalty against the person in an amount not less than
7 three thousand dollars but not greater than ten
8 thousand dollars per violation, and may issue further
9 orders as it deems appropriate.

10 Sec. 18. Section 502.605, subsection 1, Code 1999,
11 is amended to read as follows:

12 1. a. Any Except as provided in paragraph "b", a
13 person who willfully and knowingly violates any
14 provision of this chapter, or any rule or order under
15 this chapter, shall-be is guilty of a class "D"
16 felony.

17 b. A person who willfully and knowingly violates
18 section 502.401, 502.402, or 502.403, or section
19 502.408, subsection 1 or 2, resulting in a loss of
20 more than ten thousand dollars is guilty of a class
21 "C" felony.

22 Sec. 19. Section 502.609, subsection 1, unnumbered
23 paragraph 1, Code 1999, is amended to read as follows:

24 Every applicant for registration under this
25 chapter, and every issuer which proposes to offer a
26 security in this state, unless exempt under section
27 502.202 or 502.203 and the administrator by rule or
28 order waives the filing, shall file with the
29 administrator, in such form as the administrator by
30 rule prescribes, an irrevocable consent appointing the
31 administrator or the administrator's successor in
32 office to be such person's attorney to receive service
33 of any lawful process in any noncriminal suit, action
34 or proceeding against such person or the successor,
35 executor or administrator of such person which arises
36 under this chapter or any rule or order hereunder
37 after the consent has been filed, with the same
38 validity as if served personally on the person filing
39 the consent. The consent need not be filed by a
40 person who has filed a consent in connection with a
41 previous registration or notice filing which is then
42 in effect. Service may be made by leaving a copy of
43 the process in the office of the administrator, but it
44 is not effective unless the plaintiff, including the
45 administrator when acting as such, does the following:

46 DIVISION III

47 BUSINESS OPPORTUNITY PROMOTIONS

48 Sec. 20. Section 523B.1, Code Supplement 1999, is
49 amended by adding the following new subsection:

50 NEW SUBSECTION. 10A. "Record" means the same as

S-5178

-7-

S-5178

Page 8

1 defined in section 321I.1.

2 Sec. 21. Section 523B.2, subsection 2, paragraph
3 b, subparagraph (2), Code Supplement 1999, is amended
4 to read as follows:

5 (2) A disclosure document prepared pursuant to the
6 federal trade commission rule entitled "Disclosure
7 relating to disclosure requirements and prohibitions
8 concerning franchising and business opportunity
9 ventures", as adopted by rule of the administrator in
10 accordance with 16 C.F.R. § 436 (1979). ~~The~~
11 ~~administrator may by rule adopt any amendment to the~~
12 ~~disclosure document prepared pursuant to 16 C.F.R. §~~
13 ~~436 (1979) that has been adopted by the federal trade~~
14 ~~commission:~~

15 Sec. 22. Section 523B.2, subsection 2, Code
16 Supplement 1999, is amended by adding the following
17 new paragraph:

18 NEW PARAGRAPH. c. The seller shall disclose to
19 the administrator in the disclosure document or
20 otherwise any sales or offers made in this state prior
21 to registration.

22 Sec. 23. Section 523B.2, subsection 4, Code
23 Supplement 1999, is amended to read as follows:

24 4. EFFECTIVE DATE. A registration automatically
25 becomes effective upon the expiration of the fifteenth
26 thirtieth full business day after the complete filing
27 is received by the administrator, provided that no an
28 order has not been issued or a proceeding is not
29 pending under subsection 10. The administrator may by
30 order waive or reduce the time period prior to
31 effectiveness, provided that a complete filing has
32 been made. The administrator may by order defer the
33 effective date until the expiration of the fifteenth
34 thirtieth full business day after the filing of an
35 amendment with the administrator.

36 Sec. 24. Section 523B.2, subsection 9, paragraph
37 c, Code Supplement 1999, is amended by adding the
38 following new subparagraph:

39 NEW SUBPARAGRAPH. (8) The rights and
40 responsibilities of the parties regarding the
41 marketing of a business opportunity, including but not
42 limited to all of the following:

43 (a) Whether the seller assigns the purchaser a
44 territory in which to sell a business opportunity.

45 (b) Whether the seller assists the purchaser in
46 finding locations in which to sell a business
47 opportunity.

48 (c) Whether the purchaser is solely responsible
49 for marketing a business opportunity.

50 Sec. 25. Section 523B.8, subsection 1, Code 1999,

S-5178

-8-

S-5178

Page 9

1 is amended to read as follows:

2 1. ~~a. If it appears to the administrator~~ Upon the
3 administrator's determination that a person has
4 engaged, is engaging, or is about to engage in any act
5 or practice constituting a violation of this chapter
6 or a rule or order adopted or issued under this
7 chapter, the administrator may issue ~~an~~ a summary
8 order directed at directing the person requiring the
9 person to cease and desist from engaging in the act or
10 practice or to take other affirmative action as in the
11 judgment of the administrator is necessary to comply
12 with the requirements of this chapter.

13 b. The If a hearing is not timely requested, the
14 summary order becomes final by operation of law. The
15 order shall remain effective from the date of issuance
16 until the date the order becomes final by operation of
17 law or is overturned by a presiding officer or court
18 following a request for hearing. A person named in
19 the order may, within fourteen days of the date of the
20 order, file a written who has been issued a summary
21 order under this subsection may contest it by filing a
22 request for a hearing. The hearing shall be held in
23 accordance with contested case proceeding as provided
24 in chapter 17A and in accordance with the rules
25 adopted by the administrator. However, the person
26 shall have at least thirty days from the date that the
27 order is issued in order to file the request. Section
28 17A.18A is inapplicable to a summary order issued
29 under this subsection.

30 c. A person violating a summary order issued under
31 this subsection shall be deemed in contempt of that
32 order. The administrator may petition the district
33 court to enforce the order as certified by the
34 administrator. The district court shall adjudge the
35 person in contempt of the order if the court finds
36 after hearing that the person is not in compliance
37 with the order. The court shall assess a civil
38 penalty against the person in an amount not less than
39 three thousand dollars but not greater than ten
40 thousand dollars per violation, and may issue further
41 orders as it deems appropriate.

42 Any A consent agreement between the administrator
43 and the seller may be filed in the miscellaneous
44 docket of the clerk of the district court.

45 Sec. 26. Section 523B.8, subsection 2, paragraph
46 b, Code 1999, is amended to read as follows:

47 b. For the purpose of an investigation or
48 proceeding under this chapter, the administrator or an
49 officer designated by the administrator may administer
50 oaths and affirmations, subpoena witnesses, compel the

S-5178

-9-

S-5178

Page 10

1 attendance of witnesses, take evidence and require the
2 production of ~~books, papers, correspondence,~~
3 ~~memoranda, agreements, or other documents or~~ records
4 which the administrator deems relevant or material to
5 the inquiry.

6 DIVISION IV

7 RESIDENTIAL SERVICE CONTRACTS

8 Sec. 27. Section 22.7, Code Supplement 1999, is
9 amended by adding the following new subsection:

10 NEW SUBSECTION. 39. Information obtained by the
11 commissioner of insurance in the course of an
12 investigation as provided in section 502.603, 523B.8,
13 or 523C.23.

14 Sec. 28. Section 523C.1, Code 1999, is amended by
15 adding the following new subsection:

16 NEW SUBSECTION. 6A. "Record" means the same as
17 defined in section 321I.1.

18 Sec. 29. Section 523C.7, subsection 4, Code 1999,
19 is amended to read as follows:

20 4. To the extent necessary to administer the
21 provisions of this chapter, the commissioner may,
22 after notice and hearing, institute a residential
23 service contract form approval or form review fee ~~as~~
24 ~~the commissioner shall by.~~ If the commissioner
25 establishes a fee, the amount of the fee shall be set
26 by rule set adopted pursuant to chapter 17A. The fee,
27 if imposed, may be by dollar amount or based upon a
28 percentage of the sale value of the contract.
29 However, the fee shall not exceed fifty thousand
30 dollars.

31 Sec. 30. Section 523C.19, Code 1999, is amended to
32 read as follows:

33 523C.19 CEASE AND DESIST ORDERS.

34 1. If an investigation provides reasonable
35 evidence upon the commissioner's determination that a
36 person violated any provision has engaged, is
37 engaging, or is about to engage in any act or practice
38 constituting a violation of this chapter or any rule
39 adopted pursuant to this chapter, the commissioner may
40 issue an order directed at directing the person to
41 cease and desist from engaging in the act or practice
42 resulting in the violation or to take other
43 affirmative action as in the judgment of the
44 commissioner is necessary to comply with the
45 requirements of this chapter.

46 2. If a hearing is not timely requested, the
47 summary order becomes final by operation of law. The
48 order shall remain effective from the date of issuance
49 until the date the order becomes final by operation of
50 law or is overturned by a presiding officer or court

S-5178

Page 11

1 following a request for hearing. A person who has
2 been issued a summary order under this section may
3 contest it by filing a request for a contested case
4 proceeding as provided in chapter 17A and in
5 accordance with rules adopted by the commissioner.
6 However, the person shall have at least thirty days
7 from the date that the order is issued in order to
8 file the request. Section 17A.18A is inapplicable to
9 a summary order issued under this subsection.

10 3. A person violating a summary order issued under
11 this subsection shall be deemed in contempt of that
12 order. The commissioner may petition the district
13 court to enforce the order as certified by the
14 commissioner. The district court shall adjudge the
15 person in contempt of the order if the court finds
16 after hearing that the person is not in compliance
17 with the order. The court shall assess a civil
18 penalty against the person in an amount not less than
19 three thousand dollars but not greater than ten
20 thousand dollars per violation, and may issue further
21 orders as it deems appropriate.

22 Sec. 31. NEW SECTION. 523C.23 INVESTIGATIONS AND
23 SUBPOENAS.

24 1. a. In enforcing this chapter, the commissioner
25 may conduct a public or private investigation in order
26 to do any of the following:

27 (1) Determine whether a person has violated or is
28 about to violate a provision of this chapter or a rule
29 or order under this chapter.

30 (2) Aid in the enforcement of this chapter or in
31 the prescribing of rules and forms under this chapter.

32 b. In carrying out this subsection, the
33 commissioner may do all of the following:

34 (1) Conduct the investigation within or outside of
35 this state.

36 (2) Require or allow a person to file a statement
37 in writing regarding the facts or circumstances
38 concerning a matter to be investigated. The
39 commissioner may require that the statement be made
40 under oath.

41 (3) Apply to the district court for the issuance
42 of an order requiring a person's appearance before the
43 commissioner or the attorney general. The person may
44 also be required to produce documentary evidence
45 germane to the subject of the investigation. The
46 failure to obey an order under this subsection
47 constitutes contempt of court.

48 c. Information obtained in the course of an
49 investigation is confidential as provided in section
50 22.7. However, upon a determination that disclosure

S-5178

-11-

S-5178

Page 12

1 of the information is necessary or appropriate in the
2 public interest or for the protection of consumers,
3 the commissioner may do any of the following:

4 (1) Share information obtained during the course
5 of the investigation with another regulatory authority
6 or government agency.

7 (2) Publish information obtained during the course
8 of the investigation which concerns a violation of
9 this chapter or a rule or order under this chapter.

10 2. Except as provided in section 523C.19, a
11 proceeding instituted under this chapter shall be
12 conducted pursuant to chapter 17A and rules adopted by
13 the commissioner pursuant to chapter 17A.

14 3. In an investigation or proceeding conducted
15 under this chapter, the commissioner or any designee
16 of the commissioner may administer oaths and
17 affirmations, subpoena witnesses, compel their
18 attendance, take evidence, and require the production
19 of any records which the commissioner deems relevant
20 or material to the inquiry.

21 4. A person is not excused from attending and
22 testifying or from producing a document or record
23 before the commissioner or in obedience to a subpoena
24 of the commissioner or an officer designated by the
25 commissioner, or in a proceeding instituted by the
26 commissioner, on the grounds that the testimony or
27 evidence, documentary or otherwise, required of the
28 person may tend to incriminate or subject the person
29 to a penalty or forfeiture. However, a person shall
30 not be prosecuted or subjected to any penalty or
31 forfeiture due to a transaction or matter about which
32 the person is compelled, after claiming privilege
33 against self-incrimination, to testify or produce
34 evidence, documentary or otherwise. The person
35 testifying, however, is not exempt from prosecution
36 and punishment for perjury or contempt committed while
37 testifying.

38 DIVISION V

39 RETIREMENT CARE CONTRACTS

40 Sec. 32. Section 523D.13, Code 1999, is amended to
41 read as follows:

42 523D.13 COMPLIANCE ORDERS.

43 1. Upon the commissioner's determination that a
44 provider has violated a provision has engaged, is
45 engaging, or is about to engage in any act or practice
46 constituting a violation of this chapter or a rule
47 adopted pursuant to this chapter, the commissioner may
48 issue an a summary order requiring a directing the
49 provider to cease and desist from an-unlawful engaging
50 in the act or practice resulting in the violation or

S-5178

-12-

S-5178

Page 13

1 to take other affirmative action as in the judgment of
2 the commissioner is necessary to comply with the
3 requirements of this chapter.

4 ~~2. The person named in the order may, within~~
5 ~~fourteen days after receipt of the order, file a~~
6 ~~written request for a hearing. The hearing shall be~~
7 ~~held in accordance with chapter 17A. If a hearing is~~
8 ~~not requested, the order shall become permanent. If a~~
9 ~~hearing is not timely requested, the summary order~~
10 becomes final by operation of law. The order shall
11 remain effective from the date of issuance until the
12 date the order becomes final by operation of law or is
13 overturned by a presiding officer or court following a
14 request for hearing. A person who has been issued a
15 summary order under this section may contest it by
16 filing a request for a contested case proceeding as
17 provided in chapter 17A and in accordance with rules
18 adopted by the commissioner. However, the person
19 shall have at least thirty days from the date that the
20 order is issued in order to file the request. Section
21 17A.18A is inapplicable to a summary order issued
22 under this section.

23 3. A person violating a summary order issued under
24 this section shall be deemed in contempt of that
25 order. The commissioner may petition the district
26 court to enforce the order as certified by the
27 commissioner. The district court shall adjudge the
28 person in contempt of the order if the court finds
29 after hearing that the person is not in compliance
30 with the order. The court shall assess a civil
31 penalty against the person in an amount not less than
32 three thousand dollars but not greater than ten
33 thousand dollars per violation, and may issue further
34 orders as it deems appropriate.

DIVISION VI

PROBATE TRANSFER ON DEATH

37 Sec. 33. Section 633.801, subsection 6, Code 1999,
38 is amended to read as follows:

39 6. "Security" means a security as defined in
40 section 502.102. For purposes of this chapter,
41 "security" includes, but is not limited to, a
42 certificated security, an uncertificated security, and
43 a security account.

DIVISION VII

VIATICAL SETTLEMENT CONTRACTS".

46 2. Title page, by striking lines 1 and 2 and
47 inserting the following:

48 "An Act relating to entities and subject matter
49 under the regulatory authority of the insurance
50 division, including motor vehicle service contracts,

S-5178

-13-

S-5178

Page 14

- 1 securities, business opportunities, residential
- 2 service contracts, retirement care contracts, transfer
- 3 on death probate provisions, viatical settlement
- 4 contracts; and establishing penalties and making
- 5 penalties applicable."
- 6 3. By renumbering as necessary.

By MICHAEL E. GRONSTAL

S-5178 FILED MARCH 20, 2000

adopted
3-27-00

(p. 859)

HOUSE FILE 2317

S-5177

- 1 Amend House File 2317, as amended, passed, and
- 2 reprinted by the House, as follows:
- 3 1. Page 2, line 20, by inserting after the word
- 4 "who" the following: "owns a life insurance policy or
- 5 certificate which covers the life of an individual
- 6 who".

By MICHAEL E. GRONSTAL

S-5177 FILED MARCH 20, 2000

adopted
3-27-00

(p. 860)

SENATE AMENDMENT TO HOUSE FILE 2317

H-8579

1 Amend House File 2317, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 1, by inserting before line 1 the
4 following:

"DIVISION I

MOTOR VEHICLE SERVICE CONTRACTS

7 Section 1. Section 321I.1, subsection 1, Code
8 1999, is amended to read as follows:

9 1. "Commissioner" means the commissioner of
10 insurance as provided in section 505.1 or the deputy
11 administrator appointed under section 502.601.

12 Sec. 2. Section 321I.1, Code 1999, is amended by
13 adding the following new subsection:

14 NEW SUBSECTION. 6A. "Record" means information
15 stored or preserved in any medium, including in an
16 electronic or paper format. A record includes but is
17 not limited to documents, books, publications,
18 accounts, correspondence, memoranda, agreements,
19 computer files, film, microfilm, photographs, and
20 audio or visual tapes.

21 Sec. 3. Section 321I.2, subsection 2, Code 1999,
22 is amended to read as follows:.

23 2. The issuer of a reimbursement insurance policy
24 shall not cancel a reimbursement insurance policy
25 unless a written notice has been received by the
26 insurance-division commissioner and by each applicable
27 provider, including automobile dealers and third-party
28 administrators, when. The notice shall fix the date
29 of cancellation at a date no earlier than ten days
30 after receipt of the notice by the insurance-division
31 commissioner and by the applicable provider. The
32 notice may be made in person or by mail and a post
33 office department receipt of certified or registered
34 mailing shall be deemed proof of receipt of the
35 notice.

36 Sec. 4. Section 321I.3, subsection 2, Code 1999,
37 is amended to read as follows:

38 2. In addition to any other required filings, a
39 true-and-correct an accurate copy of the service
40 contract and the provider's reimbursement insurance
41 policy, the consent to service of process on the
42 commissioner, and such other information as the
43 commissioner requires, shall be filed annually with
44 the commissioner no later than the first day of
45 August. If the first day of August falls on a weekend
46 or a holiday, the date for filing shall be the next
47 business day. In addition to the annual filing, the
48 provider shall promptly file copies of any amended
49 documents if material amendments have been made in the
50 materials on file with the division commissioner. If

H-8579

-1-

H-8579

Page 2

1 an annual filing is made after the first of August and
2 sales have occurred during the period when the
3 provider was in noncompliance with this section, the
4 division commissioner shall assess an additional
5 filing fee that is two times the amount normally
6 required for an annual filing. A fee shall not be
7 charged for interim filings made to keep the materials
8 filed with the division current and accurate. The
9 annual filing shall be accompanied by a filing fee
10 determined by the commissioner which shall be
11 sufficient to defray the costs of administering this
12 chapter.

13 Sec. 5. Section 321I.3, Code 1999, is amended by
14 adding the following new subsection:

15 NEW SUBSECTION. 3. a. A motor vehicle service
16 contract provider shall promptly file the following
17 information with the insurance commissioner:

18 (1) A change in the name or ownership of the
19 provider.

20 (2) The termination of the provider's business.

21 b. The provider is not required to submit a fee as
22 part of this filing.

23 Sec. 6. Section 321I.10, Code 1999, is amended to
24 read as follows:

25 321I.10 MISREPRESENTATIONS OF STATE APPROVAL.

26 ~~It is unlawful for a~~ A motor vehicle service
27 contract provider ~~to shall not~~ represent or imply in
28 any manner that the provider has been sponsored,
29 recommended, or approved or that the provider's
30 abilities or qualifications have in any respect been
31 passed upon by the ~~securities-bureau; the insurance~~
32 ~~division; or the~~ state of Iowa, including the
33 ~~commissioner, the insurance division, or the~~
34 ~~division's securities bureau.~~

35 Sec. 7. Section 321I.11, Code 1999, is amended by
36 adding the following new subsection:

37 NEW SUBSECTION. 5A. A motor vehicle service
38 contract provider shall not repair a motor vehicle
39 covered by a motor vehicle service contract with any
40 of the following:

41 a. Used parts, unless the provider receives prior
42 written authorization by the vehicle owner.

43 b. Rebuilt parts, unless the parts are rebuilt
44 according to national standards recognized by the
45 insurance division.

46 Sec. 8. Section 321I.12, subsection 1, unnumbered
47 paragraph 1, Code 1999, is amended to read as follows:

48 A motor vehicle service contract provider shall
49 keep accurate ~~accounts; books; and~~ records concerning
50 transactions regulated under this chapter.

H-8579

-2-

H-8579

Page 3

1 Sec. 9. Section 321I.13, subsection 1, paragraph
2 a, unnumbered paragraph 1, Code 1999, is amended to
3 read as follows:

4 A motor vehicle service contract provider's
5 ~~accounts, books, and~~ records shall include all of the
6 following:

7 Sec. 10. Section 321I.12, subsection 1, paragraphs
8 b and c, Code 1999, are amended to read as follows:

9 b. A motor vehicle service contract provider shall
10 retain all required ~~accounts, books, and~~ records
11 pertaining to a service contract holder for at least
12 two years after the specified period of coverage has
13 expired. A provider discontinuing business in this
14 state shall maintain its records until the provider
15 furnishes the commissioner satisfactory proof that the
16 provider has discharged all obligations to contract
17 holders in this state.

18 c. Motor vehicle service contract providers shall
19 make all ~~accounts, books, and~~ records concerning
20 transactions regulated under the chapter available to
21 the commissioner for the purpose of examination.

22 Sec. 11. Section 321I.14, subsections 1, 2, and 4,
23 Code 1999, are amended to read as follows:

24 1. ~~The administrator of this chapter~~ commissioner
25 may take actions which are necessary or appropriate
26 for the protection of service contract holders or to
27 administer for the effective administration of this
28 chapter. The administrator commissioner may make
29 private and public investigations and examinations as
30 the administrator commissioner deems necessary to
31 determine whether any person has violated or is about
32 to violate this chapter or a rule or order adopted or
33 issued pursuant to this chapter.

34 2. ~~For the purpose of~~ In an investigation or
35 proceeding under this chapter, the administrator
36 commissioner or any officer designated by the
37 administrator commissioner may administer oaths and
38 affirmations, subpoena witnesses and compel their
39 attendance, take evidence, and require the production
40 of books, papers, correspondence, memoranda,
41 agreements, or other documents or records which the
42 administrator commissioner deems relevant or material
43 to an inquiry, all of which may be enforced in
44 accordance with chapter 17A.

45 4. ~~If an investigation provides reasonable~~
46 evidence Upon the commissioner's determination that a
47 person violated provider has engaged, is engaging, or
48 is about to engage in any act or practice constituting
49 a violation of this chapter or a rule adopted pursuant
50 to this chapter, the commissioner may issue an a

H-8579

-3-

H-8579

Page 4

1 summary order directed-at directing the person to
2 cease and desist from engaging in the act or practice
3 resulting in the violation or to take other
4 affirmative action as in the judgment of the
5 commissioner is necessary to comply with the
6 requirements of this chapter.

7 a. If a hearing is not timely requested, the
8 summary order becomes final by operation of law. The
9 order shall remain effective from the date of issuance
10 until the date the order becomes final by operation of
11 law or is overturned by a presiding officer or court
12 following a request for hearing. A person who has
13 been issued a summary order under this subsection may
14 contest the order by filing a request for a contested
15 case proceeding as provided in chapter 17A and in
16 accordance with rules adopted by the commissioner.
17 However, the person shall have at least thirty days
18 from the date that the order is issued in order to
19 file the request. Section 17A.18A is inapplicable to
20 a summary order issued under this subsection.

21 b. A person violating a summary order issued under
22 this subsection shall be deemed in contempt of that
23 order. The commissioner may petition the district
24 court to enforce the order as certified by the
25 commissioner. The district court shall adjudge the
26 person in contempt of the order if the court finds
27 after hearing that the person is not in compliance
28 with the order. The court shall assess a civil
29 penalty against the person in an amount not less than
30 three thousand dollars but not greater than ten
31 thousand dollars per violation, and may issue further
32 orders as it deems appropriate.

33 Sec. 12. Section 321I.15, Code 1999, is amended to
34 read as follows:

35 321I.15 AUDITS.

36 The commissioner may examine or cause to be
37 examined the books, papers, records, memoranda, or
38 documents of a motor vehicle service contract provider
39 for the purpose of verifying compliance with this
40 chapter. The commissioner may require, by a subpoena,
41 the attendance of the provider, or the provider's
42 representative, and any other witness whom the
43 commissioner deems necessary or expedient, and the
44 production of books, papers, records, memoranda, or
45 documents relating in any manner to compliance with
46 this chapter if a provider or witness fails or refuses
47 to produce the documents for examination when
48 requested by the commissioner.

49 Sec. 13. Section 321I.16, Code 1999, is amended to
50 read as follows:

H-8579

-4-

1 321I.16 VIOLATIONS -- PENALTIES.

2 1. a. Except as provided in paragraph "b", all of
3 the following shall apply:

4 (1) A violation of this chapter or a rule adopted
5 pursuant to this chapter is a violation of section
6 714.16, subsection 2, paragraph "a". The remedies and
7 penalties provided by section 714.16, including but
8 not limited to injunctive relief and civil penalties,
9 apply to violations of this chapter.

10 (2) A person who willfully and knowingly violates
11 this chapter or a rule adopted pursuant to this
12 chapter is, upon conviction, guilty of a class "D"
13 felony.

14 b. A motor vehicle service contract provider who
15 fails to file documents and information with the
16 commissioner as required pursuant to section 321I.3
17 may be subject to a civil penalty. The amount of the
18 civil penalty shall not be more than four hundred
19 dollars plus two dollars for each motor vehicle
20 service contract that the person executed prior to
21 satisfying the filing requirement. However, a person
22 who fails to file information regarding a change in
23 the provider's name or the termination of the
24 provider's business as required pursuant to section
25 321I.3 is subject to a civil penalty of not more than
26 five hundred dollars.

27 2. If the commissioner believes that grounds exist
28 for the criminal prosecution of persons-subject-to
29 this-chapter a motor vehicle service contract provider
30 for violations-of violating this chapter or any other
31 law of this state, the commissioner may forward to the
32 attorney general or the county attorney the grounds
33 for the belief, including all evidence in the
34 commissioner's possession,-in-order-that-the-attorney
35 generat-or-the-county-attorney-may-preceed-with-the
36 matter-as for action deemed appropriate by the
37 attorney general or county attorney. At the request
38 of the attorney general, the county attorney shall
39 appear and prosecute the action when brought in the
40 county served by the county attorney.

41 ~~3.--A-person-who-willfully-and-knowingly-violates~~
42 ~~this-chapter-or-a-rule-adopted-pursuant-to-this~~
43 ~~chapter-is,-upon-conviction,-guilty-of-a-class-"D"~~
44 ~~felony-~~

45 Sec. 14. Section 321I.9, Code 1999, is repealed.

46 Sec. 15. DIRECTIONS TO THE CODE EDITOR. The Code
47 editor is directed to transfer chapter 321I to or near
48 chapter 523J, and correct internal references as
49 necessary.

H-8579

Page 6

IOWA UNIFORM SECURITIES ACT

1
2 Sec. 16. Section 502.304, subsection 1, unnumbered
3 paragraph 1, Code Supplement 1999, is amended to read
4 as follows:

5 The administrator may by order deny, suspend, or
6 revoke a registration or may censure, impose a civil
7 penalty upon, or bar an applicant, registrant, branch
8 manager, assistant branch manager, supervisor, or any
9 officer, director, partner, or person occupying a
10 similar status or performing similar functions for a
11 registrant. A person barred under this subsection may
12 be prohibited by the administrator from employment
13 with a registered broker-dealer or investment adviser.
14 The administrator may restrict the person barred from
15 engaging in any activity for which registration is
16 required. Any action by the administrator under this
17 subsection may be taken if the order is found to be in
18 the public interest and it is found that the applicant
19 or registrant or, in the case of a broker-dealer or
20 investment adviser, a partner, an officer, or a
21 director, a person occupying a similar status or
22 performing similar functions, or a person directly or
23 indirectly controlling the broker-dealer or investment
24 adviser, or a branch manager, assistant branch
25 manager, or supervisor:

26 Sec. 17. Section 502.604, subsection 1, Code
27 Supplement 1999, is amended to read as follows:

28 1. Issue ~~an~~ a summary order directed at the person
29 requiring the person to cease and desist from engaging
30 in such act or practice or to take other affirmative
31 action as in the judgment of the administrator is
32 necessary to comply with the requirements of this
33 chapter.

34 a. If a hearing is not timely requested, the
35 summary order becomes final by operation of law. The
36 order shall remain effective from the date of issuance
37 until the date the order becomes final by operation of
38 law or is overturned by a presiding officer or court
39 following a request for hearing. A person who has
40 been issued a summary order under this subsection may
41 contest the order by filing a request for a contested
42 case proceeding as provided in chapter 17A and in
43 accordance with rules adopted by the administrator.
44 However, the person shall have at least thirty days
45 from the date that the order is issued in order to
46 file the request. Section 17A.18A is inapplicable to
47 a summary order issued under this subsection.

48 b. A person violating a summary order issued under
49 this subsection shall be deemed in contempt of that
50 order. The administrator may petition the district

H-8579

-6-

H-8579

Page 7

1 court to enforce the order as certified by the
2 administrator. The district court shall adjudge the
3 person in contempt of the order, if the court finds
4 after hearing that the person is not in compliance
5 with the order. The court shall assess a civil
6 penalty against the person in an amount not less than
7 three thousand dollars but not greater than ten
8 thousand dollars per violation, and may issue further
9 orders as it deems appropriate.

10 Sec. 18. Section 502.605, subsection 1, Code 1999,
11 is amended to read as follows:

12 1. a. Any Except as provided in paragraph "b", a
13 person who willfully and knowingly violates any
14 provision of this chapter, or any rule or order under
15 this chapter, shall-be is guilty of a class "D"
16 felony.

17 b. A person who willfully and knowingly violates
18 section 502.401, 502.402, or 502.403, or section
19 502.408, subsection 1 or 2, resulting in a loss of
20 more than ten thousand dollars is guilty of a class
21 "C" felony.

22 Sec. 19. Section 502.609, subsection 1, unnumbered
23 paragraph 1, Code 1999, is amended to read as follows:

24 Every applicant for registration under this
25 chapter, and every issuer which proposes to offer a
26 security in this state, unless exempt under section
27 502.202 or 502.203 and the administrator by rule or
28 order waives the filing, shall file with the
29 administrator, in such form as the administrator by
30 rule prescribes, an irrevocable consent appointing the
31 administrator or the administrator's successor in
32 office to be such person's attorney to receive service
33 of any lawful process in any noncriminal suit, action
34 or proceeding against such person or the successor,
35 executor or administrator of such person which arises
36 under this chapter or any rule or order hereunder
37 after the consent has been filed, with the same
38 validity as if served personally on the person filing
39 the consent. The consent need not be filed by a
40 person who has filed a consent in connection with a
41 previous registration or notice filing which is then
42 in effect. Service may be made by leaving a copy of
43 the process in the office of the administrator, but it
44 is not effective unless the plaintiff, including the
45 administrator when acting as such, does the following:

46 DIVISION III

47 BUSINESS OPPORTUNITY PROMOTIONS

48 Sec. 20. Section 523B.1, Code Supplement 1999, is
49 amended by adding the following new subsection:

50 NEW SUBSECTION. 10A. "Record" means the same as

H-8579

-7-

H-8579

Page 8

1 defined in section 321I.1.

2 Sec. 21. Section 523B.2, subsection 2, paragraph
3 b, subparagraph (2), Code Supplement 1999, is amended
4 to read as follows:

5 (2) A disclosure document prepared pursuant to the
6 federal trade commission rule entitled "Disclosure
7 relating to disclosure requirements and prohibitions
8 concerning franchising and business opportunity
9 ventures", as adopted by rule of the administrator in
10 accordance with 16 C.F.R. § 436 (1979). ~~The~~
11 ~~administrator may by rule adopt any amendment to the~~
12 ~~disclosure document prepared pursuant to 16 C.F.R. §~~
13 ~~436 (1979) that has been adopted by the federal trade~~
14 ~~commission.~~

15 Sec. 22. Section 523B.2, subsection 2, Code
16 Supplement 1999, is amended by adding the following
17 new paragraph:

18 NEW PARAGRAPH. c. The seller shall disclose to
19 the administrator in the disclosure document or
20 otherwise any sales or offers made in this state prior
21 to registration.

22 Sec. 23. Section 523B.2, subsection 4, Code
23 Supplement 1999, is amended to read as follows:

24 4. EFFECTIVE DATE. A registration automatically
25 becomes effective upon the expiration of the fifteenth
26 thirtieth full business day after the complete filing
27 is received by the administrator, provided that no an
28 order has not been issued or a proceeding is not
29 pending under subsection 10. The administrator may by
30 order waive or reduce the time period prior to
31 effectiveness, provided that a complete filing has
32 been made. The administrator may by order defer the
33 effective date until the expiration of the fifteenth
34 thirtieth full business day after the filing of an
35 amendment with the administrator.

36 Sec. 24. Section 523B.2, subsection 9, paragraph
37 c, Code Supplement 1999, is amended by adding the
38 following new subparagraph:

39 NEW SUBPARAGRAPH. (8) The rights and
40 responsibilities of the parties regarding the
41 marketing of a business opportunity, including but not
42 limited to all of the following:

43 (a) Whether the seller assigns the purchaser a
44 territory in which to sell a business opportunity.

45 (b) Whether the seller assists the purchaser in
46 finding locations in which to sell a business
47 opportunity.

48 (c) Whether the purchaser is solely responsible
49 for marketing a business opportunity.

50 Sec. 25. Section 523B.8, subsection 1, Code 1999,

H-8579

-8-

H-8579

Page 9

1 is amended to read as follows:

2 1. ~~a. If it appears to the administrator~~ Upon the
3 ~~administrator's determination~~ that a person has
4 engaged, is engaging, or is about to engage in any act
5 or practice constituting a violation of this chapter
6 or a rule or order adopted or issued under this
7 chapter, the administrator may issue an a summary
8 ~~order directed at directing~~ the person ~~requiring the~~
9 ~~person to cease and desist from engaging in the act or~~
10 ~~practice or to take other affirmative action as in the~~
11 ~~judgment of the administrator is necessary to comply~~
12 ~~with the requirements of this chapter.~~

13 b. ~~The~~ If a hearing is not timely requested, the
14 ~~summary order becomes final by operation of law. The~~
15 ~~order shall remain effective from the date of issuance~~
16 ~~until the date the order becomes final by operation of~~
17 ~~law or is overturned by a presiding officer or court~~
18 ~~following a request for hearing. A person named in~~
19 ~~the order may, within fourteen days of the date of the~~
20 ~~order, file a written~~ who has been issued a summary
21 ~~order under this subsection may contest it by filing a~~
22 ~~request for a hearing. The hearing shall be held in~~
23 ~~accordance with~~ contested case proceeding as provided
24 ~~in chapter 17A and in accordance with the rules~~
25 ~~adopted by the administrator. However, the person~~
26 ~~shall have at least thirty days from the date that the~~
27 ~~order is issued in order to file the request. Section~~
28 ~~17A.18A is inapplicable to a summary order issued~~
29 ~~under this subsection.~~

30 c. A person violating a summary order issued under
31 this subsection shall be deemed in contempt of that
32 order. The administrator may petition the district
33 court to enforce the order as certified by the
34 administrator. The district court shall adjudge the
35 person in contempt of the order if the court finds
36 after hearing that the person is not in compliance
37 with the order. The court shall assess a civil
38 penalty against the person in an amount not less than
39 three thousand dollars but not greater than ten
40 thousand dollars per violation, and may issue further
41 orders as it deems appropriate.

42 Any A consent agreement between the administrator
43 and the seller may be filed in the miscellaneous
44 docket of the clerk of the district court.

45 Sec. 26. Section 523B.8, subsection 2, paragraph
46 b, Code 1999, is amended to read as follows:

47 b. For the purpose of an investigation or
48 proceeding under this chapter, the administrator or an
49 officer designated by the administrator may administer
50 oaths and affirmations, subpoena witnesses, compel the

H-8579

-9-

H-8579

Page 10

1 attendance of witnesses, take evidence and require the
2 production of ~~books, papers, correspondence,~~
3 ~~memoranda, agreements, or other documents or~~ records
4 which the administrator deems relevant or material to
5 the inquiry.

6 DIVISION IV

7 RESIDENTIAL SERVICE CONTRACTS

8 Sec. 27. Section 22.7, Code Supplement 1999, is
9 amended by adding the following new subsection:

10 NEW SUBSECTION. 39. Information obtained by the
11 commissioner of insurance in the course of an
12 investigation as provided in section 502.603, 523B.8,
13 or 523C.23.

14 Sec. 28. Section 523C.1, Code 1999, is amended by
15 adding the following new subsection:

16 NEW SUBSECTION. 6A. "Record" means the same as
17 defined in section 3211.1.

18 Sec. 29. Section 523C.7, subsection 4, Code 1999,
19 is amended to read as follows:

20 4. To the extent necessary to administer the
21 provisions of this chapter, the commissioner may,
22 after notice and hearing, institute a residential
23 service contract form approval or form review fee ~~as~~
24 ~~the commissioner shall by.~~ If the commissioner
25 establishes a fee, the amount of the fee shall be set
26 by rule set adopted pursuant to chapter 17A. The fee,
27 ~~if imposed,~~ may be by dollar amount or based upon a
28 percentage of the sale value of the contract.
29 However, the fee shall not exceed fifty thousand
30 dollars.

31 Sec. 30. Section 523C.19, Code 1999, is amended to
32 read as follows:

33 523C.19 CEASE AND DESIST ORDERS.

34 ~~1. If an investigation provides reasonable~~
35 ~~evidence Upon the commissioner's determination that a~~
36 ~~person violated any provision has engaged, is~~
37 ~~engaging, or is about to engage in any act or practice~~
38 ~~constituting a violation of this chapter or any rule~~
39 ~~adopted pursuant to this chapter, the commissioner may~~
40 ~~issue an order directed at directing the person to~~
41 ~~cease and desist from engaging in the act or practice~~
42 ~~resulting in the violation or to take other~~
43 ~~affirmative action as in the judgment of the~~
44 ~~commissioner is necessary to comply with the~~
45 ~~requirements of this chapter.~~

46 2. If a hearing is not timely requested, the
47 summary order becomes final by operation of law. The
48 order shall remain effective from the date of issuance
49 until the date the order becomes final by operation of
50 law or is overturned by a presiding officer or court

H-8579

-10-

H-8579

Page 11

1 following a request for hearing. A person who has
2 been issued a summary order under this section may
3 contest it by filing a request for a contested case
4 proceeding as provided in chapter 17A and in
5 accordance with rules adopted by the commissioner.
6 However, the person shall have at least thirty days
7 from the date that the order is issued in order to
8 file the request. Section 17A.18A is inapplicable to
9 a summary order issued under this subsection.

10 3. A person violating a summary order issued under
11 this subsection shall be deemed in contempt of that
12 order. The commissioner may petition the district
13 court to enforce the order as certified by the
14 commissioner. The district court shall adjudge the
15 person in contempt of the order if the court finds
16 after hearing that the person is not in compliance
17 with the order. The court shall assess a civil
18 penalty against the person in an amount not less than
19 three thousand dollars but not greater than ten
20 thousand dollars per violation, and may issue further
21 orders as it deems appropriate.

22 Sec. 31. NEW SECTION. 523C.23 INVESTIGATIONS AND
23 SUBPOENAS.

24 1. a. In enforcing this chapter, the commissioner
25 may conduct a public or private investigation in order
26 to do any of the following:

27 (1) Determine whether a person has violated or is
28 about to violate a provision of this chapter or a rule
29 or order under this chapter.

30 (2) Aid in the enforcement of this chapter or in
31 the prescribing of rules and forms under this chapter.

32 b. In carrying out this subsection, the
33 commissioner may do all of the following:

34 (1) Conduct the investigation within or outside of
35 this state.

36 (2) Require or allow a person to file a statement
37 in writing regarding the facts or circumstances
38 concerning a matter to be investigated. The
39 commissioner may require that the statement be made
40 under oath.

41 (3) Apply to the district court for the issuance
42 of an order requiring a person's appearance before the
43 commissioner or the attorney general. The person may
44 also be required to produce documentary evidence
45 germane to the subject of the investigation. The
46 failure to obey an order under this subsection
47 constitutes contempt of court.

48 c. Information obtained in the course of an
49 investigation is confidential as provided in section
50 22.7. However, upon a determination that disclosure

H-8579

-11-

H-8579

Page 12

1 of the information is necessary or appropriate in the
2 public interest or for the protection of consumers,
3 the commissioner may do any of the following:

4 (1) Share information obtained during the course
5 of the investigation with another regulatory authority
6 or government agency.

7 (2) Publish information obtained during the course
8 of the investigation which concerns a violation of
9 this chapter or a rule or order under this chapter.

10 2. Except as provided in section 523C.19, a
11 proceeding instituted under this chapter shall be
12 conducted pursuant to chapter 17A and rules adopted by
13 the commissioner pursuant to chapter 17A.

14 3. In an investigation or proceeding conducted
15 under this chapter, the commissioner or any designee
16 of the commissioner may administer oaths and
17 affirmations, subpoena witnesses, compel their
18 attendance, take evidence, and require the production
19 of any records which the commissioner deems relevant
20 or material to the inquiry.

21 4. A person is not excused from attending and
22 testifying or from producing a document or record
23 before the commissioner or in obedience to a subpoena
24 of the commissioner or an officer designated by the
25 commissioner, or in a proceeding instituted by the
26 commissioner, on the grounds that the testimony or
27 evidence, documentary or otherwise, required of the
28 person may tend to incriminate or subject the person
29 to a penalty or forfeiture. However, a person shall
30 not be prosecuted or subjected to any penalty or
31 forfeiture due to a transaction or matter about which
32 the person is compelled, after claiming privilege
33 against self-incrimination, to testify or produce
34 evidence, documentary or otherwise. The person
35 testifying, however, is not exempt from prosecution
36 and punishment for perjury or contempt committed while
37 testifying.

DIVISION V

RETIREMENT CARE CONTRACTS

38
39
40 Sec. 32. Section 523D.13, Code 1999, is amended to
41 read as follows:

42 523D.13 COMPLIANCE ORDERS.

43 1. Upon the commissioner's determination that a
44 provider ~~has violated a provision~~ has engaged, is
45 engaging, or is about to engage in any act or practice
46 constituting a violation of this chapter or a rule
47 adopted pursuant to this chapter, the commissioner may
48 issue ~~an a summary order requiring a directing the~~
49 provider to cease and desist from an-unlawful engaging
50 in the act or practice resulting in the violation or

H-8579

-12-

H-8579

Page 13

1 to take other affirmative action as in the judgment of
2 the commissioner is necessary to comply with the
3 requirements of this chapter.

4 ~~2. The person named in the order may, within~~
5 ~~fourteen days after receipt of the order, file a~~
6 ~~written request for a hearing. The hearing shall be~~
7 ~~held in accordance with chapter 17A. If a hearing is~~
8 ~~not requested, the order shall become permanent. If a~~
9 ~~hearing is not timely requested, the summary order~~
10 ~~becomes final by operation of law. The order shall~~
11 ~~remain effective from the date of issuance until the~~
12 ~~date the order becomes final by operation of law or is~~
13 ~~overturned by a presiding officer or court following a~~
14 ~~request for hearing. A person who has been issued a~~
15 ~~summary order under this section may contest it by~~
16 ~~filing a request for a contested case proceeding as~~
17 ~~provided in chapter 17A and in accordance with rules~~
18 ~~adopted by the commissioner. However, the person~~
19 ~~shall have at least thirty days from the date that the~~
20 ~~order is issued in order to file the request. Section~~
21 ~~17A.18A is inapplicable to a summary order issued~~
22 ~~under this section.~~

23 3. A person violating a summary order issued under
24 this section shall be deemed in contempt of that
25 order. The commissioner may petition the district
26 court to enforce the order as certified by the
27 commissioner. The district court shall adjudge the
28 person in contempt of the order if the court finds
29 after hearing that the person is not in compliance
30 with the order. The court shall assess a civil
31 penalty against the person in an amount not less than
32 three thousand dollars but not greater than ten
33 thousand dollars per violation, and may issue further
34 orders as it deems appropriate.

DIVISION VI

PROBATE TRANSFER ON DEATH

35
36
37 Sec. 33. Section 633.801, subsection 6, Code 1999,
38 is amended to read as follows:

39 6. "Security" means a security as defined in
40 section 502.102. For purposes of this chapter,
41 "security" includes, but is not limited to, a
42 certificated security, an uncertificated security, and
43 a security account.

DIVISION VII

VIATICAL SETTLEMENT CONTRACTS".

44
45
46 2. Page 2, line 20, by inserting after the word
47 "who" the following: "owns a life insurance policy or
48 certificate which covers the life of an individual
49 who".

50 3. Title page, by striking lines 1 and 2 and

H-8579

-13-

H-8579

Page 14

- 1 inserting the following:
- 2 "An Act relating to entities and subject matter
- 3 under the regulatory authority of the insurance
- 4 division, including motor vehicle service contracts,
- 5 securities, business opportunities, residential
- 6 service contracts, retirement care contracts, transfer
- 7 on death probate provisions, viatical settlement
- 8 contracts; and establishing penalties and making
- 9 penalties applicable."
- 10 4. By renumbering, relettering, or redesignating
- 11 and correcting internal references as necessary.

RECEIVED FROM THE SENATE

H-8579 FILED MARCH 28, 2000

House Confirmed
4-21-00
(P. 1242)

HOUSE FILE 2317

AN ACT

RELATING TO ENTITIES AND SUBJECT MATTER UNDER THE REGULATORY AUTHORITY OF THE INSURANCE DIVISION, INCLUDING MOTOR VEHICLE SERVICE CONTRACTS, SECURITIES, BUSINESS OPPORTUNITIES, RESIDENTIAL SERVICE CONTRACTS, RETIREMENT CARE CONTRACTS, TRANSFER ON DEATH PROBATE PROVISIONS, VIATICAL SETTLEMENT CONTRACTS; AND ESTABLISHING PENALTIES AND MAKING PENALTIES APPLICABLE.

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

DIVISION I

MOTOR VEHICLE SERVICE CONTRACTS

Section 1. Section 321I.1, subsection 1, Code 1999, is amended to read as follows:

1. "Commissioner" means the commissioner of insurance as provided in section 505.1 or the deputy administrator appointed under section 502.601.

Sec. 2. Section 321I.1, Code 1999, is amended by adding the following new subsection:

NEW SUBSECTION. 6A. "Record" means information stored or preserved in any medium, including in an electronic or paper format. A record includes but is not limited to documents, books, publications, accounts, correspondence, memoranda, agreements, computer files, film, microfilm, photographs, and audio or visual tapes.

Sec. 3. Section 321I.2, subsection 2, Code 1999, is amended to read as follows:.

2. The issuer of a reimbursement insurance policy shall not cancel a reimbursement insurance policy unless a written notice has been received by the insurance-division commissioner and by each applicable provider, including automobile dealers and third-party administrators, which. The

notice shall fix the date of cancellation at a date no earlier than ten days after receipt of the notice by the insurance division commissioner and by the applicable provider. The notice may be made in person or by mail and a post office department receipt of certified or registered mailing shall be deemed proof of receipt of the notice.

Sec. 4. Section 321I.3, subsection 2, Code 1999, is amended to read as follows:

2. In addition to any other required filings, a-true-and correct an accurate copy of the service contract and the provider's reimbursement insurance policy, the consent to service of process on the commissioner, and such other information as the commissioner requires, shall be filed annually with the commissioner no later than the first day of August. If the first day of August falls on a weekend or a holiday, the date for filing shall be the next business day. In addition to the annual filing, the provider shall promptly file copies of any amended documents if material amendments have been made in the materials on file with the division commissioner. If an annual filing is made after the first of August and sales have occurred during the period when the provider was in noncompliance with this section, the division commissioner shall assess an additional filing fee that is two times the amount normally required for an annual filing. A fee shall not be charged for interim filings made to keep the materials filed with the division current and accurate. The annual filing shall be accompanied by a filing fee determined by the commissioner which shall be sufficient to defray the costs of administering this chapter.

Sec. 5. Section 321I.3, Code 1999, is amended by adding the following new subsection:

NEW SUBSECTION. 3. a. A motor vehicle service contract provider shall promptly file the following information with the insurance commissioner:

- (1) A change in the name or ownership of the provider.
- (2) The termination of the provider's business.

H 217

b. The provider is not required to submit a fee as part of this filing.

Sec. 6. Section 321I.10, Code 1999, is amended to read as follows:

321I.10 MISREPRESENTATIONS OF STATE APPROVAL.

~~It is unlawful for a~~ A motor vehicle service contract provider to shall not represent or imply in any manner that the provider has been sponsored, recommended, or approved or that the provider's abilities or qualifications have in any respect been passed upon by the ~~securities-bureau; the insurance-division; or the~~ state of Iowa, including the commissioner, the insurance division, or the division's securities bureau.

Sec. 7. Section 321I.11, Code 1999, is amended by adding the following new subsection:

NEW SUBSECTION. 5A. A motor vehicle service contract provider shall not repair a motor vehicle covered by a motor vehicle service contract with any of the following:

a. Used parts, unless the provider receives prior written authorization by the vehicle owner.

b. Rebuilt parts, unless the parts are rebuilt according to national standards recognized by the insurance division.

Sec. 8. Section 321I.12, subsection 1, unnumbered paragraph 1, Code 1999, is amended to read as follows:

A motor vehicle service contract provider shall keep accurate ~~accounts; books; and~~ records concerning transactions regulated under this chapter.

Sec. 9. Section 321I.12, subsection 1, paragraph a, unnumbered paragraph 1, Code 1999, is amended to read as follows:

A motor vehicle service contract provider's ~~accounts; books; and~~ records shall include all of the following:

Sec. 10. Section 321I.12, subsection 1, paragraphs b and c, Code 1999, are amended to read as follows:

b. A motor vehicle service contract provider shall retain all required ~~accounts; books; and~~ records pertaining to a

service contract holder for at least two years after the specified period of coverage has expired. A provider discontinuing business in this state shall maintain its records until the provider furnishes the commissioner satisfactory proof that the provider has discharged all obligations to contract holders in this state.

c. Motor vehicle service contract providers shall make all ~~accounts; books; and~~ records concerning transactions regulated under the chapter available to the commissioner for the purpose of examination.

Sec. 11. Section 321I.14, subsections 1, 2, and 4, Code 1999, are amended to read as follows:

1. ~~The administrator of this chapter~~ commissioner may take actions which are necessary or appropriate for the protection of service contract holders or ~~to administer for the effective administration of~~ this chapter. The administrator commissioner may make private and public investigations and examinations as the administrator commissioner deems necessary to determine whether any person has violated or is about to violate this chapter or a rule or order adopted or issued pursuant to this chapter.

2. ~~For the purpose of~~ In an investigation or proceeding under this chapter, the administrator commissioner or any officer designated by the administrator commissioner may administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of ~~books; papers; correspondence; memoranda; agreements; or other documents or~~ records which the administrator commissioner deems relevant or material to an inquiry, all of which may be enforced in accordance with chapter 17A.

4. ~~If an investigation provides reasonable evidence~~ Upon the commissioner's determination that a person violated provider has engaged, is engaging, or is about to engage in any act or practice constituting a violation of this chapter or a rule adopted pursuant to this chapter, the commissioner

may issue an a summary order directed-at directing the person to cease and desist from engaging in the act or practice resulting in the violation or to take other affirmative action as in the judgment of the commissioner is necessary to comply with the requirements of this chapter.

a. If a hearing is not timely requested, the summary order becomes final by operation of law. The order shall remain effective from the date of issuance until the date the order becomes final by operation of law or is overturned by a presiding officer or court following a request for hearing. A person who has been issued a summary order under this subsection may contest the order by filing a request for a contested case proceeding as provided in chapter 17A and in accordance with rules adopted by the commissioner. However, the person shall have at least thirty days from the date that the order is issued in order to file the request. Section 17A.18A is inapplicable to a summary order issued under this subsection.

b. A person violating a summary order issued under this subsection shall be deemed in contempt of that order. The commissioner may petition the district court to enforce the order as certified by the commissioner. The district court shall adjudge the person in contempt of the order if the court finds after hearing that the person is not in compliance with the order. The court shall assess a civil penalty against the person in an amount not less than three thousand dollars but not greater than ten thousand dollars per violation, and may issue further orders as it deems appropriate.

Sec. 12. Section 321I.15, Code 1999, is amended to read as follows:

321I.15 AUDITS.

The commissioner may examine or cause to be examined the books, papers, records, memoranda or documents of a motor vehicle service contract provider for the purpose of verifying compliance with this chapter. The commissioner may require, by a subpoena, the attendance of the provider, or the

provider's representative, and any other witness whom the commissioner deems necessary or expedient, and the production of books, papers, records, memoranda or documents relating in any manner to compliance with this chapter if a provider or witness fails or refuses to produce the documents for examination when requested by the commissioner.

Sec. 13. Section 321I.16, Code 1999, is amended to read as follows:

321I.16 VIOLATIONS -- PENALTIES.

1. a. Except as provided in paragraph "b", all of the following shall apply:

(1) A violation of this chapter or a rule adopted pursuant to this chapter is a violation of section 714.16, subsection 2, paragraph "a". The remedies and penalties provided by section 714.16, including but not limited to injunctive relief and civil penalties, apply to violations of this chapter.

(2) A person who willfully and knowingly violates this chapter or a rule adopted pursuant to this chapter is, upon conviction, guilty of a class "D" felony.

b. A motor vehicle service contract provider who fails to file documents and information with the commissioner as required pursuant to section 321I.3 may be subject to a civil penalty. The amount of the civil penalty shall not be more than four hundred dollars plus two dollars for each motor vehicle service contract that the person executed prior to satisfying the filing requirement. However, a person who fails to file information regarding a change in the provider's name or the termination of the provider's business as required pursuant to section 321I.3 is subject to a civil penalty of not more than five hundred dollars.

2. If the commissioner believes that grounds exist for the criminal prosecution of persons-subject-to-this-chapter a motor vehicle service contract provider for violations-of violating this chapter or any other law of this state, the commissioner may forward to the attorney general or the county attorney the grounds for the belief, including all evidence in

~~the commissioner's possession in order that the attorney general or the county attorney may proceed with the matter as for action deemed appropriate by the attorney general or county attorney.~~ At the request of the attorney general, the county attorney shall appear and prosecute the action when brought in the county served by the county attorney.

~~37--A person who willfully and knowingly violates this chapter or a rule adopted pursuant to this chapter is, upon conviction, guilty of a class "B" felony.~~

Sec. 14. Section 321I.9, Code 1999, is repealed.

Sec. 15. DIRECTIONS TO THE CODE EDITOR. The Code editor is directed to transfer chapter 321I to or near chapter 523J, and correct internal references as necessary.

DIVISION II

IOWA UNIFORM SECURITIES ACT

Sec. 16. Section 502.304, subsection 1, unnumbered paragraph 1, Code Supplement 1999, is amended to read as follows:

The administrator may by order deny, suspend, or revoke a registration or may censure, impose a civil penalty upon, or bar an applicant, registrant, branch manager, assistant branch manager, supervisor, or any officer, director, partner, or person occupying a similar status or performing similar functions for a registrant. A person barred under this subsection may be prohibited by the administrator from employment with a registered broker-dealer or investment adviser. The administrator may restrict the person barred from engaging in any activity for which registration is required. Any action by the administrator under this subsection may be taken if the order is found to be in the public interest and it is found that the applicant or registrant or, in the case of a broker-dealer or investment adviser, a partner, an officer, or a director, a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling the broker-dealer or investment adviser, or a branch manager, assistant branch manager, or supervisor:

Sec. 17. Section 502.604, subsection 1, Code Supplement 1999, is amended to read as follows:

1. Issue an a summary order directed at the person requiring the person to cease and desist from engaging in such act or practice or to take other affirmative action as in the judgment of the administrator is necessary to comply with the requirements of this chapter.

a. If a hearing is not timely requested, the summary order becomes final by operation of law. The order shall remain effective from the date of issuance until the date the order becomes final by operation of law or is overturned by a presiding officer or court following a request for hearing. A person who has been issued a summary order under this subsection may contest the order by filing a request for a contested case proceeding as provided in chapter 17A and in accordance with rules adopted by the administrator. However, the person shall have at least thirty days from the date that the order is issued in order to file the request. Section 17A.18A is inapplicable to a summary order issued under this subsection.

b. A person violating a summary order issued under this subsection shall be deemed in contempt of that order. The administrator may petition the district court to enforce the order as certified by the administrator. The district court shall adjudge the person in contempt of the order, if the court finds after hearing that the person is not in compliance with the order. The court shall assess a civil penalty against the person in an amount not less than three thousand dollars but not greater than ten thousand dollars per violation, and may issue further orders as it deems appropriate.

Sec. 18. Section 502.605, subsection 1, Code 1999, is amended to read as follows:

1. a. Any Except as provided in paragraph "b", a person who willfully and knowingly violates any provision of this chapter, or any rule or order under this chapter, shall be is guilty of a class "D" felony.

b. A person who willfully and knowingly violates section 502.401, 502.402, or 502.403, or section 502.408, subsection 1 or 2, resulting in a loss of more than ten thousand dollars is guilty of a class "C" felony.

Sec. 19. Section 502.609, subsection 1, unnumbered paragraph 1, Code 1999, is amended to read as follows:

Every applicant for registration under this chapter, and every issuer which proposes to offer a security in this state, unless exempt under section 502.202 or 502.203 and the administrator by rule or order waives the filing, shall file with the administrator, in such form as the administrator by rule prescribes, an irrevocable consent appointing the administrator or the administrator's successor in office to be such person's attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against such person or the successor, executor or administrator of such person which arises under this chapter or any rule or order hereunder after the consent has been filed, with the same validity as if served personally on the person filing the consent. The consent need not be filed by a person who has filed a consent in connection with a previous registration or notice filing which is then in effect. Service may be made by leaving a copy of the process in the office of the administrator, but it is not effective unless the plaintiff, including the administrator when acting as such, does the following:

DIVISION III

BUSINESS OPPORTUNITY PROMOTIONS

Sec. 20. Section 523B.1, Code Supplement 1999, is amended by adding the following new subsection:

NEW SUBSECTION. 10A. "Record" means the same as defined in section 321I.1.

Sec. 21. Section 523B.2, subsection 2, paragraph b, subparagraph (2), Code Supplement 1999, is amended to read as follows:

(2) A disclosure document prepared pursuant to the federal trade commission rule entitled "Disclosure relating to disclosure requirements and prohibitions concerning franchising and business opportunity ventures", as adopted by rule of the administrator in accordance with 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.~~

Sec. 22. Section 523B.2, subsection 2, Code Supplement 1999, is amended by adding the following new paragraph:

NEW PARAGRAPH. c. The seller shall disclose to the administrator in the disclosure document or otherwise any sales or offers made in this state prior to registration.

Sec. 23. Section 523B.2, subsection 4, Code Supplement 1999, is amended to read as follows:

4. EFFECTIVE DATE. A registration automatically becomes effective upon the expiration of the fifteenth thirtieth full business day after the complete filing is received by the administrator, provided that no an order has not been issued or a proceeding is not 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 fifteenth thirtieth full business day after the filing of an amendment with the administrator.

Sec. 24. Section 523B.2, subsection 9, paragraph c, Code Supplement 1999, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (8) The rights and responsibilities of the parties regarding the marketing of a business opportunity, including but not limited to all of the following:

(a) Whether the seller assigns the purchaser a territory in which to sell a business opportunity.

(b) Whether the seller assists the purchaser in finding locations in which to sell a business opportunity.

(c) Whether the purchaser is solely responsible for marketing a business opportunity.

Sec. 25. Section 523B.8, subsection 1, Code 1999, is amended to read as follows:

1. a. If it appears to the administrator Upon the administrator's determination that a person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of this chapter or a rule or order adopted or issued under this chapter, the administrator may issue an a summary order directed at directing the person requiring the person to cease and desist from engaging in the act or practice or to take other affirmative action as in the judgment of the administrator is necessary to comply with the requirements of this chapter.

b. The If a hearing is not timely requested, the summary order becomes final by operation of law. The order shall remain effective from the date of issuance until the date the order becomes final by operation of law or is overturned by a presiding officer or court following a request for hearing. A person named in the order may, within fourteen days of the date of the order, file a written who has been issued a summary order under this subsection may contest it by filing a request for a hearing. The hearing shall be held in accordance with contested case proceeding as provided in chapter 17A and in accordance with the rules adopted by the administrator. However, the person shall have at least thirty days from the date that the order is issued in order to file the request. Section 17A.18A is inapplicable to a summary order issued under this subsection.

c. A person violating a summary order issued under this subsection shall be deemed in contempt of that order. The administrator may petition the district court to enforce the order as certified by the administrator. The district court shall adjudge the person in contempt of the order if the court finds after hearing that the person is not in compliance with the order. The court shall assess a civil penalty against the

person in an amount not less than three thousand dollars but not greater than ten thousand dollars per violation, and may issue further orders as it deems appropriate.

Any A consent agreement between the administrator and the seller may be filed in the miscellaneous docket of the clerk of the district court.

Sec. 26. Section 523B.3, subsection 2, paragraph b, Code 1999, is amended to read as follows:

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.

DIVISION IV

RESIDENTIAL SERVICE CONTRACTS

Sec. 27. Section 22.7, Code Supplement 1999, is amended by adding the following new subsection:

NEW SUBSECTION. 39. Information obtained by the commissioner of insurance in the course of an investigation as provided in section 502.603, 523B.8, or 523C.23.

Sec. 28. Section 523C.1, Code 1999, is amended by adding the following new subsection:

NEW SUBSECTION. 6A. "Record" means the same as defined in section 321I.1.

Sec. 29. Section 523C.7, subsection 4, Code 1999, is amended to read as follows:

4. To the extent necessary to administer the provisions of this chapter, the commissioner may, after notice and hearing, institute a residential service contract form approval or form review fee as the commissioner shall by. If the commissioner establishes a fee, the amount of the fee shall be set by rule set adopted pursuant to chapter 17A. The fee, if imposed, may be by dollar amount or based upon a percentage of the sale

value of the contract. However, the fee shall not exceed fifty thousand dollars.

Sec. 30. Section 523C.19, Code 1999, is amended to read as follows:

523C.19 CEASE AND DESIST ORDERS.

1. If an investigation provides reasonable evidence Upon the commissioner's determination that a person violated any provision has engaged, is engaging, or is about to engage in any act or practice constituting a violation of this chapter or any rule adopted pursuant to this chapter, the commissioner may issue an order directed at directing the person to cease and desist from engaging in the act or practice resulting in the violation or to take other affirmative action as in the judgment of the commissioner is necessary to comply with the requirements of this chapter.

2. If a hearing is not timely requested, the summary order becomes final by operation of law. The order shall remain effective from the date of issuance until the date the order becomes final by operation of law or is overturned by a presiding officer or court following a request for hearing. A person who has been issued a summary order under this section may contest it by filing a request for a contested case proceeding as provided in chapter 17A and in accordance with rules adopted by the commissioner. However, the person shall have at least thirty days from the date that the order is issued in order to file the request. Section 17A.18A is inapplicable to a summary order issued under this subsection.

3. A person violating a summary order issued under this subsection shall be deemed in contempt of that order. The commissioner may petition the district court to enforce the order as certified by the commissioner. The district court shall adjudge the person in contempt of the order if the court finds after hearing that the person is not in compliance with the order. The court shall assess a civil penalty against the person in an amount not less than three thousand dollars but not greater than ten thousand dollars per violation, and may issue further orders as it deems appropriate.

Sec. 31. NEW SECTION. 523C.23 INVESTIGATIONS AND SUBPOENAS.

1. a. In enforcing this chapter, the commissioner may conduct a public or private investigation in order to do any of the following:

(1) Determine whether a person has violated or is about to violate a provision of this chapter or a rule or order under this chapter.

(2) Aid in the enforcement of this chapter or in the prescribing of rules and forms under this chapter.

b. In carrying out this subsection, the commissioner may do all of the following:

(1) Conduct the investigation within or outside of this state.

(2) Require or allow a person to file a statement in writing regarding the facts or circumstances concerning a matter to be investigated. The commissioner may require that the statement be made under oath.

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

c. Information obtained in the course of an investigation is confidential as provided in section 22.7. However, upon a determination that disclosure of the information is necessary or appropriate in the public interest or for the protection of consumers, the commissioner may do any of the following:

(1) Share information obtained during the course of the investigation with another regulatory authority or government agency.

(2) Publish information obtained during the course of the investigation which concerns a violation of this chapter or a rule or order under this chapter.

2. Except as provided in section 523C.19, a proceeding instituted under this chapter shall be conducted pursuant to chapter 17A and rules adopted by the commissioner pursuant to chapter 17A.

3. In an investigation or proceeding conducted under this chapter, the commissioner or any designee of the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any records which the commissioner deems relevant or material to the inquiry.

4. A person is not excused from attending and testifying or from producing a document or record before the commissioner or in obedience to a subpoena of the commissioner or an officer designated by the commissioner, or in a proceeding instituted by the commissioner, on the grounds that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate or subject the person to a penalty or forfeiture. However, a person shall not be prosecuted or subjected to any penalty or forfeiture due to a transaction or matter about which the person is compelled, after claiming privilege against self-incrimination, to testify or produce evidence, documentary or otherwise. The person testifying, however, is not exempt from prosecution and punishment for perjury or contempt committed while testifying.

DIVISION V

RETIREMENT CARE CONTRACTS

Sec. 32. Section 523D.13, Code 1999, is amended to read as follows:

523D.13 COMPLIANCE ORDERS.

1. Upon the commissioner's determination that a provider has violated a provision has engaged, is engaging, or is about to engage in any act or practice constituting a violation of this chapter or a rule adopted pursuant to this chapter, the commissioner may issue an a summary order requiring a directing the provider to cease and desist from an-unlawful engaging in the act or practice resulting in the violation or

to take other affirmative action as in the judgment of the commissioner is necessary to comply with the requirements of this chapter.

2. 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. If a hearing is not timely requested, the summary order becomes final by operation of law. The order shall remain effective from the date of issuance until the date the order becomes final by operation of law or is overturned by a presiding officer or court following a request for hearing. A person who has been issued a summary order under this section may contest it by filing a request for a contested case proceeding as provided in chapter 17A and in accordance with rules adopted by the commissioner. However, the person shall have at least thirty days from the date that the order is issued in order to file the request. Section 17A.18A is inapplicable to a summary order issued under this section.

3. A person violating a summary order issued under this section shall be deemed in contempt of that order. The commissioner may petition the district court to enforce the order as certified by the commissioner. The district court shall adjudge the person in contempt of the order if the court finds after hearing that the person is not in compliance with the order. The court shall assess a civil penalty against the person in an amount not less than three thousand dollars but not greater than ten thousand dollars per violation, and may issue further orders as it deems appropriate.

DIVISION VI

PROBATE TRANSFER ON DEATH

Sec. 33. Section 633.801, subsection 6, Code 1999, is amended to read as follows:

6. "Security" means a security as defined in section 502.102. For purposes of this chapter, "security" includes, but is not limited to, a certificated security, an uncertificated security, and a security account.

DIVISION VII

VIATICAL SETTLEMENT CONTRACTS

Sec. 34. Section 502.202, subsection 19, Code Supplement 1999, is amended by adding the following new paragraph:

NEW PARAGRAPH. e. The assignment, transfer, sale, devise, or bequest of the death benefit or ownership of a life insurance policy or contract made by the policyholder or contract owner to a viatical settlement provider, if the viatical settlement transaction complies with chapter 508E, including rules adopted pursuant to that chapter.

Sec. 35. NEW SECTION. 508E.1 AUTHORITY OF THE COMMISSIONER.

The commissioner shall regulate, but not prohibit, the sale of viatical settlements as provided in this chapter.

Sec. 36. NEW SECTION. 508E.2 DEFINITIONS.

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

1. "Chronically ill" means any of the following:

a. Being unable to perform or maintain at least two activities of daily living, including but not limited to eating, toileting, transferring, bathing, dressing, or continence.

b. Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment.

c. Having a level of disability similar to that described in paragraph "a" as determined by the United States secretary of health and human services.

2. "Commissioner" means the commissioner of insurance.

3. "Terminally ill" means having an illness or sickness that can reasonably be expected to result in death in twenty-four months or less.

4. "Viatical settlement contract" means a written agreement entered into between a viatical settlement provider and a person who owns or is insured under a life insurance policy or certificate, or who owns or is covered under a group

life insurance policy. "Viatical settlement contract" does not mean a written agreement entered into between a viator and a person having an insurable interest in the viator's life.

5. "Viator" means a person selling a life insurance policy or certificate.

Sec. 37. NEW SECTION. 508E.3 VIATICAL SETTLEMENT CONTRACT LIMITATIONS.

1. a. Subject to paragraph "b", a viatical settlement contract shall not be entered into until after the contestable period of the life insurance policy or certificate has expired.

b. If a viatical settlement contract is entered into during the contestable period of the life insurance policy or certificate, a rebuttable presumption arises that it was the intent of the person entering into such contract with a viatical settlement provider to enter into such contract at the time the life insurance policy or certificate was originally purchased. If such person fails to rebut the presumption, the viatical settlement contract is void.

2. A viatical settlement contract shall only be entered into with an individual who owns a life insurance policy or certificate which covers the life of an individual who is either terminally ill or chronically ill, or as otherwise provided pursuant to rules adopted by the commissioner.

Sec. 38. NEW SECTION. 508E.4 RULEMAKING AUTHORITY.

The commissioner shall adopt rules as necessary to administer this chapter. Rules shall be adopted relating to all of the following:

1. Advertising standards.
2. Disclosure.
3. Examinations.
4. Insurance company practices.
5. License requirements.
6. Prohibited practices.
7. Refund provisions.
8. Reporting.

9. Standards for reasonableness of payment.
10. Unfair trade practices.
11. Viatical settlement contracts.

BRENT SIEGRIST
Speaker of the House

MARY E. KRAMER
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2317, Seventy-eighth General Assembly.

ELIZABETH ISAACSON
Chief Clerk of the House

Approved 4/26, 2000

THOMAS J. VILSACK
Governor