HOUSE FILE 2263
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO HSB 554)

(COMPANION TO SF 2153 BY
COMMITTEE ON COMMERCE)

(As Amended and Passed by the House February 21, 2024)

[= New Language by the House
* = Language Stricken by the House

A BILL FOR

An Act relating to the insurance commissioner's authority concerning insurance producers, business entity producers, and preneed [sellers, continuing care retirement facilities, and continuing care retirement programs.]

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

Section 1. Section 505.17, subsection 1, paragraph a, Code 2024, is amended to read as follows:

a. Information, records, and documents utilized for the purpose of, or in the course of, investigation, regulation, or examination of an insurance company, ~~or~~ insurance holding company, an individual insurance producer, or a business entity producer received by the division from some other governmental entity which treats such information, records, and documents as confidential, are confidential and shall not be disclosed by the division and are not subject to subpoena. Such information, records, and documents do not constitute a public record under chapter 22.

Sec. 2. Section 522B.11, subsection 1, paragraph q, Code 2024, is amended to read as follows:

q. Is the subject of an order ~~of the securities administrator of this state or any other state, province, district, or territory,~~ denying, suspending, revoking, or otherwise taking action against a registration as a broker-dealer, agent, investment adviser, or investment adviser representative issued by any of the following:

(1) The securities administrator of this state or any other state, province, district, or territory.

(2) The federal securities and exchange commission.

(3) The financial industry regulatory authority.

Sec. 3. Section 523A.807, subsection 3, paragraph a, Code 2024, is amended to read as follows:

a. Payment of a civil penalty of not more than one thousand dollars for each violation, ~~but~~ not exceeding an aggregate of ten thousand dollars during any six-month period, except ~~that~~ if the commissioner finds that the person knew or reasonably should have known that the person was in violation of ~~such provisions~~ a section or rules adopted pursuant ~~thereto~~ to a section, the penalty shall be not more than five thousand dollars for each violation, ~~but~~ and not ~~exceeding~~ exceed an aggregate of fifty thousand dollars during any six-month

period. ~~The commissioner shall assess the penalty on the employer of an individual and not on the individual, if the commissioner finds that the violations committed by the individual were directed, encouraged, condoned, ignored, or ratified by the individual's employer.~~ Any civil penalties collected under this subsection shall be deposited as provided in section 505.7.

Sec. 4. Section 523D.1, subsections 2, 3, 4, 8, and 9, Code 2024, are amended to read as follows:

2. "*Continuing care*" means ~~housing together with~~ a continuum of supportive services, home health services, nursing services, medical services, or other health related services, furnished to a resident, regardless of whether or not the lodging and services are provided at the same location, together with housing for residents that elect to live in a facility of a provider, with or without other periodic charges, and pursuant to one or more contracts effective for the life of the resident or a period in excess of one year, including mutually cancelable contracts, and in consideration of an entrance fee.

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

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

a. Five thousand dollars.

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

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

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

Sec. 5. Section 523D.1, Code 2024, is amended by adding the following new subsection:

NEW SUBSECTION. 7A. *"Program"* means an organized set of measures or activities undertaken by a provider to provide continuing care services to an individual.

Sec. 6. Section 523D.2, Code 2024, is amended to read as follows:

523D.2 Application of chapter.

This chapter applies to a provider who executes a contract to provide continuing care or senior adult congregate living services in a facility or program, or ~~extend~~ extends the term of an existing contract to provide continuing care or senior adult congregate living services in a facility or program, if the contract requires or permits the payment of an entrance fee to a person, and any of the following apply:

1. The facility or program is or will be located in this state.

2. The provider or a person acting on the provider's behalf solicits the contract within this state for a facility or program 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.

Sec. 7. Section 523D.2A, unnumbered paragraph 1, Code 2024, is amended to read as follows:

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 which fee shall be deposited as provided in section 505.7. The certification shall attest that according

to the best knowledge and belief of the attesting party, the facility or program 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:

Sec. 8. Section 523D.3, subsection 1, paragraph c, unnumbered paragraph 1, Code 2024, is amended to read as follows:

With respect to each person covered by paragraph "*b*", and if the facility or program will be managed on a day-to-day basis by a person identified pursuant to paragraph "*b*", or with respect to the proposed manager, the following information:

Sec. 9. Section 523D.3, subsection 1, paragraphs f, h, and k, Code 2024, are amended to read as follows:

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

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

k. Other material information concerning the facility, program, or the provider required by the division of insurance or which the provider wishes to include.

Sec. 10. Section 523D.6, subsection 1, paragraphs b, c, f, g, h, j, k, m, and p, Code 2024, are amended to read as follows:

b. The name and address of the facility or facilities, or of the program.

c. ~~The~~ If a prospective resident elects to reside in housing at the facility of a provider, the identification of the living unit which the prospective resident will occupy.

f. A statement of the policy of the facility or program with regard to any health or financial conditions upon which the provider may require the resident to relinquish the resident's space in the designated facility or program.

g. A statement of the policy of the facility or program with regard to the health and financial conditions required for a person to continue as a resident or an enrollee in a program.

h. A statement of the policy of the facility or program with regard to the conditions under which the resident is permitted to remain in the facility or program in the event of financial difficulties affecting the resident.

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

k. A description in clear and understandable language, in at least ten point type, of the terms governing the refund of any portion of the entrance fee in the event of discharge by the provider, or cancellation by the resident, and a statement that the provider shall not dismiss or discharge a resident from a facility or program prior to the expiration of a resident contract without just cause and sixty days written notice of intent to cancel. The notice of dismissal or discharge shall only be given upon a good faith determination that just cause exists, and the notice shall be given in writing, signed by the medical director, if any, and the administrator of the facility or program. In an emergency situation only such notice as is

reasonable under the circumstances is required.

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

p. A statement that if a resident dies or through illness, injury, or incapacity is precluded from becoming a resident under the terms of the contract before occupying the living unit, or precluded from commencing a continuing care services program under the terms of the contract, the contract is automatically rescinded and the resident or the resident's legal representative shall receive a full refund of all payments of money or transferred property to the facility or program, except those costs specifically incurred by the facility or program at the request of the resident or program enrollee and set forth in writing in a separate addendum, signed by both parties to the contract.

Sec. 11. Section 523D.6, subsection 2, Code 2024, is amended to read as follows:

2. *Cancellation.* The contract required by this section shall state the terms under which the contract can be canceled by the provider, ~~or~~ the resident, or a program enrollee, including a statement of the refund rights of a resident, or a program enrollee, and shall include a completed, easily detachable form in duplicate, captioned "Notice of Cancellation", as an attachment, in ten point boldface type, containing the following information and statements in substantially the following form and language:

NOTICE OF CANCELLATION

.....

Date contract was executed.

.....

Date disclosure statement was provided to resident or program enrollee.

You may rescind and cancel your contract, without any penalty or obligation, within three business days of the date the

contract was executed or within thirty days after the date you received the disclosure statement required by Iowa Code section 523D.3, whichever is later. You are not required to move into the facility or commence continuing care services from the program before the expiration of this cancellation period. However, if you do, the provider may retain the reasonable value of care and services actually provided to you, the resident, prior to your vacating the provider's facility or terminating continuing care services from the program. If you cancel this contract and you have already moved into the provider's facility, you must vacate your living unit within ten days after receipt by the provider of your cancellation notice.

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

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

I hereby cancel this contract.

.....

(Date)

.....

(Resident's signature)

Sec. 12. Section 523D.7, subsection 1, paragraphs a and b, Code 2024, are amended to read as follows:

a. Enters into a contract to provide continuing care or senior adult congregate living services ~~at a facility~~ without having first delivered a disclosure statement meeting the requirements of this chapter to the person contracting for continuing care or senior adult congregate living services and to the person's personal representative if one is appointed by the person.

b. Enters into a contract to provide continuing care or senior adult congregate living services ~~at a facility~~ with a person who has relied on a disclosure statement which contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.]