

CHAPTER 1104

REGULATION OF BUSINESS ENTITIES

H.F. 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 ~~its~~ a 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

a. ~~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 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 docu-

ment, 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.1, 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 of 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.

e. ~~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.¹ 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~~

¹ According to enrolled Act; subsection 1 does not contain any other lettered paragraphs

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 person 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~~ 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 place 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.

Approved April 26, 2004