

FEB 16 2004
Place On Calendar

HOUSE FILE 2269
BY COMMITTEE ON COMMERCE,
REGULATION AND LABOR

(SUCCESSOR TO HSB 547)

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

A BILL FOR

1 An Act providing for the regulation of business entities,
2 including businesses providing for cemetery and funeral
3 merchandising and services, business promotions and contracts,
4 and businesses providing continuing care or adult congregate
5 living services, and providing penalties.

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

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HF 2269

DIVISION I

CEMETERY AND FUNERAL MERCHANDISING AND SERVICES

Section 1. Section 523A.102, subsection 22, Code 2003, is amended by striking the subsection.

Sec. 2. Section 523A.501, subsection 6, Code 2003, is amended to read as follows:

6. If no denial order is in effect and no proceeding is pending under section 523A.503, the application becomes effective at noon of the thirtieth day after a completed application or an amendment completing the application is filed, unless waived by the applicant. The commissioner may specify an earlier effective date. Automatic effectiveness under this subsection shall not be deemed approval of the application. If the commissioner does not grant the permit, the commissioner shall notify the person in writing of the reasons for the denial. ~~The permit shall disclose on its face the permit holder's employer or the establishment on whose behalf the applicant will be making or attempting to make sales, the permit number, and the expiration date.~~

Sec. 3. Section 523A.502, subsection 7, Code 2003, is amended to read as follows:

7. A sales permit is not assignable or transferable. A ~~permit holder~~ An establishment selling all or part of a its business to a purchaser shall cancel the establishment's sales permit and the. The purchaser shall apply for a new sales permit in the purchaser's name within thirty days of the sale.

Sec. 4. NEW SECTION. 523A.704 CIVIL PENALTY.

In addition to criminal penalties, a person who violates a provision of this chapter, including a rule adopted by the commissioner pursuant to this chapter or an order issued by the commissioner pursuant to this chapter, is subject to a civil penalty. The commissioner may impose, assess, and collect a civil penalty which shall not exceed ten thousand dollars. In computing the amount of the civil penalty, each day of a continuing violation constitutes a separate offense.

1 Any civil penalties collected shall be deposited in the
2 general fund of the state.

3 DIVISION II

4 BUSINESS PROMOTIONS AND CONTRACTS

5 Sec. 5. Section 22.7, subsection 42, Code Supplement 2003,
6 is amended to read as follows:

7 42. Information obtained by the commissioner of insurance
8 in the course of an investigation as provided in section
9 502.603~~7~~-523B-8~~7~~ or 523C.23.

10 Sec. 6. Section 523B.1, subsection 1, Code 2003, is
11 amended by striking the subsection.

12 Sec. 7. Section 523B.1, subsection 3, paragraph a,
13 unnumbered paragraph 1, Code 2003, is amended to read as
14 follows:

15 "Business opportunity" means an opportunity to start a
16 business according to the terms of a contract ~~or agreement~~~~7~~
17 ~~between a seller and purchaser~~~~7~~-~~express-or-implied~~~~7~~-~~orally-or~~
18 ~~in-writing~~~~7~~-at in which the purchaser provides an initial
19 investment exceeding five hundred dollars~~7~~-~~where;~~ the parties
20 ~~agree~~ seller represents that the seller or a person
21 recommended by the seller is to provide to the purchaser any
22 products, equipment, supplies, materials, or services for the
23 purpose of enabling the purchaser to start a the business~~7~~;
24 and the seller represents, directly or indirectly, orally or
25 in writing, any of the following:

26 Sec. 8. Section 523B.1, subsection 3, paragraph b,
27 subparagraph (5), Code 2003, is amended to read as follows:

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

31 Sec. 9. Section 523B.1, Code 2003, is amended by adding
32 the following new subsection:

33 NEW SUBSECTION. 3A. "Contract" means any agreement
34 between parties which is express or implied, and which is made
35 orally or in writing.

1 Sec. 10. Section 523B.1, subsection 4, unnumbered
2 paragraph 1, Code 2003, is amended to read as follows:

3 "Franchise" means a contract ~~or-agreement~~ between a seller
4 and a purchaser~~7-express-or-implied7-orally-or-in-writing7~~
5 where the parties agree to both all of the following:

6 Sec. 11. Section 523B.1, subsections 9, 10, and 12, Code
7 2003, are amended to read as follows:

8 9. "Person" means ~~an-individual7-corporation7-trust7~~
9 ~~partnership7-incorporated-or-unincorporated-association7-or~~
10 ~~any-other-legal-entity7-provided7-however7-person~~ the same as
11 defined in section 4.1, except that it does not include a
12 government or governmental subdivision or agency.

13 10. "Purchaser" means a person who enters into a contract
14 ~~or-agreement~~ for the acquisition of a business opportunity or
15 a person to whom an offer to sell a business opportunity is
16 directed.

17 12. "Sale" or "sell" includes every contract ~~or-agreement~~
18 ~~of~~ for sale, contract to sell, or disposition of, a business
19 opportunity or interest in a business opportunity for value.

20 Sec. 12. Section 523B.2, subsections 1 through 7, Code
21 2003, are amended by striking the subsections.

22 Sec. 13. Section 523B.2, subsection 8, paragraphs a and b,
23 Code 2003, are amended to read as follows:

24 1. DISCLOSURE DOCUMENT REQUIRED. A person required to
25 file an irrevocable consent to service of process with the
26 secretary of state as a seller as provided in section 523B.2A
27 shall not act as seller in the state

28 ~~a---it-is-unlawful-to-offer-or-sell-a-business-opportunity~~
29 ~~required-to-be-registered-pursuant-to-this-chapter~~ unless the
30 person provides a written disclosure document ~~as-filed-under~~
31 ~~subsection-2-is-delivered~~ to each purchaser. The person shall
32 deliver the written disclosure document to the purchaser at
33 least ten business days prior to the earlier of the
34 purchaser's execution by ~~a-purchaser~~ of a contract ~~or~~
35 agreement imposing a binding legal obligation on the purchaser

1 or the payment by a purchaser of any consideration in
2 connection with the offer or sale of the business opportunity.

3 b. 2. DISCLOSURE DOCUMENT COVER SHEET. The disclosure
4 document shall have a cover sheet which ~~is entitled,~~ shall
5 consist of a title printed in bold and a statement. The title
6 and statement shall be in at least ten point bold type,
7 "DISCLOSURE-REQUIRED-BY-IOWA-LAW." and shall appear as
8 follows:

9 DISCLOSURE REQUIRED BY IOWA LAW

10 ~~Under the title shall appear the following statement in at~~
11 ~~least ten point type:--"The~~ The registration of this business
12 opportunity does not constitute approval, recommendation, or
13 endorsement by the state of Iowa. The information contained
14 in this disclosure document has not been verified by this
15 state. If you have any questions or concerns about this
16 investment, seek professional advice before you sign a
17 contract or make any payment. You are to be provided ten (10)
18 business days to review this document before signing a
19 contract or agreement or making any payment to the seller or
20 the seller's representative." representative.

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

25 3. DISCLOSURE DOCUMENT CONTENTS. A disclosure document
26 shall be in one of the following forms:

27 a. A uniform franchise offering circular prepared in
28 accordance with the guidelines adopted by the North American
29 securities administrators association, inc., as amended
30 through the effective date of this Act.

31 b. A disclosure document prepared pursuant to the federal
32 trade commission rule relating to disclosure requirements and
33 prohibitions concerning franchising and business opportunity
34 ventures in accordance with 16 C.F.R. § 436.

35 c. A form that includes all of the following:

1 Sec. 14. Section 523B.2, subsection 8, paragraph c,
2 unnumbered paragraph 1, Code 2003, is amended by striking the
3 unnumbered paragraph.

4 Sec. 15. Section 523B.2, subsection 8, paragraph c,
5 subparagraph (13), Code 2003, is amended by striking the
6 subparagraph.

7 Sec. 16. Section 523B.2, subsection 8, paragraph c,
8 subparagraphs (17), (18), (19), and (20), Code 2003, are
9 amended to read as follows:

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

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

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

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

29 Sec. 17. Section 523B.2, subsection 8, paragraph c,
30 subparagraph (25), Code 2003, is amended by striking the
31 subparagraph.

32 Sec. 18. Section 523B.2, subsection 9, paragraphs a and b,
33 Code 2003, are amended to read as follows:

34 a. ~~It-is-unlawful-to~~ A person shall not offer or sell a
35 business opportunity ~~required-to-be-registered~~ unless the a

1 business opportunity contract ~~or-agreement~~ is in writing and a
2 copy of the contract ~~or-agreement~~ is given provided to the
3 purchaser at the time the purchaser ~~signs~~ executes the
4 contract ~~or-agreement~~.

5 ~~b.--The-contract-or-agreement-is-subject-to-this-chapter~~
6 ~~and-section-714-16-~~

7 Sec. 19. Section 523B.2, subsection 9, paragraph c,
8 unnumbered paragraph 1, Code 2003, is amended to read as
9 follows:

10 ~~Contracts-or-agreements~~ A business opportunity contract
11 shall set forth in at least ten point type or equivalent size,
12 if handwritten, all of the following:

13 Sec. 20. Section 523B.2, subsection 10, Code 2003, is
14 amended by striking the subsection.

15 Sec. 21. NEW SECTION. 523B.2A SERVICE OF PROCESS --
16 IRREVOCABLE CONSENT.

17 A seller shall file an irrevocable consent with the
18 secretary of state. The seller shall file the irrevocable
19 consent prior to executing a business opportunity contract or
20 engaging in the sale of a business opportunity in this state.
21 The irrevocable consent shall appoint the secretary of state
22 to be the seller's attorney to receive service of any lawful
23 process in a noncriminal suit, action, or proceeding against
24 the seller or the seller's successor, executor, or
25 administrator which arises under this chapter after the
26 irrevocable consent has been filed. The irrevocable consent
27 shall have the same force and validity as if the seller were
28 served service of process personally.

29 Sec. 22. Section 523B.3, Code 2003, is amended to read as
30 follows:

31 523B.3 ~~EXEMPTIONS FROM REGISTRATION-AND-DISCLOSURE~~
32 REQUIREMENTS -- BURDEN OF PROOF.

33 1. ~~EXEMPTIONS-~~ The following business opportunities are
34 exempt from the requirements of section 523B.2:

35 a. The offer or sale of a business opportunity if the

1 purchaser is a bank, savings and loan association, trust
2 company, insurance company, credit union, or investment
3 company as defined by the federal Investment Company Act of
4 1940, a pension or profit-sharing trust, or other financial
5 institution or institutional buyer, or a broker-dealer
6 registered pursuant to chapter 502, whether the purchaser is
7 acting for itself or in a fiduciary capacity.

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

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

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

26 For the purposes of this paragraph "b", a personal meeting
27 means a face-to-face meeting between the purchaser and the
28 seller or their representatives, which is held for the purpose
29 of discussing the offer or sale of a business opportunity.

30 ~~The administrator may by rule adopt any amendment to the~~
31 ~~uniform franchise offering circular that has been adopted by~~
32 ~~the North American securities administrators association,~~
33 ~~inc. or any amendment to the disclosure document prepared~~
34 ~~pursuant to the federal trade commission rule entitled~~
35 ~~"Disclosure requirements and prohibitions concerning~~

1 franchising-and-business-opportunity-ventures^u7-16-C.F.R.-§
2 436-(1979)7-that-has-been-adopted-by-the-federal-trade
3 commission-

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

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

16 2.--DENIAL-OR-REVOCAION-OF-EXEMPTIONS-

17 a.--If-the-public-interest-of-the-protection-of-purchasers
18 so-requires7-the-administrator-may-by-order-deny-or-revoke-an
19 exemption-specified-in-this-section-with-respect-to-a
20 particular-offering-of-one-or-more-business-opportunities.--An
21 order-shall-not-be-entered-without-appropriate-prior-notice-to
22 all-interested-parties7-opportunity-for-hearing7-and-written
23 findings-of-fact-and-conclusions-of-law-

24 b.--If-the-public-interest-or-the-protection-of-purchasers
25 so-requires7-the-administrator-may-by-order-summarily-deny-or
26 revoke-any-of-the-specified-exemptions-pending-final
27 determination-of-any-proceedings-under-this-section.--Upon
28 entry-of-the-order7-the-administrator-shall-promptly-notify
29 all-interested-parties-that-it-has-been-entered-and-of-the
30 reasons-for-entering-the-order-and-that-within-fifteen-days-of
31 the-receipt-of-a-written-request-the-matter-will-be-set-down
32 for-hearing.--If-a-hearing-is-not-requested-the-order-shall
33 remain-in-effect-until-it-is-modified-or-vacated-by-the
34 administrator.--If-a-hearing-is-requested-or-ordered7-the
35 administrator-shall-not-modify-or-vacate-the-order-or-extend

1 ~~it-until-final-determination.~~

2 ~~c.--An-order-under-this-section-shall-not-operate~~
3 ~~retroactively.~~

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

9 ~~3.--BURDEN-OF-PROOF.~~ 2. In an administrative, civil, or
10 criminal proceeding related to this chapter, the burden of
11 proving an exemption, an exception from a definition, or an
12 exclusion from this chapter, is upon the person claiming it.

13 Sec. 23. Section 523B.7, subsection 1, paragraph a, Code
14 2003, is amended to read as follows:

15 a. A person who violates the requirements for disclosure
16 or for the contents of a business opportunity contract
17 pursuant to section 523B.2,-subsection-1,-8,-or-9, is liable
18 to the purchaser in an action for rescission of the agreement
19 contract, or for recovery of all money or other valuable
20 consideration paid for the business opportunity, and for
21 actual damages together with interest as determined pursuant
22 to section 668.13 from the date of sale, reasonable attorney's
23 fees, and court costs.

24 Sec. 24. Section 523B.7, subsection 1, paragraphs b and c,
25 Code 2003, are amended by striking the paragraphs.

26 Sec. 25. Section 523B.7, subsection 4, Code 2003, is
27 amended to read as follows:

28 4. ~~The-rights-and~~ In addition to any remedies available
29 ~~pursuant-to-this-chapter-are-in-addition-to-any-other-rights~~
30 ~~or-remedies-that-may-exist-at~~ provided by law or in equity, a
31 person injured by a violation of this chapter may bring a
32 civil action and recover damages or obtain other appropriate
33 relief including injunctive or other equitable relief. If the
34 person is the prevailing party, the person shall be awarded
35 court costs, reasonable attorney fees, and expert fees which

1 shall be taxed as part of the costs of the action.

2 Sec. 26. Section 523B.11, Code 2003, is amended to read as
3 follows:

4 523B.11 PENALTIES.

5 1. a. A seller who willfully violates the requirements
6 for disclosure or for the contents of a business opportunity
7 contract pursuant to section 523B.2, subsection-1, 8, or 9, or
8 who provides misleading advertising as provided in section
9 523B.12, subsection-2, who willfully violates a rule under
10 this chapter, or who willfully violates an order of which the
11 person has notice, ~~or who violates section 523B.12, subsection~~
12 ~~1, knowing that the statement made was false or misleading in~~
13 ~~any material respect,~~ upon conviction, is guilty of a class
14 "D" felony. Otherwise, a person who violates a rule adopted
15 or order issued under this chapter is, upon conviction, guilty
16 of an aggravated misdemeanor. Each of the acts specified
17 constitutes a separate offense and a prosecution or conviction
18 for any one of such offenses does not bar prosecution or
19 conviction for any other offense.

20 2. A business opportunity contract is subject to section
21 714.16.

22 3. A seller who willfully uses any device or scheme to
23 defraud a person in connection with the an advertisement,
24 offer to sell or lease, sale, or lease of a business
25 opportunity, or who willfully violates any other provision of
26 this chapter, except as provided in subsections 1 and 3,
27 subsection 1, is, upon conviction, guilty of a fraudulent
28 practice as provided in chapter 714.

29 ~~3.--A seller who violates a rule or order adopted or issued~~
30 ~~under this chapter is, upon conviction, guilty of an~~
31 ~~aggravated misdemeanor.~~

32 ~~4.--The administrator may refer available evidence~~
33 ~~concerning a possible violation of this chapter or of a rule~~
34 ~~or order issued under this chapter to the attorney general.~~
35 ~~The attorney general, with or without such a referral, may~~

1 institute-appropriate-criminal-proceedings-or-may-direct-the
2 case-to-the-appropriate-county-attorney-to-institute
3 appropriate-criminal-proceedings-

4 Sec. 27. Section 523B.12, subsections 1, 2, and 3, Code
5 2003, are amended to read as follows:

6 1. MISLEADING FILINGS STATEMENTS. ~~It is unlawful to A~~
7 person shall not make or cause to be made, a misleading
8 statement in a disclosure document filed with the
9 administrator required pursuant to section 523B.2 or in a
10 proceeding under this chapter, a statement which is, at. The
11 statement shall be deemed to be misleading if any of the
12 following apply:

13 a. At the time and in the light of the circumstances under
14 which it is made, the statement is false or misleading in a
15 material respect or, in connection with such a statement, to
16 omit to state.

17 b. An omission of a material fact is necessary in order to
18 make the statement made, in the light of the circumstances
19 under which it is made, not misleading.

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

33 3. 2. ADVERTISING. It is unlawful for a A seller shall
34 not, in connection with the offer or sale of a business
35 opportunity in this state, to publish, circulate, or use

1 advertising which contains an untrue statement of a material
2 fact or omits to state a material fact necessary in order to
3 make the statements made, in the light of the circumstances
4 under which they are made, not misleading.

5 Sec. 28. Section 523B.12, subsection 4, unnumbered
6 paragraph 1, Code 2003, is amended to read as follows:

7 ~~It is unlawful for a business opportunity~~ A seller to of a
8 business opportunity shall not do any of the following:

9 Sec. 29. Section 523B.12, subsection 4, paragraphs d, f,
10 h, and j, Code 2003, are amended to read as follows:

11 d. Misrepresent the training and management assistance
12 available to the ~~business-opportunity~~ purchaser.

13 f. Misrepresent, by failure to disclose or otherwise, the
14 termination, transfer, or renewal provision of a business
15 opportunity agreement contract.

16 h. Assign a so-called exclusive territory encompassing the
17 same area to more than one ~~business-opportunity~~ purchaser.

18 j. Provide merchandise, machines, or displays of a brand
19 or kind substantially different from or inferior to those
20 promised by the ~~business-opportunity~~ seller.

21 Sec. 30. Section 523B.13, subsections 5 and 6, Code 2003,
22 are amended by striking the subsections.

23 Sec. 31. DIRECTIONS TO CODE EDITOR. The Code editor is
24 directed to renumber Code chapter 523B, transferring the
25 chapter from title XIII, subtitle 1, insurance and related
26 regulation, to title XIII, subtitle 5, regulation of
27 commercial enterprises.

28 Sec. 32. Sections 523B.5, 523B.8, and 523B.10, Code 2003,
29 are repealed.

30 DIVISION III

31 CONGREGATE CARE OR SENIOR ADULT CONGREGATE LIVING SERVICES

32 Sec. 33. Section 523D.2, Code 2003, is amended to read as
33 follows:

34 523D.2 ~~FILING WITH DIVISION OF INSURANCE~~ APPLICATION OF
35 CHAPTER.

1 ~~A person shall not~~ as This chapter applies to a provider,
2 ~~enter into~~ who executes a contract to provide continuing care
3 or senior adult congregate living services in a facility, or
4 extend the term of an existing contract to provide continuing
5 care or senior adult congregate living services in a facility,
6 if the contract requires or permits the payment of an entrance
7 fee to any a person, and ~~the~~ any of the following apply:

8 1. The facility is or will be located in this state ~~or~~
9 the.

10 2. The provider or a person acting on the provider's
11 behalf solicits the contract within this state for a facility
12 located in this state and the person to be provided with
13 continuing care or senior adult congregate living services
14 under the contract resides within this state at the time of
15 the solicitation ~~unless the person has filed with the~~
16 ~~division of insurance of the department of commerce, a current~~
17 ~~disclosure statement which meets the requirements of section~~
18 ~~523D-3. The disclosure statement shall be accompanied by a~~
19 ~~one hundred dollar filing fee as a condition of filing and~~
20 ~~compliance with this section.~~

21 Sec. 34. NEW SECTION. 523D.2A ANNUAL CERTIFICATION.

22 On or before March 1 of each year, a provider shall file a
23 certification with the commissioner in a manner and according
24 to requirements established by the commissioner. The
25 certification shall be accompanied by a one hundred dollar
26 administrative fee. The certification shall attest that
27 according to the best knowledge and belief of the attesting
28 party, the facility administered by the provider is in
29 compliance with the provisions of this chapter, including
30 rules adopted by the commissioner or orders issued by the
31 commissioner as authorized under this chapter. The attesting
32 person may be any of the following:

33 1. A person serving as the president or chief executive
34 officer of a corporation.

35 2. A person acting as the general partner of a limited

1 partnership.

2 3. A person acting as the general partner of a limited
3 liability partnership.

4 4. A person acting in a fiduciary capacity or as a trustee
5 on behalf of a provider.

6 5. A person who is a manager of a limited liability
7 company.

8 Sec. 35. Section 523D.3, subsection 1, Code 2003, is
9 amended by adding the following new paragraph:

10 NEW PARAGRAPH. n. A description of transactions in which
11 the provider obtains real or personal property or construction
12 services from any of the following:

13 (1) The developer of the facility, or a person who is
14 under the control of the developer.

15 (2) If the provider is a business entity, any person
16 holding an executive position in the business entity,
17 including but not limited to a member of a board of directors
18 or an officer of a corporation, a manager of a limited
19 liability company, a general partner of a limited partnership,
20 or a trustee of a trust.

21 (3) If the provider is a business entity, any person who
22 holds a ten percent or greater equity or beneficial interest
23 in the business entity.

24 (4) Any person who directly or indirectly by acting
25 through one or more intermediaries controls management
26 decisions of the facility.

27 A transaction shall include each purchase or lease of real
28 property or personal property by the provider, and any
29 construction services provided to the provider. The
30 description shall include transactions which have occurred or
31 which are planned to occur. The description shall also
32 include whether the terms of the transaction were or will be
33 on terms which are at least as favorable to the provider as
34 those terms which would be generally available from an
35 unaffiliated third party.

1 Sec. 36. Section 523D.3, subsections 2 through 4, Code
2 2003, are amended to read as follows:

3 2. ~~The provider shall file with the insurance division,~~
4 ~~annually within five months following the end of the~~
5 ~~provider's fiscal year,~~ prepare an annual disclosure statement
6 which shall contain the information required by this chapter
7 for the initial disclosure statement. The annual disclosure
8 statement shall also be accompanied by a narrative describing:

9 a. Any material differences between the pro forma cash
10 flow projection ~~filed~~ prepared pursuant to this chapter as
11 part of the most recent annual disclosure statement and the
12 actual results of operations during the fiscal year, if the
13 material differences substantially affect the financial safety
14 or soundness of the community.

15 b. A revised pro forma cash flow projection for the next
16 fiscal year.

17 2A. The provider shall prepare the annual disclosure
18 statement not later than five months following the end of the
19 provider's fiscal year. The provider shall retain a record of
20 each annual disclosure statement prepared under this section
21 for at least five years.

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

31 4. ~~In addition to filing the annual disclosure statement,~~
32 ~~the~~ The provider may amend its ~~currently filed~~ current annual
33 disclosure statement at any other time if, in the opinion of
34 the provider, an amendment is necessary to prevent the
35 disclosure statement and annual disclosure statement from

1 containing any material misstatement of fact or omission to
2 state a material fact required to be included in the
3 statement. The amendment or amended disclosure statement
4 shall be ~~filed with the division of insurance before the~~
5 ~~statement is delivered~~ kept with the records of the provider's
6 annual disclosure statements. The provider shall deliver a
7 copy of the amendment to a resident or prospective resident
8 and a personal representative of a resident or prospective
9 resident ~~and is subject to all the requirements, including~~
10 ~~those as to content and delivery, of this chapter~~ in the same
11 manner as the annual disclosure statement.

12 Sec. 37. Section 523D.4, subsection 2, Code 2003, is
13 amended to read as follows:

14 2. A provider shall not ~~file with the division of~~
15 ~~insurance or make,~~ publish, disseminate, circulate, or deliver
16 to any person or place before the public, or cause, directly
17 or indirectly, to be ~~made,~~ published, disseminated,
18 circulated, or delivered to any person or placed before the
19 public, a financial statement which does not meet generally
20 accepted accounting principles.

21 Sec. 38. Section 523D.5, subsection 1, unnumbered
22 paragraph 1, Code 2003, is amended to read as follows:

23 A provider shall not enter into a contract to provide
24 continuing care or senior adult congregate living services
25 that applies to a living unit that is part of a new facility
26 or proposed expansion that is or will be located in this state
27 unless the ~~person has submitted an application on a form as~~
28 ~~required by the division of insurance accompanied by a fee of~~
29 ~~two hundred fifty dollars. The application at a minimum must~~
30 include provider has prepared or acquired all of the following
31 information:

32 Sec. 39. Section 523D.5, subsection 1, paragraphs d
33 through f, Code 2003, are amended to read as follows:

34 d. A statement of financial feasibility for the new
35 facility or proposed expansion ~~in a form satisfactory to the~~

1 commissioner, which includes a statement of future funding
2 sources and shall identify the qualifications of the person or
3 persons preparing the study.

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

8 f. If the new facility or proposed expansion offers a
9 promise to provide nursing or health care services to
10 residents in the future pursuant to contracts effective for
11 the life of the resident or a period in excess of one year in
12 consideration for an entrance fee, an actuarial forecast ~~in-a~~
13 ~~form-satisfactory-to-the-commissioner~~, which identifies the
14 qualifications of the actuary or actuaries preparing the
15 forecast.

16 Sec. 40. Section 523D.5, subsection 2, paragraphs a and b,
17 Code 2003, are amended to read as follows:

18 a. ~~Existing-facilities---If-a-filing-is-made-under-this~~
19 ~~section-for~~ For an expansion of an existing facility, the
20 determination of feasibility shall be based on consolidated
21 information for the existing facility and the proposed
22 expansion.

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

30 Sec. 41. Section 523D.5, subsection 3, unnumbered
31 paragraph 1, Code 2003, is amended to read as follows:

32 New construction shall not begin until ~~the-filing-required~~
33 ~~by-this-section-has-been-made-and~~ at least fifty percent of
34 the proposed number of independent living units in the initial
35 stage or phase have been reserved pursuant to executed

1 contracts and at least ten percent of the entrance fees
2 required by those contracts are held in escrow pursuant to
3 this chapter. However, the requirements of this subsection
4 may be waived by the commissioner by rule or order upon a
5 showing of good cause.

6 Sec. 42. Section 523D.5, subsection 3, paragraph a, Code
7 2003, is amended to read as follows:

8 a. Secured financing adequate in an amount and term to
9 complete the project ~~described-in-the-filing-required-by-this~~
10 ~~section.~~

11 Sec. 43. Section 523D.5, subsection 4, Code 2003, is
12 amended to read as follows:

13 4. ESCROW REQUIREMENTS. Unless ~~proof-has-been-submitted~~
14 ~~to-the-commissioner-that~~ conditions for the release of
15 escrowed funds set forth in this section have already been
16 met, the provider shall establish an interest-bearing escrow
17 account at a state or federally regulated financial
18 institution located within this state to receive any deposits
19 or entrance fees or portions of deposits or fees for a living
20 unit which has not been previously occupied by a resident for
21 which an entry fee arrangement is used. The escrow account
22 agreement shall be entered into between the financial
23 institution and the provider with the financial institution as
24 the escrow agent and as a fiduciary for the resident or
25 prospective resident. The agreement shall state that the
26 purpose of the escrow account is to protect the resident or
27 prospective resident and that the funds deposited shall be
28 kept and maintained in an account separate and apart from the
29 provider's business accounts.

30 Sec. 44. Section 523D.5, subsection 5, paragraph c,
31 unnumbered paragraph 1, Code 2003, is amended to read as
32 follows:

33 Except as provided by paragraphs "a" and "b", amounts held
34 in escrow shall not be released ~~only-upon-approval-of-the~~
35 ~~commissioner.--The-commissioner-shall-approve-the-release-of~~

1 ~~funds-only-upon-a-determination-that~~ unless at least one of
2 the following conditions has been satisfied:

3 Sec. 45. Section 523D.5, Code 2003, is amended by adding
4 the following new subsection:

5 NEW SUBSECTION. 6. RETENTION OF RECORDS. The provider
6 shall maintain information required by this section for at
7 least five years. The information shall be made available for
8 inspection during normal business hours.

9 Sec. 46. Section 523D.8, subsection 1, Code 2003, is
10 amended to read as follows:

11 1. A person who ~~willfully-and-knowingly~~ violates a
12 provision of this chapter or a rule adopted or order entered
13 pursuant to this chapter, ~~upon-conviction,-is-guilty-of-an~~
14 aggravated-misdemeanor commits a fraudulent practice as
15 provided in chapter 714.

16 Sec. 47. Section 523D.10, Code 2003, is amended to read as
17 follows:

18 523D.10 RULES.

19 The division of insurance may adopt rules pursuant to
20 chapter 17A as necessary and appropriate to implement this
21 chapter, and may make further recommendations to the general
22 assembly for the protection of residents and prospective
23 residents of facilities ~~required-to-file-an-annual-disclosure~~
24 statement under this chapter.

25 Sec. 48. Section 523D.12, subsection 1, Code 2003, is
26 amended by striking the subsection.

27 Sec. 49. Section 523D.12, subsection 2, unnumbered
28 paragraph 1, Code 2003, is amended to read as follows:

29 The commissioner ~~or-the-attorney-general~~ may, for the
30 purpose of discovering or investigating violations of this
31 chapter or rules adopted pursuant to this chapter do any or
32 all of the following:

33 Sec. 50. Section 523D.12, subsection 2, paragraph c, Code
34 2003, is amended to read as follows:

35 c. Apply to the district court for issuance of an order

1 requiring a person's appearance before the commissioner ~~or~~
2 ~~attorney-general~~. The person may also be required to produce
3 documentary evidence germane to the subject of the
4 investigation. Failure to obey a court order under this
5 subsection constitutes contempt of court.

6 Sec. 51. Section 523D.14, Code 2003, is amended to read as
7 follows:

8 523D.14 INJUNCTIONS.

9 The ~~attorney-general~~ commissioner may petition the district
10 court in any county of the state for an injunction to restrain
11 a person subject to this chapter and any agents, employees, or
12 associates of the person from engaging in conduct or practices
13 in violation of this chapter or rules adopted pursuant to this
14 chapter. In a proceeding for an injunction, the ~~attorney~~
15 ~~general~~ commissioner may apply to the court for the issuance
16 of a subpoena to require the appearance of a defendant and the
17 defendant's agents and any documents, books, or records
18 germane to the hearing upon the petition for an injunction.
19 Upon proof of any of the violations described in the petition
20 for injunction, the court may grant the injunction.

21 Sec. 52. Section 523D.9, Code 2003, is repealed.

22 EXPLANATION

23 DIVISION I -- CEMETERY AND FUNERAL MERCHANDISING AND
24 SERVICES

25 This division amends provisions in Code chapter 523A, the
26 "Iowa Cemetery and Funeral Merchandise and Funeral Services
27 Act", which regulates persons engaged in the business of
28 selling merchandise and services related to interment,
29 entombment, or cremation. The chapter is administered by the
30 insurance commissioner.

31 The division eliminates the definition of "person" which is
32 defined for purposes of the entire Code in section 4.1.

33 Code sections 523A.501 through 523A.503 provide permit
34 requirements for persons regulated by the Code chapter such as
35 establishments or persons advertising or selling cemetery or

1 funeral merchandise or funeral services. Specifically, the
2 Code chapter provides for both establishment permits and sales
3 permits. The division amends Code section 523A.501 regulating
4 establishment permits by eliminating a requirement that an
5 establishment permit disclose information about the permit
6 holder's employer or business. The division also amends
7 provisions in Code section 523A.502 regulating sales permits.
8 A provision in the Code section requires a purchaser of an
9 establishment to obtain a new sales permit within 30 days from
10 a sale. The division provides that the provisions address the
11 establishment's sales permit.

12 The division also establishes a civil penalty for
13 violations of the Code chapter. Code sections 523A.701
14 through 523A.703 prohibit making false or misleading
15 statements under the Code chapter; prohibit a seller from
16 representing that the commissioner has approved the seller;
17 and list a number of grounds constituting a fraudulent
18 practice, including violations of the Code chapter. The
19 division provides that, in addition to these penalties, a
20 person is also subject to a civil penalty not to exceed
21 \$10,000. Each day of a continuing violation constitutes a
22 separate offense.

23 DIVISION II -- BUSINESS PROMOTIONS AND CONTRACTS

24 This division amends a number of provisions in Code chapter
25 523B regulating business opportunity promotions. It removes
26 references to the insurance division and administrator (the
27 insurance commissioner or the commissioner's deputy) as the
28 agency responsible for the chapter's enforcement. As part of
29 this change, the division eliminates registration and filing
30 requirements but retains disclosure requirements, including
31 references to administrative files and opinions. It rewrites
32 provisions providing for consent to service of process which,
33 under the division, is filed with the secretary of state
34 rather than the division.

35 The division eliminates a number of provisions, including

1 Code section 523B.8 relating to the powers of the
2 administrator to carry out the provisions of the chapter, and
3 Code section 523B.10 which authorizes the administrator to
4 adopt rules.

5 A person who violates a provision of the Code chapter is
6 subject to a number of penalties, including a class "D"
7 felony.

8 DIVISION III -- CONGREGATE CARE OR SENIOR ADULT CONGREGATE
9 LIVING SERVICES

10 This division amends Code chapter 523D providing for the
11 regulation of places which undertake to provide continuing
12 care or senior adult congregate living services to an
13 individual if such facility provides contractual support
14 services, such as laundry, maintenance, housekeeping,
15 emergency nursing care, activity services, security, dining
16 options, transportation, beauty and barber services, health
17 care, personal care, or supervised medication administration.
18 A provider of such services who charges an entrance fee to a
19 person as a resident, prospective resident, or a personal
20 representative is required to file a disclosure statement with
21 the insurance commissioner which in some ways resembles a
22 stock prospective. The provider must also submit an
23 application to the commissioner as well as a filing fee of
24 \$100. The Code chapter details the content of the required
25 disclosure statements, provides enforcement mechanisms, and
26 provides penalties.

27 The division eliminates the requirement that the annual
28 disclosure statement and the application must be filed and
29 approved by the commissioner. Instead, the provider must
30 submit an annual certification of compliance to the
31 commissioner. The filing fee remains the same.

32 The division provides that the disclosure statement must
33 include new information, including a description of
34 transactions in which the provider obtains real or personal
35 property or construction services from a developer or other

1 person who does not have an arm's length relationship with the
2 provider.

3 The division provides that the commissioner and not the
4 attorney general may petition the district court for an
5 injunction to restrain a person who is violating the Code
6 chapter. The division provides that a person who violates a
7 provision of the Code chapter is guilty of a fraudulent
8 practice as provided in Code chapter 714. Currently, a person
9 who violates a provision of the Code chapter is guilty of an
10 aggravated misdemeanor.

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HOUSE FILE 2269

S-5153

- 1 Amend House File 2269, as passed by the House, as
- 2 follows:
- 3 1. By striking page 1, line 27, through page 2,
- 4 line 2.
- 5 2. By renumbering as necessary.

By COMMITTEE ON COMMERCE
JERRY BEHN, Chairperson

S-5153 FILED MARCH 29, 2004
ADOPTED

23

**SENATE AMENDMENT TO
HOUSE FILE 2269**

H-8339

- 1 Amend House File 2269, as passed by the House, as
- 2 follows:
- 3 1. By striking page 1, line 27, through page 2,
- 4 line 2.
- 5 2. By renumbering as necessary.

RECEIVED FROM THE SENATE

H-8339 FILED MARCH 30, 2004

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**Fiscal Services Division
Legislative Services Agency
Fiscal Note**

HF 2269 - Cemetery Merchandising (LSB 5203 HV)
Analyst: Ron Robinson (Phone: (515) 281-6256) (ron.robinson@legis.state.ia.us)
Fiscal Note Version - New

Description

House File 2269 provides for the regulation of business entities, including businesses providing cemetery and funeral merchandising and services, business promotions and contracts, and businesses providing continuing care or adult congregate living services, and providing penalties.

Section 26 of the Bill amends Section 523B.11, Code of Iowa, and provides that a seller of a business opportunity who willfully violates the requirements for disclosure or for the contents of a business opportunity contract who provides misleading advertising, who willfully violates a rule, or who willfully violates an order of which the person has notice, upon conviction, is guilty of a Class "D" Felony. The amendment to Section 523B.11, Code of Iowa, clarifies current law.

Section 46 of the Bill amends Section 523D.8, Code of Iowa, by eliminating the requirements that a person act willfully and knowingly to be guilty of violating Chapter 523B.11 or a rule adopted or order entered pursuant to that Chapter. Chapter 523B involves agreements to provide congregate or continuing care. The Section also now provides a violation penalty, which is determined by the degree of the fraudulent practice as established in Chapter 714, Code of Iowa. The penalty will now range from a simple misdemeanor to a Class "C" Felony, rather than the current aggravated misdemeanor.

Assumptions

1. The amendment to Section 523B.11, Code of Iowa, clarifies current law.
2. The Iowa Justice Data Warehouse shows that there were no convictions in FY 2003 for current violations of Chapter 523B, Code of Iowa.
3. The Iowa Justice Data Warehouse shows that there were no convictions in FY 2003 for current violations of Chapter 523D, Code of Iowa.
4. Charge, conviction, and sentencing patterns and trends will not change over the projection period.
5. Prisoner length of stay, revocation rates, and other corrections' practices and policies will not change over the projection period.
6. The law will become effective July 1, 2004. A lag of six months is assumed, from the effective date of the change in the law to the date of first entry of affected offenders into the correctional system.
7. The analysis is based on information obtained from the Justice Data Warehouse, which includes statewide court and Community-Based Corrections (CBC) information. Conviction and penalty information is based on FY 2003 data.
8. The changes to the provision concerning the seller of a business opportunity will lead to no additional convictions under HF 2269.
9. There is no readily available data with which to predict the number of violations involving agreements to provide congregate or continuing care that will be issued under HF 2269.

Correctional Impact

House File 2269 will have no significant correctional impact.

Fiscal Impact

The fiscal impact of HF 2269 cannot be determined due to insufficient information; however, the impact is not expected to be significant.

To the extent that additional violations are prosecuted due to the changes to Chapter 523D, Code of Iowa, the following are average State costs associated with imposing criminal penalties for one conviction:

- Simple misdemeanors: Costs range from \$14 (court costs) to \$300 (court costs plus indigent defense).
- Serious misdemeanors: Costs range from \$100 (court costs) to \$5,000 (court costs including a jury, indigent defense, prison, and parole).
- Aggravated misdemeanors: Minimum is \$1,100 (court costs and probation). Maximum is \$5,800 for a crime against persons and \$4,600 for crimes not against a person. Includes court costs with a jury, prison, parole, and indigent defense.
- Class D Felony: Minimum is \$1,700 (court costs and probation). Maximum for person crimes is \$12,000 and \$8,100 for crimes not against a person (court costs with a jury, indigent defense, prison and parole).
- Class C Felony: Minimum is \$3,000 (court costs and probation and indigent defense). Maximum for person crimes is \$23,000 and \$11,000 for crimes not against a person (court costs with a jury, prison, parole, and indigent defense).

Sources

Department of Commerce, Insurance Division

Department of Human Rights, Criminal and Juvenile Justice Planning Division

Dennis C Prouty

March 3, 2004

The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Fiscal Services Division, Legislative Services Agency to members of the Legislature upon request.

HOFFMAN-CH
WILDERDYKE
OSTERHAUS

HSB 547
COMMERCE, REGULATION & LABOR

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

St  ^{3y} 2269

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

A BILL FOR

1 An Act providing for the regulation of business entities,
2 including businesses providing for cemetery and funeral
3 merchandising and services, business promotions and contracts,
4 and businesses providing continuing care or adult congregate
5 living services, and providing penalties.

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

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DIVISION I

CEMETERY AND FUNERAL MERCHANDISING AND SERVICES

Section 1. Section 523A.102, subsection 22, Code 2003, is amended by striking the subsection.

Sec. 2. Section 523A.501, subsection 6, Code 2003, is amended to read as follows:

6. If no denial order is in effect and no proceeding is pending under section 523A.503, the application becomes effective at noon of the thirtieth day after a completed application or an amendment completing the application is filed, unless waived by the applicant. The commissioner may specify an earlier effective date. Automatic effectiveness under this subsection shall not be deemed approval of the application. If the commissioner does not grant the permit, the commissioner shall notify the person in writing of the reasons for the denial. ~~The permit shall disclose on its face the permit holder's employer or the establishment on whose behalf the applicant will be making or attempting to make sales, the permit number, and the expiration date.~~

Sec. 3. Section 523A.502, subsection 7, Code 2003, is amended to read as follows:

7. A sales permit is not assignable or transferable. A ~~permit holder~~ An establishment selling all or part of a its business to a purchaser shall cancel the establishment's sales permit and the. The purchaser shall apply for a new sales permit in the purchaser's name within thirty days of the sale.

Sec. 4. NEW SECTION. 523A.704 CIVIL PENALTY.

In addition to criminal penalties, a person who violates a provision of this chapter, including a rule adopted by the commissioner pursuant to this chapter or an order issued by the commissioner pursuant to this chapter, is subject to a civil penalty. The commissioner may impose, assess, and collect a civil penalty which shall not exceed ten thousand dollars. In computing the amount of the civil penalty, each day of a continuing violation constitutes a separate offense.

1 Any civil penalties collected shall be deposited in the
2 general fund of the state.

3 DIVISION II
4 BUSINESS PROMOTIONS AND CONTRACTS

5 Sec. 5. Section 22.7, subsection 42, Code Supplement 2003,
6 is amended to read as follows:

7 42. Information obtained by the commissioner of insurance
8 in the course of an investigation as provided in section
9 502.603~~7~~-523B~~7~~-8~~7~~ or 523C.23.

10 Sec. 6. Section 523B.1, subsection 1, Code 2003, is
11 amended by striking the subsection.

12 Sec. 7. Section 523B.1, subsection 3, paragraph a,
13 unnumbered paragraph 1, Code 2003, is amended to read as
14 follows:

15 "Business opportunity" means an opportunity to start a
16 business according to the terms of a contract or agreement~~7~~
17 ~~between a seller and purchaser~~~~7~~-~~express-or-implied~~~~7~~-~~orally-or~~
18 ~~in-writing~~~~7~~-~~at~~ in which the purchaser provides an initial
19 investment exceeding five hundred dollars~~7~~-~~where~~; the parties
20 ~~agree~~ seller represents that the seller or a person
21 recommended by the seller is to provide to the purchaser any
22 products, equipment, supplies, materials, or services for the
23 purpose of enabling the purchaser to start ~~a~~ the business~~7~~;
24 and the seller represents, directly or indirectly, orally or
25 in writing, any of the following:

26 Sec. 8. Section 523B.1, subsection 3, paragraph b,
27 subparagraph (5), Code 2003, is amended to read as follows:

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

31 Sec. 9. Section 523B.1, Code 2003, is amended by adding
32 the following new subsection:

33 NEW SUBSECTION. 3A. "Contract" means any agreement
34 between parties which is express or implied, and which is made
35 orally or in writing.

1 Sec. 10. Section 523B.1, subsection 4, unnumbered
2 paragraph 1, Code 2003, is amended to read as follows:

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

6 Sec. 11. Section 523B.1, subsections 9, 10, and 12, Code
7 2003, are amended to read as follows:

8 9. "Person" means ~~an-individual, corporation, trust,~~
9 ~~partnership, incorporated-or-unincorporated-association, or~~
10 ~~any-other-legal-entity, provided, however, person~~ the same as
11 defined in section 4.1, except that it does not include a
12 government or governmental subdivision or agency.

13 10. "Purchaser" means a person who enters into a contract
14 ~~or-agreement~~ for the acquisition of a business opportunity or
15 a person to whom an offer to sell a business opportunity is
16 directed.

17 12. "Sale" or "sell" includes every contract ~~or-agreement~~
18 ~~of~~ for sale, contract to sell, or disposition of, a business
19 opportunity or interest in a business opportunity for value.

20 Sec. 12. Section 523B.2, subsections 1 through 7, Code
21 2003, are amended by striking the subsections.

22 Sec. 13. Section 523B.2, subsection 8, paragraphs a and b,
23 Code 2003, are amended to read as follows:

24 1. DISCLOSURE DOCUMENT REQUIRED. A person required to
25 file an irrevocable consent to service of process with the
26 secretary of state as a seller as provided in section 523B.2A
27 shall not act as seller in the state

28 ~~a.--It-is-unlawful-to-offer-or-sell-a-business-opportunity~~
29 ~~required-to-be-registered-pursuant-to-this-chapter~~ unless the
30 person provides a written disclosure document ~~as-filed-under~~
31 ~~subsection-2-is-delivered~~ to each purchaser. The person shall
32 deliver the written disclosure document to the purchaser at
33 least ten business days prior to the earlier of the
34 purchaser's execution by ~~a-purchaser~~ of a contract ~~or~~
35 ~~agreement~~ imposing a binding legal obligation on the purchaser

1 or the payment by a purchaser of any consideration in
2 connection with the offer or sale of the business opportunity.

3 ~~b-~~ 2. DISCLOSURE DOCUMENT COVER SHEET. The disclosure
4 document shall have a cover sheet which ~~is entitled,~~ shall
5 consist of a title printed in bold and a statement. The title
6 and statement shall be in at least ten point bold type,
7 "DISCLOSURE-REQUIRED-BY-IOWA-LAW." and shall appear as
8 follows:

9 DISCLOSURE REQUIRED BY IOWA LAW

10 ~~Under the title shall appear the following statement in at~~
11 ~~least ten point type:--"The~~ The registration of this business
12 opportunity does not constitute approval, recommendation, or
13 endorsement by the state of Iowa. The information contained
14 in this disclosure document has not been verified by this
15 state. If you have any questions or concerns about this
16 investment, seek professional advice before you sign a
17 contract or make any payment. You are to be provided ten (10)
18 business days to review this document before signing a
19 contract ~~or agreement~~ or making any payment to the seller or
20 the seller's ~~representative.~~ representative.

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

25 3. DISCLOSURE DOCUMENT CONTENTS. A disclosure document
26 shall be in one of the following forms:

27 a. A uniform franchise offering circular prepared in
28 accordance with the guidelines adopted by the North American
29 securities administrators association, inc., as amended
30 through the effective date of this Act.

31 b. A disclosure document prepared pursuant to the federal
32 trade commission rule relating to disclosure requirements and
33 prohibitions concerning franchising and business opportunity
34 ventures in accordance with 16 C.F.R. § 436.

35 c. A form that includes all of the following:

1 Sec. 14. Section 523B.2, subsection 8, paragraph c,
2 unnumbered paragraph 1, Code 2003, is amended by striking the
3 unnumbered paragraph.

4 Sec. 15. Section 523B.2, subsection 8, paragraph c,
5 subparagraph (13), Code 2003, is amended by striking the
6 subparagraph.

7 Sec. 16. Section 523B.2, subsection 8, paragraph c,
8 subparagraphs (17), (18), (19), and (20), Code 2003, are
9 amended to read as follows:

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

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

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

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

29 Sec. 17. Section 523B.2, subsection 8, paragraph c,
30 subparagraph (25), Code 2003, is amended by striking the
31 subparagraph.

32 Sec. 18. Section 523B.2, subsection 9, paragraphs a and b,
33 Code 2003, are amended to read as follows:

34 a. ~~It-is-unlawful-to~~ A person shall not offer or sell a
35 business opportunity ~~required-to-be-registered~~ unless the a

1 business opportunity contract or-agreement is in writing and a
2 copy of the contract or-agreement is given provided to the
3 purchaser at the time the purchaser signs executes the
4 contract or-agreement.

5 ~~b.--The-contract-or-agreement-is-subject-to-this-chapter~~
6 ~~and-section-714-16-~~

7 Sec. 19. Section 523B.2, subsection 9, paragraph c,
8 unnumbered paragraph 1, Code 2003, is amended to read as
9 follows:

10 ~~Contracts-or-agreements~~ A business opportunity contract
11 shall set forth in at least ten point type or equivalent size,
12 if handwritten, all of the following:

13 Sec. 20. Section 523B.2, subsection 10, Code 2003, is
14 amended by striking the subsection.

15 Sec. 21. NEW SECTION. 523B.2A SERVICE OF PROCESS --
16 IRREVOCABLE CONSENT.

17 A seller shall file an irrevocable consent with the
18 secretary of state. The seller shall file the irrevocable
19 consent prior to executing a business opportunity contract or
20 engaging in the sale of a business opportunity in this state.
21 The irrevocable consent shall appoint the secretary of state
22 to be the seller's attorney to receive service of any lawful
23 process in a noncriminal suit, action, or proceeding against
24 the seller or the seller's successor, executor, or
25 administrator which arises under this chapter after the
26 irrevocable consent has been filed. The irrevocable consent
27 shall have the same force and validity as if the seller were
28 served service of process personally.

29 Sec. 22. Section 523B.3, Code 2003, is amended to read as
30 follows:

31 523B.3 EXEMPTIONS FROM REGISTRATION-AND-DISCLOSURE
32 REQUIREMENTS -- BURDEN OF PROOF.

33 1. EXEMPTIONS. The following business opportunities are
34 exempt from the requirements of section 523B.2:

35 a. The offer or sale of a business opportunity if the

1 purchaser is a bank, savings and loan association, trust
2 company, insurance company, credit union, or investment
3 company as defined by the federal Investment Company Act of
4 1940, a pension or profit-sharing trust, or other financial
5 institution or institutional buyer, or a broker-dealer
6 registered pursuant to chapter 502, whether the purchaser is
7 acting for itself or in a fiduciary capacity.

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

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

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

26 For the purposes of this paragraph "b", a personal meeting
27 means a face-to-face meeting between the purchaser and the
28 seller or their representatives, which is held for the purpose
29 of discussing the offer or sale of a business opportunity.

30 ~~The-administrator-may-by-rule-adopt-any-amendment-to-the~~
31 ~~uniform-franchise-offering-circular-that-has-been-adopted-by~~
32 ~~the-North-American-securities-administrators-association,~~
33 ~~inc.,-or-any-amendment-to-the-disclosure-document-prepared~~
34 ~~pursuant-to-the-federal-trade-commission-rule-entitled~~
35 ~~"Disclosure-requirements-and-prohibitions-concerning~~

1 franchising-and-business-opportunity-ventures^{47-16-C.F.R.-§}
2 436-(1979)-that-has-been-adopted-by-the-federal-trade
3 commission-

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

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

16 2.--DENIAL-OR-REVOCAION-OF-EXEMPTIONS-

17 a.--If-the-public-interest-of-the-protection-of-purchasers
18 so-requires,-the-administrator-may-by-order-deny-or-revoke-an
19 exemption-specified-in-this-section-with-respect-to-a
20 particular-offering-of-one-or-more-business-opportunities.--An
21 order-shall-not-be-entered-without-appropriate-prior-notice-to
22 all-interested-parties,-opportunity-for-hearing,-and-written
23 findings-of-fact-and-conclusions-of-law-

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

1 ~~it-until-final-determination.~~

2 ~~c.--An-order-under-this-section-shall-not-operate~~
3 ~~retroactively.~~

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

9 3.--BURDEN-OF-PROOF. 2. In an administrative, civil, or
10 criminal proceeding related to this chapter, the burden of
11 proving an exemption, an exception from a definition, or an
12 exclusion from this chapter, is upon the person claiming it.

13 Sec. 23. Section 523B.7, subsection 1, paragraph a, Code
14 2003, is amended to read as follows:

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

24 Sec. 24. Section 523B.7, subsection 1, paragraphs b and c,
25 Code 2003, are amended by striking the paragraphs.

26 Sec. 25. Section 523B.7, subsection 4, Code 2003, is
27 amended to read as follows:

28 4. ~~The-rights-and~~ In addition to any remedies available
29 ~~pursuant-to-this-chapter-are-in-addition-to-any-other-rights~~
30 ~~or-remedies-that-may-exist-at~~ provided by law or in equity, a
31 person injured by a violation of this chapter may bring a
32 civil action and recover damages or obtain other appropriate
33 relief including injunctive or other equitable relief. If the
34 person is the prevailing party, the person shall be awarded
35 court costs, reasonable attorney fees, and expert fees which

1 shall be taxed as part of the costs of the action.

2 Sec. 26. Section 523B.11, Code 2003, is amended to read as
3 follows:

4 523B.11 PENALTIES.

5 1. a. A seller who willfully violates the requirements
6 for disclosure or for the contents of a business opportunity
7 contract pursuant to section 523B.2, subsection-1, 8, or 9, or
8 who provides misleading advertising as provided in section
9 523B.12, subsection-2, who willfully violates a rule under
10 this chapter, or who willfully violates an order of which the
11 person has notice, ~~or who violates section 523B.12, subsection~~
12 ~~1, knowing that the statement made was false or misleading in~~
13 ~~any material respect,~~ upon conviction, is guilty of a class
14 "D" felony. Otherwise, a person who violates a rule adopted
15 or order issued under this chapter is, upon conviction, guilty
16 of an aggravated misdemeanor. Each of the acts specified
17 constitutes a separate offense and a prosecution or conviction
18 for any one of such offenses does not bar prosecution or
19 conviction for any other offense.

20 2. A business opportunity contract is subject to section
21 714.16.

22 3. A seller who willfully uses any device or scheme to
23 defraud a person in connection with the an advertisement,
24 offer to sell or lease, sale, or lease of a business
25 opportunity, or who willfully violates any other provision of
26 this chapter, except as provided in ~~subsections 1 and 3,~~
27 subsection 1, is, upon conviction, guilty of a fraudulent
28 practice as provided in chapter 714.

29 ~~3. A seller who violates a rule or order adopted or issued~~
30 ~~under this chapter is, upon conviction, guilty of an~~
31 ~~aggravated misdemeanor.~~

32 ~~4. The administrator may refer available evidence~~
33 ~~concerning a possible violation of this chapter or of a rule~~
34 ~~or order issued under this chapter to the attorney general.~~
35 ~~The attorney general, with or without such a referral, may~~

1 ~~institute appropriate criminal proceedings or may direct the~~
2 ~~case to the appropriate county attorney to institute~~
3 ~~appropriate criminal proceedings.~~

4 Sec. 27. Section 523B.12, subsections 1, 2, and 3, Code
5 2003, are amended to read as follows:

6 1. MISLEADING FILINGS STATEMENTS. ~~It is unlawful to~~ A
7 person shall not make or cause to be made, a misleading
8 statement in a disclosure document filed with the
9 administrator required pursuant to section 523B.2 or in a
10 proceeding under this chapter, a statement which is, at. The
11 statement shall be deemed to be misleading if any of the
12 following apply:

13 a. At the time and in the light of the circumstances under
14 which it is made, the statement is false or misleading in a
15 material respect ~~or, in connection with such a statement, to~~
16 ~~omit to state.~~

17 b. An omission of a material fact is necessary in order to
18 make the statement made, in the light of the circumstances
19 under which it is made, not misleading.

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

33 3. 2. ADVERTISING. ~~It is unlawful for a~~ A seller shall
34 not, in connection with the offer or sale of a business
35 opportunity in this state, to publish, circulate, or use

1 advertising which contains an untrue statement of a material
2 fact or omits to state a material fact necessary in order to
3 make the statements made, in the light of the circumstances
4 under which they are made, not misleading.

5 Sec. 28. Section 523B.12, subsection 4, unnumbered
6 paragraph 1, Code 2003, is amended to read as follows:

7 ~~It is unlawful for a business opportunity~~ A seller to of a
8 business opportunity shall not do any of the following:

9 Sec. 29. Section 523B.12, subsection 4, paragraphs d, f,
10 h, and j, Code 2003, are amended to read as follows:

11 d. Misrepresent the training and management assistance
12 available to the ~~business-opportunity~~ purchaser.

13 f. Misrepresent, by failure to disclose or otherwise, the
14 termination, transfer, or renewal provision of a business
15 opportunity ~~agreement~~ contract.

16 h. Assign a so-called exclusive territory encompassing the
17 same area to more than one ~~business-opportunity~~ purchaser.

18 j. Provide merchandise, machines, or displays of a brand
19 or kind substantially different from or inferior to those
20 promised by the ~~business-opportunity~~ seller.

21 Sec. 30. Section 523B.13, subsections 5 and 6, Code 2003,
22 are amended by striking the subsections.

23 Sec. 31. DIRECTIONS TO CODE EDITOR. The Code editor is
24 directed to renumber Code chapter 523B, transferring the
25 chapter from title XIII, subtitle 1, insurance and related
26 regulation, to title XIII, subtitle 5, regulation of
27 commercial enterprises.

28 Sec. 32. Sections 523B.5, 523B.8, and 523B.10, Code 2003,
29 are repealed.

30 DIVISION III

31 CONGREGATE CARE OR SENIOR ADULT CONGREGATE LIVING SERVICES

32 Sec. 33. Section 523D.2, Code 2003, is amended to read as
33 follows:

34 523D.2 ~~FILING WITH DIVISION OF INSURANCE~~ APPLICATION OF
35 CHAPTER.

1 ~~A person shall not, as~~ This chapter applies to a provider,
2 ~~enter into who executes~~ a contract to provide continuing care
3 or senior adult congregate living services in a facility, or
4 extend the term of an existing contract to provide continuing
5 care or senior adult congregate living services in a facility,
6 if the contract requires or permits the payment of an entrance
7 fee to any a person, and the any of the following apply:

8 1. The facility is or will be located in this state, or
9 the.

10 2. The provider or a person acting on the provider's
11 behalf solicits the contract within this state for a facility
12 located in this state and the person to be provided with
13 continuing care or senior adult congregate living services
14 under the contract resides within this state at the time of
15 the solicitation, unless the person has filed with the
16 division of insurance of the department of commerce, a current
17 disclosure statement which meets the requirements of section
18 523D-3. The disclosure statement shall be accompanied by a
19 one hundred dollar filing fee as a condition of filing and
20 compliance with this section.

21 Sec. 34. NEW SECTION. 523D.2A ANNUAL CERTIFICATION.

22 On or before March 1 of each year, a provider shall file a
23 certification with the commissioner in a manner and according
24 to requirements established by the commissioner. The
25 certification shall be accompanied by a one hundred dollar
26 administrative fee. The certification shall attest that
27 according to the best knowledge and belief of the attesting
28 party, the facility administered by the provider is in
29 compliance with the provisions of this chapter, including
30 rules adopted by the commissioner or orders issued by the
31 commissioner as authorized under this chapter. The attesting
32 person may be any of the following:

33 1. A person serving as the president or chief executive
34 officer of a corporation.

35 2. A person acting as the general partner of a limited

1 partnership.

2 3. A person acting as the general partner of a limited
3 liability partnership.

4 4. A person acting in a fiduciary capacity or as a trustee
5 on behalf of a provider.

6 5. A person who is a manager of a limited liability
7 company.

8 Sec. 35. Section 523D.3, subsection 1, Code 2003, is
9 amended by adding the following new paragraph:

10 NEW PARAGRAPH. n. A description of transactions in which
11 the provider obtains real or personal property or construction
12 services from any of the following:

13 (1) The developer of the facility, or a person who is
14 under the control of the developer.

15 (2) If the provider is a business entity, any person
16 holding an executive position in the business entity,
17 including but not limited to a member of a board of directors
18 or an officer of a corporation, a manager of a limited
19 liability company, a general partner of a limited partnership,
20 or a trustee of a trust.

21 (3) If the provider is a business entity, any person who
22 holds a ten percent or greater equity or beneficial interest
23 in the business entity.

24 (4) Any person who directly or indirectly by acting
25 through one or more intermediaries controls management
26 decisions of the facility.

27 A transaction shall include each purchase or lease of real
28 property or personal property by the provider, and any
29 construction services provided to the provider. The
30 description shall include transactions which have occurred or
31 which are planned to occur. The description shall also
32 include whether the terms of the transaction were or will be
33 on terms which are at least as favorable to the provider as
34 those terms which would be generally available from an
35 unaffiliated third party.

1 Sec. 36. Section 523D.3, subsections 2 through 4, Code
2 2003, are amended to read as follows:

3 2. The provider shall ~~file-with-the-insurance-division,~~
4 ~~annually-within-five-months-following-the-end-of-the~~
5 ~~provider's-fiscal-year,~~ prepare an annual disclosure statement
6 which shall contain the information required by this chapter
7 for the initial disclosure statement. The annual disclosure
8 statement shall also be accompanied by a narrative describing:

9 a. Any material differences between the pro forma cash
10 flow projection ~~filed~~ prepared pursuant to this chapter as
11 part of the most recent annual disclosure statement and the
12 actual results of operations during the fiscal year, if the
13 material differences substantially affect the financial safety
14 or soundness of the community.

15 b. A revised pro forma cash flow projection for the next
16 fiscal year.

17 2A. The provider shall prepare the annual disclosure
18 statement not later than five months following the end of the
19 provider's fiscal year. The provider shall retain a record of
20 each annual disclosure statement prepared under this section
21 for at least five years.

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

31 4. ~~In-addition-to-filing-the-annual-disclosure-statement,~~
32 The provider may amend its ~~currently-filed~~ current annual
33 disclosure statement at any other time if, in the opinion of
34 the provider, an amendment is necessary to prevent the
35 disclosure statement and annual disclosure statement from

1 containing any material misstatement of fact or omission to
 2 state a material fact required to be included in the
 3 statement. The amendment or amended disclosure statement
 4 shall be ~~filed with the division of insurance before the~~
 5 ~~statement is delivered~~ kept with the records of the provider's
 6 annual disclosure statements. The provider shall deliver a
 7 copy of the amendment to a resident or prospective resident
 8 and a personal representative of a resident or prospective
 9 resident ~~and is subject to all the requirements, including~~
 10 ~~those as to content and delivery, of this chapter~~ in the same
 11 manner as the annual disclosure statement.

12 Sec. 37. Section 523D.4, subsection 2, Code 2003, is
 13 amended to read as follows:

14 2. A provider shall not ~~file with the division of~~
 15 ~~insurance or make,~~ publish, disseminate, circulate, or deliver
 16 to any person or place before the public, or cause, directly
 17 or indirectly, to be ~~made,~~ published, disseminated,
 18 circulated, or delivered to any person or placed before the
 19 public, a financial statement which does not meet generally
 20 accepted accounting principles.

21 Sec. 38. Section 523D.5, subsection 1, unnumbered
 22 paragraph 1, Code 2003, is amended to read as follows:

23 A provider shall not enter into a contract to provide
 24 continuing care or senior adult congregate living services
 25 that applies to a living unit that is part of a new facility
 26 or proposed expansion that is or will be located in this state
 27 unless the ~~person has submitted an application on a form as~~
 28 ~~required by the division of insurance accompanied by a fee of~~
 29 ~~two hundred fifty dollars. --The application at a minimum must~~
 30 include provider has prepared or acquired all of the following
 31 information:

32 Sec. 39. Section 523D.5, subsection 1, paragraphs d
 33 through f, Code 2003, are amended to read as follows:

34 d. A statement of financial feasibility for the new
 35 facility or proposed expansion ~~in a form satisfactory to the~~

1 commissioner, which includes a statement of future funding
2 sources and shall identify the qualifications of the person or
3 persons preparing the study.

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

8 f. If the new facility or proposed expansion offers a
9 promise to provide nursing or health care services to
10 residents in the future pursuant to contracts effective for
11 the life of the resident or a period in excess of one year in
12 consideration for an entrance fee, an actuarial forecast ~~in-a~~
13 ~~form-satisfactory-to-the-commissioner~~, which identifies the
14 qualifications of the actuary or actuaries preparing the
15 forecast.

16 Sec. 40. Section 523D.5, subsection 2, paragraphs a and b,
17 Code 2003, are amended to read as follows:

18 a. ~~Existing-facilities---if-a-filing-is-made-under-this~~
19 ~~section-for~~ For an expansion of an existing facility, the
20 determination of feasibility shall be based on consolidated
21 information for the existing facility and the proposed
22 expansion.

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

30 Sec. 41. Section 523D.5, subsection 3, unnumbered
31 paragraph 1, Code 2003, is amended to read as follows:

32 New construction shall not begin until ~~the-filing-required~~
33 ~~by-this-section-has-been-made-and~~ at least fifty percent of
34 the proposed number of independent living units in the initial
35 stage or phase have been reserved pursuant to executed

1 contracts and at least ten percent of the entrance fees
2 required by those contracts are held in escrow pursuant to
3 this chapter. However, the requirements of this subsection
4 may be waived by the commissioner by rule or order upon a
5 showing of good cause.

6 Sec. 42. Section 523D.5, subsection 3, paragraph a, Code
7 2003, is amended to read as follows:

8 a. Secured financing adequate in an amount and term to
9 complete the project ~~described-in-the-filing-required-by-this~~
10 section.

11 Sec. 43. Section 523D.5, subsection 4, Code 2003, is
12 amended to read as follows:

13 4. ESCROW REQUIREMENTS. Unless ~~proof-has-been-submitted~~
14 ~~to-the-commissioner-that~~ conditions for the release of
15 escrowed funds set forth in this section have already been
16 met, the provider shall establish an interest-bearing escrow
17 account at a state or federally regulated financial
18 institution located within this state to receive any deposits
19 or entrance fees or portions of deposits or fees for a living
20 unit which has not been previously occupied by a resident for
21 which an entry fee arrangement is used. The escrow account
22 agreement shall be entered into between the financial
23 institution and the provider with the financial institution as
24 the escrow agent and as a fiduciary for the resident or
25 prospective resident. The agreement shall state that the
26 purpose of the escrow account is to protect the resident or
27 prospective resident and that the funds deposited shall be
28 kept and maintained in an account separate and apart from the
29 provider's business accounts.

30 Sec. 44. Section 523D.5, subsection 5, paragraph c,
31 unnumbered paragraph 1, Code 2003, is amended to read as
32 follows:

33 Except as provided by paragraphs "a" and "b", amounts held
34 in escrow shall not be released ~~only-upon-approval-of-the~~
35 commissioner. ~~The-commissioner-shall-approve-the-release-of~~

1 ~~fun~~~~ds-only-upon-a-determination-that~~ unless at least one of
2 the following conditions has been satisfied:

3 Sec. 45. Section 523D.5, Code 2003, is amended by adding
4 the following new subsection:

5 NEW SUBSECTION. 6. RETENTION OF RECORDS. The provider
6 shall maintain information required by this section for at
7 least five years. The information shall be made available for
8 inspection during normal business hours.

9 Sec. 46. Section 523D.8, subsection 1, Code 2003, is
10 amended to read as follows:

11 1. A person who ~~willfully-and-knowingly~~ violates a
12 provision of this chapter or a rule adopted or order entered
13 pursuant to this chapter, ~~upon conviction, is guilty of an~~
14 aggravated misdemeanor commits a fraudulent practice as
15 provided in chapter 714.

16 Sec. 47. Section 523D.10, Code 2003, is amended to read as
17 follows:

18 523D.10 RULES.

19 The division of insurance may adopt rules pursuant to
20 chapter 17A as necessary and appropriate to implement this
21 chapter, and may make further recommendations to the general
22 assembly for the protection of residents and prospective
23 residents of facilities ~~required to file an annual disclosure~~
24 statement under this chapter.

25 Sec. 48. Section 523D.12, subsection 1, Code 2003, is
26 amended by striking the subsection.

27 Sec. 49. Section 523D.12, subsection 2, unnumbered
28 paragraph 1, Code 2003, is amended to read as follows:

29 The commissioner ~~or the attorney general~~ may, for the
30 purpose of discovering or investigating violations of this
31 chapter or rules adopted pursuant to this chapter do any or
32 all of the following:

33 Sec. 50. Section 523D.12, subsection 2, paragraph c, Code
34 2003, is amended to read as follows:

35 c. Apply to the district court for issuance of an order

1 requiring a person's appearance before the commissioner or
2 attorney-general. The person may also be required to produce
3 documentary evidence germane to the subject of the
4 investigation. Failure to obey a court order under this
5 subsection constitutes contempt of court.

6 Sec. 51. Section 523D.14, Code 2003, is amended to read as
7 follows:

8 523D.14 INJUNCTIONS.

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

21 Sec. 52. Section 523D.9, Code 2003, is repealed.

22 EXPLANATION

23 DIVISION I -- CEMETERY AND FUNERAL MERCHANDISING AND
24 SERVICES

25 This division amends provisions in Code chapter 523A, the
26 "Iowa Cemetery and Funeral Merchandise and Funeral Services
27 Act", which regulates persons engaged in the business of
28 selling merchandise and services related to interment,
29 entombment, or cremation. The chapter is administered by the
30 insurance commissioner.

31 The division eliminates the definition of "person" which is
32 defined for purposes of the entire Code in section 4.1.

33 Code sections 523A.501 through 523A.503 provide permit
34 requirements for persons regulated by the Code chapter such as
35 establishments or persons advertising or selling cemetery or

1 funeral merchandise or funeral services. Specifically, the
2 Code chapter provides for both establishment permits and sales
3 permits. The division amends Code section 523A.501 regulating
4 establishment permits by eliminating a requirement that an
5 establishment permit disclose information about the permit
6 holder's employer or business. The division also amends
7 provisions in Code section 523A.502 regulating sales permits.
8 A provision in the Code section requires a purchaser of an
9 establishment to obtain a new sales permit within 30 days from
10 a sale. The division provides that the provisions address the
11 establishment's sales permit.

12 The division also establishes a civil penalty for
13 violations of the Code chapter. Code sections 523A.701
14 through 523A.703 prohibit making false or misleading
15 statements under the Code chapter; prohibit a seller from
16 representing that the commissioner has approved the seller;
17 and list a number of grounds constituting a fraudulent
18 practice, including violations of the Code chapter. The
19 division provides that, in addition to these penalties, a
20 person is also subject to a civil penalty not to exceed
21 \$10,000. Each day of a continuing violation constitutes a
22 separate offense.

23 DIVISION II -- BUSINESS PROMOTIONS AND CONTRACTS

24 This division amends a number of provisions in Code chapter
25 523B regulating business opportunity promotions. It removes
26 references to the insurance division and administrator (the
27 insurance commissioner or the commissioner's deputy) as the
28 agency responsible for the chapter's enforcement. As part of
29 this change, the division eliminates registration and filing
30 requirements but retains disclosure requirements, including
31 references to administrative files and opinions. It rewrites
32 provisions providing for consent to service of process which,
33 under the division, is filed with the secretary of state
34 rather than the division.

35 The division eliminates a number of provisions, including

1 Code section 523B.8 relating to the powers of the
2 administrator to carry out the provisions of the chapter, and
3 Code section 523B.10 which authorizes the administrator to
4 adopt rules.

5 A person who violates a provision of the Code chapter is
6 subject to a number of penalties, including a class "D"
7 felony.

8 DIVISION III -- CONGREGATE CARE OR SENIOR ADULT CONGREGATE
9 LIVING SERVICES

10 This division amends Code chapter 523D providing for the
11 regulation of places which undertake to provide continuing
12 care or senior adult congregate living services to an
13 individual if such facility provides contractual support
14 services, such as laundry, maintenance, housekeeping,
15 emergency nursing care, activity services, security, dining
16 options, transportation, beauty and barber services, health
17 care, personal care, or supervised medication administration.
18 A provider of such services who charges an entrance fee to a
19 person as a resident, prospective resident, or a personal
20 representative is required to file a disclosure statement with
21 the insurance commissioner which in some ways resembles a
22 stock prospective. The provider must also submit an
23 application to the commissioner as well as a filing fee of
24 \$100. The Code chapter details the content of the required
25 disclosure statements, provides enforcement mechanisms, and
26 provides penalties.

27 The division eliminates the requirement that the annual
28 disclosure statement and the application must be filed and
29 approved by the commissioner. Instead, the provider must
30 submit an annual certification of compliance to the
31 commissioner. The filing fee remains the same.

32 The division provides that the disclosure statement must
33 include new information, including a description of
34 transactions in which the provider obtains real or personal
35 property or construction services from a developer or other

1 person who does not have an arm's length relationship with the
2 provider.

3 The division provides that the commissioner and not the
4 attorney general may petition the district court for an
5 injunction to restrain a person who is violating the Code
6 chapter. The division provides that a person who violates a
7 provision of the Code chapter is guilty of a fraudulent
8 practice as provided in Code chapter 714. Currently, a person
9 who violates a provision of the Code chapter is guilty of an
10 aggravated misdemeanor.

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Iowa Insurance Division

Memo

To: Iowa General Assembly
From: Dennis Britson, Director, Regulated Industries Unit
CC: Susan Voss, Deputy Insurance Commissioner
Craig Goettsch, Superintendent of Securities
Date: January 16, 2004
Re: Iowa Code chapters 523A, 523B and 523D

Pre-need Funeral Agreements – Iowa Code chapter 523A

In responding to an inquiry, the Division discovered some language that is incorrect and needs correction and some language in which the requirements are unclear. Corrective, clarifying amendments are proposed to sections 523A.501 and 523A.502, regarding permits and a transfer of ownership.

This bill also proposes to add a civil penalty provision for violations of the Code chapter. In recent discussions with the office of the Attorney General, they have opined that current Code section 523A.807 does not authorize the Division to directly fine permit holders. This amendment will allow the Division to levy fines for statutory violations. It is sometimes necessary and advisable to use civil penalties under a graduated penalty system, for mid-level violations.

Business Opportunity Promotions – Iowa Code chapter 523B

This bill amends a number of provisions in Code chapter 523B, which regulates business opportunity promotions. With a staff of five, the Regulated Industries Unit regulates business opportunities, cemeteries, motor vehicle service contracts, residential service contracts, pre-need funerals and retirements facilities. The Regulated Industries Unit's Examiner position was eliminated for budget reasons. The Examiner reviewed and processed filings made under the business opportunities, motor vehicle service contract, residential service contract and retirement facilities statutes.

This bill removes references to the Insurance Division as the administrator and eliminates registration and filing requirements. To protect purchasers the bill retains the disclosure requirements. Individuals would have a private right of action in the event of a violation.

Continuing Care Retirement Facilities – Iowa Code chapter 523D

With a staff of five, the Regulated Industries Unit regulates business opportunities, cemeteries, motor vehicle service contracts, residential service contracts, pre-need funerals and retirements facilities. This bill amends a number of provisions in Code chapter 523D, which regulates continuing care and congregate living facilities. The Regulated Industries Unit's Examiner position was eliminated for budget reasons. The Examiner reviewed and processed filings made under this chapter.

This bill removes the chapter's filing and approval provisions. The annual filing of a disclosure document and contract forms is eliminated. The Division's approval will no longer be required for new construction or the release of funds from escrow. Instead, facilities will file a certificate of compliance once a year. The filing fee is unchanged (\$100). Facilities will be required to retain copies of their disclosure documents at the facility for five years.

HOUSE FILE 2269

AN ACT

PROVIDING FOR THE REGULATION OF BUSINESS ENTITIES, INCLUDING BUSINESSES PROVIDING FOR CEMETERY AND FUNERAL MERCHANDISING AND SERVICES, BUSINESS PROMOTIONS AND CONTRACTS, AND BUSINESSES PROVIDING CONTINUING CARE OR ADULT CONGREGATE LIVING SERVICES, AND PROVIDING PENALTIES.

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

DIVISION I

CEMETERY AND FUNERAL MERCHANDISING AND SERVICES

Section 1. Section 523A.102, subsection 22, Code 2003, is amended by striking the subsection.

Sec. 2. Section 523A.501, subsection 6, Code 2003, is amended to read as follows:

6. If no denial order is in effect and no proceeding is pending under section 523A.503, the application becomes effective at noon of the thirtieth day after a completed application or an amendment completing the application is filed, unless waived by the applicant. The commissioner may specify an earlier effective date. Automatic effectiveness under this subsection shall not be deemed approval of the application. If the commissioner does not grant the permit, the commissioner shall notify the person in writing of the reasons for the denial. ~~The permit shall disclose on its face the permit holder's employer or the establishment on whose behalf the applicant will be making or attempting to make sales, the permit number, and the expiration date.~~

Sec. 3. Section 523A.502, subsection 7, Code 2003, is amended to read as follows:

7. A sales permit is not assignable or transferable. A permit holder An establishment selling all or part of a its business to a purchaser shall cancel the establishment's sales permit and the. The purchaser shall apply for a new sales permit in the purchaser's name within thirty days of the sale.

DIVISION II

BUSINESS PROMOTIONS AND CONTRACTS

Sec. 4. Section 22.7, subsection 42, Code Supplement 2003, is amended to read as follows:

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

Sec. 5. Section 523B.1, subsection 1, Code 2003, is amended by striking the subsection.

Sec. 6. Section 523B.1, subsection 3, paragraph a, unnumbered paragraph 1, Code 2003, is amended to read as follows:

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

Sec. 7. Section 523B.1, subsection 3, paragraph b, subparagraph (5), Code 2003, is amended to read as follows:

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

Sec. 8. Section 523B.1, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 3A. "Contract" means any agreement between parties which is express or implied, and which is made orally or in writing.

Sec. 9. Section 523B.1, subsection 4, unnumbered paragraph 1, Code 2003, is amended to read as follows:

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

Sec. 10. Section 523B.1, subsections 9, 10, and 12, Code 2003, are amended to read as follows:

9. "Person" means ~~an individual, corporation, trust, partnership, incorporated or unincorporated association, or any other legal entity, provided, however, person the same as defined in section 4.1, except that it~~ does not include a government or governmental subdivision or agency.

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

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

Sec. 11. Section 523B.2, subsections 1 through 7, Code 2003, are amended by striking the subsections.

Sec. 12. Section 523B.2, subsection 8, paragraphs a and b, Code 2003, are amended to read as follows:

1. DISCLOSURE DOCUMENT REQUIRED. A person required to file an irrevocable consent to service of process with the secretary of state as a seller as provided in section 523B.2A shall not act as seller in the state

~~or it is unlawful to offer or sell a business opportunity required to be registered pursuant to this chapter unless the person provides a written disclosure document as filed under subsection 2 is delivered to each purchaser. The person shall deliver the written disclosure document to the purchaser at least ten business days prior to the earlier of the~~

~~purchaser's execution by a purchaser of a contract or agreement imposing a binding legal obligation on the purchaser or the payment by a purchaser of any consideration in connection with the offer or sale of the business opportunity.~~

b. 2. DISCLOSURE DOCUMENT COVER SHEET. The disclosure document shall have a cover sheet which is entitled, shall consist of a title printed in bold and a statement. The title and statement shall be in at least ten point bold type, "DISCLOSURE REQUIRED BY IOWA LAW," and shall appear as follows:

DISCLOSURE REQUIRED BY IOWA LAW

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

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

3. DISCLOSURE DOCUMENT CONTENTS. A disclosure document shall be in one of the following forms:

a. A uniform franchise offering circular prepared in accordance with the guidelines adopted by the North American securities administrators association, inc., as amended through the effective date of this Act.

b. A disclosure document prepared pursuant to the federal trade commission rule relating to disclosure requirements and prohibitions concerning franchising and business opportunity ventures in accordance with 16 C.F.R. § 436.

c. A form that includes all of the following:

Sec. 13. Section 523B.2, subsection 8, paragraph c, unnumbered paragraph 1, Code 2003, is amended by striking the unnumbered paragraph.

Sec. 14. Section 523B.2, subsection 8, paragraph c, subparagraph (13), Code 2003, is amended by striking the subparagraph.

Sec. 15. Section 523B.2, subsection 8, paragraph c, subparagraphs (17), (18), (19), and (20), Code 2003, are amended to read as follows:

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

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

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

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

Sec. 16. Section 523B.2, subsection 8, paragraph c, subparagraph (25), Code 2003, is amended by striking the subparagraph.

Sec. 17. Section 523B.2, subsection 9, paragraphs a and b, Code 2003, are amended to read as follows:

a. ~~It is unlawful to~~ A person shall not offer or sell a business opportunity ~~required to be registered~~ unless the a business opportunity contract ~~or agreement~~ is in writing and a

copy of the contract ~~or agreement~~ is given provided to the purchaser at the time the purchaser signs executes the contract ~~or agreement~~.

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

Sec. 18. Section 523B.2, subsection 9, paragraph c, unnumbered paragraph 1, Code 2003, is amended to read as follows:

~~Contracts or agreements~~ A business opportunity contract shall set forth in at least ten point type or equivalent size, if handwritten, all of the following:

Sec. 19. Section 523B.2, subsection 10, Code 2003, is amended by striking the subsection.

Sec. 20. NEW SECTION. 523B.2A SERVICE OF PROCESS -- IRREVOCABLE CONSENT.

A seller shall file an irrevocable consent with the secretary of state. The seller shall file the irrevocable consent prior to executing a business opportunity contract or engaging in the sale of a business opportunity in this state. The irrevocable consent shall appoint the secretary of state to be the seller's attorney to receive service of any lawful process in a noncriminal suit, action, or proceeding against the seller or the seller's successor, executor, or administrator which arises under this chapter after the irrevocable consent has been filed. The irrevocable consent shall have the same force and validity as if the seller were served service of process personally.

Sec. 21. Section 523B.3, Code 2003, is amended to read as follows:

523B.3 EXEMPTIONS FROM REGISTRATION AND DISCLOSURE REQUIREMENTS -- BURDEN OF PROOF.

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

a. The offer or sale of a business opportunity if the purchaser is a bank, savings and loan association, trust company, insurance company, credit union, or investment

company as defined by the federal Investment Company Act of 1940, a pension or profit-sharing trust, or other financial institution or institutional buyer, or a broker-dealer registered pursuant to chapter 502, whether the purchaser is acting for itself or in a fiduciary capacity.

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

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

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

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

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

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

~~2. DENIAL OR REVOCATION OF EXEMPTIONS.~~

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

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

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

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

~~3. BURDEN OF PROOF.~~ 2. In an administrative, civil, or criminal proceeding related to this chapter, the burden of proving an exemption, an exception from a definition, or an exclusion from this chapter, is upon the person claiming it.

Sec. 22. Section 523B.7, subsection 1, paragraph a, Code 2003, is amended to read as follows:

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

Sec. 23. Section 523B.7, subsection 1, paragraphs b and c, Code 2003, are amended by striking the paragraphs.

Sec. 24. Section 523B.7, subsection 4, Code 2003, is amended to read as follows:

4. The rights and in addition to any remedies available pursuant to this chapter are in addition to any other rights or remedies that may exist at provided by law or in equity, a person injured by a violation of this chapter may bring a civil action and recover damages or obtain other appropriate relief including injunctive or other equitable relief. If the person is the prevailing party, the person shall be awarded court costs, reasonable attorney fees, and expert fees which shall be taxed as part of the costs of the action.

Sec. 25. Section 523B.11, Code 2003, is amended to read as follows:

523B.11 PENALTIES.

1. a. A seller who willfully violates the requirements for disclosure or for the contents of a business opportunity contract pursuant to section 523B.2, subsection 1, 8, or 9, or who provides misleading advertising as provided in section 523B.12, subsection 2, who willfully violates a rule under this chapter, or who willfully violates an order of which the person has notice, or who violates section 523B.12, subsection 1, knowing that the statement made was false or misleading in any material respect, upon conviction, is guilty of a class "D" felony. Otherwise, a person who violates a rule adopted or order issued under this chapter is, upon conviction, guilty of an aggravated misdemeanor. Each of the acts specified constitutes a separate offense and a prosecution or conviction for any one of such offenses does not bar prosecution or conviction for any other offense.

2. A business opportunity contract is subject to section 714.16.

3. A seller who willfully uses any device or scheme to defraud a person in connection with the an advertisement, offer to sell or lease, sale, or lease of a business opportunity, or who willfully violates any other provision of this chapter, except as provided in subsections 1 and 3, subsection 1, is, upon conviction, guilty of a fraudulent practice as provided in chapter 714.

~~3. A seller who violates a rule or order adopted or issued under this chapter is, upon conviction, guilty of an aggravated misdemeanor.~~

~~4. The administrator may refer available evidence concerning a possible violation of this chapter or of a rule or order issued under this chapter to the attorney general. The attorney general, with or without such a referral, may institute appropriate criminal proceedings or may direct the case to the appropriate county attorney to institute appropriate criminal proceedings.~~

Sec. 26. Section 523B.12, subsections 1, 2, and 3, Code 2003, are amended to read as follows:

1. MISLEADING FILINGS STATEMENTS. ~~It is unlawful to a~~ A seller shall not make or cause to be made, a misleading statement in a disclosure document filed with the administrator required pursuant to section 523B.2 or in a proceeding under this chapter, a statement which is, at, The statement shall be deemed to be misleading if any of the following apply:

a. At the time and in the light of the circumstances under which it is made, the statement is false or misleading in a material respect or, in connection with such a statement, to omit to state.

b. An omission of a material fact is necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading.

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

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

Sec. 27. Section 523B.12, subsection 4, unnumbered paragraph 1, Code 2003, is amended to read as follows:

~~It is unlawful for a business opportunity A seller to of a business opportunity shall not~~ do any of the following:

Sec. 28. Section 523B.12, subsection 4, paragraphs d, f, h, and j, Code 2003, are amended to read as follows:

d. Misrepresent the training and management assistance available to the business opportunity purchaser.

f. Misrepresent, by failure to disclose or otherwise, the termination, transfer, or renewal provision of a business opportunity agreement contract.

h. Assign a so-called exclusive territory encompassing the same area to more than one business opportunity purchaser.

j. Provide merchandise, machines, or displays of a brand or kind substantially different from or inferior to those promised by the business opportunity seller.

Sec. 29. Section 523B.13, subsections 5 and 6, Code 2003, are amended by striking the subsections.

Sec. 30. DIRECTIONS TO CODE EDITOR. The Code editor is directed to renumber Code chapter 523B, transferring the chapter from title XIII, subtitle 1, insurance and related regulation, to title XIII, subtitle 5, regulation of commercial enterprises.

Sec. 31. Sections 523B.5, 523B.8, and 523B.10, Code 2003, are repealed.

DIVISION III

CONGREGATE CARE OR SENIOR ADULT CONGREGATE LIVING SERVICES

Sec. 32. Section 523D.2, Code 2003, is amended to read as follows:

523D.2 FILING WITH DIVISION OF INSURANCE APPLICATION OF CHAPTER.

A person shall not, as This chapter applies to a provider, enter into who executes a contract to provide continuing care or senior adult congregate living services in a facility, or extend the term of an existing contract to provide continuing care or senior adult congregate living services in a facility, if the contract requires or permits the payment of an entrance fee to any a person, and the any of the following apply:

1. ~~The facility is or will be located in this state, or the.~~

2. ~~The provider or a person acting on the provider's behalf solicits the contract within this state for a facility located in this state and the person to be provided with continuing care or senior adult congregate living services under the contract resides within this state at the time of the solicitation, unless the person has filed with the division of insurance of the department of commerce, a current disclosure statement which meets the requirements of section 523D-3. The disclosure statement shall be accompanied by a one hundred dollar filing fee as a condition of filing and compliance with this section.~~

Sec. 33. NEW SECTION. 523D.2A ANNUAL CERTIFICATION.

On or before March 1 of each year, a provider shall file a certification with the commissioner in a manner and according to requirements established by the commissioner. The certification shall be accompanied by a one hundred dollar administrative fee. The certification shall attest that according to the best knowledge and belief of the attesting party, the facility administered by the provider is in compliance with the provisions of this chapter, including rules adopted by the commissioner or orders issued by the commissioner as authorized under this chapter. The attesting person may be any of the following:

1. A person serving as the president or chief executive officer of a corporation.
2. A person acting as the general partner of a limited partnership.
3. A person acting as the general partner of a limited liability partnership.
4. A person acting in a fiduciary capacity or as a trustee on behalf of a provider.
5. A person who is a manager of a limited liability company.

Sec. 34. Section 523D.3, subsection 1, Code 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. n. A description of transactions in which the provider obtains real or personal property or construction services from any of the following:

- (1) The developer of the facility, or a person who is under the control of the developer.
- (2) If the provider is a business entity, any person holding an executive position in the business entity, including but not limited to a member of a board of directors or an officer of a corporation, a manager of a limited liability company, a general partner of a limited partnership, or a trustee of a trust.
- (3) If the provider is a business entity, any person who holds a ten percent or greater equity or beneficial interest in the business entity.
- (4) Any person who directly or indirectly by acting through one or more intermediaries controls management decisions of the facility.

A transaction shall include each purchase or lease of real property or personal property by the provider, and any construction services provided to the provider. The description shall include transactions which have occurred or which are planned to occur. The description shall also include whether the terms of the transaction were or will be on terms which are at least as favorable to the provider as those terms which would be generally available from an unaffiliated third party.

Sec. 35. Section 523D.3, subsections 2 through 4, Code 2003, are amended to read as follows:

2. The provider shall ~~file with the insurance division, annually within five months following the end of the provider's fiscal year,~~ prepare an annual disclosure statement which shall contain the information required by this chapter for the initial disclosure statement. The annual disclosure statement shall also be accompanied by a narrative describing:

a. Any material differences between the pro forma cash flow projection ~~filed~~ prepared pursuant to this chapter as part of the most recent annual disclosure statement and the actual results of operations during the fiscal year, if the material differences substantially affect the financial safety or soundness of the community.

b. A revised pro forma cash flow projection for the next fiscal year.

2A. The provider shall prepare the annual disclosure statement not later than five months following the end of the provider's fiscal year. The provider shall retain a record of each annual disclosure statement prepared under this section for at least five years.

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

4. ~~In-addition-to-filing-the-annual-disclosure-statement,~~ The provider may amend its ~~currently-filed~~ current annual disclosure statement at any other time if, in the opinion of the provider, an amendment is necessary to prevent the disclosure statement and annual disclosure statement from containing any material misstatement of fact or omission to state a material fact required to be included in the statement. The amendment or amended disclosure statement shall be ~~filed-with-the-division-of-insurance-before-the statement-is-delivered~~ kept with the records of the provider's annual disclosure statements. The provider shall deliver a copy of the amendment to a resident or prospective resident and a personal representative of a resident or prospective resident ~~and-is-subject-to-all-the-requirements,-including~~

~~those-as-to-content-and-delivery,-of-this-chapter in the same manner as the annual disclosure statement.~~

Sec. 36. Section 523D.4, subsection 2, Code 2003, is amended to read as follows:

2. A provider shall not ~~file-with-the-division-of insurance-or-make,~~ publish, disseminate, circulate, or deliver to any person or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or delivered to any person or placed before the public, a financial statement which does not meet generally accepted accounting principles.

Sec. 37. Section 523D.5, subsection 1, unnumbered paragraph 1, Code 2003, is amended to read as follows:

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

Sec. 38. Section 523D.5, subsection 1, paragraphs d through f, Code 2003, are amended to read as follows:

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

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

f. If the new facility or proposed expansion offers a promise to provide nursing or health care services to residents in the future pursuant to contracts effective for

the life of the resident or a period in excess of one year in consideration for an entrance fee, an actuarial forecast ~~in-a form-satisfactory-to-the-commissioner,~~ which identifies the qualifications of the actuary or actuaries preparing the forecast.

Sec. 39. Section 523D.5, subsection 2, paragraphs a and b, Code 2003, are amended to read as follows:

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

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

Sec. 40. Section 523D.5, subsection 3, unnumbered paragraph 1, Code 2003, is amended to read as follows:

New construction shall not begin until ~~the-filing-required by-this-section-has-been-made-and~~ at least fifty percent of the proposed number of independent living units in the initial stage or phase have been reserved pursuant to executed contracts and at least ten percent of the entrance fees required by those contracts are held in escrow pursuant to this chapter. However, the requirements of this subsection may be waived by the commissioner by rule or order upon a showing of good cause.

Sec. 41. Section 523D.5, subsection 3, paragraph a, Code 2003, is amended to read as follows:

a. Secured financing adequate in an amount and term to complete the project ~~described-in-the-filing-required-by-this section.~~

Sec. 42. Section 523D.5, subsection 4, Code 2003, is amended to read as follows:

4. ESCROW REQUIREMENTS. ~~Unless proof-has-been-submitted to-the-commissioner-that~~ conditions for the release of escrowed funds set forth in this section have already been met, the provider shall establish an interest-bearing escrow account at a state or federally regulated financial institution located within this state to receive any deposits or entrance fees or portions of deposits or fees for a living unit which has not been previously occupied by a resident for which an entry fee arrangement is used. The escrow account agreement shall be entered into between the financial institution and the provider with the financial institution as the escrow agent and as a fiduciary for the resident or prospective resident. The agreement shall state that the purpose of the escrow account is to protect the resident or prospective resident and that the funds deposited shall be kept and maintained in an account separate and apart from the provider's business accounts.

Sec. 43. Section 523D.5, subsection 5, paragraph c, unnumbered paragraph 1, Code 2003, is amended to read as follows:

Except as provided by paragraphs "a" and "b", amounts held in escrow shall not be released ~~only-upon-approval-of-the commissioner---The-commissioner-shall-approve-the-release-of funds-only-upon-a-determination-that~~ unless at least one of the following conditions has been satisfied:

Sec. 44. Section 523D.5, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 6. RETENTION OF RECORDS. The provider shall maintain information required by this section for at least five years. The information shall be made available for inspection during normal business hours.

Sec. 45. Section 523D.8, subsection 1, Code 2003, is amended to read as follows:

1. A person who ~~willfully and knowingly~~ violates a provision of this chapter or a rule adopted or order entered pursuant to this chapter, ~~upon conviction, is guilty of an aggravated misdemeanor~~ commits a fraudulent practice as provided in chapter 714.

Sec. 46. Section 523D.10, Code 2003, is amended to read as follows:

523D.10 RULES.

The division of insurance may adopt rules pursuant to chapter 17A as necessary and appropriate to implement this chapter, and may make further recommendations to the general assembly for the protection of residents and prospective residents of facilities ~~required to file an annual disclosure statement~~ under this chapter.

Sec. 47. Section 523D.12, subsection 1, Code 2003, is amended by striking the subsection.

Sec. 48. Section 523D.12, subsection 2, unnumbered paragraph 1, Code 2003, is amended to read as follows:

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

Sec. 49. Section 523D.12, subsection 2, paragraph c, Code 2003, is amended to read as follows:

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

Sec. 50. Section 523D.14, Code 2003, is amended to read as follows:

523D.14 INJUNCTIONS.

The ~~attorney general~~ commissioner may petition the district court in any county of the state for an injunction to restrain a person subject to this chapter and any agents, employees, or

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

Sec. 51. Section 523D.9, Code 2003, is repealed.

CHRISTOPHER C. RANTS
Speaker of the House

JEFFREY M. LAMBERTI
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2269, Eightieth General Assembly.

MARGARET THOMSON
Chief Clerk of the House

Approved _____, 2004

THOMAS J. VILSACK
Governor