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Commerce
Succeeded By
SF/HF 2336

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

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

A BILL FOR

1 An Act relating to entities and subject matter under the
2 regulatory authority of the insurance division, including
3 motor vehicle service contracts, securities, business
4 opportunities, residential service contracts, retirement care
5 contracts, transfer on death probate provisions; and
6 establishing penalties and making penalties applicable.

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

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DIVISION I

MOTOR VEHICLE SERVICE CONTRACTS

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

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

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

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

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

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

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

31 2. In addition to any other required filings, ~~a-true-and~~
32 ~~correct~~ an accurate copy of the service contract and the
33 provider's reimbursement insurance policy, the consent to
34 service of process on the commissioner, and such other
35 information as the commissioner requires, shall be filed

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1 annually with the commissioner no later than the first day of
 2 August. If the first day of August falls on a weekend or a
 3 holiday, the date for filing shall be the next business day.
 4 In addition to the annual filing, the provider shall promptly
 5 file copies of any amended documents if material amendments
 6 have been made in the materials on file with the division
 7 commissioner. If an annual filing is made after the first of
 8 August and sales have occurred during the period when the
 9 provider was in noncompliance with this section, the division
 10 commissioner shall assess an additional filing fee that is two
 11 times the amount normally required for an annual filing. A
 12 fee shall not be charged for interim filings made to keep the
 13 materials filed with the division current and accurate. The
 14 annual filing shall be accompanied by a filing fee determined
 15 by the commissioner which shall be sufficient to defray the
 16 costs of administering this chapter.

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

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

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

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

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

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

28 321I.10 MISREPRESENTATIONS OF STATE APPROVAL.

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

1 securities bureau.

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

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

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

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

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

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

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

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

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

23 b. A motor vehicle service contract provider shall retain
24 all required ~~accounts, books, and~~ records pertaining to a
25 service contract holder for at least two years after the
26 specified period of coverage has expired. A provider
27 discontinuing business in this state shall maintain its
28 records until the provider furnishes the commissioner
29 satisfactory proof that the provider has discharged all
30 obligations to contract holders in this state.

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

35 Sec. 11. Section 321I.14, subsections 1, 2, and 4, Code

1 1999, are amended to read as follows:

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

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

21 4. ~~If-an-investigation-provides-reasonable-evidence~~ Upon
22 the commissioner's determination that a ~~person-violated~~
23 provider has engaged, is engaging, or is about to engage in
24 any act or practice constituting a violation of this chapter
25 or a rule adopted pursuant to this chapter, the commissioner
26 may issue an a summary order directed-at directing the person
27 to cease and desist from engaging in the act or practice
28 resulting in the violation or to take other affirmative action
29 as in the judgment of the commissioner is necessary to comply
30 with the requirements of this chapter.

31 a. If a hearing is not timely requested, the summary order
32 becomes final by operation of law. The order shall remain
33 effective from the date of issuance until the date the order
34 becomes final by operation of law or is overturned by a
35 presiding officer or court following a request for hearing. A

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

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

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

21 321I.15 AUDITS.

22 The commissioner may examine or cause to be examined the
23 ~~books, papers, records, memoranda, or documents~~ of a motor
24 vehicle service contract provider for the purpose of verifying
25 compliance with this chapter. The commissioner may require,
26 by a subpoena, the attendance of the provider, or the
27 provider's representative, and any other witness whom the
28 commissioner deems necessary or expedient, and the production
29 of ~~books, papers, records, memoranda, or documents~~ relating in
30 any manner to compliance with this chapter if a provider or
31 witness fails or refuses to produce the documents for
32 examination when requested by the commissioner.

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

35 321I.16 VIOLATIONS -- PENALTIES.

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

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

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

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

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

34 3.--A-person-who-willfully-and-knowingly-violates-this
 35 chapter-or-a-rule-adopted-pursuant-to-this-chapter-is, upon

1 conviction, ~~guilty of a class "B" felony.~~

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

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

6 DIVISION II

7 IOWA UNIFORM SECURITIES ACT

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

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

30 Sec. 17. Section 502.604, subsection 1, Code Supplement
31 1999, is amended to read as follows:

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

1 requirements of this chapter.

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

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

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

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

32 b. A person who willfully and knowingly violates section
33 502.401, 502.402, or 502.403, or section 502.408, subsection 1
34 or 2, resulting in a loss of more than ten thousand dollars is
35 guilty of a class "C" felony.

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

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

23 DIVISION III

24 BUSINESS OPPORTUNITY PROMOTIONS

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

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

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

32 (2) A disclosure document prepared pursuant to the federal
33 trade commission rule entitled "Disclosure relating to
34 disclosure requirements and prohibitions concerning
35 franchising and business opportunity ventures" as adopted by

1 rule of the administrator in accordance with 16 C.F.R. § 436
2 ~~{1979}. The administrator may by rule adopt any amendment to~~
3 ~~the disclosure document prepared pursuant to 16 C.F.R. § 436~~
4 ~~{1979} that has been adopted by the federal trade commission.~~

5 Sec. 22. Section 523B.2, subsection 2, Code Supplement
6 1999, is amended by adding the following new paragraph:

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

10 Sec. 23. Section 523B.2, subsection 4, Code Supplement
11 1999, is amended to read as follows:

12 4. EFFECTIVE DATE. A registration automatically becomes
13 effective upon the expiration of the ~~fifteenth~~ thirtieth full
14 business day after the complete filing is received by the
15 administrator, provided that ~~no~~ an order has not been issued
16 or a proceeding is not pending under subsection 10. The
17 administrator may by order waive or reduce the time period
18 prior to effectiveness, provided that a complete filing has
19 been made. The administrator may by order defer the effective
20 date until the expiration of the ~~fifteenth~~ thirtieth full
21 business day after the filing of an amendment with the
22 administrator.

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

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

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

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

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

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

1 amended to read as follows:

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

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

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

1 issue further orders as it deems appropriate.

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

5 Sec. 26. Section 523B.8, subsection 2, paragraph b, Code
6 1999, is amended to read as follows:

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

15 DIVISION IV

16 RESIDENTIAL SERVICE CONTRACTS

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

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

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

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

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

28 4. To the extent necessary to administer the provisions of
29 this chapter, the commissioner may, after notice and hearing,
30 institute a residential service contract form approval or form
31 review fee ~~as the commissioner shall by.~~ If the commissioner
32 establishes a fee, the amount of the fee shall be set by rule
33 set adopted pursuant to chapter 17A. The fee ~~if imposed,~~ may
34 be by dollar amount or based upon a percentage of the sale
35 value of the contract. However, the fee shall not exceed

1 fifty thousand dollars.

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

4 523C.19 CEASE AND DESIST ORDERS.

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

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

29 3. A person violating a summary order issued under this
30 subsection shall be deemed in contempt of that order. The
31 commissioner may petition the district court to enforce the
32 order as certified by the commissioner. The district court
33 shall adjudge the person in contempt of the order if the court
34 finds after hearing that the person is not in compliance with
35 the order. The court shall assess a civil penalty against the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 DIVISION V

29 RETIREMENT CARE CONTRACTS

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

32 523D.13 COMPLIANCE ORDERS.

33 1. Upon the commissioner's determination that a provider
34 has-violated-a-provision has engaged, is engaging, or is about
35 to engage in any act or practice constituting a violation of

1 this chapter or a rule adopted pursuant to this chapter, the
 2 commissioner may issue ~~an a summary order requiring a~~
 3 directing the provider to cease and desist from an-unlawful
 4 engaging in the act or practice resulting in the violation or
 5 to take other affirmative action as in the judgment of the
 6 commissioner is necessary to comply with the requirements of
 7 this chapter.

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

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

34 DIVISION VI

35 PROBATE TRANSFER ON DEATH

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

3 6. "Security" means a security as defined in section
4 502.102. For purposes of this chapter, "security" includes,
5 but is not limited to, a certificated security, an
6 uncertificated security, and a security account.

7 EXPLANATION

8 This bill amends a number of provisions relating to the
9 entities and subject matter under the regulatory authority of
10 the insurance division of the department of commerce,
11 including motor vehicle service contracts under Code chapter
12 321I, securities (the Iowa "Blue Sky Law") under Code chapter
13 502, business opportunities and promotions under Code chapter
14 523B, residential service contracts under Code chapter 523C,
15 retirement facilities under Code chapter 523D, and securities
16 transfer on death probate provisions under Code chapter 633.
17 A number of provisions contain similar language.

18 DIVISION I

19 MOTOR VEHICLE SERVICE CONTRACTS

20 The bill amends provisions in Code section 321I.1, which
21 provides for the chapter's definitions. It amends the
22 definition of "commissioner" to include the commissioner's
23 deputy for purposes of administering the Code chapter. The
24 bill repeals Code section 321I.9, which provided
25 administrative authority to the deputy. The bill replaces
26 references in the chapter to "insurance division" to
27 "commissioner" for purposes of consistency. The bill adds a
28 definition of "record" to mean information stored or preserved
29 in any medium. Provisions throughout the chapter refer to the
30 commissioner's authority to examine records and documents.
31 The references appear inconsistent, either mentioning records
32 as some separate item (see Code section 321I.12 referring to
33 "accounts, books, and records") or referring to records
34 without any other reference (see the second occurrence in Code
35 section 321I.12(1)(b)). The bill replaces these reference

1 with the term "records" as defined in the bill.

2 The bill amends Code section 321I.3 to provide that a motor
3 vehicle service contract provider must file certain provider
4 information with the commissioner. The bill provides that a
5 fee is not required as part of the filing.

6 The bill amends Code section 321I.11 to provide that a
7 provider cannot repair a motor vehicle covered by a contract
8 with used parts, unless the vehicle owner is notified prior to
9 the repair. The bill also provides that any rebuilt parts
10 used in repair of vehicles covered by service contracts be
11 rebuilt by a manufacturer according to nationally recognized
12 standards.

13 The bill amends Code section 321I.14, which provides for
14 investigations and administrative actions taken by the
15 commissioner against providers. The bill sets out procedural
16 requirements by persons who contest an order issued by the
17 commissioner. The bill provides for the assessment of civil
18 penalties for violations of an order issued pursuant to the
19 section.

20 The bill amends Code section 321I.16, which provides for
21 penalties. The bill restructures the provision in order to
22 enhance readability. For example, it moves a provision which
23 provides that a violation of the chapter is a class "D"
24 felony. It also provides that a provider who fails to file
25 documents as required in the bill is subject to a civil
26 penalty equal to \$400 plus \$2 for each contract that the
27 provider executes prior to satisfying the filing requirement.

28 The bill directs the Iowa Code editor to transfer the Code
29 chapter to a place closer to other chapters under the
30 jurisdiction of the insurance division.

31 DIVISION II

32 IOWA UNIFORM SECURITIES ACT

33 The bill amends provisions in Iowa's "Blue Sky Law"
34 administered by the commissioner of insurance or the
35 commissioner's deputy (referred to as the "administrator").

1 The bill provides that the commissioner may deny, suspend,
2 or revoke a registration or discipline a branch manager,
3 assistant branch manager, or supervisor in the same manner
4 that the commissioner may take action against an applicant or
5 registrant.

6 The bill also amends Code section 502.604, which authorizes
7 the commissioner to investigate and take disciplinary action
8 against persons regulated under the chapter. The bill makes
9 the same changes as it did in Code section 321I.14 regulating
10 motor vehicle service contracts. The bill provides procedural
11 requirements by persons who contest an order issued by the
12 administrator. The bill provides for the assessment of civil
13 penalties for violations of an order issued pursuant to the
14 section.

15 Code section 502.605 provides that a person violating the
16 chapter is guilty of a class "D" felony. This bill provides
17 that a person committing fraudulent conduct involving investor
18 losses in excess of \$10,000 is guilty of a class "C" felony,
19 which is similar to the criminal penalty for theft pursuant to
20 Code section 714.2 and fraudulent practice in the first degree
21 pursuant to Code section 714.9.

22 The bill amends Code section 502.609, which requires that
23 an issuer must file an irrevocable consent appointing the
24 commissioner as the issuer's attorney to receive service in
25 civil actions. The bill exempts certain persons from this
26 requirement if the exemption is validated by rule or order of
27 the administrator, including persons who issue exempt
28 securities.

29 DIVISION III

30 BUSINESS OPPORTUNITY PROMOTIONS

31 The bill amends Code chapter 523B which regulates sellers
32 of business opportunity promotions by the commissioner or
33 deputy (referred to as the "administrator" under the chapter).
34 A business opportunity is the offer for the sale of products
35 and equipment.

1 The bill amends Code section 523B.1, which provides
2 definitions for the chapter. Specifically, the bill defines
3 the term "record" in the same way in which the bill defines
4 the term under Code section 321I.1 regulating motor vehicle
5 service contracts. Similarly, the bill strikes references to
6 "books, papers, correspondence, memoranda, agreements, or
7 other documents or records" in the chapter.

8 The bill amends Code section 523B.2, which provides for the
9 disclosure of documents prepared pursuant to federal
10 regulations. The bill eliminates language which refers to a
11 specific date that the regulation was adopted and states that
12 the commissioner must adopt rules providing for enforcement
13 under the most recent federal regulation.

14 The bill further amends Code section 523B.2, which provides
15 registration requirements. The Code section requires
16 disclosure of documents to the commissioner as part of a
17 registration process. The bill provides that a seller must
18 disclose sales or offers made in this state prior to
19 registration. The Code section provides that a registration
20 automatically becomes effective upon the expiration of the
21 fifteenth business day after the filing has been received by
22 the commissioner. The bill increases that period to the
23 thirtieth business day. The Code section provides that a
24 contract offered under the section must include a number of
25 items. The bill adds to those required items, by stating that
26 it must include the rights and responsibilities of the parties
27 regarding the marketing of a business opportunity.

28 The bill amends Code section 523B.8, which provides for
29 investigating or taking disciplinary action against persons
30 regulated under the chapter. The bill makes the same changes
31 as it did in Code section 321I.14 regulating motor vehicle
32 service contracts and Code section 502.604 regulating
33 securities. The bill provides procedural requirements by
34 persons who contest an order issued by the administrator. The
35 bill provides for the assessment of civil penalties for

1 violations of an order issued pursuant to the section.

2

DIVISION IV

3

RESIDENTIAL SERVICE CONTRACTS

4 The bill amends provisions in Code chapter 523C, which
5 regulates residential service contracts executed between a
6 residential owner and a company for the repair, maintenance,
7 or replacement of parts of the residence.

8 The bill amends Code section 523C.1, which provides
9 definitions for the chapter. Specifically, it defines the
10 term "record" in the same way in which the bill defines the
11 term under Code section 321I.1 regulating motor vehicle
12 service contracts and Code section 523B.1 regulating business
13 opportunity promotions.

14 The bill amends Code section 523C.7, which provides that
15 the administrator may institute a residential service contract
16 form approval or form review fee. The bill provides that the
17 fee cannot exceed \$50,000.

18 The bill amends Code section 523C.19, which provides for
19 investigating or taking disciplinary action against persons
20 regulated under the chapter. The bill makes the same changes
21 as it did in Code section 321I.14 regulating motor vehicle
22 service contracts, Code section 502.604 regulating securities,
23 and Code section 523B.8 regulating business opportunity
24 promotions. The bill provides procedural requirements by
25 persons who contest an order issued by the commissioner. The
26 bill provides for the assessment of civil penalties for
27 violations of an order issued pursuant to the section.

28 The bill creates a new provision, designated as Code
29 section 523C.23, which provides for investigations and
30 subpoenas. It authorizes the commissioner to conduct public
31 or private investigations and issue subpoenas. The section is
32 based on similar provisions in Code section 502.603.
33 Information obtained in the course of the investigation is
34 confidential.

35

DIVISION V

1 RETIREMENT CARE CONTRACTS

2 The bill amends Code chapter 523D, which provides for the
3 regulation of contracts to provide care to persons in a
4 retirement facility.

5 The bill amends Code section 523D.13, which provides for
6 investigating or taking disciplinary action against persons
7 regulated under the chapter. The bill makes the same changes
8 as it did in Code section 321I.14 regulating motor vehicle
9 service contracts, Code section 502.604 regulating securities,
10 and Code section 523B.8 regulating business opportunity
11 promotions. The bill provides procedural requirements by
12 persons who contest an order issued by the commissioner. The
13 bill provides for the assessment of civil penalties for
14 violations of an order issued pursuant to the section.

15 DIVISION VI

16 PROBATE TRANSFER ON DEATH

17 This bill amends Code chapter 633, which is the "Iowa
18 Probate Code". Specifically it amends provisions enacted by
19 the general assembly in 1997 referred to as the "Uniform
20 Transfer on Death Security Registration Act". The bill amends
21 the term "security" to include a certificated security, an
22 uncertificated security, and a security account.

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THOMAS J. VILSACK
GOVERNOR

SALLY J. PEDERSON
LT. GOVERNOR

Therese M. Vaughan, Commissioner

INSURANCE DIVISION
IOWA DEPARTMENT OF COMMERCE

MEMORANDUM

To: Members of the 78th General Assembly

From: Craig A. Goettsch
Superintendent of Securities

Re: Securities Bureau Legislation

Date: February 4, 2000

The Insurance Division/ Securities Bureau has filed an Omnibus Bill that is largely clean up and clarification type of amendments to the statutes for which the Bureau is responsible to administer. We expect this bill to be noncontroversial.

Sections 1 through 15 amend chapter 321I, the Motor Vehicle Service Contracts Act. Sections 16 through 19 amend chapter 502, the Iowa Uniform Securities Act. Sections 20 through 26 amend chapter 523B, the Iowa Business Opportunities Sales Act. Sections 27 through 31 amend chapter 523C, the Residential Service Contracts Act. Section 32 amends chapter 523D, the Retirement Care Contracts Act. Lastly, section 33 amends the Transfer on Death Security Registration provisions of the Probate Code. Rather than propose six separate bills, the Securities Bureau has packaged these as one piece of legislation. While there is no overall "theme" to the proposals, we propose several changes that are the same for each chapter.

DIVISION I - MOTOR VEHICLE SERVICE CONTRACTS

Section 1 defines the term "commissioner" and includes a reference to the deputy (superintendent of securities) appointed under the securities laws for purposes of administering the act. This was previously included in our rules at 191-23.6

Section 2 defines the term "record" providing a more modern definition to include electronic formats. The broad definition leads to the deletion of excess verbiage in later sections and other chapters.

Section 3 uses the defined term "commissioner" and eliminates inconsistent references to the insurance division.

Section 4 uses the term "accurate" in lieu of the archaic "true and correct". Also, commissioner is used instead of division.

Section 5 is a substantive addition that imposes a duty upon motor vehicle service contract providers to disclose material changes in the name or ownership of the business and requires them to advise the division when they go out of business. Currently no such duty exists and this puts the division at a disadvantage. Receipt of this information will allow us to reply to consumer inquiries and complaints. Also, it is not uncommon for a provider who is unable to meet the filing requirements of chapter 321I to change its name and then attempt again to file with the division.

Section 6 makes it unlawful for a provider to represent that the government has in some way approved of any provider. The substance of this addition was previously contained in Bureau rule 191-23.21.

Section 7 is a new and substantive provision that limits the use of used parts by the provider unless the owner authorizes them, and limits the use of rebuilt parts unless they meet certain national standards. This provision affords additional protection to consumers by requiring that all rebuilt parts must meet the same minimum requirements before they can be used in repairs.

Section 8 uses the new definition of records.

Section 9 uses the new definition of records.

Section 10 uses the new definition of records.

Section 11 amends three subsections of 321I.14. In subsection 1, the defined term commissioner is used. In subsection 2, commissioner is used, as is the new definition of record. In subsection 3, language is added to clarify that the cease and desist authority is a summary order, and that orders may include requiring affirmative action as well. The Bureau has issued summary cease and desist orders for more than two decades, so this language maintains the process historically used by the Bureau. This change makes clear that practice may continue with express authority, and that the order is effective during the pendency of any proceedings. Paragraph b provides a process for enforcement of the cease and desist order by filing a contempt action in district court., with an authorization for a civil penalty.

Section 12 uses the new definition of record.

Section 13 has some reorganization and clean-up language. The new substantive addition is a provision that allows the division to impose fines upon those providers who fail to make certain disclosures

Section 14 is a repeal of section 321I.9, which provided administrative authority to the deputy. this is now handled through the simpler definition in section 1.

Section 15 moves the chapter to the part of the code that contains several other acts administered by the insurance division/ securities bureau.

Section 16 amends the licensing sanctions to clarify that designated persons at brokerage firms with supervisory responsibilities may be held responsible for a failure to supervise under paragraph j.

Section 17 adds language to clarify that the cease and desist authority is a summary order, and that orders may include requiring affirmative action as well. The Bureau has issued summary cease and desist orders for more than two decades, so this language maintains the process historically used by the Bureau. This change makes clear that practice may continue with express authority, and that the order is effective during the pendency of any proceedings. Paragraph b provides a process for enforcement of the cease and desist order by filing a contempt action in district court., with an authorization for a civil penalty.

Section 18 increases the criminal penalty for fraudulent conduct involving investor losses in excess of \$10,000. The dollar amount for a class "C" felony matches that for theft (section 714.2(1) and fraudulent practice in the first degree (section 714.9).

Section 19 clarifies that the administrator may by rule or order waive the filing of consent to service of process if the security or transaction is exempt from registration.

DIVISION III - BUSINESS OPPORTUNITY PROGRAMS

Section 20 defines "record" by referring to the new definition in section 1 above.

Section 21 amends and "cleans up" the current reference to 16 C.F.R. section 436. The 1979 version of this provision was revised as of January 1, 1986. We can adopt rules rather than amend the statute to keep current with federal changes at the FTC.

Section 22 is a new provision to impose a clear duty upon the seller to disclose prior unregistered sales when an application is filed.

Section 23 is an amendment to add 15 days to the review period for disclosure documents filed under the business opportunities act. The time frame is being lengthened to ensure a thorough review might be performed.

Section 24 clarifies some confusion in the existing law concerning what marketing responsibilities the seller of a business opportunity has to a purchaser.

Section 25 adds language to clarify that the cease and desist authority is a summary order, and that orders may include requiring affirmative action as well. The Bureau has issued summary cease and desist orders for more than two decades, so this language maintains the process historically used by the Bureau. This change makes clear that practice may continue with express authority, and that the order is effective during the pendency of any proceedings. Paragraph b provides a process for enforcement of the cease and desist order by filing a contempt action in district court, with an authorization for a civil penalty.

Section 26 uses the new definition of record.

DIVISION IV - RESIDENTIAL SERVICE CONTRACTS

Section 27 amends chapter 22, the open records law by adding a reference to a new section 523C.23 and several longstanding sections that are administered by the Securities Bureau. The common theme is that investigative records are not public.

Section 28 defines "record" by referring to the new definition in section 1 above.

Section 29 contains clean-up language regarding fees, and sets a new cap on fees that may be collected under this act. The goal is to ensure that the fees collected do not vastly exceed the costs of administering the act

Section 30 adds language to clarify that the cease and desist authority is a summary order, and that orders may include requiring affirmative action as well. The Bureau has issued summary cease and desist orders for more than two decades, so this language maintains the process historically used by the Bureau. This change makes clear that practice may continue with express authority, and that the order is effective during the pendency of any proceedings. Paragraph b provides a process for enforcement of the cease and desist order by filing a contempt action in district court., with an authorization for a civil penalty.

Section 31 is a provision to allow the division to conduct investigations and issue subpoenas. The language is the same as in the securities act, the business opportunities act and other laws.

DIVISION V - RETIREMENT CARE CONTRACTS

Section 32 adds language to clarify that the cease and desist authority is a summary order. The Bureau has issued summary cease and desist orders for more than two decades, so this language maintains the process historically used by the Bureau. This change makes clear that practice may continue with express authority, and that the order is effective during the pendency of any proceedings. Paragraph b provides a process for enforcement of the cease and desist order by filing a contempt action in district court., with an authorization for a civil penalty.

DIVISION VI - PROBATE TRANSFER ON DEATH

Section 33 amends the uniform transfer on death security registration act that was adopted by the legislature in 1997. Due to an oversight, the sentence proposed by this amendment had been dropped from the bill. It is from the uniform act, and clarifies what is covered by the act.

FILED FEB 24 '00

SENATE FILE 2336
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 3137)

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

A BILL FOR

1 An Act relating to entities and subject matter under the
2 regulatory authority of the insurance division, including
3 motor vehicle service contracts, securities, business
4 opportunities, residential service contracts, retirement care
5 contracts, transfer on death probate provisions; and
6 establishing penalties and making penalties applicable.

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

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SF 2336

1 DIVISION I

2 MOTOR VEHICLE SERVICE CONTRACTS

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

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

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

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

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

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

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

31 2. In addition to any other required filings, ~~a-true-and~~
32 ~~correct~~ an accurate copy of the service contract and the
33 provider's reimbursement insurance policy, the consent to
34 service of process on the commissioner, and such other
35 information as the commissioner requires, shall be filed

1 annually with the commissioner no later than the first day of
2 August. If the first day of August falls on a weekend or a
3 holiday, the date for filing shall be the next business day.
4 In addition to the annual filing, the provider shall promptly
5 file copies of any amended documents if material amendments
6 have been made in the materials on file with the division
7 commissioner. If an annual filing is made after the first of
8 August and sales have occurred during the period when the
9 provider was in noncompliance with this section, the division
10 commissioner shall assess an additional filing fee that is two
11 times the amount normally required for an annual filing. A
12 fee shall not be charged for interim filings made to keep the
13 materials filed with the division current and accurate. The
14 annual filing shall be accompanied by a filing fee determined
15 by the commissioner which shall be sufficient to defray the
16 costs of administering this chapter.

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

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

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

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

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

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

28 321I.10 MISREPRESENTATIONS OF STATE APPROVAL.

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

1 securities bureau.

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

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

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

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

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

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

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

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

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

23 b. A motor vehicle service contract provider shall retain
24 all required ~~accounts, books, and~~ records pertaining to a
25 service contract holder for at least two years after the
26 specified period of coverage has expired. A provider
27 discontinuing business in this state shall maintain its
28 records until the provider furnishes the commissioner
29 satisfactory proof that the provider has discharged all
30 obligations to contract holders in this state.

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

35 Sec. 11. Section 321I.14, subsections 1, 2, and 4, Code

1 1999, are amended to read as follows:

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

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

21 4. ~~If-an-investigation-provides-reasonable-evidence~~ Upon
22 the commissioner's determination that a ~~person-violated~~
23 provider has engaged, is engaging, or is about to engage in
24 any act or practice constituting a violation of this chapter
25 or a rule adopted pursuant to this chapter, the commissioner
26 may issue ~~an a~~ a summary order directed at directing the person
27 to cease and desist from engaging in the act or practice
28 resulting in the violation or to take other affirmative action
29 as in the judgment of the commissioner is necessary to comply
30 with the requirements of this chapter.

31 a. If a hearing is not timely requested, the summary order
32 becomes final by operation of law. The order shall remain
33 effective from the date of issuance until the date the order
34 becomes final by operation of law or is overturned by a
35 presiding officer or court following a request for hearing. A

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

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

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

21 321I.15 AUDITS.

22 The commissioner may examine or cause to be examined the
23 ~~books, papers, records, memoranda, or documents~~ of a motor
24 vehicle service contract provider for the purpose of verifying
25 compliance with this chapter. The commissioner may require,
26 by a subpoena, the attendance of the provider, or the
27 provider's representative, and any other witness whom the
28 commissioner deems necessary or expedient, and the production
29 of ~~books, papers, records, memoranda, or documents~~ relating in
30 any manner to compliance with this chapter if a provider or
31 witness fails or refuses to produce the documents for
32 examination when requested by the commissioner.

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

35 321I.16 VIOLATIONS -- PENALTIES.

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

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

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

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

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

34 ~~3.--A person who willfully and knowingly violates this~~
35 ~~chapter or a rule adopted pursuant to this chapter is, upon~~

1 ~~conviction, guilty of a class "D" felony.~~

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

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

6 DIVISION II

7 IOWA UNIFORM SECURITIES ACT

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

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

30 Sec. 17. Section 502.604, subsection 1, Code Supplement
31 1999, is amended to read as follows:

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

1 requirements of this chapter.

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

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

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

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

32 b. A person who willfully and knowingly violates section
33 502.401, 502.402, or 502.403, or section 502.408, subsection 1
34 or 2, resulting in a loss of more than ten thousand dollars is
35 guilty of a class "C" felony.

1 Sec. 19. Section 502.609, subsection 1, unnumbered
2 paragraph 1, Code 1999, is amended to read as follows:
3 Every applicant for registration under this chapter, and
4 every issuer which proposes to offer a security in this state,
5 unless exempt under section 502.202 or 502.203 and the
6 administrator by rule or order waives the filing, shall file
7 with the administrator, in such form as the administrator by
8 rule prescribes, an irrevocable consent appointing the
9 administrator or the administrator's successor in office to be
10 such person's attorney to receive service of any lawful
11 process in any noncriminal suit, action or proceeding against
12 such person or the successor, executor or administrator of
13 such person which arises under this chapter or any rule or
14 order hereunder after the consent has been filed, with the
15 same validity as if served personally on the person filing the
16 consent. The consent need not be filed by a person who has
17 filed a consent in connection with a previous registration or
18 notice filing which is then in effect. Service may be made by
19 leaving a copy of the process in the office of the
20 administrator, but it is not effective unless the plaintiff,
21 including the administrator when acting as such, does the
22 following:

23 DIVISION III

24 BUSINESS OPPORTUNITY PROMOTIONS

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

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

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

32 (2) A disclosure document prepared pursuant to the federal
33 trade commission rule ~~entitled~~-"Disclosure relating to
34 disclosure requirements and prohibitions concerning
35 franchising and business opportunity ventures" as adopted by

1 rule of the administrator in accordance with 16 C.F.R. § 436
2 ~~{1979}. The administrator may by rule adopt any amendment to~~
3 ~~the disclosure document prepared pursuant to 16 C.F.R. § 436~~
4 ~~{1979} that has been adopted by the federal trade commission.~~

5 Sec. 22. Section 523B.2, subsection 2, Code Supplement
6 1999, is amended by adding the following new paragraph:

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

10 Sec. 23. Section 523B.2, subsection 4, Code Supplement
11 1999, is amended to read as follows:

12 4. EFFECTIVE DATE. A registration automatically becomes
13 effective upon the expiration of the ~~fifteenth~~ thirtieth full
14 business day after the complete filing is received by the
15 administrator, provided that ~~no~~ an order has not been issued
16 or a proceeding is not pending under subsection 10. The
17 administrator may by order waive or reduce the time period
18 prior to effectiveness, provided that a complete filing has
19 been made. The administrator may by order defer the effective
20 date until the expiration of the ~~fifteenth~~ thirtieth full
21 business day after the filing of an amendment with the
22 administrator.

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

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

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

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

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

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

1 amended to read as follows:

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

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

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

1 issue further orders as it deems appropriate.

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

5 Sec. 26. Section 523B.8, subsection 2, paragraph b, Code
6 1999, is amended to read as follows:

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

15 DIVISION IV

16 RESIDENTIAL SERVICE CONTRACTS

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

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

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

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

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

28 4. To the extent necessary to administer the provisions of
29 this chapter, the commissioner may, after notice and hearing,
30 institute a residential service contract form approval or form
31 review fee ~~as-the-commissioner-shall-by.~~ If the commissioner
32 establishes a fee, the amount of the fee shall be set by rule
33 set adopted pursuant to chapter 17A. The fee~~-if-imposed~~, may
34 be by dollar amount or based upon a percentage of the sale
35 value of the contract. However, the fee shall not exceed

1 fifty thousand dollars.

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

4 523C.19 CEASE AND DESIST ORDERS.

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

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

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

1 issue further orders as it deems appropriate.

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

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

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

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

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

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

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

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

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

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

34 (2) Publish information obtained during the course of the
35 investigation which concerns a violation of this chapter or a

1 rule or order under this chapter.

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

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

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

26 DIVISION V

27 RETIREMENT CARE CONTRACTS

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

30 523D.13 COMPLIANCE ORDERS.

31 1. Upon the commissioner's determination that a provider
32 ~~has violated a provision~~ has engaged, is engaging, or is about
33 to engage in any act or practice constituting a violation of
34 this chapter or a rule adopted pursuant to this chapter, the
35 commissioner may issue an a summary order requiring-a

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

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

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

DIVISION VI

PROBATE TRANSFER ON DEATH

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

1 6. "Security" means a security as defined in section
2 502.102. For purposes of this chapter, "security" includes,
3 but is not limited to, a certificated security, an
4 uncertificated security, and a security account.

5 EXPLANATION

6 This bill amends a number of provisions relating to the
7 entities and subject matter under the regulatory authority of
8 the insurance division of the department of commerce,
9 including motor vehicle service contracts under Code chapter
10 321I, securities (the Iowa "Blue Sky Law") under Code chapter
11 502, business opportunities and promotions under Code chapter
12 523B, residential service contracts under Code chapter 523C,
13 retirement facilities under Code chapter 523D, and securities
14 transfer on death probate provisions under Code chapter 633.
15 A number of provisions contain similar language.

16 DIVISION I

17 MOTOR VEHICLE SERVICE CONTRACTS

18 The bill amends provisions in Code section 321I.1, which
19 provides for the chapter's definitions. It amends the
20 definition of "commissioner" to include the commissioner's
21 deputy for purposes of administering the Code chapter. The
22 bill repeals Code section 321I.9, which provided
23 administrative authority to the deputy. The bill replaces
24 references in the chapter to "insurance division" to
25 "commissioner" for purposes of consistency. The bill adds a
26 definition of "record" to mean information stored or preserved
27 in any medium. Provisions throughout the chapter refer to the
28 commissioner's authority to examine records and documents.
29 The references appear inconsistent, either mentioning records
30 as some separate item (see Code section 321I.12 referring to
31 "accounts, books, and records") or referring to records
32 without any other reference (see the second occurrence in Code
33 section 321I.12(1)(b)). The bill replaces these references
34 with the term "records" as defined in the bill.

35 The bill amends Code section 321I.3 to provide that a motor

1 vehicle service contract provider must file certain provider
2 information with the commissioner. The bill provides that a
3 fee is not required as part of the filing.

4 The bill amends Code section 321I.11 to provide that a
5 provider cannot repair a motor vehicle covered by a contract
6 with used parts, unless the vehicle owner is notified prior to
7 the repair. The bill also provides that any rebuilt parts
8 used in repair of vehicles covered by service contracts be
9 rebuilt by a manufacturer according to nationally recognized
10 standards.

11 The bill amends Code section 321I.14, which provides for
12 investigations and administrative actions taken by the
13 commissioner against providers. The bill sets out procedural
14 requirements by persons who contest an order issued by the
15 commissioner. The bill provides for the assessment of civil
16 penalties for violations of an order issued pursuant to the
17 section.

18 The bill amends Code section 321I.16, which provides for
19 penalties. The bill restructures the provision in order to
20 enhance readability. For example, it moves a provision which
21 provides that a violation of the chapter is a class "D"
22 felony. It also provides that a provider who fails to file
23 documents as required in the bill is subject to a civil
24 penalty equal to \$400 plus \$2 for each contract that the
25 provider executes prior to satisfying the filing requirement.

26 The bill directs the Iowa Code editor to transfer the Code
27 chapter to a place closer to other chapters under the
28 jurisdiction of the insurance division.

29 DIVISION II

30 IOWA UNIFORM SECURITIES ACT

31 The bill amends provisions in Iowa's "Blue Sky Law"
32 administered by the commissioner of insurance or the
33 commissioner's deputy (referred to as the "administrator").

34 The bill provides that the commissioner may deny, suspend,
35 or revoke a registration or discipline a branch manager,

1 assistant branch manager, or supervisor in the same manner
2 that the commissioner may take action against an applicant or
3 registrant.

4 The bill also amends Code section 502.604, which authorizes
5 the commissioner to investigate and take disciplinary action
6 against persons regulated under the chapter. The bill makes
7 the same changes as it did in Code section 321I.14 regulating
8 motor vehicle service contracts. The bill provides procedural
9 requirements by persons who contest an order issued by the
10 administrator. The bill provides for the assessment of civil
11 penalties for violations of an order issued pursuant to the
12 section.

13 Code section 502.605 provides that a person violating the
14 chapter is guilty of a class "D" felony. This bill provides
15 that a person committing fraudulent conduct involving investor
16 losses in excess of \$10,000 is guilty of a class "C" felony,
17 which is similar to the criminal penalty for theft pursuant to
18 Code section 714.2 and fraudulent practice in the first degree
19 pursuant to Code section 714.9.

20 The bill amends Code section 502.609, which requires that
21 an issuer must file an irrevocable consent appointing the
22 commissioner as the issuer's attorney to receive service in
23 civil actions. The bill exempts certain persons from this
24 requirement if the exemption is validated by rule or order of
25 the administrator, including persons who issue exempt
26 securities.

27 DIVISION III

28 BUSINESS OPPORTUNITY PROMOTIONS

29 The bill amends Code chapter 523B which regulates sellers
30 of business opportunity promotions by the commissioner or
31 deputy (referred to as the "administrator" under the chapter).
32 A business opportunity is the offer for the sale of products
33 and equipment.

34 The bill amends Code section 523B.1, which provides
35 definitions for the chapter. Specifically, the bill defines

1 the term "record" in the same way in which the bill defines
2 the term under Code section 321I.1 regulating motor vehicle
3 service contracts. Similarly, the bill strikes references to
4 "books, papers, correspondence, memoranda, agreements, or
5 other documents or records" in the chapter.

6 The bill amends Code section 523B.2, which provides for the
7 disclosure of documents prepared pursuant to federal
8 regulations. The bill eliminates language which refers to a
9 specific date that the regulation was adopted and states that
10 the commissioner must adopt rules providing for enforcement
11 under the most recent federal regulation.

12 The bill further amends Code section 523B.2, which provides
13 registration requirements. The Code section requires
14 disclosure of documents to the commissioner as part of a
15 registration process. The bill provides that a seller must
16 disclose sales or offers made in this state prior to
17 registration. The Code section provides that a registration
18 automatically becomes effective upon the expiration of the
19 fifteenth business day after the filing has been received by
20 the commissioner. The bill increases that period to the
21 thirtieth business day. The Code section provides that a
22 contract offered under the section must include a number of
23 items. The bill adds to those required items, by stating that
24 it must include the rights and responsibilities of the parties
25 regarding the marketing of a business opportunity.

26 The bill amends Code section 523B.8, which provides for
27 investigating or taking disciplinary action against persons
28 regulated under the chapter. The bill makes the same changes
29 as it did in Code section 321I.14 regulating motor vehicle
30 service contracts and Code section 502.604 regulating
31 securities. The bill provides procedural requirements by
32 persons who contest an order issued by the administrator. The
33 bill provides for the assessment of civil penalties for
34 violations of an order issued pursuant to the section.

35

DIVISION IV

1 regulation of contracts to provide care to persons in a
2 retirement facility.

3 The bill amends Code section 523D.13, which provides for
4 investigating or taking disciplinary action against persons
5 regulated under the chapter. The bill makes the same changes
6 as it did in Code section 321I.14 regulating motor vehicle
7 service contracts, Code section 502.604 regulating securities,
8 and Code section 523B.8 regulating business opportunity
9 promotions. The bill provides procedural requirements by
10 persons who contest an order issued by the commissioner. The
11 bill provides for the assessment of civil penalties for
12 violations of an order issued pursuant to the section.

13 DIVISION VI

14 PROBATE TRANSFER ON DEATH

15 This bill amends Code chapter 633, which is the "Iowa
16 Probate Code". Specifically it amends provisions enacted by
17 the general assembly in 1997 referred to as the "Uniform
18 Transfer on Death Security Registration Act". The bill amends
19 the term "security" to include a certificated security, an
20 uncertificated security, and a security account.

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SENATE FILE 2336

S-5067

1 Amend Senate File 2336 as follows:

2 1. Page 12, by inserting after line 14 the
3 following:

4 "DIVISION
5 MANAGED HEALTH CARE
6 Sec. ____ . NEW SECTION. 514L.1 LIABILITY OF A
7 MANAGED CARE HEALTH PLAN OR HEALTH MAINTENANCE
8 ORGANIZATION.

9 1. For purposes of this section, unless the
10 context otherwise requires:

11 a. "Managed care health plan" means a health
12 benefit plan that selects and contracts with health
13 care providers; manages and coordinates health care
14 delivery; monitors necessity, appropriateness, and
15 quality of health care delivered by health care
16 providers; and performs utilization review and cost
17 control.

18 b. "Health maintenance organization" means a
19 health maintenance organization as defined in section
20 514B.1, subsection 6.

21 2. a. A managed care health plan or health
22 maintenance organization shall exercise ordinary care
23 when making health care treatment decisions and is
24 liable for damages for harm to an insured or enrollee
25 proximately caused by its failure to exercise ordinary
26 care. An insured or enrollee may bring an action
27 against a managed care health plan or health
28 maintenance organization for a breach of the duty to
29 exercise ordinary care.

30 For purposes of this section, a managed care health
31 plan or health maintenance organization includes an
32 employee, agent, or other person acting on behalf of
33 the managed care health plan or health maintenance
34 organization.

35 b. In any action brought under this section
36 against a managed care health plan or health
37 maintenance organization, the managed care health plan
38 or health maintenance organization may assert as a
39 defense either of the following:

40 (1) The managed care health plan or health
41 maintenance organization did not control, influence,
42 or participate in the health care treatment decision.

43 (2) The managed care health plan or health
44 maintenance organization did not deny or delay payment
45 for any treatment prescribed or recommended by a
46 health care provider.

47 c. This section does not create a duty on the part
48 of the managed care health plan or health maintenance
49 organization to provide treatment which is not covered
50 by the health care plan of the managed care health

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1 plan or health maintenance organization.
2 d. In an action against a managed care health plan
3 or health maintenance organization, a finding that a
4 physician or other health care provider is an
5 employee, agent, or representative of such managed
6 care health plan or health maintenance organization
7 shall not be based solely on proof that such person's
8 name appears in a listing of approved health care
9 providers made available to insureds or enrollees."

By JOHNIE HAMMOND

S-5067 FILED MARCH 6, 2000