

Sec. 2. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved March 31, 1994

CHAPTER 1031

DIVISION OF INSURANCE — SECURITIES REGULATION — REGULATED INDUSTRIES *H.F. 2385*

AN ACT relating to entities and subject matter under the regulatory authority of the division of insurance, including securities, motor vehicle service contracts, residential service contracts, business opportunities, and invention developers, and providing for fees, and establishing penalties.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 321I.5, subsection 2, paragraph m, Code 1993, is amended to read as follows:

m. Sets forth any and all conditions on which the service contract may be canceled ~~and any and all, the terms and conditions for the refund of any portion of the purchase price, the identity of the person primarily liable to provide any refund, and the identity of any other person liable to provide any portion of the refund.~~

Sec. 2. Section 321I.8, Code 1993, is amended to read as follows:

321I.8 EXEMPTION.

This chapter does not apply to a motor vehicle service contract issued by the manufacturer or importer of the motor vehicle covered by the service contract or to any ~~third party administrator~~ third party acting in an administrative capacity on the manufacturer's behalf in connection with that service contract.

Sec. 3. Section 321I.12, Code 1993, is amended by adding the following new subsection:

NEW SUBSECTION. 4. A motor vehicle service contract provider shall promptly deliver a written explanation to the service contract holder, describing the reasons for denying a claim or for the offer of a compromise settlement, based on all relevant facts or legal requirements and referring to applicable provisions of the service contract.

Sec. 4. Section 321I.14, Code 1993, is amended by adding the following new subsection:

NEW SUBSECTION. 4. If an investigation provides reasonable evidence that a person violated this chapter or a rule adopted pursuant to this chapter, the commissioner may issue an order directed at the person to cease and desist from engaging in the act or practice resulting in the violation.

Sec. 5. **NEW SECTION. 321I.16 VIOLATIONS.**

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

2. If the commissioner believes that grounds exist for the criminal prosecution of persons subject to this chapter for violations of this chapter or any other law of this state, the commissioner may forward to the attorney general or the county attorney the grounds for the belief, including all evidence in the commissioner's possession, in order that the attorney general or the county attorney may proceed with the matter as deemed appropriate. At the request of the attorney general, the county attorney shall appear and prosecute the action when brought in the county served by the county attorney.

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

Sec. 6. Section 502.102, subsection 11, Code 1993, is amended to read as follows:

11. "Person" means an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a trust, a fiduciary, an unincorporated organization, a government, or a political subdivision of a government.

Sec. 7. Section 502.208, subsection 2, Code 1993, is amended by striking the subsection and inserting in lieu thereof the following:

2. a. Except as provided in subsection 13 and section 502.207A, subsection 3, paragraph "g", a person who files a registration statement shall pay a filing fee of one-tenth of one percent of the proposed aggregate sales price of the securities to be offered to persons in this state pursuant to the registration statement. However, except as provided in paragraph "c", subsection 13, and section 502.207A, subsection 3, paragraph "g", the annual filing fee shall not be less than fifty dollars or more than one thousand dollars.

b. The administrator shall retain the filing fee even if the registration is withdrawn, denied, suspended, revoked, or abandoned.

c. A person who is a face-amount certificate company, open-end management investment company, or a unit investment trust, as defined in the Investment Company Act of 1940, shall initially register and annually renew a registration statement in this state for an indefinite amount or a fixed amount. The fixed amount must be for two hundred fifty thousand dollars. A registrant shall pay a filing fee when the statement is filed. If the registration statement amount is indefinite, the registrant shall pay a filing fee of one thousand dollars. If the registration statement amount is fixed, the registrant shall pay a filing fee of two hundred fifty dollars, and the following shall apply:

(1) The registrant shall file a sales report with the administrator or pay an additional filing fee of one thousand two hundred fifty dollars within ninety days after the registration statement's annual renewal date. If the registrant files a sales report with the administrator, the registrant shall pay an additional filing fee of one-tenth of one percent of the amount of securities sold in excess of two hundred fifty thousand dollars. The additional filing fee must be paid within ninety days after the registration statement's annual renewal date.

(2) The administrator shall order the registration of the additional securities effective retroactively as of the effective date of the registration statement that is being amended.

Sec. 8. Section 502.208, subsection 9, paragraph a, Code 1993, is amended to read as follows:

a. A registration statement shall remain effective for one year from its effective date unless it is renewed, extended, or amended by rule or order of the administrator. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any transaction by or on behalf of a person who is not the issuer, and who is not in control of the issuer or controlled by the issuer or under common control with the issuer, so long as the registration statement is effective, unless otherwise prescribed by order. A registration statement may not be withdrawn after its effective date if any of the securities has been sold in this state, unless permitted by rule or order of the administrator. A registration statement is not effective during the time a stop order is in effect under section 502.209. A registration statement which never became effective may be withdrawn without prejudice to the issuer upon request and for good cause as determined at the discretion of the administrator.

Sec. 9. Section 502.208, subsection 11, Code 1993, is amended by striking the subsection and inserting in lieu thereof the following:

11. Except for face-amount certificate companies, open-end management investment companies, and unit investment trusts, as defined by the Investment Company Act of 1940, registration statements may be amended during the registration period to increase the amount of registered securities to be offered for sale to persons in this state.

- a. The amendment to the registration statement becomes effective on the date ordered by the administrator.
- b. Filing fees shall be calculated as specified by subsection 2, paragraph "a", and subsection 13.

Sec. 10. Section 502.208, subsection 13, Code 1993, is amended by striking the subsection and inserting in lieu thereof the following:

13. a. With the exception of face-amount certificate companies, open-end management investment companies, and unit investment trusts, a registrant who sold securities to persons in this state in excess of the amount of securities registered in this state at the time of the sale may file an amendment to its registration statement to register the additional securities. The following requirements shall apply:

(1) If a registrant proposes to sell securities to persons in this state pursuant to a registration statement that is currently effective in this state in an amount that exceeds the amount registered in this state, the registrant must do both of the following:

(a) File an amendment to register the additional securities.

(b) Pay an additional filing fee in the same amount as specified by subsection 2, paragraph "a", as though the amendment constitutes a separate issue.

(2) If a registrant sold securities to persons in this state in excess of the amount registered in this state at that time, the registrant must do both of the following:

(a) File an amendment to register the additional securities.

(b) Pay an additional filing fee that is three times the amount specified in subsection 2, paragraph "a", as though the amendment constitutes a separate issue.

(3) The administrator may order the amendment effective retroactively as of the effective date of the registration statement that is being amended.

Sec. 11. Section 502.209, subsection 1, paragraphs i and j, Code 1993, are amended by striking the paragraphs and inserting in lieu thereof the following:

i. A person who is an issuer, correspondent, or applicant, as listed on the uniform application to register securities form known as "Form U-1", failed to pay the proper filing fee. The administrator may enter only a denial order pursuant to this paragraph, and shall vacate any such order when the deficiency has been corrected.

j. A person who is an issuer, correspondent, or applicant, as listed on the uniform application to register securities form known as "Form U-1", has abandoned the registration statement. The administrator may enter an order pursuant to this paragraph if a notice of abandonment is sent to the last known address of each person, and the person fails to take corrective action within the time specified by the administrator. The notice of abandonment shall state the reasons for the administrator's action, specify the corrective action required, and specify the time period for submitting a response. However, the time specified shall not be less than fifteen days.

Sec. 12. Section 502.209, subsection 1, Code 1993, is amended by adding the following new paragraph:

NEW PARAGRAPH. k. A person who is an issuer, correspondent, or applicant has failed to file a sales report with the administrator within ninety days after the registration statement's annual anniversary of its effectiveness or latest renewal.

Sec. 13. Section 502.209, subsection 3, Code 1993, is amended to read as follows:

3. The administrator may issue a summary order revoking, withdrawing, postponing, suspending, or denying the effectiveness of a registration statement pending a final determination of any proceeding under this section. Upon the entry of the order, the administrator shall promptly notify the persons who are the issuer, correspondent, and applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered by restricted certified mail, sent to the last known address of each person. The notice shall state that the order has been entered and of, the reasons therefor for the administrator's action, and that the matter will be set down for a hearing within fifteen days after the receipt of a

~~written request the matter will be set down for hearing, if the request is received by the administrator within fifteen days after receipt of the notice by the persons. The hearing shall be held within forty-five days after the date of the notice of hearing unless continued by the administrative law judge for good cause with at least fifteen days' notice to the parties. If no a hearing is requested and none is or ordered, by the administrator, after notice of an opportunity for a hearing to each of the persons, may modify, extend, or vacate the order. If a hearing is not requested or ordered by the administrator, the order will remain in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each of the aforementioned persons, may modify or vacate the order or extend it until final determination.~~

Sec. 14. Section 502.302, subsection 5, Code 1993, is amended by striking the subsection.

Sec. 15. Section 502.304, subsection 1, Code 1993, is amended by adding the following new paragraph:

NEW PARAGRAPH. m. Does any of the following:

(1) Has willfully violated the law of a foreign jurisdiction governing or regulating any aspect of the business of securities or banking.

(2) Within the past five years, has been the subject of an action of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer or agent.

(3) Is the subject of an action of any securities exchange or self-regulatory organization operating under the authority of the securities regulator of a foreign jurisdiction suspending or expelling such person from membership in such exchange or self-regulatory organization.

Sec. 16. Section 502.603, subsection 1, paragraph c, Code 1993, is amended to read as follows:

c. ~~Keep~~ Notwithstanding chapter 22, keep confidential the information obtained in the course of an investigation. However, if the administrator determines that it is necessary or appropriate in the public interest or for the protection of investors, the administrator may share information with other securities administrators, regulatory authorities, or governmental agencies or may publish information concerning a violation of this chapter or a rule or order under this chapter.

Sec. 17. Section 502.604A, unnumbered paragraph 1, Code 1993, is amended to read as follows:

If a person fails or refuses to file any statement or report or to produce any books, papers, correspondence, memoranda, agreements, or other documents or records, or to obey any subpoena issued by the administrator, the administrator may refer the matter to the attorney general, who, after notice, may apply to a district court to enforce compliance. The court may order any or all of the following:

Sec. 18. Section 523C.12, Code 1993, is amended to read as follows:

523C.12 OPTIONAL EXAMINATION.

The commissioner or a designee of the commissioner may make an examination of the books and records of a service company, including copies of contracts and records of claims and expenditures, and verify its assets, liabilities, and reserves. The actual costs of the examination shall be borne by the service company.

Sec. 19. **NEW SECTION. 523C.20 SERVICE OF PROCESS.**

The commissioner shall be the agent for service of process upon a service company.

Sec. 20. **NEW SECTION. 523C.21 CLAIM PROCEDURES.**

A service company shall promptly provide a written explanation to the residential customer, describing the reasons for denying a claim or for the offer of a compromise settlement, based on all relevant facts or legal requirements and referring to applicable provisions of the residential service contract.

Sec. 21. **CONDITIONAL IMPLEMENTATION – PROVISIONS OF THE INVENTION DEVELOPMENT SERVICES ACT.** Sections 523G.6, 523G.10, and 523G.11, relating to the duties and authority of the commissioner of insurance under the invention development services Act, shall only be implemented if and when the general assembly makes an appropriation of at least ten thousand dollars and provides for the retention of one part-time clerk for a total of at least one-half full-time equivalent position devoted to the insurance division of the department of commerce for the implementation of those sections.

Sec. 22. **INSTRUCTIONS TO CODE EDITOR.** The Code editor shall reverse the order that section 523B.13, subsections 3 and 4, appear in the Code.

Approved March 31, 1994

CHAPTER 1032

INNKEEPERS AND GUESTS

H.F. 2232

AN ACT relating to the rights and obligations of innkeepers and guests.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. **NEW SECTION. 137C.25 RIGHT OF HOTEL OPERATOR TO DENY SERVICES.**

1. A person operating a hotel has the right to refuse or deny the use of a room, accommodations, facilities, or other privileges of the hotel to any of the following:

a. An individual unwilling or unable to pay for the room, accommodations, facilities, or other privileges of the hotel.

b. An individual who is visibly publicly intoxicated or under the influence of alcohol or some other illegal drug, or who is disorderly so as to create a public nuisance.

c. An individual the hotel operator reasonably believes is seeking to use a room, accommodations, facilities, or other privileges of the hotel for an unlawful purpose.

d. An individual the hotel operator reasonably believes is bringing in anything which may create an unreasonable danger or risk to other persons, including but not limited to firearms or explosives.

e. An individual whose use of the room, accommodations, facilities, or other privileges of the hotel would result in a violation of the maximum capacity of such hotel.

2. A hotel operator who reasonably refuses or denies the use of a room, accommodations, facilities, or other privileges of the hotel pursuant to this section is not subject to any civil or criminal action or any fine or other penalty, unless the refusal or denial is a violation of state or federal law.

Sec. 2. **NEW SECTION. 137C.25A RIGHT TO REQUIRE FINANCIAL GUARANTEE.**

The hotel operator has the right to require a person seeking the use of a room, accommodations, facilities, or other privileges of the hotel to demonstrate the ability to pay for such use by cash, credit card, or approved check. The hotel operator may require the parent or guardian of a minor to do all of the following:

1. Accept in writing the liability for the cost of the room, accommodations, facilities, or other privileges of the hotel used by the minor, and for the cost of any damages to the room, furnishings in the room, or other facilities of the hotel caused by the minor while the minor is using the room, accommodations, facilities, or other privileges of the hotel.

2. Provide the hotel operator with one of the following: