

Johnson  
Jensen  
DeLury

SSB-1241  
Commerce  
Succeeded by  
SF/HF 473

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

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to the regulation of securities, by defining the  
2 terms "agent" and "security", providing registration  
3 requirements, providing for disciplinary actions, imposing  
4 fees and civil penalties, providing for testimony and the  
5 production of evidence, authorizing cooperation with law  
6 enforcement entities, providing criminal penalties, and  
7 eliminating reporting requirements.

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

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1 Section 1. Section 502.102, subsection 3, paragraph a,  
2 subparagraph (3), Code 2001, is amended to read as follows:

3 (3) Effecting transactions in a federal covered security  
4 as described in sections 18(b)(3) and 18(b)(4)(D) of the  
5 Securities Act of 1933 as amended in Pub. L. No. 104-290, if a  
6 commission or other remuneration is not either directly or  
7 indirectly paid any person for soliciting in this state.

8 Sec. 2. Section 502.102, subsection 19, Code 2001, is  
9 amended to read as follows:

10 19. "Security" means any note; stock; treasury stock;  
11 bond; debenture; evidence of indebtedness; certificate of  
12 interest or participation in a profit sharing agreement;  
13 collateral trust certificate; preorganization certificate or  
14 subscription; transferable share; investment contract;  
15 viatical settlement contract, or any fractional or pooled  
16 interest in such contract; voting trust certificate;  
17 certificate of deposit for a security; fractional undivided  
18 interest in an oil, gas, or other mineral lease or in payments  
19 out of production under such a lease, right, or royalty; an  
20 interest in a limited liability company or in a limited  
21 liability partnership or any class or series of such interest,  
22 including any fractional or other interest in such interest;  
23 or, in general, any interest or instrument commonly known as a  
24 "security", or any certificate of interest or participation  
25 in, temporary or interim certificate for, receipt for,  
26 guarantee of, or warrant or right to subscribe to or purchase,  
27 any of the foregoing. "Security" does not include an  
28 insurance or endowment policy or annuity contract under which  
29 an insurance company promises to pay money either in a lump  
30 sum or periodically for life or for some other specified  
31 period. "Security" also does not include an interest in a  
32 limited liability company or a limited liability partnership  
33 if the person claiming that such an interest is not a security  
34 proves that all of the members of the limited liability  
35 company or limited liability partnership are actively engaged

1 in the management of the limited liability company or limited  
 2 liability partnership; provided that the evidence that members  
 3 vote or have the right to vote, or the right to information  
 4 concerning the business and affairs of the limited liability  
 5 company or limited liability partnership, or the right to  
 6 participate in management, shall not establish, without more,  
 7 that all members are actively engaged in the management of the  
 8 limited liability company or limited liability partnership.  
 9 "Security" is any of the foregoing as provided in this  
 10 subsection whether or not it is evidenced by a written  
 11 instrument.

12 Sec. 3. Section 502.203, subsection 18, Code 2001, is  
 13 amended to read as follows:

14 18. An offer or sale of securities which are exempt from  
 15 registration under 15 U.S.C. §77a-77aa pursuant to rule 801 or  
 16 802 promulgated by the securities and exchange commission as  
 17 provided in the Securities Act of 1933.

18 19. Any other security or transaction or offering or class  
 19 of securities or transactions or offers exempted or  
 20 requirements for exemption waived, by the administrator by  
 21 rule or order, from requirements provided in section 502.201  
 22 or 502.602.

23 Sec. 4. Section 502.207A, subsection 7, Code 2001, is  
 24 amended to read as follows:

25 7. Notwithstanding any other provision of this chapter,  
 26 the administrator shall not deny effectiveness to or suspend  
 27 or revoke the effectiveness of a registration under this  
 28 section on the basis of section 502.209, subsection 1,  
 29 paragraph "h", and the administrator shall not impose the  
 30 conditions specified in section 502.208, subsection 8,  
 31 subsection 9, paragraph "b", or subsection 12. ~~The~~  
 32 ~~administrator may issue a stop order pursuant to section~~  
 33 ~~502.209 to filers under this section for any of the following~~  
 34 ~~additional reasons:~~

35 a. ~~The issuer's principal place of business is not in this~~

1 state:

2 b.--At least fifty percent of the issuer's full-time  
3 employees are not located in this state:

4 c.--At least eighty percent of the net proceeds of the  
5 offering are not going to be used in connection with the  
6 operations of the issuer in this state:

7 d.--If the issuer is a seed or venture capital fund, at  
8 least fifty percent of the moneys received from the sale of  
9 the securities will not be used to make seed or venture  
10 capital investments in this state:

11 Sec. 5. Section 502.302, subsections 1 and 3, Code 2001,  
12 are amended to read as follows:

13 1. A broker-dealer, agent, investment adviser, or  
14 investment adviser representative may obtain an initial or  
15 renewal license by filing with the administrator, or an  
16 organization person which the administrator by rule designates  
17 assigns as a designee, an application together with a consent  
18 to service of process pursuant to section 502.609 and the  
19 appropriate filing fee as required in this section. If the  
20 application is filed with a designee, the applicant must also  
21 pay any reasonable costs charged by the designee. The  
22 applicant may transmit the fee to the administrator through  
23 the designee according to rules adopted by the administrator.  
24 The application shall contain information the administrator  
25 requires by rule concerning the applicant's form and place of  
26 organization, proposed method of doing business and financial  
27 condition, and the qualifications and experience of the  
28 applicant. In the case of a broker-dealer or investment  
29 adviser, the application shall include the qualifications and  
30 experience of any partner, officer, director or controlling  
31 person, any injunction or administrative order or conviction  
32 of a misdemeanor involving securities and any conviction of a  
33 felony, and any other matters which the administrator  
34 determines are relevant to the application. In addition, in  
35 the case of an investment adviser, the application shall

1 include any information to be furnished or disseminated to any  
 2 client or prospective client, and any other information which  
 3 the administrator determines is relevant to the application.  
 4 If no denial order is in effect and no proceeding is pending  
 5 under section 502.304, registration becomes effective at noon  
 6 of the sixtieth day after a completed application or an  
 7 amendment completing the application is filed, unless waived  
 8 by the applicant. The administrator may by rule or order  
 9 specify an earlier effective date.

10 3. Every applicant for initial or renewal registration as  
 11 a broker-dealer or-investment-adviser shall pay a filing fee  
 12 of two hundred dollars. Every applicant for an initial or  
 13 renewal registration as an investment adviser shall pay a  
 14 filing fee of one hundred dollars. Every applicant for  
 15 initial or renewal registration as an agent or investment  
 16 adviser representative shall pay a filing fee of thirty  
 17 dollars. However, an investment adviser representative is not  
 18 required to pay a filing fee if the investment adviser is a  
 19 sole proprietorship or the substantial equivalent and the  
 20 investment adviser representative is the same individual as  
 21 the investment adviser. A filing fee is not refundable.  
 22 Every person acting as a federal covered adviser in this  
 23 state, except with respect to federal covered advisers whose  
 24 only clients are those described in section 502.301,  
 25 subsection 3, paragraph "b", shall pay an initial and renewal  
 26 notice filing fee of one hundred dollars.

27 Sec. 6. Section 502.304, subsection 1, paragraph m,  
 28 subparagraph (1), Code 2001, is amended to read as follows:

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

32 Sec. 7. Section 502.304, subsection 1, is amended by  
 33 adding the following new paragraph:

34 NEW PARAGRAPH. o. Is the subject of a cease and desist  
 35 order issued by the administrator under section 502.604,

1 another state, or the securities and exchange commission.

2 Sec. 8. Section 502.304, subsection 8, Code 2001, is  
3 amended to read as follows:

4 8. A civil penalty ~~levied~~ imposed under subsection 1 shall  
5 not exceed one five thousand dollars per violation per person  
6 and shall not exceed one five hundred thousand dollars in a  
7 single proceeding against any one person. ~~All-administrative~~  
8 finances Moneys received from the imposition of civil penalties  
9 shall be deposited in the general fund of the state.

10 Sec. 9. Section 502.603, subsection 3, Code 2001, is  
11 amended by striking the subsection and inserting in lieu  
12 thereof the following:

13 3. A person is not excused from attending or testifying in  
14 a proceeding required by this section, or from producing any  
15 evidence, including a document or record in obedience to a  
16 subpoena of the administrator or any officer designated by the  
17 administrator, on the ground that the testimony or evidence  
18 required, whether documentary or otherwise, may tend to  
19 incriminate such person or subject such person to a penalty or  
20 forfeiture. If a person makes a claim against self-  
21 incrimination, the administrator may file a petition to compel  
22 compliance with this section in the district court for Polk  
23 county. The court may make a threshold determination on the  
24 applicability of the self-incrimination privilege. Any  
25 evidence compelled under order of the district court, or any  
26 information directly or indirectly derived from such evidence  
27 or other information, shall not be used against the person in  
28 any criminal case. The limitation on the use of evidence in a  
29 criminal proceeding contained in this section does not apply  
30 to any prosecution or proceeding for perjury or contempt of  
31 court committed in the course of giving or producing  
32 information, documents, testimony, or other evidence.

33 Sec. 10. Section 502.604, unnumbered paragraph 1, Code  
34 2001, is amended to read as follows:

35 If it appears to the administrator that a person has

1 engaged or is about to engage in an act or practice  
2 constituting a violation of this chapter or any rule or order  
3 adopted or issued pursuant to this chapter, the administrator  
4 may do either-or-both any of the following:

5 Sec. 11. Section 502.604, Code 2001, is amended by adding  
6 the following new subsection:

7 NEW SUBSECTION. 3. Assess a civil penalty against the  
8 person, if the violation was made knowingly or recklessly.  
9 The penalty shall be assessed as an agency action provided for  
10 under chapter 17A. The amount of the civil penalty shall not  
11 exceed five thousand dollars for each violation.

12 Sec. 12. NEW SECTION. 502.604B LIMITED LAW ENFORCEMENT  
13 AUTHORITY.

14 The administrator or designee, when carrying out the  
15 provisions of section 502.603, 502.603A, or 502.604, may  
16 develop, share, and receive information related to any law  
17 enforcement purpose, including any criminal investigation.  
18 The administrator or designee shall not have the authority to  
19 issue criminal subpoenas or make arrests. The administrator  
20 or designee shall not be considered a peace officer, including  
21 as provided in chapter 801.

22 Sec. 13. Section 502.605, subsection 1, Code 2001, is  
23 amended to read as follows:

24 1. a. Except as provided in paragraph "b", a person who  
25 willfully and-knowingly violates any provision of this  
26 chapter, or any rule or order under this chapter, is guilty of  
27 a class "D" felony.

28 b. A person who willfully and-knowingly violates section  
29 502.401, 502.402, or 502.403, or section 502.408, subsection 1  
30 or 2, resulting in a loss of more than ten thousand dollars is  
31 guilty of a class "C" felony.

32 Sec. 14. Section 502.605, Code 2001, is amended by adding  
33 the following new subsection:

34 NEW SUBSECTION. 4. In a criminal proceeding brought under  
35 this chapter, the applicability of any exemption, exception,

1 exclusion from a definition, or preemption shall be an  
2 affirmative defense. The defendant claiming such an  
3 exemption, exception, exclusion, or preemption has the burden  
4 of going forward with the evidence of the claim.

5 Sec. 15. Section 502.207B, Code 2001, is repealed.

6

EXPLANATION

7 This bill amends a number of provisions in Code chapter  
8 502, the state's law regulating the sale of securities.

9 Code section 502.102 currently provides a definition of  
10 "agent" who represents a broker-dealer or issuer for purposes  
11 of regulation. The section provides that the term does not  
12 include a person representing an issuer for certain purposes,  
13 including effecting transactions in a federal covered  
14 security. The bill amends the provision to require that in  
15 order for the exception to apply no remuneration can be paid  
16 for soliciting a person in the state.

17 The bill also amends the definition of "security" in Code  
18 section 502.102. The Code provision currently defines  
19 security to mean a long list of a number of different types of  
20 investments or ownership interests, including stock,  
21 certificates of deposit, and membership interests. The bill  
22 provides that the term includes any of the described  
23 investments or ownership interests regardless of whether it is  
24 evidenced by a written instrument.

25 Code section 502.203 currently exempts transactions from  
26 the requirements of Code sections 502.201 and 502.602. Code  
27 section Code 502.201 provides registration requirements for  
28 securities and Code section 502.602 provides requirements for  
29 filing prospectus or sales literature to persons, including  
30 prospective investors. The bill provides that these sections  
31 do not apply to a sale of securities that are exempt from  
32 registration under the federal Securities Act of 1933.

33 Code section 502.207A currently provides an expedited  
34 registration process for small issuers. The bill eliminates  
35 provisions allowing the administrator of the security bureau

1 (the commissioner of insurance or the commissioner's deputy)  
2 to issue a stop order to filers.

3 Code section 502.302 currently provides that a broker-  
4 dealer, agent, investment adviser, or investment adviser  
5 representative may obtain an initial or renewal license by  
6 filing an application and paying a filing fee with the  
7 administrator or an organization which the administrator by  
8 rule designates. The bill provides that the applicant must  
9 pay any reasonable costs charged by the designee for  
10 processing the filings. It also amends a provision requiring  
11 an investment adviser to pay a filing fee of \$200, by  
12 decreasing the fee to \$100.

13 Code section 502.304 currently provides that the  
14 administrator may order the denial, suspension, or revocation  
15 of a registration or may take disciplinary action against a  
16 registrant or a person representing the registrant. One of  
17 the grounds for such action is the violation of law of a  
18 foreign jurisdiction governing the business of securities or  
19 banking. The bill adds the business of insurance.

20 Code section 502.304 currently provides for the denial,  
21 revocation, suspension, and withdrawal of registration by the  
22 administrator based on a number of grounds. The bill adds to  
23 that list another ground of being subject to a cease and  
24 desist order issued by the federal securities and exchange  
25 commission or another state. The bill increases the maximum  
26 civil penalties for violations of the section from \$1,000 to  
27 \$5,000 per violation. It also increases the ceiling that  
28 applies to a single proceeding from \$100,000 to \$500,000.

29 Code section 502.603 currently provides that a person is  
30 not excused from attending and testifying or from producing  
31 other evidence pursuant to a subpoena. The section provides  
32 protections against self-incrimination in a criminal  
33 proceeding. The bill rewrites those provisions by authorizing  
34 the administrator to petition the court to require a person to  
35 provide testimony or evidence, with the exception that the

1 testimony or other evidence may not be used in a criminal  
2 proceeding.

3 The bill also amends Code section 502.604 to provide for  
4 the imposition of a civil penalty upon a person who is in  
5 violation of a provision in the chapter, a rule adopted under  
6 the chapter, or a order issued under the chapter. The amount  
7 of the civil penalty shall not exceed \$5,000.

8 The bill creates a new Code section 502.604B authorizing  
9 the securities bureau to cooperate with law enforcement  
10 agencies, including agencies conducting criminal  
11 investigations.

12 Code section 502.605 currently provides that a person who  
13 violates a provision of the chapter is guilty of a felony,  
14 either a class "C" or class "D" felony. The provision  
15 contains a requirement that the violation be committed  
16 willfully and knowingly. The bill eliminates the requirement  
17 that the violation is knowing. The bill also provides that in  
18 a criminal proceeding in which a person claims an exemption,  
19 exception, exclusion under a definition, or a preemption, the  
20 person has the burden of going forward with evidence of the  
21 claim.

22 Code section 502.207B currently provides that the director  
23 of revenue and finance and the administrator must report on an  
24 annual basis to the senate's and house of representatives'  
25 committees on ways and means concerning the expedited filing  
26 by registration system provided by Code section 502.207A. The  
27 bill repeals Code section 502.207B.

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THOMAS J VILSACK  
GOVERNOR

SALLY J PEDERSON  
LT GOVERNOR

Therese M. Vaughan, Commissioner

INSURANCE DIVISION  
IOWA DEPARTMENT OF COMMERCE

**MEMORANDUM**

To: Members of the 79<sup>th</sup> General Assembly

From: Craig A. Goettsch  
Superintendent of Securities

Re: Securities Bureau Legislation

Date: February 20, 2001

The Insurance Division/ Securities Bureau has filed an Omnibus Bill that proposes changes to some enforcement provisions, definitions, and licensing sanctions. This will largely be noncontroversial. However, the Bureau is seeking limited peace officer status for some enforcement staff. We are seeing an increasing number of cases that result in criminal referrals. Our investigatory ability and authority would be enhanced with this status. Additionally, we are working more often with FBI and other law enforcement personnel, so being a law enforcement authority would improve our communications. A second important proposal involves a new national electronic licensing system for investment advisers. The 50 states and the SEC are jointly developing this system, to be called Investment Adviser Registration Depository (IARD), with the NASD serving as a vendor. Federally registered firms will be mandated to use the system. We are also seeking to require that state filers use this system.

**Section 1** adds a limitation on when a person will be excluded from the definition of agent under the act. Currently, persons selling in reliance upon two federal limited offering exemptions are excluded. We propose to add a requirement that in order to be excluded, no commissions are paid. This is the same treatment and requirement elsewhere in the act as a prerequisite for the Iowa limited offering exemption (§203(9)). The same requirement also exists in subparagraph (4). The policy behind this is that persons being paid commission should be registered.

**Section 2** removes all doubt as to the issue of a security needing to be in writing. Importantly, including such a provision in the definition would save the potential cost of litigating this issue as Texas had to do in *Thomas v. State* (3 S.W.3d 89 (Tex.Ct.App.1999, petition for discretionary review granted 5/24/00)). There, the Texas Court of Appeals concluded that an evidence of indebtedness under the Texas Securities Act must be in writing. We receive complaints from Iowa citizens who have been sold "notes" that are never reduced to writing.

**Section 3** makes two changes to the exemption sections. A new exemption is proposed that coordinates with new federal exemptions that are designed to facilitate the participation of U.S. holders of foreign securities in certain cross-border transactions. Without the exemptions, persons already holding certain foreign securities are excluded from exchange offers, business combinations and rights offerings. The language proposed was developed and adopted by the North American Securities Administrators Association.

The second change clarifies an existing exemption by providing more discretion to the administrator.

**Section 4** repeals some outdated language in the Bureau's small business "fast-track" registration section. Section 207A was adopted in conjunction with a investment tax credit that has long since expired. The standards being repealed were added to the securities provisions in order to ensure that the tax credit was used by Iowa based companies. With the elimination of the credit, the limitations in §207A may be repealed.

**Section 5** clarifies the authority of the Securities Bureau to require that all investment adviser licensing be done through a designee. This is intended to implement use of an electronic filing system being jointly developed by the North American Securities Administrators Association (NASAA/the 50 states) and the Securities and Exchange Commission. The system will be known as the Investment Adviser Registration Depository (IARD), a correlative of the current licensing system for broker-dealers and securities agents (CRD). Filers would be required to file electronically with the IARD and also pay the costs to support the filing.

We have received letters of support for requiring this system from the major trade groups, including the Financial Planning Association, the Certified Financial Planner Board of Standards, the Investment Company Institute, and the Investment Counsel Association of America, Inc. Only 4-5 states have indicated that they do not currently plan to mandate use of this system.

This proposal would also reduce the current annual registration fee for state only registered advisers from \$200 to \$100. The reduction in Bureau revenues is estimated to be \$14,000. When developing this program a few years ago, the Bureau suggested fees that we believed would be adequate to pay for the costs of regulation. Last year, program revenues were \$195,000 versus program costs of \$42,000. This year, after hiring an auditor, revenues are already \$135,000 versus the program budget of \$54,000.

We submit that requiring use of the system is critical. The IARD will provide a centralized electronic filing system for applications, amendments and renewals, thereby reducing paperwork and the possibility of incomplete and inaccurate filings. Investors will have access to a web-based public disclosure system that allows them to check the disciplinary history of the persons with whom they might do business. The IARD will serve as an "electronic business card" for advisers to where they can refer potential customers to review application forms and required disclosures. The system helps move the agency to a completely electronic system before the goal of 2003. This uniform system will help ensure that there is no further preemption of state authority in the oversight of what is essentially local activity.

**Section 6** adds a reference to "insurance" violations as grounds for taking action against a securities licensee.

**Section 7** adds to list of reasons for licensing action to include being ordered to "cease and desist" from securities law violations in Iowa, another state, or by the SEC.

**Section 8** increases the maximum amount a person may pay as a civil penalty from \$1,000 to \$5,000 for one incident, and a total of \$500,000, up from \$100,000. This reflects both the passage of time since the thresholds were first set, and the increasingly egregious nature of the cases the Bureau investigates. The broader range provides wider latitude for the Bureau in negotiating voluntary settlements and consent judgments.

**Section 9** amends current §502.603(3), which is based on the Uniform Securities Act section 407(d). The current language provides that if, after the subject of a subpoena or request to testify has asserted that to answer would violate his or her 5<sup>th</sup> Amendment rights, and the administrator then compels the testimony, the subject gets **transactional** immunity. That means he or she may not be prosecuted for **any offense that testimony describes**. We are proposing a change to **use immunity, i.e., whatever testimony that is given and any evidence flowing from it cannot be used in any subsequent prosecution**. Secondly, there are potential constitutional concerns with an administrative agency granting immunity. This amendment further provides for a process to resolve claims of immunity by the administrator filing in court. A judge then questions the person on each specific factual issue to determine whether the grant is appropriate. The validity of the Fifth Amendment assertion *must be determined by a judge, not hinging on a witness' claim alone*.

**Section 10** makes a nonsubstantive wording change.

**Section 11** will authorize the Bureau to request some kind of monetary sanction from unlicensed, nonexempt individuals who are issued cease and desist orders. This capability would put more "teeth" into an otherwise fairly toothless process. At present these orders have limited value unless the violator continues selling under the specific circumstances proscribed by the cease and desist order, thereby setting up a civil injunctive action. The ability to request that an administrative law judge impose a civil penalty as part an *administrative action would be an immediate, effective way to sanction--and hopefully curb--* unlicensed and fraudulent activity.

**Section 12** creates law enforcement authority for the Bureau for the limited purpose of sharing with and receiving information from other law enforcement agencies. The level and nature of investment fraud is changing, with our investigations increasingly resulting in criminal referrals. In FY00, we were involved on seven criminal case compared with a historical average of two or three per year. We have referred substantial information this year to the FBI in three separate cases. Because the Bureau lacks "law enforcement" authority, federal and state agencies clothed with such power are unable to share certain information with the Bureau in *joint investigations*. This lack of information flow hampers the Bureau's ability to effectively and efficiently conduct investigations and make filing decisions. Further, the Bureau would be more likely to be treated as an equal partner in joint investigations with other state and federal agencies if it had this limited law enforcement capability.

**Section 13** deletes the phrase "and knowingly" in the criminal penalties section. The test would then be one of "willful" violations, which is the language used in the Uniform Securities Act, in most state securities laws, and in the federal law at section 24 of the Securities Act of

SSB 1241

1933. The current draft of the uniform securities act, which is under revision, has the following comment.

The term "willfully" has the same meaning in Section 306(a)(2) as it did in the 1956 Act. All that is required is proof that a person acted intentionally in the sense that the person was aware of what he or she was doing. Proof of evil motive or intent to violate the law or knowledge that the law was being violated is not required. This definition has been followed by most subsequent courts. See, e.g., *State v. Kansas*, 460 P.2d 596 (Kan. 1969) ("No specific intent is necessary to constitute the offense where one violates the securities act except the intent to do the act denounced by the statute"); *State v. Nagel*, 279 N.W.2d 911, 915 (S.D. 1979) ("[I]t is widely understood that the legislature may forbid the doing of an act and make its commission a crime without regard to the intent or knowledge of the doer"); *State v. Fries*, 337 N.W.2d 398, 405 (Neb. 1983) (proof of a specific intent, evil motive, or knowledge that the law was being violated is not required to sustain a criminal conviction under a state's blue sky law); *People v. Riley*, 708 P.2d 1359, \_\_\_\_ (Colo. 1985) ("A person acts 'knowingly' or 'willfully' with respect to conduct . . . when he is aware that his conduct . . . exists"); *State v. Larsen*, 865 P.2d 1355, 1358 (Utah 1993) (willful implies a willingness to commit the act, not an intent to violate the law or to injure another or acquire any advantage); *State of Mo. v. Dumke*, 901 S.W.2d 100, 102 (Mo. Ct. App. 1995) (*mens rea* not required); *State v. Mueller*, 549 N.W.2d 455, \_\_\_\_ (Wis. Ct. App. 1996) (willfulness does not require proof that the defendant acted with intent to defraud or knowledge that the law was violated).

"Willfully" would not include negligent or inadvertent conduct. Taking out the knowledge requirement makes it much easier to make and prove a criminal case on referral. Bureau criminal referrals thus would be more likely to be acted upon. And, in complex cases, the prosecutor could completely ignore the maze of entities through which products are marketed for proof purposes, as "who knew what from whom" would no longer be relevant.

**Section 14** has been added to clarify the parties' respective obligations in a criminal proceeding. While the standard of proof that the prosecuting attorney is required to meet to obtain a conviction is establishing the requisite elements of the criminal offense "beyond a reasonable doubt," a defendant claiming an exemption or exception as a defense has the burden of offering evidence to establish that defense. Case law in other states has upheld the constitutionality of these types of provisions.

**Section 15** repeals existing section 502.207B. This contains an outdated report required originally as part of the Bureau's small business "fast-track" registration section in section 207A. That was adopted in conjunction with an investment tax credit that has long since expired. With the elimination of the credit, the requirements of §207B may be repealed.

H- 2/28/01  
H. 4/6/01 Amended to Pa  
W/H 1448

H- 4/2/01

FILED MAR 15 2001 BUSINESS CALF 107

SENATE FILE **473**  
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 1241)

Passed Senate, Date <sup>(P. 858)</sup> 3-27-01 Passed House, Date <sup>(P. 1383)</sup> 4/23/01  
Vote: Ayes 47 Nays 0 Vote: Ayes 98 Nays 0

Approved May 7, 2001

(P. 1267)

Revised 4-24-01  
Vote 49-0

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JP 415

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14 subscription; transferable share; investment contract;  
15 viatical settlement contract, or any fractional or pooled  
16 interest in such contract; voting trust certificate;  
17 certificate of deposit for a security; fractional undivided  
18 interest in an oil, gas, or other mineral lease or in payments  
19 out of production under such a lease, right, or royalty; an  
20 interest in a limited liability company or in a limited  
21 liability partnership or any class or series of such interest,  
22 including any fractional or other interest in such interest;  
23 or, in general, any interest or instrument commonly known as a  
24 "security", or any certificate of interest or participation  
25 in, temporary or interim certificate for, receipt for,  
26 guarantee of, or warrant or right to subscribe to or purchase,  
27 any of the foregoing. "Security" does not include an  
28 insurance or endowment policy or annuity contract under which  
29 an insurance company promises to pay money either in a lump  
30 sum or periodically for life or for some other specified  
31 period. "Security" also does not include an interest in a  
32 limited liability company or a limited liability partnership  
33 if the person claiming that such an interest is not a security  
34 proves that all of the members of the limited liability  
35 company or limited liability partnership are actively engaged

1 in the management of the limited liability company or limited  
2 liability partnership; provided that the evidence that members  
3 vote or have the right to vote, or the right to information  
4 concerning the business and affairs of the limited liability  
5 company or limited liability partnership, or the right to  
6 participate in management, shall not establish, without more,  
7 that all members are actively engaged in the management of the  
8 limited liability company or limited liability partnership.  
9 "Security" is any of the foregoing as provided in this  
10 subsection whether or not it is evidenced by a written  
11 instrument.

12 Sec. 3. Section 502.203, subsection 18, Code 2001, is  
13 amended to read as follows:

14 18. An offer or sale of securities which are exempt from  
15 registration under 15 U.S.C. §77a-77aa pursuant to rule 801 or  
16 802 promulgated by the securities and exchange commission as  
17 provided in the Securities Act of 1933.

18 19. Any other security or transaction or offering or class  
19 of securities or transactions or offers exempted or  
20 requirements for exemption waived, by the administrator by  
21 rule or order, from requirements provided in section 502.201  
22 or 502.602.

23 Sec. 4. Section 502.207A, subsection 7, Code 2001, is  
24 amended to read as follows:

25 7. Notwithstanding any other provision of this chapter,  
26 the administrator shall not deny effectiveness to or suspend  
27 or revoke the effectiveness of a registration under this  
28 section on the basis of section 502.209, subsection 1,  
29 paragraph "h", and the administrator shall not impose the  
30 conditions specified in section 502.208, subsection 8,  
31 subsection 9, paragraph "b", or subsection 12. ~~The~~  
32 ~~administrator may issue a stop order pursuant to section~~  
33 ~~502.209 to filers under this section for any of the following~~  
34 ~~additional reasons:~~

35 ~~a. --The issuer's principal place of business is not in this~~

1 state:

2 b.--At least fifty percent of the issuer's full-time  
3 employees are not located in this state:

4 c.--At least eighty percent of the net proceeds of the  
5 offering are not going to be used in connection with the  
6 operations of the issuer in this state:

7 d.--If the issuer is a seed or venture capital fund, at  
8 least fifty percent of the moneys received from the sale of  
9 the securities will not be used to make seed or venture  
10 capital investments in this state:

11 Sec. 5. Section 502.302, subsections 1 and 3, Code 2001,  
12 are amended to read as follows:

13 1. A broker-dealer, agent, investment adviser, or  
14 investment adviser representative may obtain an initial or  
15 renewal license by filing with the administrator, or an  
16 organization person which the administrator by rule designates  
17 assigns as a designee, an application together with a consent  
18 to service of process pursuant to section 502.609 and the  
19 appropriate filing fee as required in this section. If the  
20 application is filed with a designee, the applicant must also  
21 pay any reasonable costs charged by the designee. The  
22 applicant may transmit the fee to the administrator through  
23 the designee according to rules adopted by the administrator.  
24 The application shall contain information the administrator  
25 requires by rule concerning the applicant's form and place of  
26 organization, proposed method of doing business and financial  
27 condition, and the qualifications and experience of the  
28 applicant. In the case of a broker-dealer or investment  
29 adviser, the application shall include the qualifications and  
30 experience of any partner, officer, director or controlling  
31 person, any injunction or administrative order or conviction  
32 of a misdemeanor involving securities and any conviction of a  
33 felony, and any other matters which the administrator  
34 determines are relevant to the application. In addition, in  
35 the case of an investment adviser, the application shall

1 include any information to be furnished or disseminated to any  
2 client or prospective client, and any other information which  
3 the administrator determines is relevant to the application.  
4 If no denial order is in effect and no proceeding is pending  
5 under section 502.304, registration becomes effective at noon  
6 of the sixtieth day after a completed application or an  
7 amendment completing the application is filed, unless waived  
8 by the applicant. The administrator may by rule or order  
9 specify an earlier effective date.

10 3. Every applicant for initial or renewal registration as  
11 a broker-dealer ~~or investment adviser~~ shall pay a filing fee  
12 of two hundred dollars. Every applicant for an initial or  
13 renewal registration as an investment adviser shall pay a  
14 filing fee of one hundred dollars. Every applicant for  
15 initial or renewal registration as an agent or investment  
16 adviser representative shall pay a filing fee of thirty  
17 dollars. However, an investment adviser representative is not  
18 required to pay a filing fee if the investment adviser is a  
19 sole proprietorship or the substantial equivalent and the  
20 investment adviser representative is the same individual as  
21 the investment adviser. A filing fee is not refundable.  
22 Every person acting as a federal covered adviser in this  
23 state, except with respect to federal covered advisers whose  
24 only clients are those described in section 502.301,  
25 subsection 3, paragraph "b", shall pay an initial and renewal  
26 notice filing fee of one hundred dollars.

27 Sec. 6. Section 502.304, subsection 1, paragraph m,  
28 subparagraph (1), Code 2001, is amended to read as follows:

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

32 Sec. 7. Section 502.304, subsection 1, Code 2001, is  
33 amended by adding the following new paragraph:

34 NEW PARAGRAPH. o. Is the subject of a cease and desist  
35 order issued by the administrator under section 502.604,

1 another state, or the securities and exchange commission.

2 Sec. 8. Section 502.304, subsection 8, Code 2001, is  
3 amended to read as follows:

4 8. A civil penalty ~~levied~~ imposed under subsection 1 shall  
5 not exceed ~~one~~ five thousand dollars per violation per person  
6 and shall not exceed ~~one~~ five hundred thousand dollars in a  
7 single proceeding against any one person. ~~All-administrative~~  
8 ~~finer~~ Moneys received from the imposition of civil penalties  
9 shall be deposited in the general fund of the state.

10 Sec. 9. Section 502.603, subsection 3, Code 2001, is  
11 amended by striking the subsection and inserting in lieu  
12 thereof the following:

13 3. A person is not excused from attending or testifying in  
14 a proceeding required by this section, or from producing any  
15 evidence, including a document or record in obedience to a  
16 subpoena of the administrator or any officer designated by the  
17 administrator, on the ground that the testimony or evidence  
18 required, whether documentary or otherwise, may tend to  
19 incriminate such person or subject such person to a penalty or  
20 forfeiture. If a person makes a claim against self-  
21 incrimination, the administrator may file a petition to compel  
22 compliance with this section in the district court for Polk  
23 county. The court may make a threshold determination on the  
24 applicability of the self-incrimination privilege. Any  
25 evidence compelled under order of the district court, or any  
26 information directly or indirectly derived from such evidence  
27 or other information, shall not be used against the person in  
28 any criminal case. The limitation on the use of evidence in a  
29 criminal proceeding contained in this section does not apply  
30 to any prosecution or proceeding for perjury or contempt of  
31 court committed in the course of giving or producing  
32 information, documents, testimony, or other evidence.

33 Sec. 10. Section 502.604, unnumbered paragraph 1, Code  
34 2001, is amended to read as follows:

35 If it appears to the administrator that a person has

1 engaged or is about to engage in an act or practice  
2 constituting a violation of this chapter or any rule or order  
3 adopted or issued pursuant to this chapter, the administrator  
4 may do ~~either-or-both~~ any of the following:

5 Sec. 11. Section 502.604, Code 2001, is amended by adding  
6 the following new subsection:

7 NEW SUBSECTION. 3. Assess a civil penalty against the  
8 person, if the violation was made knowingly or recklessly.  
9 The penalty shall be assessed as an agency action provided for  
10 under chapter 17A. The amount of the civil penalty shall not  
11 exceed five thousand dollars for each violation.

12 Sec. 12. NEW SECTION. 502.604B LIMITED LAW ENFORCEMENT  
13 AUTHORITY.

14 The administrator or designee, when carrying out the  
15 provisions of section 502.603, 502.603A, or 502.604, may  
16 develop, share, and receive information related to any law  
17 enforcement purpose, including any criminal investigation.  
18 The administrator or designee shall not have the authority to  
19 issue criminal subpoenas or make arrests. The administrator  
20 or designee shall not be considered a peace officer, including  
21 as provided in chapter 801.

22 Sec. 13. Section 502.605, subsection 1, Code 2001, is  
23 amended to read as follows:

24 1. a. Except as provided in paragraph "b", a person who  
25 willfully ~~and-knowingly~~ violates any provision of this  
26 chapter, or any rule or order under this chapter, is guilty of  
27 a class "D" felony.

28 b. A person who willfully ~~and-knowingly~~ violates section  
29 502.401, 502.402, or 502.403, or section 502.408, subsection 1  
30 or 2, resulting in a loss of more than ten thousand dollars is  
31 guilty of a class "C" felony.

32 Sec. 14. Section 502.605, Code 2001, is amended by adding  
33 the following new subsection:

34 NEW SUBSECTION. 4. In a criminal proceeding brought under  
35 this chapter, the applicability of any exemption, exception,

1 exclusion from a definition, or preemption shall be an  
2 affirmative defense. The defendant claiming such an  
3 exemption, exception, exclusion, or preemption has the burden  
4 of going forward with the evidence of the claim.

5 Sec. 15. Section 502.207B, Code 2001, is repealed.

6

EXPLANATION

7 This bill amends a number of provisions in Code chapter  
8 502, the state's law regulating the sale of securities.

9 Code section 502.102 currently provides a definition of  
10 "agent" who represents a broker-dealer or issuer for purposes  
11 of regulation. The section provides that the term does not  
12 include a person representing an issuer for certain purposes,  
13 including effecting transactions in a federal covered  
14 security. The bill amends the provision to require that in  
15 order for the exception to apply no remuneration can be paid  
16 for soliciting a person in the state.

17 The bill also amends the definition of "security" in Code  
18 section 502.102. The Code provision currently defines  
19 security to mean a long list of a number of different types of  
20 investments or ownership interests, including stock,  
21 certificates of deposit, and membership interests. The bill  
22 provides that the term includes any of the described  
23 investments or ownership interests regardless of whether it is  
24 evidenced by a written instrument.

25 Code section 502.203 currently exempts transactions from  
26 the requirements of Code sections 502.201 and 502.602. Code  
27 section Code 502.201 provides registration requirements for  
28 securities and Code section 502.602 provides requirements for  
29 filing prospectus or sales literature to persons, including  
30 prospective investors. The bill provides that these sections  
31 do not apply to a sale of securities that are exempt from  
32 registration under the federal Securities Act of 1933.

33 Code section 502.207A currently provides an expedited  
34 registration process for small issuers. The bill eliminates  
35 provisions allowing the administrator of the security bureau

1 (the commissioner of insurance or the commissioner's deputy)  
2 to issue a stop order to filers.

3 Code section 502.302 currently provides that a broker-  
4 dealer, agent, investment adviser, or investment adviser  
5 representative may obtain an initial or renewal license by  
6 filing an application and paying a filing fee with the  
7 administrator or an organization which the administrator by  
8 rule designates. The bill provides that the applicant must  
9 pay any reasonable costs charged by the designee for  
10 processing the filings. It also amends a provision requiring  
11 an investment adviser to pay a filing fee of \$200, by  
12 decreasing the fee to \$100.

13 Code section 502.304 currently provides that the  
14 administrator may order the denial, suspension, or revocation  
15 of a registration or may take disciplinary action against a  
16 registrant or a person representing the registrant. One of  
17 the grounds for such action is the violation of law of a  
18 foreign jurisdiction governing the business of securities or  
19 banking. The bill adds the business of insurance.

20 Code section 502.304 currently provides for the denial,  
21 revocation, suspension, and withdrawal of registration by the  
22 administrator based on a number of grounds. The bill adds to  
23 that list another ground of being subject to a cease and  
24 desist order issued by the federal securities and exchange  
25 commission or another state. The bill increases the maximum  
26 civil penalties for violations of the section from \$1,000 to  
27 \$5,000 per violation. It also increases the ceiling that  
28 applies to a single proceeding from \$100,000 to \$500,000.

29 Code section 502.603 currently provides that a person is  
30 not excused from attending and testifying or from producing  
31 other evidence pursuant to a subpoena. The section provides  
32 protections against self-incrimination in a criminal  
33 proceeding. The bill rewrites those provisions by authorizing  
34 the administrator to petition the court to require a person to  
35 provide testimony or evidence, with the exception that the

1 testimony or other evidence may not be used in a criminal  
2 proceeding.

3 The bill also amends Code section 502.604 to provide for  
4 the imposition of a civil penalty upon a person who is in  
5 violation of a provision in the chapter, a rule adopted under  
6 the chapter, or an order issued under the chapter. The amount  
7 of the civil penalty shall not exceed \$5,000.

8 The bill creates a new Code section 502.604B authorizing  
9 the securities bureau to cooperate with law enforcement  
10 agencies, including agencies conducting criminal  
11 investigations.

12 Code section 502.605 currently provides that a person who  
13 violates a provision of the chapter is guilty of a felony,  
14 either a class "C" or class "D" felony. The provision  
15 contains a requirement that the violation be committed  
16 willfully and knowingly. The bill eliminates the requirement  
17 that the violation is knowing. The bill also provides that in  
18 a criminal proceeding in which a person claims an exemption,  
19 exception, exclusion under a definition, or a preemption, the  
20 person has the burden of going forward with evidence of the  
21 claim.

22 Code section 502.207B currently provides that the director  
23 of revenue and finance and the administrator must report on an  
24 annual basis to the senate's and house of representatives'  
25 committees on ways and means concerning the expedited filing  
26 by registration system provided by Code section 502.207A. The  
27 bill repeals Code section 502.207B.

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**SENATE FILE 473  
FISCAL NOTE**

The estimate for **Senate File 473** is hereby submitted as a fiscal note pursuant to Joint Rule 17 and as a correctional impact statement pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 473 makes several changes to the regulation of securities by redefining agents and securities, as well as providing for disciplinary actions, and registration requirements. The Bill increases the ceiling for civil penalties for violations and decreases investment adviser fees to \$100. The Bill creates a new Code section, Section 502.604B authorizing the securities bureau to cooperate with law enforcement agencies, including agencies conducting criminal investigations. A person who violates a provision of the chapter is guilty of a felony, either a Class "C" or Class "D." The provision contains a requirement that the violation be committed willfully and knowingly.

**ASSUMPTIONS**

1. Charge, conviction, and sentencing patterns and trends will not change over the projection period.
2. Prisoner length of stay, revocation rates, and other corrections' practices and policies will not change over the projection period.
3. The law will become effective July 1, 2001. A lag effect 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.
4. The analysis is based on information obtained from the Justice Data Warehouse, which includes statewide court information. Conviction and penalty information is based on FY 2000 data.
5. The marginal cost per day for county jails is \$25 per offender.
6. Court costs vary by type of offense charged as well as contested versus uncontested cases. Information concerning the ratio of contested versus uncontested cases is not available.
7. These costs include expenses for the Clerk of Court, court attendant, court reporter, juries, and judges, i.e., Magistrates, District Associate Judges, and District Court Judges.
8. The median cost per case for the State Public Defender to defend a Class C or D felony is \$1,000.
9. Court costs vary by type of offense charged as well as contested versus uncontested cases. Trial costs for a Class C or D Felony case range from

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approximately \$3,000 to \$5,000.

10. Average length of stay for serious misdemeanors is 25 to 41 months in prison.
11. There have been no convictions for cases initiated on or after September 1, 1997, under Chapter 502.605, Code of Iowa.

#### CORRECTIONAL IMPACT

Senate File 473 is not expected to have a significant correctional impact.

#### FISCAL IMPACT

The fiscal impact of Senate File 473 cannot be determined, but is not expected to be significant. The estimated cost for one offender is approximately \$19,000 to \$31,000 depending on whether the case is contested or uncontested and prisoner length of stay.

General Fund revenues are expected to decrease \$14,000 in FY 2002 and \$15,000 in FY 2003 due to reduced fees for investment advisors.

#### SOURCES

Department of Corrections  
Department of Human Rights, Criminal and Juvenile Justice Planning Division  
Judicial Branch  
Iowa Insurance Division  
State Public Defender

(LSB 1239SV, CAS)

FILED MARCH 26, 2001

BY DENNIS PROUTY, FISCAL DIRECTOR

**SENATE FILE 473****H-1448**

1 Amend Senate File 473, as passed by the Senate, as  
2 follows:

3 1. Page 7, by inserting after line 4, the  
4 following:

5 "SUBCHAPTER 1

6 SHORT TITLE AND DEFINITIONS

7 Sec. \_\_\_\_ . NEW SECTION. 523A.101 SHORT TITLE.

8 This chapter may be cited as the "Iowa Cemetery and  
9 Funeral Merchandise and Funeral Services Act".

10 Sec. \_\_\_\_ . NEW SECTION. 523A.102 DEFINITIONS.

11 For purposes of this chapter, unless the context  
12 otherwise requires:

13 1. "Authorized to do business within this state"  
14 means a person licensed, registered, or subject to  
15 regulation by an agency of the state of Iowa or who  
16 has filed a consent to service of process with the  
17 commissioner for purposes of this chapter.

18 2. "Beneficiary" means any natural person  
19 specified or included in a purchase agreement, upon  
20 whose future death cemetery merchandise, funeral  
21 merchandise, funeral services, or a combination  
22 thereof are to be provided under the purchase  
23 agreement.

24 3. "Burial account" means an account established  
25 by a person with a financial institution for the  
26 purpose of funding the future purchase of cemetery  
27 merchandise, funeral merchandise, or a combination  
28 thereof without any related trust agreement.

29 4. "Burial trust fund" means an irrevocable burial  
30 trust fund established by a person with a financial  
31 institution for the purpose of funding the future  
32 purchase of cemetery merchandise, funeral merchandise,  
33 funeral services, or a combination thereof upon the  
34 death of the person named in the burial trust fund's  
35 records or a related purchase agreement. "Burial  
36 trust fund" does not include or imply the existence of  
37 any oral or written purchase agreement for cemetery  
38 merchandise, funeral merchandise, funeral services, or  
39 a combination thereof between the person and a seller.

40 5. "Cemetery merchandise" means foundations, grave  
41 markers, tombstones, ornamental merchandise,  
42 memorials, and monuments sold under a purchase  
43 agreement that does not require installation within  
44 twelve months of the purchase.

45 6. "Commissioner" means the commissioner of  
46 insurance or the deputy administrator authorized in  
47 section 523A.801 to the extent the commissioner  
48 delegates functions to the deputy administrator.

49 7. "Common business enterprise" means a group of  
50 two or more business entities that share common

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1 ownership in excess of fifty percent.

2 8. "Credit sale" means a sale of goods, services,  
3 or an interest in land in which all of the following  
4 are applicable:

5 a. Credit is granted either under a seller credit  
6 card or by a seller who regularly engages as a seller  
7 in credit transactions of the same kind.

8 b. The buyer is a person other than an  
9 organization.

10 c. The goods, services, or interest in land are  
11 purchased primarily for a personal, family, or  
12 household purpose.

13 d. Either the debt is payable in installments or a  
14 finance charge is made.

15 e. For goods and services, the amount financed  
16 does not exceed twenty-five thousand dollars.

17 9. "Delivery" occurs when:

18 a. The cemetery merchandise, funeral merchandise,  
19 or the title document establishing an easement for  
20 burial rights is physically delivered to the purchaser  
21 or installed, except that burial of any item at the  
22 site of its ultimate use shall not constitute delivery  
23 for purposes of this chapter.

24 b. If authorized by a purchaser under a purchase  
25 agreement, cemetery merchandise has been permanently  
26 identified with the name of the purchaser or the  
27 beneficiary and delivered to a bonded warehouse or  
28 storage facility approved by the commissioner and both  
29 title to the merchandise and a warehouse receipt have  
30 been delivered to the purchaser or beneficiary and a  
31 copy of the warehouse receipt has been delivered to  
32 the establishment for retention in its files.

33 c. If authorized by a purchaser under a purchase  
34 agreement, a polystyrene or polypropylene outer burial  
35 container has been permanently identified with the  
36 name of the purchaser or the beneficiary and delivered  
37 to a bonded warehouse or storage facility approved by  
38 the commissioner and both title to the merchandise and  
39 a warehouse receipt have been delivered to the  
40 purchaser or beneficiary and a copy of the warehouse  
41 receipt has been delivered to the establishment for  
42 retention in its files.

43 10. "Doing business in this state" means issuing  
44 or performing wholly or in part any term of a purchase  
45 agreement executed within the state of Iowa.

46 11. "Establishment" means each business  
47 establishment that advertises, sells, promotes, or  
48 offers cemetery merchandise, funeral merchandise,  
49 funeral services, or a combination thereof prior to  
50 the death of the person named or implied in a purchase

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1 agreement.

2 12. "Financial institution" means a state or  
3 federally insured bank, savings and loan association,  
4 credit union, trust department thereof, or a trust  
5 company authorized to do business within this state  
6 and which has been granted trust powers under the laws  
7 of this state or the United States, which holds funds  
8 under a trust agreement. "Financial institution" does  
9 not include:

10 a. A seller.

11 b. Anyone employed by or directly involved with  
12 the seller in the seller's cemetery merchandise,  
13 funeral merchandise, or funeral services business.

14 13. "Funeral merchandise" means personal property  
15 used for the final disposition of a dead human body,  
16 including but not limited to clothing, caskets,  
17 vaults, urns, and interment receptacles. "Funeral  
18 merchandise" does not include easements for burial  
19 rights in a completed space or cemetery merchandise.

20 14. "Funeral services" means services provided for  
21 the final disposition of a dead human body, including  
22 but not limited to services necessarily or customarily  
23 provided for a funeral, or for the interment,  
24 entombment, or cremation of a dead human body, or any  
25 combination thereof. "Funeral services" does not  
26 include perpetual care or maintenance.

27 15. "Inner burial container" means a container in  
28 which human remains are placed for burial or  
29 entombment. Where only one container is used for  
30 burial or entombment, "inner burial container"  
31 includes a container serving as a burial vault, urn  
32 vault, grave box, grave liner, or lawn crypt.

33 16. "Insolvent" means the inability to pay debts  
34 as they become due in the usual course of business.

35 17. "Interest or income" means unrealized net  
36 appreciation or loss in the fair value of cemetery  
37 merchandise, funeral merchandise, and funeral services  
38 trust assets for which a market value may be  
39 determined with reasonable certainty, plus the return  
40 in money or property derived from the use of trust  
41 principal or income, net of investment losses, taxes,  
42 and expenses incurred in the sale of trust assets, any  
43 cost of the operation of the trust, and any annual  
44 audit fee. "Interest or income" includes but is not  
45 limited to:

46 a. Rent of real or personal property, including  
47 sums received for cancellation or renewal of a lease  
48 and any royalties.

49 b. Interest on money lent, including sums received  
50 as consideration for prepayment of principal.

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- 1 c. Cash dividends paid on corporate stock.  
2 d. Interest paid on deposit funds or debt  
3 obligations.  
4 e. Gain realized from the sale of trust assets.  
5 18. "Next of kin" means the surviving spouse and  
6 heirs at law of the deceased.  
7 19. "Nonguaranteed" means that the price of the  
8 merchandise and services selected has not been fixed  
9 or guaranteed and will be determined by existing  
10 prices at the time the merchandise and services are  
11 delivered or provided.  
12 20. "Outer burial container" means a container  
13 used for the burial of human remains that is used  
14 exclusively to surround or enclose an inner burial  
15 container and to support the earth above the  
16 container, commonly known as a burial vault, urn  
17 vault, grave box, or grave liner, but not including a  
18 lawn crypt.  
19 21. "Parent company" means a corporation that has  
20 a controlling interest in an establishment.  
21 22. "Person" means an individual, business,  
22 corporation, trust, firm, partnership, association, or  
23 any other legal entity.  
24 23. "Personal representative" means a personal  
25 representative as defined in section 633.3.  
26 24. "Provider" means a person that provides  
27 funeral services, funeral merchandise, or cemetery  
28 merchandise purchased in a purchase agreement.  
29 25. "Purchase agreement" means an agreement to  
30 furnish cemetery merchandise, funeral merchandise,  
31 funeral services, or a combination thereof when  
32 performance or delivery may be more than one hundred  
33 twenty days following the initial payment on the  
34 account.  
35 26. "Purchase price" means the negotiated price  
36 for the item of merchandise or service, if itemized in  
37 the purchase agreement, or the price of the item  
38 listed in the seller's general price list at the time  
39 the purchase agreement is signed.  
40 27. "Purchaser" means a person who purchases  
41 cemetery merchandise, funeral merchandise, funeral  
42 services, or a combination thereof. The purchaser  
43 need not be a beneficiary of the agreement.  
44 28. "Seller" means a person doing business within  
45 this state, including a person doing business within  
46 this state who sells insurance, who advertises, sells,  
47 promotes, or offers to furnish cemetery merchandise,  
48 funeral merchandise, funeral services, or a  
49 combination thereof when performance or delivery may  
50 be more than one hundred twenty days following the

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1 initial payment on the account whether the transaction  
2 is completed or offered in person, through the mail,  
3 over the telephone, by the internet, or through any  
4 other means of commerce. "Seller" includes any person  
5 performing any term of a purchase agreement executed  
6 within this state, and any person identified under a  
7 burial account as the provider of cemetery  
8 merchandise, funeral merchandise, funeral services, or  
9 a combination thereof.

10 29. "Total purchase price" means the aggregate  
11 amount the purchaser is obligated to pay for  
12 merchandise or services pursuant to the purchase  
13 agreement, excluding any taxes, administrative  
14 charges, or financing charges.

## SUBCHAPTER 2

ESTABLISHMENT OF TRUSTS, DEPOSIT, INVESTMENT,  
AND REPORTING REQUIREMENTS

18 Sec. \_\_\_\_ NEW SECTION. 523A.201 ESTABLISHMENT OF  
19 TRUST FUNDS.

20 Unless proceeding under section 523A.401, 523A.402,  
21 or 523A.403, a seller must establish a trust fund  
22 prior to advertising, selling, promoting, or offering  
23 cemetery merchandise, funeral merchandise, funeral  
24 services, or a combination thereof in this state as  
25 follows:

26 1. The trust fund must be established at a  
27 financial institution.

28 2. If a seller agrees to furnish cemetery  
29 merchandise, funeral merchandise, funeral services, or  
30 a combination thereof and performance or delivery may  
31 be more than one hundred twenty days following the  
32 initial payment on the account, a minimum of eighty  
33 percent of all payments made under the purchase  
34 agreement shall be placed and remain in trust until  
35 the person for whose benefit the funds were paid dies.

36 3. If a purchase agreement for cemetery  
37 merchandise, funeral merchandise, funeral services, or  
38 a combination thereof provides that payments are to be  
39 made in installments, the seller shall deposit eighty  
40 percent of each payment in the trust fund until the  
41 full amount required to be placed in trust has been  
42 deposited. If the purchase agreement is financed with  
43 or sold to a financial institution, the purchase  
44 agreement shall be considered paid in full and the  
45 trust requirements shall be satisfied within fifteen  
46 days after the close of the month in which the seller  
47 receives funds from the financial institution.

48 4. A seller shall not invade the trust principal  
49 for any purpose.

50 5. A seller who lacks insurance coverage which

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1 protects against the loss of purchaser payments not  
2 placed in trust within the time period required by  
3 this section and section 523A.202 shall not commingle  
4 these payments with any other seller funds. A seller  
5 who lacks insurance coverage may use one or more of  
6 the following methods to dispose of these payments

7 a. Deposit purchaser funds into an escrow account  
8 until the required amount has been deposited into a  
9 trust account at a financial institution.

10 b. Make a prior delivery or warehouse cemetery or  
11 funeral merchandise or a combination thereof as  
12 provided by this chapter.

13 c. Make a prior filing of a surety bond in lieu of  
14 establishing a trust fund as required by this section.

15 d. Make a simultaneous, same-day deposit of the  
16 purchaser's payments into the seller's bank account  
17 and the required amount into the seller's trust fund.

18 6. Payments otherwise subject to this section are  
19 not exempt merely because they are held in  
20 certificates of deposit.

21 7. Commingling of trust funds with other funds of  
22 the seller is prohibited.

23 8. Interest or income earned on amounts deposited  
24 in trust shall remain in trust under the same terms  
25 and conditions as payments made under the purchase  
26 agreement, except that the seller may withdraw so much  
27 of the interest or income as represents the difference  
28 between the amount needed to adjust the trust funds  
29 for inflation as set by the commissioner based on the  
30 consumer price index and the interest or income earned  
31 during the preceding year not to exceed fifty percent  
32 of the total interest or income on a calendar-year  
33 basis. The early withdrawal of interest or income  
34 under this provision does not affect the purchaser's  
35 right to a credit of such interest or income in the  
36 event of a nonguaranteed price agreement,  
37 cancellation, or nonperformance by the seller.

38 9. The commissioner may require amendments to a  
39 trust agreement not in accord with the provisions of  
40 this chapter.

41 10. If a seller voluntarily or involuntarily  
42 ceases doing business and the seller's obligation to  
43 provide merchandise or services has not been assumed  
44 by another establishment holding a current  
45 establishment permit, all trust funds, including  
46 accrued interest or income, shall be repaid to the  
47 purchaser within one hundred twenty days following the  
48 seller's cessation of business or, in the event of  
49 circumstances where a payment is not possible within  
50 one hundred twenty days, as soon as is reasonably

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1 practicable.

2 Sec. \_\_\_\_ NEW SECTION. 523A.202 TRUST FUND

3 DEPOSIT REQUIREMENTS.

4 1. All funds held in trust pursuant to section  
5 523A.201 shall be deposited in a financial  
6 institution, within fifteen days after the close of  
7 the month a seller receives the funds. The financial  
8 institution shall hold the funds for the designated  
9 beneficiary until released.

10 2. All funds required to be deposited by the  
11 purchaser for a purpose described in section 523A.201  
12 shall be deposited consistent with one of the  
13 following methods:

14 a. The payments shall be deposited directly into  
15 an interest-bearing burial account in the purchaser's  
16 name.

17 b. The purchaser shall deposit payments directly  
18 into a separate trust account in the purchaser's name.  
19 The account may be made payable to the seller upon the  
20 death of the purchaser or the designated beneficiary,  
21 provided that, until death, the purchaser retains the  
22 exclusive power to hold, manage, pledge, and invest  
23 the trust account funds and may revoke the trust and  
24 withdraw the funds, in whole or in part, at any time  
25 during the term of the agreement.

26 c. The purchaser or the seller shall deposit  
27 payments directly into a separate trust account in the  
28 name of the purchaser, as trustee, for the named  
29 beneficiary, to be held, invested, and administered as  
30 a trust account for the benefit and protection of the  
31 beneficiary. The depositor shall notify the financial  
32 institution of the existence and terms of the trust,  
33 including at a minimum, the name of each party to the  
34 agreement, the name and address of the trustee, and  
35 the name and address of the beneficiary. The account  
36 may be made payable to the seller upon the  
37 beneficiary's death.

38 d. The payments shall be deposited in the name of  
39 the trustee, as trustee, under the terms of a master  
40 trust agreement and the trustee may invest, reinvest,  
41 exchange, retain, sell, and otherwise manage the trust  
42 fund for the benefit and protection of the named  
43 beneficiary.

44 3. The commissioner may by rule authorize other  
45 methods of deposit upon a finding that such methods  
46 provide equivalent safety of the principal and  
47 interest or income and the seller lacks access to the  
48 proceeds prior to performance.

49 4. This section does not prohibit moving trust  
50 funds from one financial institution to another.

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1 Sec. \_\_\_\_ . NEW SECTION. 523A.203 FINANCIAL  
2 INSTITUTION TRUSTEE QUALIFICATION AND INVESTMENT  
3 REQUIREMENTS.

4 1. A financial institution may serve as a trustee  
5 if granted those powers under the laws of this state  
6 or of the United States. A financial institution  
7 acting as a trustee of trust funds under this chapter  
8 shall invest the funds in accordance with applicable  
9 law.

10 2. A financial institution acting as a trustee of  
11 trust funds under this chapter has a fiduciary duty to  
12 make reasonable investment decisions and to properly  
13 oversee and manage the funds entrusted to it. The  
14 trustee shall use the judgment and care under the  
15 circumstances then prevailing that persons of  
16 prudence, discretion, and intelligence exercise in the  
17 management of their own affairs, not in regard to  
18 speculation but in regard to the permanent disposition  
19 of their funds, considering the probable income as  
20 well as the probable safety of their capital. The  
21 commissioner may take enforcement action against a  
22 financial institution in its capacity as trustee for a  
23 breach of fiduciary duty proven under this chapter.

24 3. Moneys deposited under a master trust agreement  
25 may be commingled by the financial institution for  
26 investment purposes if each deposit includes a  
27 detailed listing of the amount deposited in trust for  
28 each beneficiary and maintenance of a separate  
29 accounting of each purchaser's principal, interest,  
30 and income.

31 4. Subject to a master trust agreement, the seller  
32 may appoint an independent investment adviser to  
33 advise the financial institution about investment of  
34 the trust funds.

35 5. Subject to agreement between the parties, the  
36 financial institution may receive a reasonable fee  
37 from the trust funds for services rendered as trustee.  
38 The trust shall pay the trust operation costs and any  
39 annual audit fees.

40 6. The seller or any officer, director, agent,  
41 employee, or affiliate of the seller shall not serve  
42 as trustee. A financial institution holding trust  
43 funds shall not do any of the following:

44 a. Be owned, under the control of, or affiliated  
45 with a seller.

46 b. Use any funds required to be held in trust  
47 under this chapter or chapter 566A to purchase an  
48 interest in any contract or agreement to which a  
49 seller is a party.

50 c. Otherwise invest, directly or indirectly, in a

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1 seller's business operations. 523A.204  
 2 Sec. NEW SECTION. shall file with  
 3 ANNUAL REPORTING REQUIREMENTS. a form prescribed by the  
 4 1. An establishment not later than March 1 of  
 5 commissioner all of the following address and t  
 6 annual report of the establishment that will prov  
 7 containing all of the following merchandise, f  
 8 a. The balance of each trust account as of  
 9 address of the seller's name and address of  
 10 cemetery or a combination thereof.  
 11 services, or a beneficiary name, identified by  
 12 of the preceding calendar year, identified by  
 13 purchaser or beneficiary name, identified by  
 14 trust account including the reason for each  
 15 withdrawal.  
 16 d. A detailed listing of the insurance funding  
 17 outstanding at the end of the preceding calendar year  
 18 identified by the name of the purchaser or the  
 19 beneficiary.  
 20 e. A complete inventory of the cemetery  
 21 merchandise, funeral merchandise, or a combination  
 22 thereof delivered in lieu of trust or a combination  
 23 under section 523A.401, including the following:

- 24 (1) The location of the merchandise.
- 25 (2) Merchandise numbers or warehouse
- 26 (3) A verified statement of the cemetery
- 27 (a) A physical inventory of the merchandise has been conducted.
- 28 (b) Each item of that merchandise is in the
- 29 possession of the purchaser at the specified location, the amount
- 30 of each purchase agreement made in the preceding year, the amount
- 31 from the purchase agreement converted
- 32 and the date the purchase agreement was made.
- 33 g. A summary of any purchase agreements converted
- 34 from trust-funded benefits to insurance-funded or
- 35 annuity benefits during the preceding year which shall
- 36 include, as the purchase agreement was made, the following
- 37 information, as well as aggregated totals for each of
- 38 the following categories of information, if
- 39 appropriate:
- 40 (1) Insured's name.
- 41 (2) Insured's policy number.
- 42 (3) Original prepaid purchase agreement amount
- 43 (4) Amount paid in.

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1 (5) Unpaid balance of the prepaid purchase  
2 agreement.

3 (6) Unpaid balance of the purchase agreement.

4 (7) Amount retained by the establishment.

5 (8) Amount applied to the purchase of the  
6 insurance policy or annuity.

7 (9) Initial cash surrender value and initial death  
8 benefit under the insurance policy.

9 The establishment shall include a notarized  
10 statement attesting that the insurance policies or  
11 annuities have been issued and funded on behalf of the  
12 purchasers listed in the summary and that all notices  
13 required under this section have been given.

14 h. A summary of any purchase agreements converted  
15 from trust-funded benefits to a surety bond during the  
16 preceding year which shall include, as of the  
17 conversion date, the following information, as well as  
18 aggregated totals for each of the following categories  
19 of information, if appropriate:

20 (1) Name of the purchaser and beneficiary.

21 (2) Original prepaid purchase agreement amount.

22 (3) Amount paid in.

23 (4) Unpaid balance of the prepaid purchase  
24 agreement.

25 (5) Unpaid balance of the purchase agreement.

26 (6) Amount retained by the establishment.

27 (7) Amount applied to the purchase of the surety  
28 bond.

29 (8) A description of the surety bond and the  
30 applicable amount of coverage.

31 i. Any other information the commissioner deems  
32 necessary for the administration of this chapter.

33 2. A person holding multiple establishment permits  
34 may elect to file only one annual report after noting  
35 all establishments on the report.

36 3. An establishment shall make a good faith effort  
37 to complete the annual report. The establishment  
38 shall note on the annual report any information not  
39 reasonably available to the establishment as an  
40 exception or variance. Account balances within twelve  
41 months of the date of the filing of the annual report  
42 shall be accepted if the actual date of the account  
43 balances is noted.

44 4. In lieu of the annual report form described in  
45 subsection 1, the commissioner may authorize an  
46 establishment to file a short form annual report on a  
47 form prescribed by the commissioner. The short form  
48 annual report may incorporate by reference information  
49 readily available to the establishment. The  
50 commissioner may certify and decertify establishments

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1 authorized to file the short form based upon:  
2 a. The establishment's recordkeeping system.  
3 b. The number of purchase agreements which the  
4 establishment has sold that are subject to regulation  
5 under chapter 523A.  
6 c. The availability and accessibility of  
7 information at the establishment for purchase  
8 agreements subject to regulation.  
9 d. Whether the establishment places one hundred  
10 percent of funds received pursuant to its purchase  
11 agreements in trust.  
12 e. The findings of the commissioner concerning  
13 audits and consumer complaints.  
14 The commissioner shall retain the authority to  
15 require establishments permitted to file the short  
16 form annual report to provide all of the information  
17 required in the annual report form required by  
18 subsection 1 for audit purposes or otherwise.  
19 5. An establishment filing an annual report shall  
20 pay a filing fee of ten dollars per purchase agreement  
21 sold during the year covered by the report. The fee  
22 does not apply to any of the following:  
23 a. A purchase agreement where the beneficiary dies  
24 in the same year the agreement was sold.  
25 b. Any modifications or additions, such as  
26 payments, for an existing purchase agreement sold in a  
27 previous year.  
28 c. An additional agreement purchased and already  
29 reported to the commissioner by the purchaser.  
30 d. A purchase agreement canceled or revoked in the  
31 same year it was sold.  
32 All purchase agreement changes for which a filing  
33 fee is not required must be reported to the  
34 commissioner on the annual report for the year  
35 covered.  
36 6. As part of the annual filing with the  
37 commissioner, an establishment shall file an  
38 authorization for the commissioner or a designee to  
39 investigate, audit, and verify all funds, accounts,  
40 safe deposit boxes, and other evidence of  
41 establishment trust funds held by or in a financial  
42 institution.  
43 7. Forms may be obtained at cost from the  
44 commissioner upon request. The commissioner may  
45 accept annual reports submitted in an electronic  
46 format, including but not limited to computer  
47 diskettes.  
48 8. Notwithstanding chapter 22, all records  
49 maintained by the commissioner under this section  
50 shall be confidential and shall not be made available

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1 for inspection or copying except upon approval of the  
2 commissioner or the attorney general.

3 Sec. \_\_\_\_ . NEW SECTION. 523A.205 FINANCIAL  
4 INSTITUTION ANNUAL REPORTING REQUIREMENTS.

5 1. A financial institution shall file with the  
6 commissioner not later than March 1 of each year an  
7 annual report on a form prescribed by the commissioner  
8 showing all funds deposited by an establishment under  
9 a trust agreement during the previous year. Each  
10 report shall contain all information requested.

11 2. Forms may be obtained from the commissioner  
12 upon request. The commissioner may accept annual  
13 reports submitted in an electronic format, including  
14 but not limited to computer diskettes.

15 3. Notwithstanding chapter 22, all records  
16 maintained by the commissioner under this section  
17 shall be confidential and shall not be made available  
18 for inspection or copying except upon approval of the  
19 commissioner or the attorney general.

20 Sec. \_\_\_\_ . NEW SECTION. 523A.206 AUDITS.

21 1. The commissioner may make audits of the  
22 establishment and of the records of a seller, at the  
23 times and in the scope the commissioner determines.  
24 The audits may be made without prior notice to the  
25 seller. The commissioner may copy all records the  
26 commissioner feels are necessary to conduct the audit.  
27 The commissioner may require an audit of a seller or  
28 other person by a certified public accountant to  
29 verify compliance with this chapter, implementing  
30 rules, or orders.

31 2. A seller or other person shall pay for the  
32 audit unless the commissioner waives this requirement.  
33 The cost of an audit involving multiple sellers or  
34 other persons shall be prorated among them upon any  
35 reasonable basis as determined by the commissioner.  
36 The accountant shall deliver the audit report to the  
37 commissioner and to the seller or other persons.

38 3. The commissioner shall not make public the  
39 information obtained in the course of an audit, except  
40 when a duty under this chapter requires the  
41 commissioner to take action against a seller or to  
42 cooperate with another enforcement or regulatory  
43 agency, or except when the commissioner is called as a  
44 witness in a civil or criminal proceeding.

#### 45 SUBCHAPTER 3

46 DISBURSEMENT OF REMAINING BURIAL ACCOUNT FUNDS,  
47 BURIAL TRUST FUNDS, AND INSURANCE OR ANNUITY PROCEEDS  
48 UNDER THE REQUIREMENTS OF SECTION 249A.5

49 Sec. \_\_\_\_ . NEW SECTION. 523A.301 DEFINITION.

50 As used in sections 523A.302 and 523A.303,

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1 "director" means the director of human services.

2 Sec. \_\_\_\_ . NEW SECTION. 523A.302 IDENTIFICATION  
3 OF MERCHANDISE AND SERVICE PROVIDER.

4 If a burial trust fund identifies, either in the  
5 trust fund records or in a related purchase agreement,  
6 the seller who will provide the cemetery merchandise,  
7 funeral merchandise, funeral services or a combination  
8 thereof, the trust fund records or the related  
9 purchase agreements must contain a statement signed by  
10 an authorized representative of the seller agreeing to  
11 furnish the cemetery merchandise, funeral merchandise,  
12 funeral services, or a combination thereof upon the  
13 death of the beneficiary. The burial trust fund shall  
14 not identify a specific seller as payee unless the  
15 trust fund records or the related purchase agreements,  
16 if any, contain the signature of an authorized  
17 representative of the seller and, if the agreement is  
18 for funeral services as defined in chapter 156, the  
19 name of a funeral director licensed to deliver those  
20 services. A person may enter into agreements  
21 authorizing the establishment of more than one burial  
22 trust fund and agreeing to furnish the applicable  
23 merchandise and services.

24 Sec. \_\_\_\_ . NEW SECTION. 523A.303 DISBURSEMENT OF  
25 REMAINING FUNDS.

26 1. If funds remain in a nonguaranteed irrevocable  
27 burial trust fund or from the proceeds of an insurance  
28 policy or annuity made payable or assigned to the  
29 seller or a provider after the payment of funeral and  
30 burial expenses in accordance with the conditions and  
31 terms of the purchase agreement for cemetery  
32 merchandise, funeral merchandise, or funeral services,  
33 the seller shall comply with all of the following:

34 a. The seller shall provide written notice by mail  
35 to the director under subsection 2.

36 b. At least sixty days after mailing notice to the  
37 director, the seller shall disburse any remaining  
38 funds from the burial trust fund as follows:

39 (1) If within the sixty-day period the seller  
40 receives a claim from the personal representative of  
41 the deceased, any remaining funds shall be disbursed  
42 to the personal representative, notwithstanding any  
43 claim by the director.

44 (2) If within the sixty-day period the seller has  
45 not received a claim from the personal representative  
46 of the deceased but receives a claim from the  
47 director, the seller shall disburse the remaining  
48 funds up to the amount of the claim to the director.

49 (3) Any remaining funds not disposed of pursuant  
50 to subparagraphs (1) and (2) shall be disbursed to any

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1 person who is identified as the next of kin of the  
2 deceased in an affidavit submitted in accordance with  
3 subsection 5.

4 2. The notice mailed to the director shall meet  
5 all of the following requirements and is subject to  
6 all of the following conditions:

7 a. The notice shall be mailed with postage  
8 prepaid.

9 b. If the notice is sent by regular mail, the  
10 sixty-day period for receipt of a response is deemed  
11 to commence three days following the date of mailing.

12 c. If the notice is sent by certified mail, the  
13 sixty-day period for receipt of a response is deemed  
14 to commence on the date of mailing.

15 d. The notice shall provide all of the following  
16 information:

17 (1) Current name, address, and telephone number of  
18 the seller.

19 (2) Full name of the deceased.

20 (3) Date of the deceased's death.

21 (4) Amount of funds remaining in the burial trust  
22 fund.

23 (5) Statement that any claim by the director must  
24 be received by the seller within sixty days after the  
25 date of mailing of the notice.

26 e. A notice in substantially the following form  
27 complies with this subsection:

28 "TO: THE DIRECTOR OF HUMAN SERVICES

29 FROM: (SELLER'S NAME, CURRENT ADDRESS, AND  
30 TELEPHONE NUMBER)

31 YOU ARE HEREBY NOTIFIED THAT (NAME OF DECEASED),  
32 WHO HAD AN IRREVOCABLE BURIAL TRUST FUND, HAS DIED,  
33 THAT FINAL PAYMENT FOR CEMETERY MERCHANDISE, FUNERAL  
34 MERCHANDISE, AND FUNERAL SERVICES HAS BEEN MADE, AND  
35 THAT (REMAINING AMOUNT) REMAINS IN THE IRREVOCABLE  
36 BURIAL TRUST FUND.

37 THE ABOVE-NAMED SELLER MUST RECEIVE A WRITTEN  
38 RESPONSE REGARDING ANY CLAIM BY THE DIRECTOR WITHIN  
39 SIXTY DAYS AFTER THE MAILING OF THIS NOTICE TO THE  
40 DIRECTOR.

41 IF THE ABOVE-NAMED SELLER DOES NOT RECEIVE A  
42 WRITTEN RESPONSE REGARDING A CLAIM BY THE DIRECTOR  
43 WITHIN SIXTY DAYS AFTER THE MAILING OF THIS NOTICE,  
44 THE SELLER MAY DISPOSE OF THE REMAINING FUNDS IN  
45 ACCORDANCE WITH SECTION 523A.303, CODE OF IOWA."

46 3. Upon receipt of the seller's written notice,  
47 the director shall determine if a debt is due the  
48 department of human services pursuant to section  
49 249A.5. If the director determines that a debt is  
50 owing, the director shall provide a written response

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1 to the seller within sixty days after the director's notice. If the director  
 2 the seller's notice. If the director shall not be enforced  
 3 with a claim within the sixty-day period.  
 4 made by the seller, the trust, or a trustee.  
 5 the seller. If the seller does not receive any  
 6 claim, the director shall send written notice of the claim  
 7 seller. A personal representative of the seller, the trustee,  
 8 a personal representative of the seller, or a trustee, shall  
 9 provided for response by the director regarding the trust  
 10 claim, the claim of the personal representative of the seller,  
 11 not be enforceable against the seller, the trustee,  
 12 trustee.  
 13 5. Any person other than a personal representative of the seller,  
 14 or the director claiming an interest in the remaining funds  
 15 funds shall submit an affidavit claiming an interest in the  
 16 which provides the following information:  
 17 a. Full name, current address, and telephone  
 18 number of the claimant.  
 19 b. Claimant's relationship to the deceased.  
 20 c. Name of any surviving next of kin.  
 21 d. That the claimant has no knowledge of the  
 22 existence of a personal representative for the  
 23 deceased's estate.  
 24 6. The requirements of this section, and the requirements of the  
 25 next of kin, shall not be more than fifty dollars for the  
 26 fund for the remaining funds in the burial trust  
 27 the requirements of this section, and the requirements of the  
 28 fund for the remaining funds in the burial trust, shall be  
 29 the requirements of this section, and the requirements of the  
 30 fund for the remaining funds in the burial trust, shall be  
 31 the requirements of this section, and the requirements of the  
 32 fund for the remaining funds in the burial trust, shall be  
 33 the requirements of this section, and the requirements of the  
 34 fund for the remaining funds in the burial trust, shall be  
 35 the requirements of this section, and the requirements of the  
 36 fund for the remaining funds in the burial trust, shall be  
 37 the requirements of this section, and the requirements of the  
 38 fund for the remaining funds in the burial trust, shall be  
 39 the requirements of this section, and the requirements of the  
 40 fund for the remaining funds in the burial trust, shall be  
 41 the requirements of this section, and the requirements of the  
 42 fund for the remaining funds in the burial trust, shall be

43 Sec. NEW TRUSTING ALTERNATIVES 523A.401 PURCHASE  
 44 AGREEMENTS FUNDED BY INSURANCE PROCEEDS.  
 45 1. A purchase agreement may be funded by insurance  
 46 proceeds derived from a new or existing insurance  
 47 policy issued by an insurance company authorized to do  
 48 business and doing business within this state.  
 49 2. Such funding may be in lieu of the trusting  
 50 requirements of this chapter when the purchaser  
 assigns the proceeds of an existing insurance

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1 3. Such funding may be in lieu of the trusting  
2 requirements of this chapter when a new insurance  
3 policy is purchased to fund the purchase agreement,  
4 with a face amount equal to or greater than the  
5 current retail price of the cemetery merchandise,  
6 funeral merchandise, and funeral services to be  
7 delivered under the purchase agreement or, if less, a  
8 face amount equal to the total of all payments to be  
9 submitted by the purchaser pursuant to the purchase  
10 agreement.

11 4. The premiums of any new insurance policy shall  
12 be fully paid within thirty days after execution of  
13 the purchase agreement or, with respect to a purchase  
14 agreement that provides for periodic payments, the  
15 premiums shall be paid directly by the purchaser to  
16 the insurance company issuing the policy.

17 5. Any new insurance policy shall satisfy the  
18 following conditions:

19 a. Except as necessary and appropriate to satisfy  
20 the requirements regarding burial trust funds under  
21 Title XIX of the federal Social Security Act, the  
22 policy shall not be owned by the establishment, the  
23 policy shall not be irrevocably assigned to the  
24 establishment, and the assignment of proceeds from the  
25 insurance policy to the establishment shall be limited  
26 to the establishment's interests as they appear in the  
27 purchase agreement, and conditioned on the  
28 establishment's delivery of cemetery merchandise,  
29 funeral merchandise, and funeral services pursuant to  
30 a purchase agreement.

31 b. The policy shall provide that any assignment of  
32 benefits is contingent upon the establishment's  
33 delivery of cemetery merchandise, funeral merchandise,  
34 and funeral services pursuant to a purchase agreement.

35 c. The policy shall have an increasing death  
36 benefit or similar feature that provides some means  
37 for increasing the funding as the cost of funeral and  
38 cemetery goods and services increases.

39 6. With the written consent of the purchaser, an  
40 existing prepaid purchase agreement with trust-funded  
41 benefits may be converted to a prepaid purchase  
42 agreement with insurance-funded benefits provided the  
43 establishment and the insurance benefits comply with  
44 the following provisions:

45 a. The transfer of the trust funds to the  
46 insurance company must be at least equal to the full  
47 sum required to be deposited as trust principal under  
48 the trust-funded prepaid purchase agreement plus all  
49 net earnings accumulated with respect thereto, as of  
50 the transfer date. Commissions, allowances, surrender

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7 on an individual must be no less than  
8 principal and interest transferred for  
9 to the insurance company, and any supp.  
10 insurance policy issued to cover the un.  
11 of the purchase agreement must have a fac  
12 is at least as great as the unfunded princ  
13 balance. The face amount of the insurance  
14 shall not, under any circumstances, be les  
15 total of all payments made by the purchase  
16 to the agreement plus all net earnings acc  
17 with respect thereto, as of the transfer d

18 c. The insurance policy shall not allow  
19 contesting coverage, limit death benefits  
20 of suicide, refer to physical examination,  
21 otherwise operate as an exclusion, limitat  
22 condition other than requiring submission  
23 death or surrender of policy at the time t  
24 purchase agreement is funded, matures, or  
25 as the case may be.

26 d. The establishment shall maintain a  
27 prepaid trust-funded purchase agreement th  
28 converted to a prepaid insurance-funded pu  
29 agreement and retain the payment history r  
30 each converted purchase agreement prior to  
31 until the cemetery merchandise, funeral me  
32 and funeral services have been delivered.

33 7. The seller of a purchase agreement  
34 this chapter which is to be funded by insu  
35 proceeds shall obtain all permits required  
36 obtained and comply with all reporting req  
37 under this chapter.

38 8. An insurance company issuing poli  
39 purchase agreements subject to this  
40 an annual report with the commiss  
prescribed by the commissioner

applicable insurance pr  
establishment. Comput  
each legibly  
the r

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1 business within this state.

2 2. Such funding may be in lieu of the trust  
3 requirements of this chapter when the purchaser  
4 assigns the proceeds of an existing annuity.

5 3. Such funding may be in lieu of the trust  
6 requirements of this chapter when a new annuity is  
7 purchased to fund the purchase agreement, with a face  
8 amount equal to or greater than the current retail  
9 price of the cemetery merchandise, funeral  
10 merchandise, and funeral services to be delivered  
11 under the purchase agreement or, if less, a face  
12 amount equal to the total of all payments to be  
13 submitted by the purchaser pursuant to the purchase  
14 agreement.

15 4. The premiums of any new annuity shall be fully  
16 paid within thirty days after execution of the  
17 purchase agreement or, with respect to a purchase  
18 agreement that provides for periodic payments, the  
19 premiums shall be paid directly by the purchaser to  
20 the insurance company issuing the annuity.

21 5. The annuity shall satisfy the following  
22 conditions:

23 a. Except as necessary and appropriate to satisfy  
24 the requirements regarding burial trust funds under  
25 Title XIX of the federal Social Security Act, the  
26 annuity shall not be owned by the establishment or  
27 irrevocably assigned and any designation of the  
28 establishment as a beneficiary shall not be made  
29 irrevocable.

30 b. The annuity shall provide that any assignment  
31 of benefits is contingent upon the establishment's  
32 delivery of cemetery merchandise, funeral merchandise,  
33 and funeral services pursuant to a purchase agreement.

34 c. The annuity shall have an increasing death  
35 benefit or similar feature that provides some means  
36 for increasing the funding as the cost of cemetery  
37 merchandise, funeral merchandise, and funeral services  
38 increases.

39 6. With the written consent of the purchaser, an  
40 existing prepaid purchase agreement with trust-funded  
41 benefits may be converted to a prepaid purchase  
42 agreement with annuity-funded benefits provided the  
43 establishment and the annuity benefits comply with the  
44 following provisions:

45 a. The transfer of the trust funds to the  
46 insurance company must be at least equal to the full  
47 sum required to be deposited as trust principal under  
48 the trust-funded prepaid purchase agreement plus all  
49 net earnings accumulated with respect thereto, as of  
50 the transfer date. Commissions, allowances, surrender

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1 charges or other forms of compensation or expense  
 2 loads, premium expense, administrative charges or  
 3 expenses, or fees shall not be deducted from the trust  
 4 funds transferred pursuant to the conversion.  
 5 b. The face amount of any annuity issued on an  
 6 individual must be no less than the amount of  
 7 principal and interest transferred for that individual  
 8 to the insurance company, and any supplemental annuity  
 9 issued to cover the unfunded principal balance. The face  
 10 amount of the annuity purchased shall not, under any  
 11 circumstances, be less than the total of all payments  
 12 made by the purchaser pursuant to the agreement plus  
 13 all net earnings accumulated with respect thereto, as  
 14 of the transfer date.

15 c. The annuity shall not allow for contesting  
 16 coverage, limit death benefits in the case of suicide,  
 17 an exclusion, limitation, or condition other than  
 18 requiring submission of proof of death or surrender of  
 19 the annuity at the time the prepaid purchase agreement  
 20 is funded, matures, or is canceled, as the case may  
 21 be.

22 d. The establishment shall maintain a copy of any  
 23 prepaid trust-funded purchase agreement that was  
 24 converted to a prepaid annuity-funded purchase  
 25 agreement and retain the payment history records for  
 26 each converted purchase agreement prior to conversion  
 27 until the cemetery services have been delivered.  
 28 and funeral services have been delivered, subject to  
 29 this chapter which is to be funded by annuity proceeds  
 30 shall obtain all permits required to be obtained and  
 31 comply with all reporting requirements under this  
 32 chapter.  
 33 7. An insurance company issuing annuities fur  
 34 purchase agreements subject to this chapter shall  
 35 an annual report with the commissioner on a for  
 36 prescribed by the commissioner. The report sh  
 37 the applicable annuities outstanding for each s  
 38 establishment. Computer printouts may be su  
 39 as each in the prescribed form.  
 40 NEW SECTION. 523A.403 PUR  
 41 PURCHASE AGREEMENTS OF DE  
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1       2. The seller of a purchase agreement subject to  
2 this chapter which is to be funded by a certificate of  
3 deposit shall obtain all permits required to be  
4 obtained and comply with all reporting requirements  
5 under this chapter, implementing rules, and orders.

6       Sec. \_\_\_\_ NEW SECTION. 523A.404 MERCHANDISE  
7 DELIVERED TO THE PURCHASER OR WAREHOUSED.

8       1. Trust requirements do not apply to payments for  
9 outer burial containers made of either polystyrene or  
10 polypropylene or cemetery merchandise delivered to the  
11 purchaser or stored in an independent third-party  
12 storage facility not owned or controlled by the seller  
13 when approved by the commissioner. The seller or the  
14 storage facility must demonstrate that they will do  
15 all of the following:

- 16       a. Issue a receipt of ownership in the name of the  
17 purchaser and deliver it to the purchaser.
- 18       b. Insure the merchandise against loss.
- 19       c. Protect the merchandise against damage.
- 20       d. Transfer title to the purchaser.
- 21       e. Appropriately identify and describe the  
22 merchandise in a manner that it can be distinguished  
23 from other similar items.

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1 delivery has occurred. Adequate documentation  
2 includes but is not limited to photographs and third-  
3 party certifications.

4 3. Cemetery merchandise and funeral merchandise  
5 shall not be deemed delivered to the purchaser or  
6 warehoused if the merchandise is subject to a lien or  
7 security interest by any party other than the seller.

8 4. An establishment is prohibited from requiring  
9 delivery as a condition of the sale.

10 5. A seller shall provide services necessary for  
11 the installation or burial of outer burial containers  
12 sold by the seller. This subsection shall not require  
13 the seller to provide for the opening or closing of  
14 the interment or entombment space, unless the purchase  
15 agreement provides otherwise.

16 Sec. \_\_\_\_ . NEW SECTION. 523A.405 BOND IN LIEU OF  
17 TRUST FUND.

18 1. In lieu of trust requirements, a seller may  
19 file with the commissioner a surety bond issued by a  
20 surety company authorized to do business and doing  
21 business within this state. The bond must be  
22 conditioned upon the seller's faithful performance of  
23 purchase agreements subject to this chapter. The  
24 surety's liability extends to each such agreement  
25 executed while the bond is in force and until  
26 performance or rescision of the purchase agreement. To  
27 the extent expressly agreed to in writing by the  
28 surety, the surety's liability extends to each such  
29 agreement subject to this chapter executed prior to  
30 the time the bond was in force and until performance  
31 or rescision of the agreement. A purchaser aggrieved  
32 by a breach of a condition of the bond covering the  
33 purchaser's agreement may maintain an action against  
34 the bond. If, at the time of the breach, the  
35 purchaser is aware of the purchaser's rights under the  
36 bond and how to file a claim against the bond, the  
37 surety shall not be liable for any breach of condition  
38 unless the surety receives notice of a claim within  
39 sixty days following discovery of the acts, omissions,  
40 or conditions constituting the breach of condition,  
41 except as otherwise provided in this section. A  
42 surety bond shall not be canceled by a surety except  
43 upon a written notice of cancellation given by the  
44 surety to the commissioner by restricted certified  
45 mail, and not prior to the expiration of sixty days  
46 after receipt of the notice by the commissioner. The  
47 surety's liability shall extend to each purchase  
48 agreement subject to this chapter executed prior to  
49 cancellation of the surety bond until the seller has  
50 complied with section 3.

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1 2. If a seller becomes insolvent or otherwise  
2 ceases to engage in business prior to or within sixty  
3 days after cancellation of a bond, the seller shall be  
4 deemed to have breached the bond conditions for  
5 outstanding agreements under this chapter as of the  
6 day prior to cancellation of the bond. The  
7 commissioner shall mail written notice by restricted  
8 certified mail to the purchaser under each outstanding  
9 purchase agreement of the seller that a claim against  
10 the bond must be filed with the surety company within  
11 sixty days after the mailing date of the notice. The  
12 surety shall cease to be liable for all purchase  
13 agreements except those for which claims are filed  
14 with the surety company within sixty days after the  
15 date the commissioner mails the notices.

16 3. If a surety bond is canceled by a surety under  
17 any conditions other than those specified in  
18 subsection 2, the seller shall comply with all of the  
19 following:

20 a. The seller shall comply with the trust  
21 requirements of section 523A.201 for all purchase  
22 agreements subject to this chapter executed on or  
23 after the effective date of cancellation of the surety  
24 bond. In the alternative, the seller may submit a  
25 substitute surety bond meeting the requirements of  
26 subsection 1, but the seller must comply with section  
27 523A.201 for any purchase agreements executed on or  
28 after the effective cancellation date of the earlier  
29 surety bond and prior to the effective date of the  
30 later surety bond.

31 b. Within sixty days after the effective  
32 cancellation date of the surety bond, the seller shall  
33 submit to the commissioner an undertaking by another  
34 surety company that a substitute surety bond meeting  
35 the requirements of subsection 1 is in effect and that  
36 the liability of the substitute surety bond extends to  
37 all outstanding purchase agreements of the seller that  
38 were executed but not performed or extinguished prior  
39 to the effective date of the substitute surety bond,  
40 or the seller shall submit to the commissioner a  
41 financial statement accompanied by an unqualified  
42 opinion based upon an audit performed by a certified  
43 public accountant licensed in this state certifying  
44 the total amount of outstanding liabilities of the  
45 seller on purchase agreements subject to this chapter  
46 and proof of deposit by the seller in trust under  
47 section 523A.201 of either the amount specified in  
48 section 523A.201, including interest as set by the  
49 commissioner based on the interest which would have  
50 been earned had the funds been maintained in trust.

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1 with respect to all of those out-  
 2 agreements or, where applicable,  
 3 merchandise has been made in compli-  
 4 523A.404. The surety may require  
 5 necessary to comply with this sec-  
 6 compliance by the seller except those  
 7 to be liable with respect to which a  
 8 agreements of the seller to which a  
 9 occurred prior to cancellation and for  
 10 claims were filed. Section 523A.202, and, to the extent  
 11 4. Section 523A.206, apply to seller  
 12 applicable, section 523A.206, apply to seller  
 13 purchase agreements are covered by a surety  
 14 maintained under this section, and section 52-  
 15 sellers that are not covered by a surety bond  
 16 continues to apply this section.  
 17 5. Upon receiving a notice of cancellation of  
 18 surety under this section, the attorney shall  
 19 of the bond, receiving a notice of cancellation  
 20 cancellation of this chapter and sections 523A.201  
 21 and 523A.202.  
 22 6. Upon receiving a notice of cancellation, unless  
 23 the seller has complied with the requirements of this  
 24 section, the attorney shall seek an injunction  
 25 to prohibit the seller from making further purchase  
 26 agreements subject to the requirements of this  
 27 chapter. The necessary action to secure compliance  
 28 with this chapter shall be taken by the county attorney  
 29 with this chapter. The necessary action to secure compliance  
 30 with this chapter shall be taken by the county attorney  
 31 criminal charges under this section shall  
 32 owned, the surety under this section shall  
 33 seller. The amount of the surety shall be  
 34 8. The amount of the payments made by the  
 35 eighty percent of the payments made by the  
 36 purchase agreements, or the amount of the  
 37 se, funeral charges, or the amount of the  
 38 of, funeral charges, or the amount of the  
 39 he

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1 needed to adjust for inflation shall be added annually  
2 to the surety bond during the first quarter of the  
3 establishment's fiscal year.

4 9. With the consent of the purchaser, an existing  
5 prepaid purchase agreement with trust-funded benefits  
6 may be converted to a prepaid purchase agreement  
7 funded by a surety bond provided the establishment and  
8 the surety bond comply with the following provisions:

9 a. The amount of the trust funds transferred to  
10 the surety company must be at least equal to the full  
11 sum required to be deposited as trust principal under  
12 the trust-funded prepaid purchase agreement plus all  
13 net earnings accumulated with respect thereto, as of  
14 the transfer date. Commissions, allowances, surrender  
15 charges or other forms of compensation or expense  
16 loads, premium expense, administrative charges or  
17 expenses, or fees shall not be deducted from the trust  
18 funds transferred pursuant to the conversion.

19 b. The face amount of the surety bond issued on an  
20 individual must be no less than the amount of  
21 principal and interest transferred for that individual  
22 to the surety company, and any supplemental surety  
23 bond issued to cover the unfunded portion of the  
24 purchase agreement must have a face amount that is at  
25 least as great as the unfunded principal balance. The  
26 face amount of the surety bond purchased shall not,  
27 under the circumstances, be less than the total of all  
28 payments made by the purchaser pursuant to the  
29 agreement plus all net earnings accumulated with  
30 respect thereto, as of the transfer date.

31 c. The establishment shall maintain a copy of any  
32 prepaid trust-funded agreement that was converted to a  
33 prepaid purchase agreement funded by a surety bond and  
34 retain the payment history records for each converted  
35 purchase agreement prior to conversion until the  
36 cemetery merchandise, funeral merchandise, and funeral  
37 services have been delivered.

38 SUBCHAPTER 5  
39 PERMIT REQUIREMENTS FOR SELLERS OF CEMETERY  
40 MERCHANDISE, FUNERAL MERCHANDISE, FUNERAL SERVICES,  
41 OR A COMBINATION THEREOF  
42 Sec. \_\_\_\_ . NEW SECTION. 523A.501 ESTABLISHMENT  
43 PERMITS.

44 1. A person shall not advertise, sell, promote, or  
45 offer to furnish cemetery merchandise, funeral  
46 merchandise, funeral services, or a combination  
47 thereof when performance or delivery may be more than  
48 one hundred twenty days following the initial payment  
49 on the account without an establishment permit. Each  
50 establishment must have an establishment permit.

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1 2. An application for an establishment permit  
2 shall be filed on a form prescribed by the  
3 commissioner, be accompanied by a fifty dollar filing  
4 fee, and include a copy of each purchase agreement the  
5 person will use for sales of cemetery merchandise,  
6 funeral merchandise, funeral services, or a  
7 combination thereof.

8 3. The application shall contain:

9 a. The name and address of the establishment.

10 b. The name and address of any additional provider  
11 of cemetery merchandise, funeral merchandise, funeral  
12 services, or a combination thereof.

13 c. The name and address of each owner, officer, or  
14 other official of the establishment, including when  
15 relevant the chief executive officer and the members  
16 of the board of directors.

17 d. A description of any common business enterprise  
18 or parent company.

19 e. The types of cemetery merchandise, funeral  
20 merchandise, funeral services, or a combination  
21 thereof to be sold.

22 f. The types of trust or trust alternatives  
23 utilized by the establishment and a list of the  
24 financial institutions, storage facilities, surety  
25 companies, and insurance companies utilized by the  
26 establishment on a regular basis.

27 4. A permit holder shall inform the commissioner  
28 of changes in the information required to be provided  
29 by subsection 3 within thirty days of the change.

30 5. An establishment permit is not assignable or  
31 transferable. A permit holder selling all or part of  
32 an establishment shall cancel the permit and the  
33 purchaser shall apply for a new permit in the  
34 purchaser's name within thirty days of the sale.

35 6. The commissioner shall grant or deny a permit  
36 application within thirty days after receipt, but the  
37 commissioner's failure to act within that time period  
38 shall not be deemed approval of the application. If  
39 the commissioner does not grant the permit, the  
40 commissioner shall notify the person in writing of the  
41 reasons for the denial. The permit shall disclose on  
42 its face the permit holder's employer or the  
43 establishment on whose behalf the applicant will be  
44 making or attempting to make sales, the permit number,  
45 and the expiration date.

46 7. An initial permit is valid for two years from  
47 the date the application is filed. A permit may be  
48 renewed for two years by filing the form prescribed by  
49 the commissioner under subsection 2, accompanied by a  
50 ten dollar renewal fee. Submission of purchase

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1 agreements is not required for renewals unless the  
2 purchase agreements have been modified since the last  
3 filing.

4 8. The commissioner may by rule create or accept a  
5 multi-jurisdiction establishment permit. If the  
6 establishment permit is issued by another  
7 jurisdiction, the rules shall require the filing of an  
8 application or notice form and payment of the  
9 applicable filing fee of fifty dollars for an initial  
10 application and ten dollars for a renewal application.  
11 The application or notice form utilized and the  
12 effective dates and terms of the permit may vary from  
13 the provisions set forth in subsections 2, 3, and 7.

14 Sec. \_\_\_\_ . NEW SECTION. 523A.502 SALES PERMITS.

15 1. A person shall not advertise, sell, promote, or  
16 offer to furnish cemetery merchandise, funeral  
17 merchandise, funeral services, or a combination  
18 thereof when performance or delivery may be more than  
19 one hundred twenty days following initial payment on  
20 the account without a sales permit. A permit holder  
21 must be an employee or agent of a person holding an  
22 establishment permit who can deliver the cemetery  
23 merchandise, funeral merchandise, funeral services, or  
24 a combination thereof being sold. A person must have  
25 a sales permit for each establishment at which the  
26 person works. However, a person may apply for a sales  
27 permit covering multiple establishments, if the  
28 establishments have common ownership. The  
29 establishment permit holder is liable for the acts of  
30 its employees and agents performed in advertising,  
31 selling, promoting, or offering to furnish, upon the  
32 future death of a person named or implied in a  
33 purchase agreement, cemetery merchandise, funeral  
34 merchandise, funeral services, or a combination  
35 thereof.

36 2. This chapter does not permit a person to  
37 practice mortuary science without a license. A person  
38 holding a current sales permit may advertise, sell,  
39 promote, or offer to furnish a funeral director's  
40 services as an employee or agent of a funeral  
41 establishment furnishing the funeral services under  
42 chapter 156.

43 3. An application for a sales permit shall be  
44 filed on a form prescribed by the commissioner and be  
45 accompanied by a five dollar filing fee.

46 4. The application shall contain:

47 a. The name and address of the person.

48 b. The name and address of the person's employer  
49 and each establishment on whose behalf the person will  
50 be advertising, selling, promoting, or offering to

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1 furnish cemetery merchandise, funeral merchandise,  
2 funeral services, or a combination thereof.

3 c. The name and address of the provider who will  
4 provide the cemetery merchandise, funeral merchandise,  
5 funeral services, or a combination thereof if  
6 different from the person's employer.

7 5. An initial permit expires one year from the  
8 date the application is filed. The permit may be  
9 renewed for four years by filing the form prescribed  
10 by the commissioner under subsection 3, accompanied by  
11 a twenty dollar filing fee.

12 6. A permit holder shall inform the commissioner  
13 of changes in the information required to be provided  
14 by subsection 4 within thirty days of the change.

15 7. A sales permit is not assignable or  
16 transferable. A permit holder selling all or part of  
17 a business shall cancel the permit and the purchaser  
18 shall apply for a new permit in the purchaser's name  
19 within thirty days of the sale.

20 8. The commissioner shall grant or deny a permit  
21 application within thirty days after receipt, but the  
22 commissioner's failure to act within that time period  
23 shall not be deemed approval of the application. If  
24 the commissioner does not grant the permit, the  
25 commissioner shall notify the applicant in writing of  
26 the reasons for the denial.

27 9. The commissioner may by rule create or accept a  
28 multijurisdiction sales permit. If the sales permit  
29 is issued by another jurisdiction, the rules shall  
30 require the filing of an application or notice form  
31 and payment of the applicable filing fee of five  
32 dollars for each year. The application or notice form  
33 utilized and the effective dates and terms of the  
34 permit may vary from the provisions set forth in  
35 subsections 3 and 5.

36 Sec. \_\_\_\_ . NEW SECTION. 523A.503 DENIAL,  
37 SUSPENSION, REVOCATION, AND SURRENDER OF PERMITS.

38 1. The commissioner may, pursuant to chapter 17A,  
39 deny any permit application or immediately suspend or  
40 revoke any permit issued under this chapter for  
41 several reasons, including but not limited to:

42 a. Committing a fraudulent act, engaging in a  
43 fraudulent practice, or violating any provision of  
44 this chapter or, any implementing rule or order issued  
45 under this chapter.

46 b. Violating any other state or federal law  
47 applicable to the conduct of the applicant's or permit  
48 holder's business.

49 c. Insolvency or financial condition.

50 d. The permit holder, for the purpose of avoiding

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1 the trust requirement for funeral services, attributes  
2 amounts paid under the purchase agreement to cemetery  
3 merchandise or funeral merchandise that is delivered  
4 under section 523A.404 rather than to funeral services  
5 sold to the purchaser. The sale of funeral services  
6 at a lower price when the sale is made in conjunction  
7 with the sale of cemetery merchandise or funeral  
8 merchandise to be delivered under section 523A.404  
9 than the services are regularly and customarily sold  
10 for when not sold in conjunction with cemetery  
11 merchandise or funeral merchandise is evidence that  
12 the permit holder is acting with the purpose of  
13 avoiding the trust requirement for funeral services  
14 under section 523A.201.

15 e. Engaging in a deceptive act or practice or  
16 deliberately misrepresenting or omitting a material  
17 fact regarding the sale of cemetery merchandise,  
18 funeral merchandise, funeral services, or a  
19 combination thereof under this chapter.

20 f. Conviction of a criminal offense involving  
21 dishonesty or a false statement.

22 g. Inability to provide the cemetery merchandise,  
23 funeral merchandise, funeral services, or a  
24 combination thereof which the applicant or permit  
25 holder purports to sell.

26 h. The applicant or permit holder sells the  
27 business without filing a prior notice of sale with  
28 the commissioner. The permit shall be revoked thirty  
29 days following such sale.

30 i. Selling by a person who is not an employee or  
31 agent of the applicant or permit holder.

32 2. The commissioner may, for good cause shown,  
33 suspend any permit for a period not exceeding thirty  
34 days, pending investigation.

35 3. Except as provided in subsection 2, a permit  
36 shall not be revoked or suspended except after notice  
37 and hearing under chapter 17A.

38 4. Any permit holder may surrender a permit by,  
39 delivering to the commissioner written notice that the  
40 permit holder surrenders the permit, but the surrender  
41 shall not affect the permit holder's civil or criminal  
42 liability for acts committed before the surrender.

43 5. Denial, revocation, suspension, or surrender of  
44 a permit does not impair or affect the obligation of  
45 any preexisting lawful agreement between the permit  
46 holder and any person.

## SUBCHAPTER 6

## PURCHASE AGREEMENT REQUIREMENTS

49 Sec. \_\_\_\_ . NEW SECTION. 523A.601 DISCLOSURES.

50 1. A purchase agreement for cemetery merchandise.

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1 funeral merchandise, funeral services, or a  
2 combination thereof shall be written in clear,  
3 understandable language, and shall be printed or typed  
4 in an easy-to-read font, size, and style, and shall:

5 a. Identify the seller, the salesperson's permit  
6 and establishment name and permit number, the  
7 expiration date of the salesperson's permit, the  
8 purchaser, and the person for whom the cemetery  
9 merchandise, funeral merchandise, funeral services, or  
10 a combination thereof is purchased, if other than the  
11 purchaser.

12 b. Specify the cemetery merchandise, funeral  
13 merchandise, funeral services, or a combination  
14 thereof, to be provided, and the cost of each  
15 merchandise item or service.

16 c. State clearly the conditions upon which  
17 substitution will be allowed.

18 d. State the total purchase price and the terms  
19 under which it is to be paid.

20 e. State clearly whether the purchase agreement is  
21 a guaranteed price agreement or a nonguaranteed price

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1 INSURANCE DIVISION AT ( ) WRITTEN  
2 INQUIRIES OR COMPLAINTS SHOULD BE MAILED TO THE IOWA  
3 SECURITIES BUREAU, (STREET ADDRESS), (CITY), IOWA (ZIP  
4 CODE).

5 2. A purchase agreement that is funded by a trust  
6 shall also:

7 a. State the percentage of money to be placed in  
8 trust.

9 b. Explain the disposition of the income generated  
10 from investments and include a statement of the  
11 purchaser's responsibility for income taxes owed on  
12 the income if applicable.

13 c. State that if, after all payments are made  
14 under the conditions and terms of the purchase  
15 agreement for cemetery merchandise, funeral  
16 merchandise, funeral services, or a combination  
17 thereof, any funds remain in the nonguaranteed  
18 irrevocable burial trust fund, the seller shall  
19 disburse the remaining funds according to law.

20 d. State clearly the terms of the funeral and  
21 burial trust agreement and whether it is revocable or  
22 irrevocable.

23 e. State clearly that the purchaser is entitled to  
24 transfer the trust funding, insurance funding, or  
25 other trust assets or select another establishment to  
26 receive the trust funding, insurance funding, or any  
27 other trust assets.

28 f. State clearly who has the authority to amend or  
29 revoke the trust agreement, if revocable, and who has  
30 the authority to appoint successor trustees if the  
31 purchase agreement is canceled.

32 3. The commissioner may adopt rules establishing  
33 disclosure and format requirements to promote consumer  
34 understanding of the merchandise and services  
35 purchased and the available funding mechanisms for a  
36 purchase agreement under this chapter.

37 4. A purchase agreement shall be signed by the  
38 purchaser, the seller, and if the agreement is for  
39 funeral services as defined in chapter 156, a person  
40 licensed to deliver funeral services.

41 5. The seller shall disclose the following  
42 information prior to accepting the initial payment  
43 under a purchase agreement:

44 a. The specific method or methods (trust deposits,  
45 certificates of deposit, life insurance or an annuity,  
46 a surety bond, or warehousing) that will be used to  
47 fund the purchase agreement.

48 b. The relationship between the soliciting agent  
49 or agents, the provider of the cemetery merchandise,  
50 funeral merchandise, or funeral services, or

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1 combination thereof, the commissioner, and any other  
2 person.

3 c. The relationship of the life insurance policy  
4 or other trust assets to the funding of the purchase  
5 agreement and the nature and existence of any  
6 guarantees regarding the purchase agreement.

7 d. The impact on the purchase agreement of the  
8 following:

9 (1) Changes in the funding, including but not  
10 limited to changes in the assignment, beneficiary  
11 designation, trustee, or use of proceeds.

12 (2) Any penalties to be incurred by the purchaser  
13 as a result of the failure to make any additional  
14 payments required.

15 (3) Penalties to be incurred upon cancellation.

16 e. A list of cemetery merchandise, funeral  
17 merchandise, and funeral services which are agreed  
18 upon under the purchase agreement and all relevant  
19 information concerning the price of the cemetery  
20 merchandise, funeral merchandise, funeral services, or  
21 a combination thereof, including a statement that the  
22 purchase price is either guaranteed at the time of  
23 purchase or to be determined at the time of need.

24 f. All relevant information concerning what occurs  
25 and whether any entitlements or obligations arise if  
26 there is a difference between the funding and the  
27 amount actually needed to fund the purchase agreement.

28 g. Any penalties or restrictions including but not  
29 limited to geographic restrictions or the inability of  
30 the provider to perform, upon delivery of cemetery  
31 merchandise, funeral merchandise, or funeral services,  
32 or the purchase agreement guarantee.

33 h. If the funding is being transferred from  
34 another establishment, any material facts related to  
35 the revocation of the prior purchase agreement and the  
36 transfer of the existing trust funds.

37 Sec. \_\_\_\_ . NEW SECTION. 523A.602 CONSUMER  
38 RECISION, CANCELLATION, AND REFUND RIGHTS, AND  
39 PURCHASE AGREEMENT COMPLIANCE WITH OTHER LAWS.

40 1. A seller shall furnish the purchaser with a  
41 completed copy of a purchase agreement pertaining to  
42 the sale at the time the purchase agreement is signed.  
43 The seller shall comply with the following terms:

44 a. The same language shall be used in both the  
45 oral sales representation and the written purchase  
46 agreement.

47 b. The seller shall give notice in the purchase  
48 agreement of the purchaser's right to rescind after  
49 signing the purchase agreement. The recision period  
50 must be but may be greater than three business days

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1 after the date of the purchase agreement. The notice  
2 must:

3 (1) Be located close to the signature line.

4 (2) Be printed in twelve point bold-faced type.

5 (3) State that "YOU, THE PURCHASER, HAVE THE RIGHT  
6 TO RESCIND THIS AGREEMENT AT ANY TIME PRIOR TO  
7 MIDNIGHT OF THE (INSERT RELEVANT NUMBER, NOT LESS THAN  
8 THREE) BUSINESS DAYS AFTER THE DATE OF THIS  
9 AGREEMENT."

10 c. All moneys shall be refunded without penalty  
11 within ten days after rescision.

12 2. CANCELLATION REFUND.

13 a. A purchase agreement must include a statement  
14 that the purchaser has the right to cancel the  
15 agreement for the purchase of cemetery merchandise,  
16 funeral merchandise, and funeral services upon written  
17 demand and designate or appoint a trustee to hold,  
18 manage, invest, and distribute the trust assets.

19 b. If a purchase agreement is canceled, a  
20 purchaser requests a transfer of the trust assets upon  
21 cancellation of a purchase agreement, or another  
22 establishment provides merchandise or services  
23 designated in a purchase agreement, the seller shall  
24 refund or transfer within thirty days of receiving a  
25 written demand no less than the purchase price of the  
26 applicable cemetery merchandise, funeral merchandise,  
27 and funeral services adjusted for inflation, using the  
28 consumer price index amounts announced by the  
29 commissioner annually, less any cancellation penalty  
30 set forth in the purchase agreement. The amount of  
31 the cancellation penalty shall not exceed ten percent  
32 of the purchase price of the applicable cemetery  
33 merchandise, funeral merchandise, and funeral  
34 services. The seller may also deduct the value of the  
35 cemetery merchandise, funeral merchandise, and funeral  
36 services already received by, delivered to, or  
37 warehoused for the purchaser.

38 c. A purchase agreement must include a statement  
39 that the purchaser is entitled to a refund of the  
40 purchase price of the applicable funeral merchandise  
41 adjusted for inflation, using the consumer price index  
42 amounts announced by the commissioner annually for any  
43 item of funeral merchandise that cannot be delivered  
44 to the location specified in the purchase agreement  
45 within forty-eight hours of notice of the individual's  
46 death, unless the delay is caused by weather  
47 conditions or a natural disaster. The seller must  
48 return such refund to the purchaser within thirty days  
49 of receiving the written demand.

50 3. This section does not prohibit a purchaser who

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16 FINES.

17 It is unlawful for a person to make or cause to be  
18 made, in any document filed with the commissioner, or  
19 in any proceeding under this chapter, any statement of  
20 material fact which is, at the time and in the light  
21 of the circumstances under which it is made, false or  
22 misleading, or, in connection with such statement, to  
23 omit to state a material fact necessary in order to  
24 make the statements made, in the light of the  
25 circumstances under which they are made, not  
26 misleading.

27 Sec.       . NEW SECTION. 523A.702  
28 MISREPRESENTATIONS OF GOVERNMENT APPROVAL.

29 It is unlawful for a seller under this chapter to  
30 represent or imply in any manner that the seller has  
31 been sponsored, recommended, or approved, or that the  
32 seller's abilities or qualifications have in any  
33 respect been passed upon by the commissioner.

34 Sec.       . NEW SECTION. 523A.703 FRAUDULENT  
35 PRACTICES.

36 A person who commits any of the following acts  
37 commits a fraudulent practice and is punishable as  
38 provided in chapter 714:

- 39 1. Knowingly fails to comply with any requirement  
40 of this chapter.
- 41 2. Knowingly makes, causes to be made, or  
42 subscribes to a false statement or representation in a  
43 report or other document required under this chapter,  
44 implementing rules, or orders, or renders such a  
45 report or document misleading through the deliberate  
46 omission of information properly belonging in the  
47 report or document.
- 48 3. Conspires to defraud in connection with the  
49 sale of cemetery merchandise, funeral merchandise  
50 funeral services, or a combination thereof un-



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1 chapter.

2 4. Fails to deposit funds under sections 523A.201  
3 and 523A.202 or withdraws any funds in a manner  
4 inconsistent with this chapter.

5 5. Knowingly sells or offers cemetery merchandise,  
6 funeral merchandise, funeral services, or a  
7 combination thereof without an establishment permit.

8 6. Deliberately misrepresents or omits a material  
9 fact relative to the sale of cemetery merchandise,  
10 funeral merchandise, funeral services, or a  
11 combination thereof under this chapter. When selling  
12 cemetery merchandise or funeral merchandise, a seller  
13 shall not exclude the funeral services necessary for  
14 the delivery, use, or installation of the cemetery  
15 merchandise or funeral merchandise at the time of the  
16 funeral or burial unless the purchase agreement  
17 expressly provides otherwise.

## 18 SUBCHAPTER 8

## 19 ADMINISTRATION AND ENFORCEMENT

20 Sec. \_\_\_\_ . NEW SECTION. 523A.801 ADMINISTRATION.

21 1. This chapter shall be administered by the  
22 commissioner. The deputy administrator appointed  
23 pursuant to section 502.601 shall be the principal  
24 operations officer responsible to the commissioner for  
25 the routine administration of this chapter and  
26 management of the administrative staff. In the  
27 absence of the commissioner, whether because of  
28 vacancy in the office due to absence, physical  
29 disability, or other cause, the deputy administrator  
30 shall, for the time being, have and exercise the  
31 authority conferred upon the commissioner. The  
32 commissioner may by order from time to time delegate  
33 to the deputy administrator any or all of the  
34 functions assigned to the commissioner in this  
35 chapter. The deputy administrator shall employ  
36 officers, attorneys, accountants, and other employees  
37 as needed for administering this chapter.

38 2. It is unlawful for the commissioner or any  
39 administrative staff to use for personal benefit any  
40 information which is filed with or obtained by the  
41 commissioner and which is not made public. This  
42 chapter does not authorize the commissioner or any

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1 or other evidence is sought under  
2 to the commissioner or any adminis 523A.80  
3 Sec. NEW SECTION.  
4 1. This chapter applies to any a  
5 sale, promotion, or offer made by a p  
6 upon the future death of a person name  
7 a purchase agreement, funeral services, or a comb  
8 merchandise, or a combination records and insurance p  
9 thereof. Burial accounts and funeral merchandise  
10 included in this state when a purchase ag  
11 identify the establishment thereof.  
12 cemetery services, or a purchase ag  
13 2. This chapter applies to either furnish or accept  
14 is executed within this state or an advertise  
15 promotion, or offer to furnish or accept  
16 within this state, when either party is made w  
17 this state, whether by the offeror to this stat  
18 present in this state or not  
19 and received by the offeree in this state thro  
20 mail, over the telephone, by the internet, or thro  
21 any other means of commerce.  
22 3. If a foreign person does not have a registered  
23 agent within this state of Iowa, doing business  
24 within or outside public or private as investiga  
25 appointment of state attorney upon whom may  
26 be served all lawful process of original notice in  
27 Iowa to be served or proceedings arising or growing out of any  
28 actions or tort.  
29 contract or tort.  
30 AND SUBPOENAS. NEW SECTION. 523A.803 INVESTIGATIONS  
31 1. The commissioner may, for the purpose of  
32 discovering violations of this chapter, implementing  
33 rules, or orders issued under this chapter, implementing  
34 a. Make orders necessary to determine whether any person has  
35 violated or is about to violate this chapter,  
36 implementing rules, or orders issued under this  
37 chapter, or to aid in enforcement of this chapter or  
38 in the prescribing of rules and forms under this  
39 chapter.  
40 b. Require or permit any person to file a  
41 statement in writing, under oath or otherwise as the  
42 commissioner or attorney general determines, as to a  
43 the facts and circumstances concerning the matter  
44 to be investigated.  
45 c. Notwithstanding chapter 22, keep con  
46  
47  
48  
49  
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1 the information obtained in the course of an  
2 investigation. However, if the commissioner  
3 determines that it is necessary or appropriate in the  
4 public interest or for the protection of the public,  
5 the commissioner may share information with other  
6 administrators, regulatory authorities, or  
7 governmental agencies, or may publish information  
8 concerning a violation of this chapter, implementing  
9 rules, or orders issued under this chapter.

10 d. Investigate the establishment and examine the  
11 books, accounts, papers, correspondence, memoranda,  
12 purchase agreements, files, or other documents or  
13 records used by every applicant and permit holder  
14 under this chapter.

15 e. Administer oaths and affirmations, subpoena  
16 witnesses, compel their attendance, take evidence, and  
17 require the production of any books, accounts, papers,  
18 correspondence, memoranda, purchase agreements, files,  
19 or other documents or records which the commissioner  
20 deems relevant or material to any investigation or  
21 proceeding under this chapter and implementing rules,  
22 all of which may be enforced under chapter 17A.

23 f. Apply to the district court for an order  
24 requiring a person's appearance before the  
25 commissioner or attorney general, or a designee of  
26 either or both, in cases where the person has refused  
27 to obey a subpoena issued by the commissioner or  
28 attorney general. The person may also be required to  
29 produce documentary evidence germane to the subject of  
30 the investigation. Failure to obey a court order  
31 under this subsection constitutes contempt of court.

32 2. The commissioner may issue and bring an action  
33 in district court to enforce subpoenas within this  
34 state at the request of an agency or administrator of  
35 another state, if the activity constituting an alleged  
36 violation for which the information is sought would be  
37 a violation of this chapter had the activity occurred  
38 in this state.

39 Sec. \_\_\_\_ . NEW SECTION. 523A.804 MEDIATION.

40 The commissioner may order an establishment to  
41 participate in mediation in any dispute regarding a  
42 purchase agreement. Mediation performed under this



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1 Sec. \_\_\_\_ NEW SECTION. 523A.806 COURT ACTION FOR  
2 FAILURE TO COOPERATE.

3 If a person fails or refuses to file any statement  
4 or report or to produce any books, accounts, papers,  
5 correspondence, memoranda, purchase agreements, files,  
6 or other documents or records, or to obey any subpoena  
7 issued by the commissioner, the commissioner may refer  
8 the matter to the attorney general, who may apply to a  
9 district court to enforce compliance. The court may  
10 order any or all of the following:

11 1. Injunctive relief, restricting or prohibiting  
12 the offer or sale of cemetery merchandise, funeral  
13 merchandise, funeral services, or a combination  
14 thereof.

15 2. Revocation or suspension of any permit issued  
16 under this chapter.

17 3. Production of documents or records including  
18 but not limited to books, accounts, papers,  
19 correspondence, memoranda, purchase agreements, files,  
20 or other documents or records.

21 4. Such other relief as may be required.

22 Such an order shall be effective until the person  
23 files the statement or report or produces the  
24 documents requested, or obeys the subpoena.

25 Sec. \_\_\_\_ NEW SECTION. 523A.807 PROSECUTION FOR  
26 VIOLATIONS OF LAW.

27 1. A violation of this chapter or rules adopted or  
28 orders issued under this chapter is a violation of  
29 section 714.16, subsection 2, paragraph "a". The  
30 remedies and penalties provided by section 714.16,  
31 including but not limited to injunctive relief and  
32 penalties, apply to violations of this chapter.

33 2. If the commissioner believes that grounds exist  
34 for the criminal prosecution of persons subject to  
35 this chapter for violations of this chapter or any  
36 other law of this state, the commissioner may forward  
37 to the attorney general or the county attorney the  
38 grounds for the belief, including all evidence in the  
39 commissioner's possession, so that the attorney  
40 general or the county attorney may proceed with the  
41 matter as deemed appropriate. At the request of the  
42 attorney general, the county attorney shall appear and  
43 prosecute the action when brought in the county  
44 attorney's county.

45 Sec. \_\_\_\_ NEW SECTION. 523A.808 COOPERATION WITH  
46 OTHER AGENCIES.

47 1. To encourage uniform interpretation and  
48 administration of this chapter and effective  
49 regulation of the sale of cemetery merchandise,  
50 funeral merchandise, and funeral services, the

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1 commissioner may cooperate with any governmental law  
2 enforcement or regulatory agency.

3 2. This cooperation includes but is not limited  
4 to:

5 a. Making a joint examination or investigation.

6 b. Holding a joint administrative hearing.

7 c. Filing and prosecuting a joint civil or  
8 administrative proceeding.

9 d. Sharing and exchanging personnel.

10 e. Sharing and exchanging relevant information and  
11 documents.

12 f. Formulating, in accordance with chapter 17A,  
13 rules or proposed rules on matters such as statements  
14 of policy, regulatory standards, guidelines, and  
15 interpretive opinions.

16 Sec. \_\_\_\_ . NEW SECTION. 523A.809 RULES, FORMS,  
17 AND ORDERS.

18 1. Under chapter 17A, the commissioner may from  
19 time to time make, amend, and rescind such rules,  
20 forms, and orders as are necessary or appropriate for  
21 the protection of purchasers and the public and to  
22 administer the provisions of this chapter, its  
23 implementing rules, and orders issued under this  
24 chapter.

25 2. A rule, form, or order shall not be made,  
26 amended, or rescinded unless the commissioner finds  
27 that the action is necessary or appropriate in the  
28 public interest or for the protection of purchasers  
29 and consistent with the purposes fairly intended by  
30 the policies and provisions of this chapter, its  
31 implementing rules, and orders issued under this  
32 chapter.

33 3. A provision of this chapter imposing any  
34 liability does not apply to any act done or omitted in  
35 good faith in conformity with any rules, form, or  
36 order of the commissioner, notwithstanding that the  
37 rule, form, or order may later be amended or rescinded  
38 or be determined by judicial or other authority to be  
39 invalid for any reason.

40 Sec. \_\_\_\_ . NEW SECTION. 523A.810 DATE OF FILING  
41 AND INTERPRETIVE OPINIONS.

42 1. A document is filed when it is received by the  
43 commissioner.

44 2. Requests for interpretive opinions may be  
45 granted in the commissioner's discretion.

46 Sec. \_\_\_\_ . NEW SECTION. 523A.811 RECEIVERSHIPS.

47 1. The commissioner shall notify the attorney  
48 general of the potential need for establishment of a  
49 receivership if the commissioner finds that a seller  
50 subject to this chapter meets one or more of the

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1 following conditions:

2 a. Is insolvent.

3 b. Has utilized trust funds for personal or  
4 business purposes in a manner inconsistent with this  
5 chapter.

6 c. The amount of funds currently held in trust for  
7 cemetery merchandise, funeral merchandise, and funeral  
8 services is less than eighty percent of all payments  
9 made under the purchase agreements referred to in  
10 section 523A.201.

11 d. Has refused to pay any just claim or demand  
12 based on a purchase agreement referred to in section  
13 523A.201.

14 e. The commissioner finds upon investigation that  
15 a seller is unable to pay any claim or demand based on  
16 a purchase agreement which has been legally determined  
17 to be just and outstanding.

18 2. The commissioner or attorney general may apply  
19 to the district court in any county of the state for  
20 the establishment of a receivership. Upon proof of  
21 any of the grounds for a receivership described in  
22 this section, the court may grant a receivership.

23 Sec. \_\_\_\_ . NEW SECTION. 523A.812 INSURANCE  
24 DIVISION'S REGULATORY FUND.

25 The insurance division may authorize the creation  
26 of a special revenue fund in the state treasury, to be  
27 known as the insurance division regulatory fund. The  
28 commissioner shall allocate annually from the fees  
29 paid pursuant to section 523A.204, two dollars for  
30 each purchase agreement reported on an establishment  
31 permit holder's annual report for deposit to the  
32 regulatory fund. The remainder of the fees collected  
33 pursuant to section 523A.204 shall be deposited into  
34 the general fund of the state. The moneys in the  
35 regulatory fund shall be retained in the fund. The  
36 moneys are appropriated and, subject to authorization  
37 by the commissioner, may be used to pay auditors,  
38 audit expenses, investigative expenses, the expenses  
39 of mediation ordered by the commissioner, consumer  
40 education expenses, the expenses of a toll-free  
41 telephone line to receive consumer complaints, and the  
42 expenses of receiverships established under section  
43 523A.811. An annual allocation to the regulatory fund  
44 shall not be imposed if the current balance of the  
45 fund exceeds two hundred thousand dollars.

46 Sec. \_\_\_\_ . NEW SECTION. 523A.813 LICENSE  
47 REVOCATION -- RECOMMENDATION BY COMMISSIONER TO BOARD  
48 OF MORTUARY SCIENCE EXAMINERS.

49 Upon a determination by the commissioner that  
50 grounds exist for an administrative license revocation

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1 or suspension action by the board of mortuary science  
2 examiners under chapter 156, the commissioner may  
3 forward to the board the grounds for the  
4 determination, including all evidence in the  
5 possession of the commissioner, so that the board may  
6 proceed with the matter as deemed appropriate.

## SUBCHAPTER 9

## LIQUIDATION PROCEDURES

Sec.          NEW SECTION. 523A.901 LIQUIDATION.

10 1. GROUND FOR LIQUIDATION. The commissioner may  
11 petition the district court for an order directing the  
12 commissioner to liquidate an establishment on either  
13 of the following grounds:

14 a. The establishment did not deposit funds  
15 pursuant to section 523A.201 or withdrew funds in a  
16 manner inconsistent with this chapter and is  
17 insolvent.

18 b. The establishment did not deposit funds  
19 pursuant to section 523A.201 or withdrew funds in a  
20 manner inconsistent with this chapter and the  
21 condition of the establishment is such that further  
22 transaction of business would be hazardous,  
23 financially or otherwise, to purchasers or the public.

24 2. LIQUIDATION ORDER.

25 a. An order to liquidate the business of an  
26 establishment shall appoint the commissioner as  
27 liquidator and shall direct the liquidator to  
28 immediately take possession of the assets of the  
29 establishment and to administer them under the general  
30 supervision of the court. The liquidator is vested  
31 with the title to the property, contracts, and rights  
32 of action and the books and records of the  
33 establishment ordered liquidated, wherever located, as  
34 of the entry of the final order of liquidation. The  
35 filing or recording of the order with the clerk of  
36 court and the recorder of deeds of the county in which  
37 its principal office or place of business is located,  
38 or, in the case of real estate with the recorder of  
39 deeds of the county where the property is located, is  
40 notice as a deed, bill of sale, or other evidence of  
41 title duly filed or recorded with the recorder of  
42 deeds.

43 b. Upon issuance of an order, the rights and  
44 liabilities of an establishment and of the  
45 establishment's creditors, purchasers, owners, and  
46 other persons interested in the establishment's estate  
47 shall become fixed as of the date of the entry of the  
48 order of liquidation, except as provided in subsection  
49 14.

50 c. At the time of petitioning for an order of

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1 liquidation, or at any time after the time of  
2 petitioning, the commissioner, after making  
3 appropriate findings of an establishment's insolvency,  
4 may petition the court for a declaration of  
5 insolvency. After providing notice and hearing as it  
6 deems proper, the court may make the declaration.

7 d. An order issued under this section shall  
8 require accounting to the court by the liquidator.  
9 Accountings, at a minimum, must include all funds  
10 received or disbursed by the liquidator during the  
11 current period. An accounting shall be filed within  
12 one year of the liquidation order and at such other  
13 times as the court may require.

14 e. Within five days after the initiation of an  
15 appeal of an order of liquidation, which order has not  
16 been stayed, the commissioner shall present for the  
17 court's approval a plan for the continued performance  
18 of the establishment's obligations during the pendency  
19 of an appeal. The plan shall provide for the  
20 continued performance of purchase agreements in the  
21 normal course of events, notwithstanding the grounds  
22 alleged in support of the order of liquidation  
23 including the ground of insolvency. If the defendant  
24 establishment's financial condition, in the judgment  
25 of the commissioner, will not support the full  
26 performance of all obligations during the appeal  
27 pendency period, the plan may prefer the claims of  
28 certain purchasers and claimants over creditors and  
29 interested parties as well as other purchasers and  
30 claimants, as the commissioner finds to be fair and  
31 equitable considering the relative circumstances of  
32 such purchasers and claimants. The court shall  
33 examine the plan submitted by the commissioner and if  
34 it finds the plan to be in the best interests of the  
35 parties, the court shall approve the plan. An action  
36 shall not lie against the commissioner or any of the  
37 commissioner's deputies, agents, clerks, assistants,  
38 or attorneys by any party based on preference in an  
39 appeal pendency plan approved by the court.

40 3. POWERS OF LIQUIDATOR.

41 a. The liquidator may do any of the following:

42 (1) Appoint a special deputy to act for the  
43 liquidator under this chapter, and determine the  
44 special deputy's reasonable compensation. The special  
45 deputy shall have all the powers of the liquidator  
46 granted by this section. The special deputy shall  
47 serve at the pleasure of the liquidator.

48 (2) Hire employees and agents, legal counsel,  
49 accountants, appraisers, consultants, and other  
50 personnel as the commissioner may deem necessary to

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11 establishment does not contain sufficient cash or  
12 liquid assets to defray the costs incurred, the  
13 commissioner may advance the costs so incurred out of  
14 the insurance division regulatory fund. Amounts so  
15 advanced for expenses of administration shall be  
16 repaid to the insurance division regulatory fund for  
17 the use of the division out of the first available  
18 moneys of the establishment.

19 (5) Hold hearings, subpoena witnesses, and compel  
20 their attendance, administer oaths, examine a person  
21 under oath, and compel a person to subscribe to the  
22 person's testimony after it has been correctly reduced  
23 to writing, and in connection to the proceedings  
24 require the production of books, accounts, papers,  
25 correspondence, memoranda, purchase agreements, files,  
26 or other documents or records which the liquidator  
27 deems relevant to the inquiry.

28 (6) Collect debts and moneys due and claims  
29 belonging to the establishment, wherever located.  
30 Pursuant to this subparagraph, the liquidator may do  
31 any of the following:

32 (a) Institute timely action in other jurisdictions  
33 to forestall garnishment and attachment proceedings  
34 against debts.

35 (b) Perform acts as are necessary or expedient to  
36 collect, conserve, or protect its assets or property,  
37 including the power to sell, compound, compromise, or  
38 assign debts for purposes of collection upon terms and  
39 conditions as the liquidator deems best.

40 (c) Pursue any creditor's remedies available to  
41 enforce claims.

42 (7) Conduct public and private sales of the  
43 property of the establishment.

44 (8) Use assets of the establishment under a  
45 liquidation order to transfer obligations of purchase  
46 agreements to a solvent establishment, if the transfer  
47 can be accomplished without prejudice to the  
48 applicable priorities under subsection 18.

49 (9) Acquire, hypothecate, encumber, lease,  
50 improve, sell, transfer, abandon, or otherwise dispose

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1 of or deal with property of the establishment at its  
2 market value or upon terms and conditions as are fair  
3 and reasonable. The liquidator shall also have power  
4 to execute, acknowledge, and deliver deeds,  
5 assignments, releases, and other instruments necessary  
6 to effectuate a sale of property or other transaction  
7 in connection with the liquidation.

8 (10) Borrow money on the security of the  
9 establishment's assets or without security and execute  
10 and deliver documents necessary to that transaction  
11 for the purpose of facilitating the liquidation.

12 Money borrowed pursuant to this subparagraph shall be  
13 repaid as an administrative expense and shall have  
14 priority over any other class 1 claims under the  
15 priority of distribution established in subsection 18.

16 (11) Enter into contracts as necessary to carry  
17 out the order to liquidate and affirm or disavow  
18 contracts to which the establishment is a party.

19 (12) Continue to prosecute and to institute in the  
20 name of the establishment or in the liquidator's own  
21 name any and all suits and other legal proceedings, in  
22 this state or elsewhere, and to abandon the  
23 prosecution of claims the liquidator deems  
24 unprofitable to pursue further.

25 (13) Prosecute an action on behalf of the  
26 creditors, purchasers, or owners against an officer of  
27 the establishment or any other person.

28 (14) Remove records and property of the  
29 establishment to the offices of the commissioner or to  
30 other places as may be convenient for the purposes of  
31 efficient and orderly execution of the liquidation.

32 (15) Deposit in one or more banks in this state  
33 sums as are required for meeting current  
34 administration expenses and distributions.

35 (16) Unless the court orders otherwise, invest  
36 funds not currently needed.

37 (17) File necessary documents for recording in the  
38 office of the recorder of deeds or record office in  
39 this state or elsewhere where property of the  
40 establishment is located.

41 (18) Assert defenses available to the  
42 establishment against third persons including statutes  
43 of limitations, statutes of fraud, and the defense of  
44 usury. A waiver of a defense by the establishment  
45 after a petition in liquidation has been filed shall  
46 not bind the liquidator.

47 (19) Exercise and enforce the rights, remedies,  
48 and powers of a creditor, purchaser, or owner,  
49 including the power to avoid transfer or lien that may  
50 be given by the general law and that is not included

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1 within subsections 7 through 9.

2 (20) Intervene in a proceeding wherever instituted  
3 that might lead to the appointment of a receiver or  
4 trustee, and act as the receiver or trustee whenever  
5 the appointment is offered.

6 (21) Exercise powers now held or later conferred  
7 upon receivers by the laws of this state which are not  
8 inconsistent with this chapter.

9 b. This subsection does not limit the liquidator  
10 or exclude the liquidator from exercising a power not  
11 listed in paragraph "a" that may be necessary or  
12 appropriate to accomplish the purposes of this  
13 chapter.

14 4. NOTICE TO CREDITORS AND OTHERS.

15 a. Unless the court otherwise directs, the  
16 liquidator shall give notice of the liquidation order  
17 as soon as possible by doing both of the following:

18 (1) Mailing notice, by first-class mail, to all  
19 persons known or reasonably expected to have claims  
20 against the establishment, including purchasers, at  
21 their last known address as indicated by the records  
22 of the establishment.

23 (2) Publication of notice in a newspaper of  
24 general circulation in the county in which the  
25 establishment has its principal place of business and  
26 in other locations as the liquidator deems  
27 appropriate.

28 b. Notice to potential claimants under paragraph  
29 "a" shall require claimants to file with the  
30 liquidator their claims together with proper proofs of  
31 the claim under subsection 13 on or before a date the  
32 liquidator shall specify in the notice. Claimants  
33 shall keep the liquidator informed of their changes of  
34 address, if any.

35 c. If notice is given pursuant to this subsection,  
36 the distribution of assets of the establishment under  
37 this chapter shall be conclusive with respect to  
38 claimants, whether or not a claimant actually received  
39 notice.

40 5. ACTIONS BY AND AGAINST LIQUIDATOR.

41 a. After issuance of an order appointing a  
42 liquidator of an establishment, an action at law or  
43 equity shall not be brought against the establishment  
44 within this state or elsewhere, and existing actions  
45 shall not be maintained or further presented after  
46 issuance of the order. Whenever in the liquidator's  
47 judgment, protection of the estate of the  
48 establishment necessitates intervention in an action  
49 against the establishment that is pending outside this  
50 state, the liquidator may intervene in the action.

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1 The liquidator may defend, at the expense of the  
2 estate of the establishment, an action in which the  
3 liquidator intervenes under this section.

4 b. Within two years or such additional time as  
5 applicable law may permit, the liquidator, after the  
6 issuance of an order for liquidation, may institute an  
7 action or proceeding on behalf of the estate of the  
8 establishment upon any cause of action against which  
9 the period of limitation fixed by applicable law has  
10 not expired at the time of the filing of the petition  
11 upon which the order is entered. If a period of  
12 limitation is fixed by agreement for instituting a  
13 suit or proceeding upon a claim, or for filing a  
14 claim, proof of claim, proof of loss, demand, notice,  
15 or the like, or if in a proceeding, judicial or  
16 otherwise, a period of limitation is fixed in the  
17 proceeding or pursuant to applicable law for taking an  
18 action, filing a claim or pleading, or doing an act,  
19 and if the period has not expired at the date of the  
20 filing of the petition, the liquidator may, for the  
21 benefit of the estate, take any action or do any act,  
22 required of or permitted to the establishment, within  
23 a period of one hundred eighty days subsequent to the  
24 entry of an order for liquidation, or within a further  
25 period as is shown to the satisfaction of the court  
26 not to be unfairly prejudicial to the other party.

27 c. A statute of limitations or defense of laches  
28 shall not run with respect to an action against an  
29 establishment between the filing of a petition for  
30 liquidation against the establishment and the denial  
31 of the petition. An action against the establishment  
32 that might have been commenced when the petition was  
33 filed may be commenced for at least sixty days after  
34 the petition is denied.

35 6. COLLECTION AND LIST OF ASSETS.

36 a. As soon as practicable after the liquidation  
37 order but not later than one hundred twenty days after  
38 such order, the liquidator shall prepare in duplicate  
39 a list of the establishment's assets. The list shall  
40 be amended or supplemented as the liquidator may  
41 determine. One copy shall be filed in the office of  
42 the clerk of court, and one copy shall be retained for  
43 the liquidator's files. Amendments and supplements  
44 shall be similarly filed.

45 b. The liquidator shall reduce the assets to a  
46 degree of liquidity that is consistent with the  
47 effective execution of the liquidation.

48 c. A submission of a proposal to the court for  
49 distribution of assets in accordance with subsection  
50 11 fulfills the requirements of paragraph "a".

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5 a. FRAUDULENT TRANSFERS PRIOR TO PETITION.  
6 A transfer made and an obligation incurred by  
7 of an establishment within one year prior to the filing  
8 chapter is fraudulent as to then existing under this  
9 creditors if made or incurred without fair  
10 consideration, or with actual intent to hinder, delay,  
11 or defraud either existing or future creditors. A  
12 fraudulent transfer made or an obligation incurred by  
13 a person who in good faith is a liquidator, except as to  
14 an establishment ordered to be liquidated under this  
15 chapter may be avoided by the purchaser, lienor, or  
16 obligee for a present fair equivalent value. A  
17 purchaser, lienor, or obligee, who in good faith has  
18 given a consideration less than present fair  
19 equivalent value for such transfer, lien, or  
20 obligation, may retain the property, lien, or  
21 obligation as security for repayment. The court may,  
22 on due notice, order any such transfer, lien, or  
23 obligation to be preserved for the benefit of the  
24 lienor, and in that event, the receiver shall succeed  
25 to and may enforce the rights of the purchaser,  
26 lienor, or obligee.

27 b. (1) A transfer of property other than real  
28 property is made when it becomes perfected so that a  
29 subsequent lien obtainable by legal or equitable  
30 proceedings on a simple contract could not become  
31 superior to the rights of the transferee under  
32 subsection 9, paragraph "c".  
33 (2) A transfer of real property is made when it  
34 becomes perfected so that a subsequent bona fide  
35 purchaser from the establishment could not obtain  
36 rights superior to the rights of the transferee.  
37 (3) A transfer which creates an equitable  
38 legal lien could be perfected prior to the  
39 filing of a petition for liquidation if made  
40 immediately before the filing of the petition.  
41 (4) A transfer not perfected prior to the  
42 filing of a petition for liquidation is deemed to  
43 be perfected if there are available means by  
44 which the transfer could be perfected.

45 (5) This subsection applies whether  
46 persons who might have become bona  
47 fraudulent transferees after the filing of the  
48 petition for liquidation are or were creditors  
49 who might have become bona fide purchasers  
50 from the establishment if the transfer had been  
51 made to a person acting in good faith and for  
52 value.

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1 is valid to the extent of the present consideration  
2 actually paid for which amount the transferee shall  
3 have a lien on the property transferred. The  
4 commencement of a proceeding in liquidation is  
5 constructive notice upon the recording of a copy of  
6 the petition for or order of liquidation with the  
7 recording or deeds in the county where any real  
8 property in question is located. The exercise by a  
9 court of the United States or a state or jurisdiction  
10 to authorize a judicial sale of real property of the  
11 establishment within a county in a state shall not be  
12 impaired by the pendency of a proceeding unless the  
13 copy is recorded in the county prior to the  
14 consummation of the judicial sale.

15 b. After a petition for liquidation has been filed  
16 and before either the liquidator takes possession of  
17 the property of the establishment or an order of  
18 liquidation is granted:

19 (1) A transfer of the property, other than real  
20 property, of the establishment made to a person acting  
21 in good faith is valid against the liquidator if made  
22 for a present fair equivalent value. If the transfer  
23 was not made for a present fair equivalent value, then  
24 the transfer is valid to the extent of the present  
25 consideration actually paid for which amount the  
26 transferee shall have a lien on the property  
27 transferred.

28 (2) If acting in good faith, a person indebted to  
29 the establishment or holding property of the  
30 establishment may pay the debt or deliver the  
31 property, or any part of the property, to the  
32 establishment or upon the establishment's order as if  
33 the petition were not pending.

34 (3) A person having actual knowledge of the  
35 pending liquidation is not acting in good faith.

36 (4) A person asserting the validity of a transfer  
37 under this subsection has the burden of proof. Except  
38 as provided in this subsection, a transfer by or on  
39 behalf of the establishment after the date of the  
40 petition for liquidation by any person other than the  
41 liquidator is not valid against the liquidator.

42 c. A person receiving any property from the  
43 establishment or any benefit of the property of the  
44 establishment which is a fraudulent transfer under  
45 paragraph "a" is personally liable for the property or  
46 benefit and shall account to the liquidator.

47 d. This chapter does not impair the negotiability  
48 of currency or negotiable instruments.

49 9. VOIDABLE PREFERENCES AND LIENS.

50 a. (1) A preference is a transfer of the property

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1 of an establishment to or for  
2 creditor for an antecedent debt  
3 the establishment within one year  
4 a successful petition for liquida  
5 chapter, the effect of which trans  
6 the creditor to obtain a greater pe  
7 debt than another creditor is e  
8 receive. If a liquidation order is e  
9 establishment is already subject to a  
10 then the transfers are preferences if m  
11 within one year before the filing of the  
12 petition for the receivership, or within  
13 before the filing of the successful petiti  
14 liquidation, whichever time is shorter.  
15 if any of the following exist.  
16 (a) The establishment was insolvent at the  
17 the transfer.  
18 (b) The transfer was made within four months  
19 before the filing of the petition.  
20 (c) At the time of the transfer, the  
21 creditor receiving it or to be benefited by the  
22 transfer or the creditor's agent acting with referen  
23 to the transfer had reasonable cause to believe that  
24 the establishment was insolvent or was about to become  
25 insolvent.  
26 (d) The creditor receiving the transfer was an  
27 officer, or an employee, attorney, or other person who  
28 was in fact in a position of comparable influence in  
29 the establishment to an officer, owner, or  
30 person held the position of an officer, association, or  
31 other person, firm, corporation, association, or  
32 aggregation of persons with whom the establishment did  
33 not deal at arm's length.  
34 (3) Where a bona fide purchaser or receiver may  
35 liquidator may recover the property.  
36 has been converted, the liquidator may recover its  
37 value from a person who has received or converted the  
38 property. However, if a bona fide purchaser or lienor  
39 the purchaser or lienor shall have a lien upon the  
40 property to the extent of the consideration on due notice  
41 given. Where a preference by way of lien or security  
42 interest is voidable, the court may order the liquidator  
43 order the lien or security interest to be preserved  
44 for the benefit of the estate, in which event the lien  
45 or title shall pass to the liquidator.  
46 b. (1) A transfer of property other than the  
47 property is made when it becomes perfected  
48 subsequent lien obtainable by legal or equ  
49  
50

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1 proceedings on a simple contract could not become  
2 superior to the rights of the transferee.

3 (2) A transfer of real property is made when it  
4 becomes perfected so that a subsequent bona fide  
5 purchaser from the establishment could not obtain  
6 rights superior to the rights of the transferee.

7 (3) A transfer which creates an equitable lien is  
8 not perfected if there are available means by which a  
9 legal lien could be created.

10 (4) A transfer not perfected prior to the filing  
11 of a petition for liquidation is deemed to be made  
12 immediately before the filing of the successful  
13 petition.

14 (5) This subsection applies whether or not there  
15 are or were creditors who might have obtained liens or  
16 persons who might have become bona fide purchasers.

17 c. (1) A lien obtainable by legal or equitable  
18 proceedings upon a simple contract is one arising in  
19 the ordinary course of the proceedings upon the entry  
20 or docketing of a judgment or decree, or upon  
21 attachment, garnishment, execution, or like process,

22 whether before, upon, or after judgment or decree and  
23 whether before or upon levy. It does not include  
24 liens which under applicable law are given a special  
25 priority over other liens which are prior in time.

26 (2) A lien obtainable by legal or equitable  
27 proceedings may become superior to the rights of a  
28 transferee, or a purchaser may obtain rights superior  
29 to the rights of a transferee within the meaning of  
30 paragraph "b", if such consequences follow only from  
31 the lien or purchase itself, or from the lien or  
32 purchase followed by a step wholly within the control  
33 of the respective lienholder or purchaser, with or  
34 without the aid of ministerial action by public  
35 officials. However, a lien could not become superior  
36 and a purchase could not create superior rights for  
37 the purpose of paragraph "b" through an act subsequent  
38 to the obtaining of a lien or subsequent to a purchase  
39 which requires the agreement or concurrence of any  
40 third party or which requires further judicial action  
41 or ruling.

42 d. A transfer of property for or on account of a  
43 new and contemporaneous consideration, which is under  
44 paragraph "b" made or suffered after the transfer  
45 because of delay in perfecting it, does not become a  
46 transfer for or on account of an antecedent debt if  
47 any acts required by the applicable law to be  
48 performed in order to perfect the transfer as against  
49 liens or a bona fide purchaser's rights are performed  
50 within twenty-one days or any period expressly allowed

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1 by the law, whichever is less. A transfer to secure a  
2 future loan, if a loan is actually made, or a transfer  
3 which becomes security for a future loan, shall have  
4 the same effect as a transfer for or on account of a  
5 new and contemporaneous consideration.

6 e. If a lien which is voidable under paragraph  
7 "a", subparagraph (2), has been dissolved by the  
8 furnishing of a bond or other obligation, the surety  
9 of which has been indemnified directly or indirectly  
10 by the transfer or the creation of a lien upon  
11 property of an establishment before the filing of a  
12 petition under this chapter which results in the  
13 liquidation order, the indemnifying transfer or lien  
14 is also voidable.

15 f. The property affected by a lien voidable under  
16 paragraphs "a" and "e" is discharged from the lien.  
17 The property and any of the indemnifying property  
18 transferred to or for the benefit of a surety shall  
19 pass to the liquidator. However, the court may on due  
20 notice order a lien to be preserved for the benefit of  
21 the estate and the court may direct that the  
22 conveyance be executed to evidence the title of the  
23 liquidator.

24 g. The court shall have summary jurisdiction of a  
25 proceeding by a liquidator to hear and determine the  
26 rights of the parties under this section. Reasonable  
27 notice of hearing in the proceeding shall be given to  
28 all parties in interest, including the obligee of a  
29 releasing bond or other like obligation. Where an  
30 order is entered for the recovery of indemnifying  
31 property in kind or for the avoidance of an  
32 indemnifying lien, upon application of any party in  
33 interest, the court shall in the same proceeding  
34 ascertain the value of the property or lien. If the  
35 value is less than the amount for which the property  
36 is indemnified or less than the amount of the lien,  
37 the transferee or lienholder may elect to retain the  
38 property or lien upon payment of its value, as  
39 ascertained by the court, to the liquidator within the  
40 time as fixed by the court.

41 h. The liability of a surety under a releasing  
42 bond or other like obligation is discharged to the  
43 extent of the value of the indemnifying property  
44 recovered or the indemnifying lien nullified and  
45 avoided by the liquidator. Where the property is  
46 retained under paragraph "g", the liability of the  
47 surety is discharged to the extent of the amount paid  
48 to the liquidator.

49 i. If a creditor has been preferred for property  
50 which becomes a part of the establishment's estate,

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1 and afterward in good faith gives the establishment  
2 further credit without security of any kind, the  
3 amount of the new credit remaining unpaid at the time  
4 of the petition may be set off against the preference  
5 which would otherwise be recoverable from the  
6 creditor.

7 j. If within four months before the filing of a  
8 successful petition for liquidation under this  
9 chapter, or at any time in contemplation of a  
10 proceeding to liquidate, an establishment, directly or  
11 indirectly, pays money or transfers property to an  
12 attorney for services rendered or to be rendered, the  
13 transaction may be examined by the court on its own  
14 motion or shall be examined by the court on petition  
15 of the liquidator. The payment or transfer shall be  
16 held valid only to the extent of a reasonable amount  
17 to be determined by the court. The excess may be  
18 recovered by the liquidator for the benefit of the  
19 estate. However, where the attorney is in a position  
20 of influence in the establishment or an affiliate,  
21 payment of any money or the transfer of any property  
22 to the attorney for services rendered or to be  
23 rendered shall be governed by the provisions of  
24 paragraph "a", subparagraph (2), subparagraph  
25 subdivision (d).

26 k. (1) An officer, manager, employee,  
27 shareholder, subscriber, attorney, or other person  
28 acting on behalf of the establishment who knowingly  
29 participates in giving any preference when the person  
30 has reasonable cause to believe the establishment is  
31 or is about to become insolvent at the time of the  
32 preference is personally liable to the liquidator for  
33 the amount of the preference. There is an inference  
34 that reasonable cause exists if the transfer was made  
35 within four months before the date of filing of this  
36 successful petition for liquidation.

37 (2) A person receiving property from the  
38 establishment or the benefit of the property of the  
39 establishment as a preference voidable under paragraph  
40 "a" is personally liable for the property and shall  
41 account to the liquidator.

42 (3) This subsection shall not prejudice any other  
43 claim by the liquidator against any person.

44 10. CLAIMS OF HOLDER OF VOID OR VOIDABLE RIGHTS.

45 a. A claim of a creditor who has received or  
46 acquired a preference, lien, conveyance, transfer,  
47 assignment, or encumbrance, voidable under this  
48 chapter, shall not be allowed unless the creditor  
49 surrenders the preference, lien, conveyance, transfer,  
50 assignment, or encumbrance. If the avoidance is

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1 effected by a proceeding in which a final judgment has  
2 been entered, the claim shall not be allowed unless  
3 the money is paid or the property is delivered to the  
4 liquidator within thirty days from the date of the  
5 entering of the final judgment. However, the court  
6 having jurisdiction over the liquidation may allow  
7 further time if there is an appeal or other  
8 continuation of the proceeding.

9 b. A claim allowable under paragraph "a" by reason  
10 of a voluntary or involuntary avoidance, preference,  
11 lien, conveyance, transfer, assignment, or encumbrance  
12 may be filed as an excused late filing under  
13 subsection 12, if filed within thirty days from the  
14 date of the avoidance or within the further time  
15 allowed by the court under paragraph "a".

16 11. LIQUIDATOR'S PROPOSAL TO DISTRIBUTE ASSETS.

17 a. From time to time as assets become available,  
18 the liquidator shall make application to the court for  
19 approval of a proposal to disburse assets out of  
20 marshaled assets.

21 b. The proposal shall at least include provisions  
22 for all of the following:

23 (1) Reserving amounts for the payment of all the  
24 following:

25 (a) Expenses of administration.

26 (b) To the extent of the value of the security  
27 held, the payment of claims of secured creditors.

28 (c) Claims falling within the priorities  
29 established in subsection 18, paragraphs "a" and "b".

30 (2) Disbursement of the assets marshaled to date  
31 and subsequent disbursement of assets as they become  
32 available.

33 c. Action on the application may be taken by the  
34 court provided that the liquidator's proposal complies  
35 with paragraph "b".

36 12. FILING OF CLAIMS.

37 a. Proof of all claims shall be filed with the  
38 liquidator in the form required by subsection 13 on or  
39 before the last day for filing specified in the notice  
40 required under subsection 4.

41 b. The liquidator may permit a claimant making a  
42 late filing to share in distributions, whether past or  
43 future, as if the claimant were not late, to the  
44 extent that the payment will not prejudice the orderly  
45 administration of the liquidation under any of the  
46 following circumstances:

47 (1) The existence of the claim was not known to  
48 the claimant and the claimant filed the claim as  
49 promptly as reasonably possible after learning of it.

50 (2) A transfer to a creditor was avoided under

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1 subsections 7 through 9, or was voluntarily  
2 surrendered under subsection 10, and the filing  
3 satisfies the conditions of subsection 10.

4 (3) The valuation under subsection 17 of security  
5 held by a secured creditor shows a deficiency, which  
6 is filed within thirty days after the valuation.

7 c. The liquidator may consider any claim filed  
8 late and permit the claimant to receive distributions  
9 which are subsequently declared on any claims of the  
10 same or lower priority if the payment does not  
11 prejudice the orderly administration of the  
12 liquidation. The late-filing claimant shall receive  
13 at each distribution the same percentage of the amount  
14 allowed on the claim as is then being paid to  
15 claimants of any lower priority. This shall continue  
16 until the claim has been paid in full.

17 13. PROOF OF CLAIM.

18 a. Proof of claim shall consist of a statement  
19 signed by the claimant that includes all of the  
20 following that are applicable:

21 (1) The particulars of the claim, including the  
22 consideration given for it.

23 (2) The identity and amount of the security on the  
24 claim.

25 (3) The payments, if any, made on the debt.

26 (4) A statement that the sum claimed is justly  
27 owing and that there is no setoff, counterclaim, or  
28 defense to the claim.

29 (5) Any right of priority of payment or other  
30 specific right asserted by the claimant.

31 (6) A copy of the written instrument which is the  
32 foundation of the claim.

33 (7) The name and address of the claimant and the  
34 attorney who represents the claimant, if any.

35 b. A claim need not be considered or allowed if it  
36 does not contain all the information identified in  
37 paragraph "a" which is applicable. The liquidator may  
38 require that a prescribed form be used and may require  
39 that other information and documents be included.

40 c. At any time the liquidator may request the  
41 claimant to present information or evidence  
42 supplementary to that required under paragraph "a",  
43 and may take testimony under oath, require production  
44 of affidavits or depositions, or otherwise obtain  
45 additional information or evidence.

46 d. A judgment or order against an establishment  
47 entered after the date of filing of a successful  
48 petition for liquidation, or a judgment or order  
49 against the establishment entered at any time by  
50 default or by collusion need not be considered as

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1 evidence of liability or of the amount of damages. A  
2 judgment or order against an establishment before the  
3 filing of the petition need not be considered as  
4 evidence of liability or of the amount of damages.

5 14. SPECIAL CLAIMS.

6 a. A claim may be allowed even if contingent, if  
7 it is filed pursuant to subsection 12. The claim may  
8 be allowed and the claimant may participate in all  
9 distributions declared after it is filed to the extent  
10 that it does not prejudice the orderly administration  
11 of the liquidation.

12 b. Claims that are due except for the passage of  
13 time shall be treated as absolute claims are treated.  
14 However, the claims may be discounted at the legal  
15 rate of interest.

16 c. Claims made under employment contracts by  
17 directors, principal officers, or persons in fact  
18 performing similar functions or having similar powers  
19 are limited to payment for services rendered prior to  
20 the issuance of an order of liquidation under  
21 subsection 2.

22 15. DISPUTED CLAIMS.

23 a. If a claim is denied in whole or in part by the  
24 liquidator, written notice of the determination shall  
25 be given to the claimant or the claimant's attorney by  
26 first-class mail at the address shown in the proof of  
27 claim. Within sixty days from the mailing of the  
28 notice, the claimant may file objections with the  
29 liquidator. Unless a filing is made, the claimant  
30 shall not further object to the determination.

31 b. If objections are filed with the liquidator and  
32 the liquidator does not alter the denial of the claim  
33 as a result of the objections, the liquidator shall  
34 ask the court for a hearing as soon as practicable and  
35 give notice of the hearing by first-class mail to the  
36 claimant or the claimant's attorney and to any other  
37 persons directly affected. The notice shall be given  
38 not less than ten nor more than thirty days before the  
39 date of hearing. The matter shall be heard by the  
40 court or by a court-appointed referee. The referee  
41 shall submit findings of fact along with a  
42 recommendation.

43 16. CLAIMS OF OTHER PERSON. If a creditor, whose  
44 claim against an establishment is secured in whole or  
45 in part by the undertaking of another person, fails to  
46 prove and file that claim, then the other person may  
47 do so in the creditor's name and shall be subrogated  
48 to the rights of the creditor, whether the claim has  
49 been filed by the creditor or by the other person in  
50 the creditor's name to the extent that the other

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1 person discharges the undertaking. However, in the  
2 absence of an agreement with the creditor to the  
3 contrary, the other person is not entitled to any  
4 distribution until the amount paid to the creditor on  
5 the undertaking plus the distributions paid on the  
6 claim from the establishment's estate to the creditor  
7 equal the amount of the entire claim of the creditor.  
8 An excess received by the creditor shall be held by  
9 the creditor in trust for the other person.

10 17. SECURED CREDITOR'S CLAIMS.

11 a. The value of the security held by a secured  
12 creditor shall be determined in one of the following  
13 ways, as the court may direct:

14 (1) By converting the security into money  
15 according to the terms of the agreement pursuant to  
16 which the security was delivered to the creditors.

17 (2) By agreement, arbitration, compromise, or  
18 litigation between the creditor and the liquidator.

19 b. The determination shall be under the  
20 supervision and control of the court with due regard  
21 for the recommendation of the liquidator. The amount  
22 so determined shall be credited upon the secured  
23 claim. A deficiency shall be treated as an unsecured  
24 claim. If the claimant surrenders the security to the  
25 liquidator, the entire claim shall be allowed as if  
26 unsecured.

27 18. PRIORITY OF DISTRIBUTION. The priority of  
28 distribution of claims from the establishment's estate  
29 shall be in accordance with the order in which each  
30 class of claims is set forth. Claims in each class  
31 shall be paid in full or adequate funds retained for  
32 the payment before the members of the next class  
33 receive any payment. Subclasses shall not be  
34 established within a class. The order of distribution  
35 of claims is as follows:

36 a. CLASS 1. The costs and expenses of  
37 administration, including but not limited to the  
38 following:

39 (1) Actual and necessary costs of preserving or  
40 recovering the assets of the establishment.

41 (2) Compensation for all authorized services  
42 rendered in the liquidation.

43 (3) Necessary filing fees.

44 (4) Fees and mileage payable to witnesses.

45 (5) Authorized reasonable attorney fees and other  
46 professional services rendered in the liquidation.

47 b. CLASS 2. Reasonable compensation to employees  
48 for services performed to the extent that they do not  
49 exceed two months of monetary compensation and  
50 represent payment for services performed within one

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1 year before the filing of the petition for  
2 liquidation. Officers and directors are not entitled  
3 to the benefit of this priority. The priority is in  
4 lieu of other similar priority which may be authorized  
5 by law as to wages or compensation of employees.

6 c. CLASS 3. Claims under purchase agreements.

7 d. CLASS 4. Claims of general creditors.

8 e. CLASS 5. Claims of the federal or of any state  
9 or local government. Claims, including those of a  
10 governmental body for a penalty or forfeiture, are  
11 allowed in this class only to the extent of the  
12 pecuniary loss sustained from the act, transaction, or  
13 proceeding out of which the penalty or forfeiture  
14 arose, with reasonable and actual costs incurred. The  
15 remainder of such claims shall be postponed to the  
16 class of claims under paragraph "g".

17 f. CLASS 6. Claims filed late or any other claims  
18 other than claims under paragraph "g".

19 g. CLASS 7. The claims of shareholders or other  
20 owners.

21 19. LIQUIDATOR'S RECOMMENDATIONS TO THE COURT.

22 a. The liquidator shall review claims duly filed  
23 in the liquidation and shall make further  
24 investigation as necessary. The liquidator may  
25 compound, compromise, or in any other manner negotiate  
26 the amount for which claims will be recommended to the  
27 court except where the liquidator is required by law  
28 to accept claims as settled by a person or  
29 organization. Unresolved disputes shall be determined  
30 under subsection 15. As soon as practicable, the  
31 liquidator shall present to the court a report of the  
32 claims against the establishment with the liquidator's  
33 recommendations. The report shall include the name  
34 and address of each claimant and the amount of the  
35 claim finally recommended.

36 b. The court may approve, disapprove, or modify  
37 the report on claims by the liquidator. Reports not  
38 modified by the court within sixty days following  
39 submission by the liquidator shall be treated by the  
40 liquidator as allowed claims, subject to later  
41 modification or to rulings made by the court pursuant  
42 to subsection 15. A claim under a policy of insurance  
43 shall not be allowed for an amount in excess of the  
44 applicable policy limits.

45 20. DISTRIBUTION OF ASSETS. Under the direction  
46 of the court, the liquidator shall pay distributions  
47 in a manner that will ensure the proper recognition of  
48 priorities and a reasonable balance between the  
49 expeditious completion of the liquidation and the  
50 protection of unliquidated and undetermined claims.

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1 including third-party claims. Distribution of assets  
2 in kind may be made at valuations set by agreement  
3 between the liquidator and the creditor and approved  
4 by the court.

5 21. UNCLAIMED AND WITHHELD FUNDS.

6 a. Unclaimed funds subject to distribution  
7 remaining in the liquidator's hands when the  
8 liquidator is ready to apply to the court for  
9 discharge, including the amount distributable to a  
10 creditor, owner, or other person who is unknown or  
11 cannot be found, shall be deposited with the treasurer  
12 of the state, and shall be paid without interest,  
13 except as provided in subsection 18, to the person  
14 entitled or to the person's legal representative upon  
15 proof satisfactory to the treasurer of state of the  
16 right to the funds. Any amount on deposit not claimed  
17 within six years from the discharge of the liquidator  
18 is deemed to have been abandoned and shall become the  
19 property of the state without formal escheat  
20 proceedings and be transferred to the insurance  
21 division regulatory fund.

22 b. Funds withheld under subsection 14 and not  
23 distributed shall upon discharge of the liquidator be  
24 deposited with the treasurer of state and paid  
25 pursuant to subsection 18. Sums remaining which under  
26 subsection 18 would revert to the undistributed assets  
27 of the establishment shall be transferred to the  
28 insurance division regulatory fund and become the  
29 property of the state as provided under paragraph "a",  
30 unless the commissioner in the commissioner's  
31 discretion petitions the court to reopen the  
32 liquidation pursuant to subsection 23.

33 c. Notwithstanding any other provision of this  
34 chapter, funds as identified in paragraph "a", with  
35 the approval of the court, shall be made available to  
36 the commissioner for use in the detection and  
37 prevention of future insolvencies. The commissioner  
38 shall hold these funds in the insurance division  
39 regulatory fund and shall pay without interest, except  
40 as provided in subsection 18, to the person entitled  
41 to the funds or to the person's legal representative  
42 upon proof satisfactory to the commissioner of the

**H-1448**

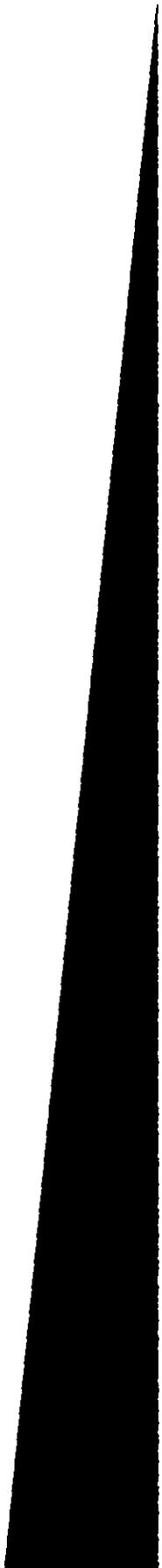
Page 59

1 apply to the court for discharge. The court may grant  
2 the discharge and make any other orders, including an  
3 order to transfer remaining funds that are  
4 uneconomical to distribute, as appropriate.

5 b. Any other person may apply to the court at any  
6 time for an order under paragraph "a". If the  
7 application is denied, the applicant shall pay the  
8 costs and expenses of the liquidator in resisting the  
9 application, including a reasonable attorney fee.

10 23. REOPENING LIQUIDATION. At any time after the  
11 liquidation proceeding has been terminated and the  
12 liquidator discharged, the commissioner or other  
13 interested party may petition the court to reopen the  
14 proceedings for good cause including the discovery of  
15 additional assets. The court shall order the  
16 proceeding reopened if it is satisfied that there is  
17 justification for the reopening.

18 24. DISPOSITION OF RECORDS DURING AND AFTER  
19 TERMINATION OF LIQUIDATION. If it appears to the  
20 commissioner that the records of an establishment in  
21 the process of liquidation or completely liquidated



## SENATE FILE 473

H-1568

1 Amend the amendment, H-1448, to Senate File 473, as  
2 passed by the Senate, as follows:

3 1. Page 1, by inserting after line 4, the  
4 following:

5 ""Sec. \_\_\_\_ . Section 507B.4, subsection 10B,  
6 unnumbered paragraph 1, as enacted by 2001 Iowa Acts,  
7 Senate File 500, section 7, is amended to read as  
8 follows:

9 Failure of an insurer to pay interest at the rate  
10 of ten percent per annum on all health insurance  
11 claims that the insurer fails to timely accept and pay  
12 pursuant to section 507B.4A, subsection ~~1~~ 2, paragraph  
13 ~~"e"~~ "d". Interest shall accrue commencing on the  
14 thirty-first day after receipt of all properly  
15 completed proof of loss forms.

16 Sec. \_\_\_\_ . Section 518.16, Code 2001, is amended to  
17 read as follows:

18 518.16 QUALIFICATION OF AGENTS.

19 A person shall not solicit any application for  
20 insurance for an association in this state without  
21 having procured from the commissioner of insurance a  
22 license authorizing the person to act as an ~~agent~~  
23 insurance producer pursuant to chapter ~~522~~ 522B."

24 2. Page 59, by inserting after line 35, the  
25 following:

26 "Sec. \_\_\_\_ . Section 537A.10, subsection 1,  
27 paragraph c, subparagraph (3), Code 2001, is amended  
28 to read as follows:

29 (3) "Franchise" also does not include any contract  
30 under which a petroleum retailer or petroleum  
31 distributor is authorized or permitted to occupy  
32 leased marketing premises, which premises are to be  
33 employed in connection with the sale, consignment, or  
34 distribution of motor fuel under a trademark which is  
35 owned or controlled by a refiner which is regulated by  
36 the federal Petroleum Marketing Practices Act, 15  
37 U.S.C. § 2801 et seq. The term "refiner" means any  
38 person engaged in the refining of crude oil to produce  
39 motor fuel, and includes any affiliate of such person.  
40 "Franchise" also does not include a contract entered  
41 into by any person regulated under chapter 123, 322,  
42 322A, 322B, 322C, 322D, 322F, ~~522~~ 522B, or 543B, or a  
43 contract establishing a franchise relationship with  
44 respect to the sale of construction equipment, lawn or  
45 garden equipment, or real estate."

46 3. Page 59, by striking lines 38 through 41 and  
47 inserting the following:

48 " \_\_\_\_ . Title page, line 1, by inserting after the  
49 word "Act" the following: "concerning regulated  
50 industries under the jurisdiction of the commissioner

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1 of insurance relating to various issues relating to  
2 insurance, "."  
3 4. By renumbering, redesignating, and correcting  
4 internal references as necessary.

By HOFFMAN of Crawford

**H-1568** FILED APRIL 17, 2001

*Adopted*  
*4/23/01 (P.1382)*

**SENATE FILE 473**

**H-1577**

1 Amend the amendment, H-1448, to Senate File 473, as  
2 passed by the Senate, as follows:

3 1. Page 59, by inserting after line 35 the  
4 following:

5 "Sec. \_\_\_\_ . 2001 Iowa Acts, Senate File 500,  
6 section 39, is amended to read as follows:

7 SEC. 39. EFFECTIVE DATE. Sections 4, 5, 7 through  
8 11, 13 through 22, 34, and 38 of this Act take effect  
9 January 1, 2002."

10 2. By renumbering, redesignating, and correcting  
11 internal references as necessary.

By HOFFMAN of Crawford

**H-1577** FILED APRIL 17, 2001

*(P.1382) Adopted*  
*4-23-01*

**SENATE FILE 473**

**H-1555**

1 Amend the amendment, H-1448, to Senate File 473, as  
2 passed by the Senate, as follows:

3 1. Page 38, by striking lines 41 through 44 and  
4 inserting the following: "matter as deemed  
5 appropriate."

By HOFFMAN of Crawford

**H-1555** FILED APRIL 17, 2001

*Adopted*  
*4/23/01*  
*(P.1382)*

HOUSE AMENDMENT TO  
SENATE FILE 473

S-3434

1 Amend Senate File 473, as passed by the Senate, as  
2 follows:

3 1. Page 7, by inserting after line 4, the  
4 following:

5 "Sec. \_\_\_\_ . Section 507B.4, subsection 10B,  
6 unnumbered paragraph 1, as enacted by 2001 Iowa Acts,  
7 Senate File 500, section 7, is amended to read as  
8 follows:

9 Failure of an insurer to pay interest at the rate  
10 of ten percent per annum on all health insurance  
11 claims that the insurer fails to timely accept and pay  
12 pursuant to section 507B.4A, subsection 2, paragraph  
13 ~~"e"~~ "d". Interest shall accrue commencing on the  
14 thirty-first day after receipt of all properly  
15 completed proof of loss forms.

16 Sec. \_\_\_\_ . Section 518.16, Code 2001, is amended to  
17 read as follows:

18 518.16 QUALIFICATION OF AGENTS.

19 A person shall not solicit any application for  
20 insurance for an association in this state without  
21 having procured from the commissioner of insurance a  
22 license authorizing the person to act as an ~~agent~~  
23 insurance producer pursuant to chapter ~~522~~ 522B.

24 "SUBCHAPTER 1

25 SHORT TITLE AND DEFINITIONS

26 Sec. \_\_\_\_ . NEW SECTION. 523A.101 SHORT TITLE.

27 This chapter may be cited as the "Iowa Cemetery and  
28 Funeral Merchandise and Funeral Services Act".

29 Sec. \_\_\_\_ . NEW SECTION. 523A.102 DEFINITIONS.

30 For purposes of this chapter, unless the context  
31 otherwise requires:

32 1. "Authorized to do business within this state"  
33 means a person licensed, registered, or subject to  
34 regulation by an agency of the state of Iowa or who  
35 has filed a consent to service of process with the  
36 commissioner for purposes of this chapter.

37 2. "Beneficiary" means any natural person  
38 specified or included in a purchase agreement, upon  
39 whose future death cemetery merchandise, funeral  
40 merchandise, funeral services, or a combination  
41 thereof are to be provided under the purchase  
42 agreement.

43 3. "Burial account" means an account established  
44 by a person with a financial institution for the  
45 purpose of funding the future purchase of cemetery  
46 merchandise, funeral merchandise, or a combination  
47 thereof without any related trust agreement.

48 4. "Burial trust fund" means an irrevocable burial  
49 trust fund established by a person with a financial  
50 institution for the purpose of funding the future

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1 purchase of cemetery merchandise, funeral merchandise,  
2 funeral services, or a combination thereof upon the  
3 death of the person named in the burial trust fund's  
4 records or a related purchase agreement. "Burial  
5 trust fund" does not include or imply the existence of  
6 any oral or written purchase agreement for cemetery  
7 merchandise, funeral merchandise, funeral services, or  
8 a combination thereof between the person and a seller.

9 5. "Cemetery merchandise" means foundations, grave  
10 markers, tombstones, ornamental merchandise,  
11 memorials, and monuments sold under a purchase  
12 agreement that does not require installation within  
13 twelve months of the purchase.

14 6. "Commissioner" means the commissioner of  
15 insurance or the deputy administrator authorized in  
16 section 523A.801 to the extent the commissioner  
17 delegates functions to the deputy administrator.

18 7. "Common business enterprise" means a group of  
19 two or more business entities that share common  
20 ownership in excess of fifty percent.

21 8. "Credit sale" means a sale of goods, services,  
22 or an interest in land in which all of the following  
23 are applicable:

24 a. Credit is granted either under a seller credit  
25 card or by a seller who regularly engages as a seller  
26 in credit transactions of the same kind.

27 b. The buyer is a person other than an  
28 organization.

29 c. The goods, services, or interest in land are  
30 purchased primarily for a personal, family, or  
31 household purpose.

32 d. Either the debt is payable in installments or a  
33 finance charge is made.

34 e. For goods and services, the amount financed  
35 does not exceed twenty-five thousand dollars.

36 9. "Delivery" occurs when:

37 a. The cemetery merchandise, funeral merchandise,  
38 or the title document establishing an easement for  
39 burial rights is physically delivered to the purchaser  
40 or installed, except that burial of any item at the  
41 site of its ultimate use shall not constitute delivery  
42 for purposes of this chapter.

43 b. If authorized by a purchaser under a purchase  
44 agreement, cemetery merchandise has been permanently  
45 identified with the name of the purchaser or the  
46 beneficiary and delivered to a bonded warehouse or  
47 storage facility approved by the commissioner and both  
48 title to the merchandise and a warehouse receipt have  
49 been delivered to the purchaser or beneficiary and a  
50 copy of the warehouse receipt has been delivered to

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1 the establishment for retention in its files.  
2 c. If authorized by a purchaser under a purchase  
3 agreement, a polystyrene or polypropylene outer burial  
4 container has been permanently identified with the  
5 name of the purchaser or the beneficiary and delivered  
6 to a bonded warehouse or storage facility approved by  
7 the commissioner and both title to the merchandise and  
8 a warehouse receipt have been delivered to the  
9 purchaser or beneficiary and a copy of the warehouse  
10 receipt has been delivered to the establishment for  
11 retention in its files.

12 10. "Doing business in this state" means issuing  
13 or performing wholly or in part any term of a purchase  
14 agreement executed within the state of Iowa.

15 11. "Establishment" means each business  
16 establishment that advertises, sells, promotes, or  
17 offers cemetery merchandise, funeral merchandise,  
18 funeral services, or a combination thereof prior to  
19 the death of the person named or implied in a purchase  
20 agreement.

21 12. "Financial institution" means a state or  
22 federally insured bank, savings and loan association,  
23 credit union, trust department thereof, or a trust  
24 company authorized to do business within this state  
25 and which has been granted trust powers under the laws  
26 of this state or the United States, which holds funds  
27 under a trust agreement. "Financial institution" does  
28 not include:

29 a. A seller.

30 b. Anyone employed by or directly involved with  
31 the seller in the seller's cemetery merchandise,  
32 funeral merchandise, or funeral services business.

33 13. "Funeral merchandise" means personal property  
34 used for the final disposition of a dead human body,  
35 including but not limited to clothing, caskets,  
36 vaults, urns, and interment receptacles. "Funeral  
37 merchandise" does not include easements for burial  
38 rights in a completed space or cemetery merchandise.

39 14. "Funeral services" means services provided for  
40 the final disposition of a dead human body, including  
41 but not limited to services necessarily or customarily  
42 provided for a funeral, or for the interment,  
43 entombment, or cremation of a dead human body, or any  
44 combination thereof. "Funeral services" does not  
45 include perpetual care or maintenance.

46 15. "Inner burial container" means a container in  
47 which human remains are placed for burial or  
48 entombment. Where only one container is used for  
49 burial or entombment, "inner burial container"  
50 includes a container serving as a burial vault, urn

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- 1 vault, grave box, grave liner, or lawn crypt.  
2 16. "Insolvent" means the inability to pay debts  
3 as they become due in the usual course of business.  
4 17. "Interest or income" means unrealized net  
5 appreciation or loss in the fair value of cemetery  
6 merchandise, funeral merchandise, and funeral services  
7 trust assets for which a market value may be  
8 determined with reasonable certainty, plus the return  
9 in money or property derived from the use of trust  
10 principal or income, net of investment losses, taxes,  
11 and expenses incurred in the sale of trust assets, any  
12 cost of the operation of the trust, and any annual  
13 audit fee. "Interest or income" includes but is not  
14 limited to:  
15 a. Rent of real or personal property, including  
16 sums received for cancellation or renewal of a lease  
17 and any royalties.  
18 b. Interest on money lent, including sums received  
19 as consideration for prepayment of principal.  
20 c. Cash dividends paid on corporate stock.  
21 d. Interest paid on deposit funds or debt  
22 obligations.  
23 e. Gain realized from the sale of trust assets.  
24 18. "Next of kin" means the surviving spouse and  
25 heirs at law of the deceased.  
26 19. "Nonguaranteed" means that the price of the  
27 merchandise and services selected has not been fixed  
28 or guaranteed and will be determined by existing  
29 prices at the time the merchandise and services are  
30 delivered or provided.  
31 20. "Outer burial container" means a container  
32 used for the burial of human remains that is used  
33 exclusively to surround or enclose an inner burial  
34 container and to support the earth above the  
35 container, commonly known as a burial vault, urn  
36 vault, grave box, or grave liner, but not including a  
37 lawn crypt.  
38 21. "Parent company" means a corporation that has  
39 a controlling interest in an establishment.  
40 22. "Person" means an individual, business,  
41 corporation, trust, firm, partnership, association, or  
42 any other legal entity.  
43 23. "Personal representative" means a personal  
44 representative as defined in section 633.3.  
45 24. "Provider" means a person that provides  
46 funeral services, funeral merchandise, or cemetery  
47 merchandise purchased in a purchase agreement.  
48 25. "Purchase agreement" means an agreement to  
49 furnish cemetery merchandise, funeral merchandise,  
50 funeral services, or a combination thereof when

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1 performance or delivery may be more than one hundred  
2 twenty days following the initial payment on the  
3 account.

4 26. "Purchase price" means the negotiated price  
5 for the item of merchandise or service, if itemized in  
6 the purchase agreement, or the price of the item  
7 listed in the seller's general price list at the time  
8 the purchase agreement is signed.

9 27. "Purchaser" means a person who purchases  
10 cemetery merchandise, funeral merchandise, funeral  
11 services, or a combination thereof. The purchaser  
12 need not be a beneficiary of the agreement.

13 28. "Seller" means a person doing business within  
14 this state, including a person doing business within  
15 this state who sells insurance, who advertises, sells,  
16 promotes, or offers to furnish cemetery merchandise,  
17 funeral merchandise, funeral services, or a  
18 combination thereof when performance or delivery may  
19 be more than one hundred twenty days following the  
20 initial payment on the account whether the transaction  
21 is completed or offered in person, through the mail,  
22 over the telephone, by the internet, or through any  
23 other means of commerce. "Seller" includes any person  
24 performing any term of a purchase agreement executed  
25 within this state, and any person identified under a  
26 burial account as the provider of cemetery  
27 merchandise, funeral merchandise, funeral services, or  
28 a combination thereof.

29 29. "Total purchase price" means the aggregate  
30 amount the purchaser is obligated to pay for  
31 merchandise or services pursuant to the purchase  
32 agreement, excluding any taxes, administrative  
33 charges, or financing charges.

#### 34 SUBCHAPTER 2

#### 35 ESTABLISHMENT OF TRUSTS, DEPOSIT, INVESTMENT, 36 AND REPORTING REQUIREMENTS

37 Sec. \_\_\_\_ . NEW SECTION. 523A.201 ESTABLISHMENT OF  
38 TRUST FUNDS.

39 Unless proceeding under section 523A.401, 523A.402,  
40 or 523A.403, a seller must establish a trust fund  
41 prior to advertising, selling, promoting, or offering  
42 cemetery merchandise, funeral merchandise, funeral  
43 services, or a combination thereof in this state as  
44 follows:

45 1. The trust fund must be established at a  
46 financial institution.

47 2. If a seller agrees to furnish cemetery  
48 merchandise, funeral merchandise, funeral services, or  
49 a combination thereof and performance or delivery may  
50 be more than one hundred twenty days following the

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1 initial payment on the account, a minimum of eighty  
2 percent of all payments made under the purchase  
3 agreement shall be placed and remain in trust until  
4 the person for whose benefit the funds were paid dies.  
5 3. If a purchase agreement for cemetery  
6 merchandise, funeral merchandise, funeral services, or  
7 a combination thereof provides that payments are to be  
8 made in installments, the seller shall deposit eighty  
9 percent of each payment in the trust fund until the  
10 full amount required to be placed in trust has been  
11 deposited. If the purchase agreement is financed with  
12 or sold to a financial institution, the purchase  
13 agreement shall be considered paid in full and the  
14 trust requirements shall be satisfied within fifteen  
15 days after the close of the month in which the seller  
16 receives funds from the financial institution.

17 4. A seller shall not invade the trust principal  
18 for any purpose.

19 5. A seller who lacks insurance coverage which  
20 protects against the loss of purchaser payments not  
21 placed in trust within the time period required by  
22 this section and section 523A.202 shall not commingle  
23 these payments with any other seller funds. A seller  
24 who lacks insurance coverage may use one or more of  
25 the following methods to dispose of these payments:

26 a. Deposit purchaser funds into an escrow account  
27 until the required amount has been deposited into a  
28 trust account at a financial institution.

29 b. Make a prior delivery or warehouse cemetery or  
30 funeral merchandise or a combination thereof as  
31 provided by this chapter.

32 c. Make a prior filing of a surety bond in lieu of  
33 establishing a trust fund as required by this section.

34 d. Make a simultaneous, same-day deposit of the  
35 purchaser's payments into the seller's bank account  
36 and the required amount into the seller's trust fund.

37 6. Payments otherwise subject to this section are  
38 not exempt merely because they are held in  
39 certificates of deposit.

40 7. Commingling of trust funds with other funds of  
41 the seller is prohibited.

42 8. Interest or income earned on amounts deposited  
43 in trust shall remain in trust under the same terms  
44 and conditions as payments made under the purchase  
45 agreement, except that the seller may withdraw so much  
46 of the interest or income as represents the difference  
47 between the amount needed to adjust the trust funds  
48 for inflation as set by the commissioner based on the  
49 consumer price index and the interest or income earned  
50 during the preceding year not to exceed fifty percent

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1 of the total interest or income on a calendar-year  
2 basis. The early withdrawal of interest or income  
3 under this provision does not affect the purchaser's  
4 right to a credit of such interest or income in the  
5 event of a nonguaranteed price agreement,  
6 cancellation, or nonperformance by the seller.

7 9. The commissioner may require amendments to a  
8 trust agreement not in accord with the provisions of  
9 this chapter.

10 10. If a seller voluntarily or involuntarily  
11 ceases doing business and the seller's obligation to  
12 provide merchandise or services has not been assumed  
13 by another establishment holding a current  
14 establishment permit, all trust funds, including  
15 accrued interest or income, shall be repaid to the  
16 purchaser within one hundred twenty days following the  
17 seller's cessation of business or, in the event of  
18 circumstances where a payment is not possible within  
19 one hundred twenty days, as soon as is reasonably  
20 practicable.

21 Sec.       . NEW SECTION. 523A.202 TRUST FUND  
22 DEPOSIT REQUIREMENTS.

23 1. All funds held in trust pursuant to section  
24 523A.201 shall be deposited in a financial  
25 institution, within fifteen days after the close of  
26 the month a seller receives the funds. The financial  
27 institution shall hold the funds for the designated  
28 beneficiary until released.

29 2. All funds required to be deposited by the  
30 purchaser for a purpose described in section 523A.201  
31 shall be deposited consistent with one of the  
32 following methods:

33 a. The payments shall be deposited directly into  
34 an interest-bearing burial account in the purchaser's  
35 name.

36 b. The purchaser shall deposit payments directly  
37 into a separate trust account in the purchaser's name.  
38 The account may be made payable to the seller upon the  
39 death of the purchaser or the designated beneficiary,  
40 provided that, until death, the purchaser retains the  
41 exclusive power to hold, manage, pledge, and invest  
42 the trust account funds and may revoke the trust and  
43 withdraw the funds, in whole or in part, at any time  
44 during the term of the agreement.

45 c. The purchaser or the seller shall deposit  
46 payments directly into a separate trust account in the  
47 name of the purchaser, as trustee, for the named  
48 beneficiary, to be held, invested, and administered as  
49 a trust account for the benefit and protection of the  
50 beneficiary. The depositor shall notify the financial

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1 institution of the existence and terms of the trust,  
2 including at a minimum, the name of each party to the  
3 agreement, the name and address of the trustee, and  
4 the name and address of the beneficiary. The account  
5 may be made payable to the seller upon the  
6 beneficiary's death.

7 d. The payments shall be deposited in the name of  
8 the trustee, as trustee, under the terms of a master  
9 trust agreement and the trustee may invest, reinvest,  
10 exchange, retain, sell, and otherwise manage the trust  
11 fund for the benefit and protection of the named  
12 beneficiary.

13 3. The commissioner may by rule authorize other  
14 methods of deposit upon a finding that such methods  
15 provide equivalent safety of the principal and  
16 interest or income and the seller lacks access to the  
17 proceeds prior to performance.

18 4. This section does not prohibit moving trust  
19 funds from one financial institution to another.

20 Sec. \_\_\_\_ . NEW SECTION. 523A.203 FINANCIAL  
21 INSTITUTION TRUSTEE QUALIFICATION AND INVESTMENT  
22 REQUIREMENTS.

23 1. A financial institution may serve as a trustee  
24 if granted those powers under the laws of this state  
25 or of the United States. A financial institution  
26 acting as a trustee of trust funds under this chapter  
27 shall invest the funds in accordance with applicable  
28 law.

29 2. A financial institution acting as a trustee of  
30 trust funds under this chapter has a fiduciary duty to  
31 make reasonable investment decisions and to properly  
32 oversee and manage the funds entrusted to it. The  
33 trustee shall use the judgment and care under the  
34 circumstances then prevailing that persons of  
35 prudence, discretion, and intelligence exercise in the  
36 management of their own affairs, not in regard to  
37 speculation but in regard to the permanent disposition  
38 of their funds, considering the probable income as  
39 well as the probable safety of their capital. The  
40 commissioner may take enforcement action against a  
41 financial institution in its capacity as trustee for a  
42 breach of fiduciary duty proven under this chapter.

43 3. Moneys deposited under a master trust agreement  
44 may be commingled by the financial institution for  
45 investment purposes if each deposit includes a  
46 detailed listing of the amount deposited in trust for  
47 each beneficiary and maintenance of a separate  
48 accounting of each purchaser's principal, interest,  
49 and income.

50 4. Subject to a master trust agreement, the seller

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1 may appoint an independent investment  
 2 advise the financial institution a  
 3 the trust funds.  
 4 5. Subject to agreement between  
 5 financial institution may receive a re  
 6 from the trust funds for services rend  
 7 The trust shall pay the trust operation  
 8 annual audit fees.  
 9 6. The seller or any officer, director  
 10 employee, or affiliate of the seller shall  
 11 as trustee. Be owned, do any of the following:  
 12 funds shall not financial institution holding  
 13 with a seller. Use any funds required to be held in tru  
 14 a. Use this chapter or chapter 566A to purchase a  
 15 b. Use interest in any contract or agreement to which a  
 16 under this chapter or chapter 566A to purchase a  
 17 seller is a party.  
 18 c. Otherwise invest, directly or indirectly, in  
 19 seller's business invest, directly or indirectly, in  
 20 Sec. ANNUAL REPORTING REQUIREMENTS. ESTABLISHMENT  
 21 ANNUAL REPORTING REQUIREMENTS. 523A.204  
 22 1. An establishment shall file with the  
 23 commissioner a report not later than March 1 of each year an  
 24 annual report of the establishment that will provide the  
 25 containing all of the following:  
 26 a. address of the seller's name and address by the commissioner  
 27 cemetery, merchandise, funeral merchandise, funeral  
 28 services, or a combination thereof.  
 29 b. The balance of each trust account as of the end  
 30 of the preceding calendar year, identified by  
 31 purchaser or beneficiary name, identified by  
 32 trust account including the reason for each  
 33 withdrawal.  
 34 d. A detailed listing of the insurance funding  
 35 outstanding at the end of the preceding calendar year,  
 36 identified by the name of the purchaser or the  
 37 beneficiary.  
 38 e. A complete inventory of the cemetery  
 39 merchandise, funeral merchandise, or a combination  
 40 thereof delivered in lieu of trust fund requirements  
 41 under section 523A.401, including the following:  
 42 (1) The location of the merchandise or warehouse  
 43 (2) Merchandise serial numbers or warehouse  
 44 (3) A verified statement of a certified pub  
 45 receipt purchaser or the beneficiary  
 46 (3) A verified statement of a certified pub  
 47 receipt purchaser or the beneficiary  
 48 (3) A verified statement of a certified pub  
 49 receipt purchaser or the beneficiary  
 50 accountant on a form prescribed by the commi

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- 1 that all of the following have occurred:
- 2 (a) A physical inventory of the cemetery  
3 merchandise or funeral merchandise has been conducted.
- 4 (b) Each item of that merchandise is in the  
5 seller's possession at the specified location.
- 6 f. The purchaser and beneficiary names, the amount  
7 of each purchase agreement made in the preceding year,  
8 and the date the purchase agreement was made.
- 9 g. A summary of any purchase agreements converted  
10 from trust-funded benefits to insurance-funded or  
11 annuity benefits during the preceding year which shall  
12 include, as of the conversion date, the following  
13 information, as well as aggregated totals for each of  
14 the following categories of information, if  
15 appropriate:
- 16 (1) Insured's name.  
17 (2) Insured's policy number.  
18 (3) Original prepaid purchase agreement amount.  
19 (4) Amount paid in.  
20 (5) Unpaid balance of the prepaid purchase  
21 agreement.  
22 (6) Unpaid balance of the purchase agreement.  
23 (7) Amount retained by the establishment.  
24 (8) Amount applied to the purchase of the  
25 insurance policy or annuity.  
26 (9) Initial cash surrender value and initial death  
27 benefit under the insurance policy.
- 28 The establishment shall include a notarized  
29 statement attesting that the insurance policies or  
30 annuities have been issued and funded on behalf of the  
31 purchasers listed in the summary and that all notices  
32 required under this section have been given.
- 33 h. A summary of any purchase agreements converted  
34 from trust-funded benefits to a surety bond during the  
35 preceding year which shall include, as of the  
36 conversion date, the following information, as well as  
37 aggregated totals for each of the following categories  
38 of information, if appropriate:
- 39 (1) Name of the purchaser and beneficiary.  
40 (2) Original prepaid purchase agreement amount.  
41 (3) Amount paid in.  
42 (4) Unpaid balance of the prepaid purchase  
43 agreement.  
44 (5) Unpaid balance of the purchase agreement.  
45 (6) Amount retained by the establishment.  
46 (7) Amount applied to the purchase of the surety  
47 bond.  
48 (8) A description of the surety bond and the  
49 applicable amount of coverage.
- 50 i. Any other information the commissioner deems

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1 necessary for the administration of this chapter.  
2 2. A person holding multiple establishment permits  
3 may elect to file only one annual report after noting  
4 all establishments on the report.  
5 3. An establishment shall make a good faith effort  
6 to complete the annual report. The establishment  
7 shall note on the annual report any information not  
8 reasonably available to the establishment as an  
9 exception or variance. Account balances within twelve  
10 months of the date of the filing of the annual report  
11 shall be accepted if the actual date of the account  
12 balances is noted.  
13 4. In lieu of the annual report form described in  
14 subsection 1, the commissioner may authorize an  
15 establishment to file a short form annual report on a  
16 form prescribed by the commissioner. The short form  
17 annual report may incorporate by reference information  
18 readily available to the establishment. The  
19 commissioner may certify and decertify establishments  
20 authorized to file the short form based upon:  
21 a. The establishment's recordkeeping system.  
22 b. The number of purchase agreements which the  
23 establishment has sold that are subject to regulation  
24 under chapter 523A.  
25 c. The availability and accessibility of  
26 information at the establishment for purchase  
27 agreements subject to regulation.  
28 d. Whether the establishment places one hundred  
29 percent of funds received pursuant to its purchase  
30 agreements in trust.  
31 e. The findings of the commissioner concerning  
32 audits and consumer complaints.  
33 The commissioner shall retain the authority to  
34 require establishments permitted to file the short  
35 form annual report to provide all of the information  
36 required in the annual report form required by  
37 subsection 1 for audit purposes or otherwise.  
38 5. An establishment filing an annual report shall  
39 pay a filing fee of ten dollars per purchase agreement  
40 sold during the year covered by the report. The fee  
41 does not apply to any of the following:  
42 a. A purchase agreement where the beneficiary dies  
43 in the same year the agreement was sold.  
44 b. Any modifications or additions, such as  
45 payments, for an existing purchase agreement sold in a  
46 previous year.  
47 c. An additional agreement purchased and already  
48 reported to the commissioner by the purchaser.  
49 d. A purchase agreement canceled or revoked in the  
50 same year it was sold.

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1 All purchase agreement changes for which a filing  
2 fee is not required must be reported to the  
3 commissioner on the annual report for the year  
4 covered.

5 6. As part of the annual filing with the  
6 commissioner, an establishment shall file an  
7 authorization for the commissioner or a designee to  
8 investigate, audit, and verify all funds, accounts,  
9 safe deposit boxes, and other evidence of  
10 establishment trust funds held by or in a financial  
11 institution.

12 7. Forms may be obtained at cost from the  
13 commissioner upon request. The commissioner may  
14 accept annual reports submitted in an electronic  
15 format, including but not limited to computer  
16 diskettes.

17 8. Notwithstanding chapter 22, all records  
18 maintained by the commissioner under this section  
19 shall be confidential and shall not be made available  
20 for inspection or copying except upon approval of the  
21 commissioner or the attorney general.

22 Sec. \_\_\_\_ . NEW SECTION. 523A.205 FINANCIAL  
23 INSTITUTION ANNUAL REPORTING REQUIREMENTS.

24 1. A financial institution shall file with the  
25 commissioner not later than March 1 of each year an  
26 annual report on a form prescribed by the commissioner  
27 showing all funds deposited by an establishment under  
28 a trust agreement during the previous year. Each  
29 report shall contain all information requested.

30 2. Forms may be obtained from the commissioner  
31 upon request. The commissioner may accept annual  
32 reports submitted in an electronic format, including  
33 but not limited to computer diskettes.

34 3. Notwithstanding chapter 22, all records  
35 maintained by the commissioner under this section  
36 shall be confidential and shall not be made available  
37 for inspection or copying except upon approval of the  
38 commissioner or the attorney general.

39 Sec. \_\_\_\_ . NEW SECTION. 523A.206 AUDITS.

40 1. The commissioner may make audits of the  
41 establishment and of the records of a seller, at the  
42 times and in the scope the commissioner determines.  
43 The audits may be made without prior notice to the  
44 seller. The commissioner may copy all records the  
45 commissioner feels are necessary to conduct the audit.  
46 The commissioner may require an audit of a seller or  
47 other person by a certified public accountant to  
48 verify compliance with this chapter, implementing  
49 rules, or orders.

50 2. A seller or other person shall pay for the

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1 audit unless the commissioner waives this requirement.  
2 The cost of an audit involving multiple sellers or  
3 other persons shall be prorated among them upon any  
4 reasonable basis as determined by the commissioner.  
5 The accountant shall deliver the audit report to the  
6 commissioner and to the seller or other persons.  
7 3. The commissioner shall not make public the  
8 information obtained in the course of an audit, except  
9 when a duty under this chapter requires the  
10 commissioner to take action against a seller or to  
11 cooperate with another enforcement or regulatory  
12 agency, or except when the commissioner is called as a  
13 witness in a civil or criminal proceeding.

## SUBCHAPTER 3

15 DISBURSEMENT OF REMAINING BURIAL ACCOUNT FUNDS,  
16 BURIAL TRUST FUNDS, AND INSURANCE OR ANNUITY PROCEEDS  
17 UNDER THE REQUIREMENTS OF SECTION 249A.5

18 Sec. \_\_\_\_ . NEW SECTION. 523A.301 DEFINITION.

19 As used in sections 523A.302 and 523A.303,  
20 "director" means the director of human services.

21 Sec. \_\_\_\_ . NEW SECTION. 523A.302 IDENTIFICATION  
22 OF MERCHANDISE AND SERVICE PROVIDER.

23 If a burial trust fund identifies, either in the  
24 trust fund records or in a related purchase agreement,  
25 the seller who will provide the cemetery merchandise,  
26 funeral merchandise, funeral services or a combination  
27 thereof, the trust fund records or the related  
28 purchase agreements must contain a statement signed by  
29 an authorized representative of the seller agreeing to  
30 furnish the cemetery merchandise, funeral merchandise,  
31 funeral services, or a combination thereof upon the  
32 death of the beneficiary. The burial trust fund shall  
33 not identify a specific seller as payee unless the  
34 trust fund records or the related purchase agreements,  
35 if any, contain the signature of an authorized  
36 representative of the seller and, if the agreement is  
37 for funeral services as defined in chapter 156, the  
38 name of a funeral director licensed to deliver those  
39 services. A person may enter into agreements  
40 authorizing the establishment of more than one burial  
41 trust fund and agreeing to furnish the applicable  
42 merchandise and services.

43 Sec. \_\_\_\_ . NEW SECTION. 523A.303 DISBURSEMENT OF  
44 REMAINING FUNDS.

45 1. If funds remain in a nonguaranteed irrevocable  
46 burial trust fund or from the proceeds of an insurance  
47 policy or annuity made payable or assigned to the  
48 seller or a provider after the payment of funeral and  
49 burial expenses in accordance with the conditions and  
50 terms of the purchase agreement for cemetery

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1 merchandise, funeral merchandise, or funeral services,  
2 the seller shall comply with all of the following:

3 a. The seller shall provide written notice by mail  
4 to the director under subsection 2.

5 b. At least sixty days after mailing notice to the  
6 director, the seller shall disburse any remaining  
7 funds from the burial trust fund as follows:

8 (1) If within the sixty-day period the seller  
9 receives a claim from the personal representative of  
10 the deceased, any remaining funds shall be disbursed  
11 to the personal representative, notwithstanding any  
12 claim by the director.

13 (2) If within the sixty-day period the seller has  
14 not received a claim from the personal representative  
15 of the deceased but receives a claim from the  
16 director, the seller shall disburse the remaining  
17 funds up to the amount of the claim to the director.

18 (3) Any remaining funds not disposed of pursuant  
19 to subparagraphs (1) and (2) shall be disbursed to any  
20 person who is identified as the next of kin of the  
21 deceased in an affidavit submitted in accordance with  
22 subsection 5.

23 2. The notice mailed to the director shall meet  
24 all of the following requirements and is subject to  
25 all of the following conditions:

26 a. The notice shall be mailed with postage  
27 prepaid.

28 b. If the notice is sent by regular mail, the  
29 sixty-day period for receipt of a response is deemed  
30 to commence three days following the date of mailing.

31 c. If the notice is sent by certified mail, the  
32 sixty-day period for receipt of a response is deemed  
33 to commence on the date of mailing.

34 d. The notice shall provide all of the following  
35 information:

36 (1) Current name, address, and telephone number of  
37 the seller.

38 (2) Full name of the deceased.

39 (3) Date of the deceased's death.

40 (4) Amount of funds remaining in the burial trust  
41 fund.

42 (5) Statement that any claim by the director must  
43 be received by the seller within sixty days after the  
44 date of mailing of the notice.

45 e. A notice in substantially the following form  
46 complies with this subsection:

47 "TO: THE DIRECTOR OF HUMAN SERVICES

48 FROM: (SELLER'S NAME, CURRENT ADDRESS, AND  
49 TELEPHONE NUMBER)

50 YOU ARE HEREBY NOTIFIED THAT (NAME OF DECEASED),

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1 WHO HAD AN IRREVOCABLE BURIAL TRUST FUND, HAS DIED,  
2 THAT FINAL PAYMENT FOR CEMETERY MERCHANDISE, FUNERAL  
3 MERCHANDISE, AND FUNERAL SERVICES HAS BEEN MADE, AND  
4 THAT (REMAINING AMOUNT) REMAINS IN THE IRREVOCABLE  
5 BURIAL TRUST FUND.

6 THE ABOVE-NAMED SELLER MUST RECEIVE A WRITTEN  
7 RESPONSE REGARDING ANY CLAIM BY THE DIRECTOR WITHIN  
8 SIXTY DAYS AFTER THE MAILING OF THIS NOTICE TO THE  
9 DIRECTOR.

10 IF THE ABOVE-NAMED SELLER DOES NOT RECEIVE A  
11 WRITTEN RESPONSE REGARDING A CLAIM BY THE DIRECTOR  
12 WITHIN SIXTY DAYS AFTER THE MAILING OF THIS NOTICE,  
13 THE SELLER MAY DISPOSE OF THE REMAINING FUNDS IN  
14 ACCORDANCE WITH SECTION 523A.303, CODE OF IOWA."

15 3. Upon receipt of the seller's written notice,  
16 the director shall determine if a debt is due the  
17 department of human services pursuant to section  
18 249A.5. If the director determines that a debt is  
19 owing, the director shall provide a written response  
20 to the seller within sixty days after the mailing of  
21 the seller's notice. If the director does not respond  
22 with a claim within the sixty-day period, any claim  
23 made by the director shall not be enforceable against  
24 the seller, the trust, or a trustee.

25 4. A personal representative who wishes to make a  
26 claim shall send written notice of the claim to the  
27 seller. If the seller does not receive any claim from  
28 a personal representative within the sixty-day period  
29 provided for response by the director regarding a  
30 claim, the claim of the personal representative shall  
31 not be enforceable against the seller, the trust, or a  
32 trustee.

33 5. Any person other than a personal representative  
34 or the director claiming an interest in the remaining  
35 funds shall submit an affidavit claiming an interest  
36 which provides the following information:

37 a. Full name, current address, and telephone  
38 number of the claimant.

39 b. Claimant's relationship to the deceased.

40 c. Name of any surviving next of kin of the  
41 deceased, and the relationship of any named surviving  
42 next of kin.

43 d. That the claimant has no knowledge of the  
44 existence of a personal representative for the  
45 deceased's estate.

46 6. The seller may retain not more than fifty  
47 dollars of the remaining funds in the burial trust  
48 fund for the administrative expenses associated with  
49 the requirements of this section.

50 7. If the funds remaining in a burial trust fund

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1 are disbursed under the requirements of this section,  
2 the seller, the provider, the burial trust fund, and  
3 any trustee shall not be liable to the director, the  
4 estate of the deceased, any personal representative,  
5 or any other interested person for the remaining funds  
6 and any lien imposed by the director shall be  
7 unenforceable against the seller, the burial trust  
8 fund, or any trustee.

9

## SUBCHAPTER 4

10

## TRUSTING ALTERNATIVES

11

Sec. \_\_\_\_\_ NEW SECTION. 523A.401 PURCHASE

12

AGREEMENTS FUNDED BY INSURANCE PROCEEDS.

13

1. A purchase agreement may be funded by insurance  
14 proceeds derived from a new or existing insurance  
15 policy issued by an insurance company authorized to do  
16 business and doing business within this state.

17

2. Such funding may be in lieu of the trusting  
18 requirements of this chapter when the purchaser  
19 assigns the proceeds of an existing insurance policy.

20

3. Such funding may be in lieu of the trusting  
21 requirements of this chapter when a new insurance  
22 policy is purchased to fund the purchase agreement,  
23 with a face amount equal to or greater than the  
24 current retail price of the cemetery merchandise,  
25 funeral merchandise, and funeral services to be  
26 delivered under the purchase agreement or, if less, a  
27 face amount equal to the total of all payments to be  
28 submitted by the purchaser pursuant to the purchase  
29 agreement.

30

4. The premiums of any new insurance policy shall  
31 be fully paid within thirty days after execution of  
32 the purchase agreement or, with respect to a purchase  
33 agreement that provides for periodic payments, the  
34 premiums shall be paid directly by the purchaser to  
35 the insurance company issuing the policy.

36

5. Any new insurance policy shall satisfy the  
37 following conditions:

38

a. Except as necessary and appropriate to satisfy  
39 the requirements regarding burial trust funds under  
40 Title XIX of the federal Social Security Act, the  
41 policy shall not be owned by the establishment, the  
42 policy shall not be irrevocably assigned to the  
43 establishment, and the assignment of proceeds from the  
44 insurance policy to the establishment shall be limited  
45 to the establishment's interests as they appear in the  
46 purchase agreement, and conditioned on the  
47 establishment's delivery of cemetery merchandise,  
48 funeral merchandise, and funeral services pursuant to  
49 a purchase agreement.

50

b. The policy shall provide that any assignment of

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1 benefits is contingent upon the establishment's  
 2 delivery of cemetery merchandise, funeral merchandise,  
 3 and funeral services pursuant to a purchase agreement.  
 4 c. The policy shall have an increasing death  
 5 benefit or similar feature that provides some means  
 6 for increasing the funding as the cost of funeral and  
 7 cemetery goods and services increases.  
 8 6. With the written consent of the purchaser, an  
 9 existing prepaid purchase agreement with trust-funded  
 10 benefits may be converted to a prepaid purchase  
 11 agreement with insurance benefits provided the  
 12 establishment and the insurance benefits comply with  
 13 the following provisions:

14 a. The transfer of the trust funds to the  
 15 insurance company must be at least equal to the full  
 16 sum required to be deposited as trust principal under  
 17 the trust-funded purchase agreement plus all  
 18 net earnings accumulated with respect thereto, as of  
 19 the transfer date. Commissions, allowances, surrender  
 20 charges or other forms of compensation or expense  
 21 loads, premium expense, administrative charges or  
 22 expenses, or policy fees shall not be deducted from  
 23 the trust funds transferred pursuant to the  
 24 conversion.

25 b. The face amount of any insurance policy issued  
 26 on an individual must be no less than the amount of  
 27 principal and interest transferred for that individual  
 28 to the insurance company, and any supplemental  
 29 insurance policy issued to cover the unfunded portion  
 30 of the purchase agreement must have a face amount that  
 31 is at least as great as the unfunded principal  
 32 balance. The face amount of the insurance purchased  
 33 shall not, under any circumstances, be less than the  
 34 total of all payments made by the purchaser pursuant  
 35 to the agreement plus all net earnings accumulated  
 36 with respect thereto, as of the transfer date.

37 c. The insurance policy shall not allow for  
 38 contesting coverage, limit death benefits in the  
 39 of suicide, refer to physical examination, or  
 40 otherwise operate as an exclusion, limitation, or  
 41 condition other than requiring submission of  
 42 death or surrender of policy at the time the  
 43 purchase agreement is funded, matures, or  
 44 case may be.

45 establishment shall maintain  
 46 prepaid purchase agreement  
 47 trust-funded insurance-funde  
 48 the payment hist  
 49 agreement pr  
 50 ise, fun

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1 and funeral services have been delivered.

2 7. The seller of a purchase agreement subject to  
3 this chapter which is to be funded by insurance  
4 proceeds shall obtain all permits required to be  
5 obtained and comply with all reporting requirements  
6 under this chapter.

7 8. An insurance company issuing policies funding  
8 purchase agreements subject to this chapter shall file  
9 an annual report with the commissioner on a form  
10 prescribed by the commissioner. The report shall list  
11 the applicable insurance policies outstanding for each  
12 establishment. Computer printouts may be submitted so  
13 long as each legibly provides the same information  
14 required in the prescribed form.

15 Sec. \_\_\_\_ . NEW SECTION. 523A.402 PURCHASE  
16 AGREEMENTS FUNDED BY ANNUITY PROCEEDS.

17 1. A purchase agreement may be funded by proceeds  
18 derived from a new or existing annuity issued by an  
19 insurance company authorized to do business and doing  
20 business within this state.

21 2. Such funding may be in lieu of the trust  
22 requirements of this chapter when the purchaser  
23 assigns the proceeds of an existing annuity.

24 3. Such funding may be in lieu of the trust  
25 requirements of this chapter when a new annuity is  
26 purchased to fund the purchase agreement, with a face  
27 amount equal to or greater than the current retail  
28 price of the cemetery merchandise, funeral  
29 merchandise, and funeral services to be delivered  
30 under the purchase agreement or, if less, a face  
31 amount equal to the total of all payments to be  
32 submitted by the purchaser pursuant to the purchase  
33 agreement.

34 4. The premiums of any new annuity shall be fully  
35 paid within thirty days after execution of the  
36 purchase agreement or, with respect to a purchase  
37 agreement that provides for periodic payments, the  
38 premiums shall be paid directly by the purchaser to  
39 the insurance company issuing the annuity.

40 5. The annuity shall satisfy the following  
41 conditions:

42 a. Except as necessary and appropriate to satisfy  
43 the requirements regarding burial trust funds under  
44 Title XIX of the federal Social Security Act, the  
45 annuity shall not be owned by the establishment or  
46 irrevocably assigned and any designation of the  
47 establishment as a beneficiary shall not be made  
48 irrevocable.

49 b. The annuity shall provide that any assignment  
50 of benefits is contingent upon the establishment's

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1 delivery of cemetery merchandise, funeral merchandise,  
2 and funeral services pursuant to a purchase agreement.

3 c. The annuity shall have an increasing death  
4 benefit or similar feature that provides some means  
5 for increasing the funding as the cost of cemetery  
6 merchandise, funeral merchandise, and funeral services  
7 increases.

8 6. With the written consent of the purchaser, an  
9 existing prepaid purchase agreement with trust-funded  
10 benefits may be converted to a prepaid purchase  
11 agreement with annuity-funded benefits provided the  
12 establishment and the annuity benefits comply with the  
13 following provisions:

14 a. The transfer of the trust funds to the  
15 insurance company must be at least equal to the full  
16 sum required to be deposited as trust principal under  
17 the trust-funded prepaid purchase agreement plus all  
18 net earnings accumulated with respect thereto, as of  
19 the transfer date. Commissions, allowances, surrender  
20 charges or other forms of compensation or expense  
21 loads, premium expense, administrative charges or  
22 expenses, or fees shall not be deducted from the trust  
23 funds transferred pursuant to the conversion.

24 b. The face amount of any annuity issued on an  
25 individual must be no less than the amount of  
26 principal and interest transferred for that individual  
27 to the insurance company, and any supplemental annuity  
28 issued to cover the unfunded portion of the purchase  
29 agreement must have a face amount that is at least as  
30 great as the unfunded principal balance. The face  
31 amount of the annuity purchased shall not, under any  
32 circumstances, be less than the total of all payments  
33 made by the purchaser pursuant to the agreement plus  
34 all net earnings accumulated with respect thereto, as  
35 of the transfer date.

36 c. The annuity shall not allow for contesting  
37 coverage, limit death benefits in the case of suicide,  
38 refer to physical examination, or otherwise operate as  
39 an exclusion, limitation, or condition other than  
40 requiring submission of proof of death or surrender of  
41 the annuity at the time the prepaid purchase agreement  
42 is funded, matures, or is canceled, as the case may  
43 be.

44 d. The establishment shall maintain a copy of any  
45 prepaid trust-funded purchase agreement that was  
46 converted to a prepaid annuity-funded purchase  
47 agreement and retain the payment history records for  
48 each converted purchase agreement prior to conversion  
49 until the cemetery merchandise, funeral merchandise,  
50 and funeral services have been delivered.

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1 7. The seller of a purchase agreement subject to  
2 this chapter which is to be funded by annuity proceeds  
3 shall obtain all permits required to be obtained and  
4 comply with all reporting requirements under this  
5 chapter.

6 8. An insurance company issuing annuities funding  
7 purchase agreements subject to this chapter shall file  
8 an annual report with the commissioner on a form  
9 prescribed by the commissioner. The report shall list  
10 the applicable annuities outstanding for each  
11 establishment. Computer printouts may be submitted so  
12 long as each legibly provides the same information  
13 required in the prescribed form.

14 Sec. \_\_\_\_ . NEW SECTION. 523A.403 PURCHASE  
15 AGREEMENTS FUNDED BY CERTIFICATES OF DEPOSIT.

16 1. A purchase agreement may be funded by proceeds  
17 derived from a certificate of deposit in the name of  
18 the purchaser made payable to the seller upon the  
19 purchaser's death.

20 2. The seller of a purchase agreement subject to  
21 this chapter which is to be funded by a certificate of  
22 deposit shall obtain all permits required to be  
23 obtained and comply with all reporting requirements  
24 under this chapter, implementing rules, and orders.

25 Sec. \_\_\_\_ . NEW SECTION. 523A.404 MERCHANDISE  
26 DELIVERED TO THE PURCHASER OR WAREHOUSED.

27 1. Trust requirements do not apply to payments for  
28 outer burial containers made of either polystyrene or  
29 polypropylene or cemetery merchandise delivered to the  
30 purchaser or stored in an independent third-party  
31 storage facility not owned or controlled by the seller  
32 when approved by the commissioner. The seller or the  
33 storage facility must demonstrate that they will do  
34 all of the following:

35 a. Issue a receipt of ownership in the name of the  
36 purchaser and deliver it to the purchaser.

37 b. Insure the merchandise against loss.

38 c. Protect the merchandise against damage.

39 d. Transfer title to the purchaser.

40 e. Appropriately identify and describe the  
41 merchandise in a manner that it can be distinguished  
42 from other similar items.

43 f. Use a method of storage that allows for visual  
44 audits of the merchandise.

45 g. Have adequate, computerized, recordkeeping  
46 systems in place to identify, describe, and count each  
47 item in storage, including the ownership of each item,  
48 and provide an aggregate listing with numerical  
49 totals.

50 h. File a consent to be audited and inspected by

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1 the commissioner.

2 i. Provide reports to the commissioner, annually,  
3 by an independent certified public accountant, which  
4 shall include a physical count of merchandise held in  
5 storage and a review of information, including the  
6 seller's revenue and sales records, as necessary to  
7 verify the adequacy of the number of items held at the  
8 storage facility.

9 j. Satisfy the annual reporting requirements of  
10 section 523A.204.

11 2. Lawn crypts may be delivered in lieu of  
12 trusting. For this purpose, delivery means  
13 installation in a grave owned by the purchaser. The  
14 seller shall do all of the following:

15 a. Notify the administrator before the lawn crypts  
16 are installed.

17 b. Identify the intended location of the lawn  
18 crypts within the cemetery.

19 c. Provide documentation adequately demonstrating  
20 delivery has occurred. Adequate documentation  
21 includes but is not limited to photographs and third-  
22 party certifications.

23 3. Cemetery merchandise and funeral merchandise  
24 shall not be deemed delivered to the purchaser or  
25 warehoused if the merchandise is subject to a lien or  
26 security interest by any party other than the seller.

27 4. An establishment is prohibited from requiring  
28 delivery as a condition of the sale.

29 5. A seller shall provide services necessary for  
30 the installation or burial of outer burial containers  
31 sold by the seller. This subsection shall not require  
32 the seller to provide for the opening or closing of  
33 the interment or entombment space, unless the purchase  
34 agreement provides otherwise.

35 Sec. \_\_\_\_ . NEW SECTION. 523A.405 BOND IN LIEU OF  
36 TRUST FUND.

37 1. In lieu of trust requirements, a seller may  
38 file with the commissioner a surety bond issued by a  
39 surety company authorized to do business and doing  
40 business within this state. The bond must be  
41 conditioned upon the seller's faithful performance of  
42 purchase agreements subject to this chapter. The  
43 surety's liability extends to each such agreement  
44 executed while the bond is in force and until  
45 performance or rescision of the purchase agreement. To  
46 the extent expressly agreed to in writing by the  
47 surety, the surety's liability extends to each such  
48 agreement subject to this chapter executed prior to  
49 the time the bond was in force and until performance  
50 or rescision of the agreement. A purchaser aggrieved

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1 by a breach of a condition of the bond covering the  
2 purchaser's agreement may maintain an action against  
3 the bond. If, at the time of the breach, the  
4 purchaser is aware of the purchaser's rights under the  
5 bond and how to file a claim against the bond, the  
6 surety shall not be liable for any breach of condition  
7 unless the surety receives notice of a claim within  
8 sixty days following discovery of the acts, omissions,  
9 or conditions constituting the breach of condition,  
10 except as otherwise provided in this section. A  
11 surety bond shall not be canceled by a surety except  
12 upon a written notice of cancellation given by the  
13 surety to the commissioner by restricted certified  
14 mail, and not prior to the expiration of sixty days  
15 after receipt of the notice by the commissioner. The  
16 surety's liability shall extend to each purchase  
17 agreement subject to this chapter executed prior to  
18 cancellation of the surety bond until the seller has  
19 complied with section 3.

20 2. If a seller becomes insolvent or otherwise  
21 ceases to engage in business prior to or within sixty  
22 days after cancellation of a bond, the seller shall be  
23 deemed to have breached the bond conditions for  
24 outstanding agreements under this chapter as of the  
25 day prior to cancellation of the bond. The  
26 commissioner shall mail written notice by restricted  
27 certified mail to the purchaser under each outstanding  
28 purchase agreement of the seller that a claim against  
29 the bond must be filed with the surety company within  
30 sixty days after the mailing date of the notice. The  
31 surety shall cease to be liable for all purchase  
32 agreements except those for which claims are filed  
33 with the surety company within sixty days after the  
34 date the commissioner mails the notices.

35 3. If a surety bond is canceled by a surety under  
36 any conditions other than those specified in  
37 subsection 2, the seller shall comply with all of the  
38 following:

39 a. The seller shall comply with the trust  
40 requirements of section 523A.201 for all purchase  
41 agreements subject to this chapter executed on or  
42 after the effective date of cancellation of the surety  
43 bond. In the alternative, the seller may submit a  
44 substitute surety bond meeting the requirements of  
45 subsection 1, but the seller must comply with section  
46 523A.201 for any purchase agreements executed on or  
47 after the effective cancellation date of the earlier  
48 surety bond and prior to the effective date of the  
49 later surety bond.

50 b. Within sixty days after the effective

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1 cancellation date of the surety bond, the seller shall  
2 submit to the commissioner an undertaking by another  
3 surety company that a substitute surety bond meeting  
4 the requirements of subsection 1 is in effect and that  
5 the liability of the substitute surety bond extends to  
6 all outstanding purchase agreements of the seller that  
7 were executed but not performed or extinguished prior  
8 to the effective date of the substitute surety bond,  
9 or the seller shall submit to the commissioner a  
10 financial statement accompanied by an unqualified  
11 opinion based upon an audit performed by a certified  
12 public accountant licensed in this state certifying  
13 the total amount of outstanding liabilities of the  
14 seller on purchase agreements subject to this chapter  
15 and proof of deposit by the seller in trust under  
16 section 523A.201 of either the amount specified in  
17 section 523A.201, including interest as set by the  
18 commissioner based on the interest which would have  
19 been earned had the funds been maintained in trust,  
20 with respect to all of those outstanding purchase  
21 agreements or, where applicable, that delivery of  
22 merchandise has been made in compliance with section  
23 523A.404. The surety may require such security as is  
24 necessary to comply with this section. Upon  
25 compliance by the seller with this paragraph, the  
26 surety company canceling the surety bond shall cease  
27 to be liable with respect to any outstanding purchase  
28 agreements of the seller except those purchase  
29 agreements with respect to which a breach of condition  
30 occurred prior to cancellation and for which timely  
31 claims were filed.

32 4. Section 523A.202, and, to the extent it is  
33 applicable, section 523A.206, apply to sellers whose  
34 purchase agreements are covered by a surety bond  
35 maintained under this section, and section 523A.202  
36 continues to apply to any purchase agreements of those  
37 sellers that are not covered by a surety bond  
38 maintained under this section.

39 5. Upon receiving a notice of cancellation of a  
40 surety bond, the commissioner shall notify the seller  
41 of the requirements of this chapter resulting from  
42 cancellation of the bond. The notice may be in the  
43 form of a copy of this section and sections 523A.201  
44 and 523A.202.

45 6. Upon receiving a notice of cancellation, unless  
46 the seller has complied with the requirements of this  
47 section, the attorney general shall seek an injunction  
48 to prohibit the seller from making further purchase  
49 agreements subject to this chapter. The attorney  
50 general shall commence an action to attach and levy

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1 execution upon property of the seller when the seller  
2 fails to perform a purchase agreement subject to this  
3 chapter, to the extent necessary to secure compliance  
4 with this chapter. The county attorney may bring  
5 criminal charges under subchapter 7.

6 7. The surety under this section shall not be  
7 owned, under the control of, or affiliated with the  
8 seller.

9 8. The amount of the surety bond shall equal  
10 eighty percent of the payments received pursuant to  
11 purchase agreements, or the applicable portion  
12 thereof, for cemetery merchandise, funeral  
13 merchandise, funeral services, or a combination  
14 thereof and the amount needed to adjust the amount of  
15 the surety bond for inflation as set by the  
16 commissioner based on the consumer price index. The  
17 seller shall review the amount of the surety bond no  
18 less than annually and shall increase the bond as  
19 necessary to reflect additional payments. The amount  
20 needed to adjust for inflation shall be added annually  
21 to the surety bond during the first quarter of the  
22 establishment's fiscal year.

23 9. With the consent of the purchaser, an existing  
24 prepaid purchase agreement with trust-funded benefits  
25 may be converted to a prepaid purchase agreement  
26 funded by a surety bond provided the establishment and  
27 the surety bond comply with the following provisions:

28 a. The amount of the trust funds transferred to  
29 the surety company must be at least equal to the full  
30 sum required to be deposited as trust principal under  
31 the trust-funded prepaid purchase agreement plus all  
32 net earnings accumulated with respect thereto, as of  
33 the transfer date. Commissions, allowances, surrender  
34 charges or other forms of compensation or expense  
35 loads, premium expense, administrative charges or  
36 expenses, or fees shall not be deducted from the trust  
37 funds transferred pursuant to the conversion.

38 b. The face amount of the surety bond issued on an  
39 individual must be no less than the amount of  
40 principal and interest transferred for that individual  
41 to the surety company, and any supplemental surety  
42 bond issued to cover the unfunded portion of the  
43 purchase agreement must have a face amount that is at  
44 least as great as the unfunded principal balance. The  
45 face amount of the surety bond purchased shall not,  
46 under the circumstances, be less than the total of all  
47 payments made by the purchaser pursuant to the  
48 agreement plus all net earnings accumulated with  
49 respect thereto, as of the transfer date.

50 c. The establishment shall maintain a copy of any

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1 prepaid trust-funded agreement the  
2 prepaid purchase agreement funded  
3 retain the payment history records  
4 purchase agreement prior to records  
5 cemetery merchandise, funeral convers  
6 cemetery merchandise, funeral merch  
7 services have been delivered.

PERMIT REQUIREMENTS FOR SELLERS OF  
MERCHANDISE, FUNERAL MERCHANDISE, OR A COMBINATION THEREOF  
NEW SECTION. 523A.501 ESTAB.

Sec.

1. A person shall not advertise, sell, pro  
offer to furnish cemetery merchandise, or a combination  
merchandise, funeral services, or delivery may be more  
thereof when performance of an establishment permit. Ea  
one hundred days following the initial paym  
establishment thereof. funeral merchandise, or a  
2. An application for an establishment permit  
shall be filed on a form prescribed by the permit  
commissioner, be accompanied by a fifty dollar filing  
fee, and include a copy of each purchase agreement the  
person will use for sales of cemetery merchandise,  
funeral merchandise, funeral services, or a  
combination thereof.  
3. The name and address of the establishment,  
a. The name and address of each additional provider  
of cemetery or a combination of funeral merchandise,  
b. The name and address of the establishment, funeral  
services, or a combination of funeral merchandise,  
c. The name and address of each additional provider  
of other relevant funeral merchandise, funeral services,  
d. A description of any common business enterprise  
or parent company.  
e. The types of funeral merchandise, funeral  
merchandise, or insurance storage facilities, surety  
utilized by the establishment, including when  
financial institutions, regular companies utilized by the  
establishment and information required to be provided  
4. A permit on a regular basis.  
5. An establishment within thirty days of the change  
of changes in the information required to be provided  
by subsection 3 within thirty days of the change.  
6. A permit holder selling all

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1 an establishment shall cancel the permit and the  
2 purchaser shall apply for a new permit in the  
3 purchaser's name within thirty days of the sale.

4 6. The commissioner shall grant or deny a permit  
5 application within thirty days after receipt, but the  
6 commissioner's failure to act within that time period  
7 shall not be deemed approval of the application. If  
8 the commissioner does not grant the permit, the  
9 commissioner shall notify the person in writing of the  
10 reasons for the denial. The permit shall disclose on  
11 its face the permit holder's employer or the  
12 establishment on whose behalf the applicant will be  
13 making or attempting to make sales, the permit number,  
14 and the expiration date.

15 7. An initial permit is valid for two years from  
16 the date the application is filed. A permit may be  
17 renewed for two years by filing the form prescribed by  
18 the commissioner under subsection 2, accompanied by a  
19 ten dollar renewal fee. Submission of purchase  
20 agreements is not required for renewals unless the  
21 purchase agreements have been modified since the last  
22 filing.

23 8. The commissioner may by rule create or accept a  
24 multijurisdiction establishment permit. If the  
25 establishment permit is issued by another  
26 jurisdiction, the rules shall require the filing of an  
27 application or notice form and payment of the  
28 applicable filing fee of fifty dollars for an initial  
29 application and ten dollars for a renewal application.  
30 The application or notice form utilized and the  
31 effective dates and terms of the permit may vary from  
32 the provisions set forth in subsections 2, 3, and 7.

33 Sec. \_\_\_\_ NEW SECTION. 523A.502 SALES PERMITS.

34 1. A person shall not advertise, sell, promote, or  
35 offer to furnish cemetery merchandise, funeral  
36 merchandise, funeral services, or a combination  
37 thereof when performance or delivery may be more than  
38 one hundred twenty days following initial payment on  
39 the account without a sales permit. A permit holder  
40 must be an employee or agent of a person holding an  
41 establishment permit who can deliver the cemetery  
42 merchandise, funeral merchandise, funeral services, or  
43 a combination thereof being sold. A person must have  
44 a sales permit for each establishment at which the  
45 person works. However, a person may apply for a sales  
46 permit covering multiple establishments, if the  
47 establishments have common ownership. The  
48 establishment permit holder is liable for the acts of  
49 its employees and agents performed in advertising,  
50 selling, promoting, or offering to furnish, upon the

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1 future death of a person named or implied in a  
2 purchase agreement, cemetery merchandise, funeral  
3 merchandise, funeral services, or a combination  
4 thereof.

5 2. This chapter does not permit a person to  
6 practice mortuary science without a license. A person  
7 holding a current sales permit may advertise, sell,  
8 promote, or offer to furnish a funeral director's  
9 services as an employee or agent of a funeral  
10 establishment furnishing the funeral services under  
11 chapter 156.

12 3. An application for a sales permit shall be  
13 filed on a form prescribed by the commissioner and be  
14 accompanied by a five dollar filing fee.

15 4. The application shall contain:

16 a. The name and address of the person.

17 b. The name and address of the person's employer  
18 and each establishment on whose behalf the person will  
19 be advertising, selling, promoting, or offering to  
20 furnish cemetery merchandise, funeral merchandise,  
21 funeral services, or a combination thereof.

22 c. The name and address of the provider who will  
23 provide the cemetery merchandise, funeral merchandise,  
24 funeral services, or a combination thereof if  
25 different from the person's employer.

26 5. An initial permit expires one year from the  
27 date the application is filed. The permit may be  
28 renewed for four years by filing the form prescribed  
29 by the commissioner under subsection 3, accompanied by  
30 a twenty dollar filing fee.

31 6. A permit holder shall inform the commissioner  
32 of changes in the information required to be provided  
33 by subsection 4 within thirty days of the change.

34 7. A sales permit is not assignable or  
35 transferable. A permit holder selling all or part of  
36 a business shall cancel the permit and the purchaser  
37 shall apply for a new permit in the purchaser's name  
38 within thirty days of the sale.

39 8. The commissioner shall grant or deny a permit  
40 application within thirty days after receipt, but the  
41 commissioner's failure to act within that time period  
42 shall not be deemed approval of the application. If  
43 the commissioner does not grant the permit, the  
44 commissioner shall notify the applicant in writing of  
45 the reasons for the denial.

46 9. The commissioner may by rule create or accept a  
47 multijurisdiction sales permit. If the sales permit  
48 is issued by another jurisdiction, the rules shall  
49 require the filing of an application or notice form  
50 and payment of the applicable filing fee of five

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1 dollars for each year. The application or notice form  
2 utilized and the effective dates and terms of the  
3 permit may vary from the provisions set forth in  
4 subsections 3 and 5.

5 Sec. \_\_\_\_ . NEW SECTION. 523A.503 DENIAL,  
6 SUSPENSION, REVOCATION, AND SURRENDER OF PERMITS.

7 1. The commissioner may, pursuant to chapter 17A,  
8 deny any permit application or immediately suspend or  
9 revoke any permit issued under this chapter for  
10 several reasons, including but not limited to:

11 a. Committing a fraudulent act, engaging in a  
12 fraudulent practice, or violating any provision of  
13 this chapter or, any implementing rule or order issued  
14 under this chapter.

15 b. Violating any other state or federal law  
16 applicable to the conduct of the applicant's or permit  
17 holder's business.

18 c. Insolvency or financial condition.

19 d. The permit holder, for the purpose of avoiding  
20 the trust requirement for funeral services, attributes  
21 amounts paid under the purchase agreement to cemetery  
22 merchandise or funeral merchandise that is delivered  
23 under section 523A.404 rather than to funeral services  
24 sold to the purchaser. The sale of funeral services  
25 at a lower price when the sale is made in conjunction  
26 with the sale of cemetery merchandise or funeral  
27 merchandise to be delivered under section 523A.404  
28 than the services are regularly and customarily sold  
29 for when not sold in conjunction with cemetery  
30 merchandise or funeral merchandise is evidence that  
31 the permit holder is acting with the purpose of  
32 avoiding the trust requirement for funeral services  
33 under section 523A.201.

34 e. Engaging in a deceptive act or practice or  
35 deliberately misrepresenting or omitting a material  
36 fact regarding the sale of cemetery merchandise,  
37 funeral merchandise, funeral services, or a  
38 combination thereof under this chapter.

39 f. Conviction of a criminal offense involving  
40 dishonesty or a false statement.

41 g. Inability to provide the cemetery merchandise,  
42 funeral merchandise, funeral services, or a  
43 combination thereof which the applicant or permit  
44 holder purports to sell.

45 h. The applicant or permit holder sells the  
46 business without filing a prior notice of sale with  
47 the commissioner. The permit shall be revoked thirty  
48 days following such sale.

49 i. Selling by a person who is not an employee or  
50 agent of the applicant or permit holder.

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1 2. The commissioner may, for good cause shown,  
2 suspend any permit for a period not exceeding thirty  
3 days, pending investigation.

4 3. Except as provided in subsection 2, a permit  
5 shall not be revoked or suspended except after notice  
6 and hearing under chapter 17A.

7 4. Any permit holder may surrender a permit by  
8 delivering to the commissioner written notice that the  
9 permit holder surrenders the permit, but the surrender  
10 shall not affect the permit holder's civil or criminal  
11 liability for acts committed before the surrender.

12 5. Denial, revocation, suspension, or surrender of  
13 a permit does not impair or affect the obligation of  
14 any preexisting lawful agreement between the permit  
15 holder and any person.

## SUBCHAPTER 6

## PURCHASE AGREEMENT REQUIREMENTS

16  
17 Sec. \_\_\_\_ . NEW SECTION. 523A.601 DISCLOSURES.

18  
19 1. A purchase agreement for cemetery merchandise,  
20 funeral merchandise, funeral services, or a  
21 combination thereof shall be written in clear,  
22 understandable language, and shall be printed or typed  
23 in an easy-to-read font, size, and style, and shall:

24 a. Identify the seller, the salesperson's permit  
25 and establishment name and permit number, the  
26 expiration date of the salesperson's permit, the  
27 purchaser, and the person for whom the cemetery  
28 merchandise, funeral merchandise, funeral services, or  
29 a combination thereof is purchased, if other than the  
30 purchaser.

31 b. Specify the cemetery merchandise, funeral  
32 merchandise, funeral services, or a combination  
33 thereof, to be provided, and the cost of each  
34 merchandise item or service.

35 c. State clearly the conditions upon which  
36 substitution will be allowed.

37 d. State the total purchase price and the terms  
38 under which it is to be paid.

39 e. State clearly whether the purchase agreement is  
40 a guaranteed price agreement or a nonguaranteed price  
41 agreement. A nonguaranteed price agreement shall  
42 contain in twelve point bold-faced type an explanation  
43 of the consequences of such agreement in substantially  
44 the following language:

45 THE PRICES OF MERCHANDISE AND SERVICES UNDER THIS  
46 AGREEMENT ARE SUBJECT TO CHANGE IN THE FUTURE. ANY  
47 FUNDS PAID UNDER THIS AGREEMENT ARE ONLY A DEPOSIT TO  
48 BE APPLIED, TOGETHER WITH ACCRUED INCOME, TOWARD THE  
49 FINAL COSTS OF THE MERCHANDISE OR SERVICES AGREED  
50 UPON. ADDITIONAL CHARGES MAY BE INCURRED WHEN

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1 ADDITIONAL MERCHANDISE OR SERVICES OR BOTH ARE  
2 PROVIDED OR WHEN PRICES HAVE INCREASED MORE THAN  
3 ACCRUED INCOME.

4 f. State that the purchase of the cemetery  
5 merchandise, funeral merchandise, and funeral services  
6 is revocable and specify the damages for cancellation,  
7 if any.

8 g. State clearly who has the authority to cancel,  
9 amend, or revoke the purchase agreement to purchase  
10 cemetery merchandise, funeral merchandise, and funeral  
11 services.

12 h. State clearly that the purchaser is entitled to  
13 rescind the purchase agreement under terms and  
14 conditions specified by section 523A.602.

15 i. Include an explanation of regulatory oversight  
16 by the insurance division in twelve point bold-faced  
17 type, in substantially the following language:

18 THIS AGREEMENT IS SUBJECT TO RULES ADMINISTERED BY  
19 THE IOWA INSURANCE DIVISION. YOU MAY CALL THE  
20 INSURANCE DIVISION AT ( ) WRITTEN  
21 INQUIRIES OR COMPLAINTS SHOULD BE MAILED TO THE IOWA  
22 SECURITIES BUREAU, (STREET ADDRESS), (CITY), IOWA (ZIP  
23 CODE).

24 2. A purchase agreement that is funded by a trust  
25 shall also:

26 a. State the percentage of money to be placed in  
27 trust.

28 b. Explain the disposition of the income generated  
29 from investments and include a statement of the  
30 purchaser's responsibility for income taxes owed on  
31 the income if applicable.

32 c. State that if, after all payments are made  
33 under the conditions and terms of the purchase  
34 agreement for cemetery merchandise, funeral  
35 merchandise, funeral services, or a combination  
36 thereof, any funds remain in the nonguaranteed  
37 irrevocable burial trust fund, the seller shall  
38 disburse the remaining funds according to law.

39 d. State clearly the terms of the funeral and  
40 burial trust agreement and whether it is revocable or  
41 irrevocable.

42 e. State clearly that the purchaser is entitled to  
43 transfer the trust funding, insurance funding, or  
44 other trust assets or select another establishment to  
45 receive the trust funding, insurance funding, or any  
46 other trust assets.

47 f. State clearly who has the authority to amend or  
48 revoke the trust agreement, if revocable, and who has  
49 the authority to appoint successor trustees if the  
50 purchase agreement is canceled.

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1 3. The commissioner may adopt rules establishing  
2 disclosure and format requirements to promote consumer  
3 understanding of the merchandise and services  
4 purchased and the available funding mechanisms for a  
5 purchase agreement under this chapter.

6 4. A purchase agreement shall be signed by the  
7 purchaser, the seller, and if the agreement is for  
8 funeral services as defined in chapter 156, a person  
9 licensed to deliver funeral services.

10 5. The seller shall disclose the following  
11 information prior to accepting the initial payment  
12 under a purchase agreement:

13 a. The specific method or methods (trust deposits,  
14 certificates of deposit, life insurance or an annuity,  
15 a surety bond, or warehousing) that will be used to  
16 fund the purchase agreement.

17 b. The relationship between the soliciting agent  
18 or agents, the provider of the cemetery merchandise,  
19 funeral merchandise, or funeral services, or  
20 combination thereof, the commissioner, and any other  
21 person.

22 c. The relationship of the life insurance policy  
23 or other trust assets to the funding of the purchase  
24 agreement and the nature and existence of any  
25 guarantees regarding the purchase agreement.

26 d. The impact on the purchase agreement of the  
27 following:

28 (1) Changes in the funding, including but not  
29 limited to changes in the assignment, beneficiary  
30 designation, trustee, or use of proceeds.

31 (2) Any penalties to be incurred by the purchaser  
32 as a result of the failure to make any additional  
33 payments required.

34 (3) Penalties to be incurred upon cancellation.

35 e. A list of cemetery merchandise, funeral  
36 merchandise, and funeral services which are agreed  
37 upon under the purchase agreement and all relevant  
38 information concerning the price of the cemetery  
39 merchandise, funeral merchandise, funeral services, or  
40 a combination thereof, including a statement that the  
41 purchase price is either guaranteed at the time of  
42 purchase or to be determined at the time of need.

43 f. All relevant information concerning what occurs  
44 and whether any entitlements or obligations arise if  
45 there is a difference between the funding and the  
46 amount actually needed to fund the purchase agreement.

47 g. Any penalties or restrictions including but not  
48 limited to geographic restrictions or the inability of  
49 the provider to perform, upon delivery of cemetery  
50 merchandise, funeral merchandise, or funeral services,

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1 or the purchase agreement guarantee.

2 h. If the funding is being transferred from  
3 another establishment, any material facts related to  
4 the revocation of the prior purchase agreement and the  
5 transfer of the existing trust funds.

6 Sec. \_\_\_\_ NEW SECTION. 523A.602 CONSUMER  
7 RECISION, CANCELLATION, AND REFUND RIGHTS, AND  
8 PURCHASE AGREEMENT COMPLIANCE WITH OTHER LAWS.

9 1. A seller shall furnish the purchaser with a  
10 completed copy of a purchase agreement pertaining to  
11 the sale at the time the purchase agreement is signed.  
12 The seller shall comply with the following terms:

13 a. The same language shall be used in both the  
14 oral sales representation and the written purchase  
15 agreement.

16 b. The seller shall give notice in the purchase  
17 agreement of the purchaser's right to rescind after  
18 signing the purchase agreement. The recision period  
19 must be but may be greater than three business days  
20 after the date of the purchase agreement. The notice  
21 must:

22 (1) Be located close to the signature line.

23 (2) Be printed in twelve point bold-faced type.

24 (3) State that "YOU, THE PURCHASER, HAVE THE RIGHT  
25 TO RESCIND THIS AGREEMENT AT ANY TIME PRIOR TO  
26 MIDNIGHT OF THE (INSERT RELEVANT NUMBER, NOT LESS THAN  
27 THREE) BUSINESS DAYS AFTER THE DATE OF THIS  
28 AGREEMENT."

29 c. All moneys shall be refunded without penalty  
30 within ten days after recision.

31 2. CANCELLATION REFUND.

32 a. A purchase agreement must include a statement  
33 that the purchaser has the right to cancel the  
34 agreement for the purchase of cemetery merchandise,  
35 funeral merchandise, and funeral services upon written  
36 demand and designate or appoint a trustee to hold,  
37 manage, invest, and distribute the trust assets.

38 b. If a purchase agreement is canceled, a  
39 purchaser requests a transfer of the trust assets upon  
40 cancellation of a purchase agreement, or another  
41 establishment provides merchandise or services  
42 designated in a purchase agreement, the seller shall  
43 refund or transfer within thirty days of receiving a  
44 written demand no less than the purchase price of the  
45 applicable cemetery merchandise, funeral merchandise,  
46 and funeral services adjusted for inflation, using the  
47 consumer price index amounts announced by the  
48 commissioner annually, less any cancellation penalty  
49 set forth in the purchase agreement. The amount of  
50 the cancellation penalty shall not exceed ten percent

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1 of the purchase price of the a  
 2 merchandise, funeral merchandise  
 3 services. The seller may also d  
 4 cemetery merchandise, funeral mer  
 5 services already received by, deli  
 6 warehouses for the purchaser, deli  
 7 c. A purchase agreement must inc  
 8 that the purchase price of the purch  
 9 purchase price of the purchaser, deli  
 10 adjusted for inflation, using the funer  
 11 amounts of funeral merchandise that cannot an  
 12 item of funeral merchandise caused by the weath  
 13 to the location specified in the purchase b  
 14 within forty-eight hours of the purchase  
 15 death, unless the delay is caused by the 1  
 16 conditions or a natural disaster. The seller  
 17 return such of the written demand.  
 18 of receiving the written demand.  
 19 is or may become eligible for prohibit a purchase  
 20 of the federal Social Security Act from under Titl  
 21 guaranteed price for regulations require that  
 22 extent that federal purchase benefits under a  
 23 such an agreement be law or regulation purposes of a  
 24 purchaser's eligibility for benefits under Title XIX  
 25 of the federal Social Security Act, as permitted under  
 26 federal law. The seller of credit sale agreements  
 27 shall comply with the requirements of chapter 537, the  
 28 Iowa consumer credit code, and is subject to the  
 29 remedies and penalties provided in that chapter for  
 30 noncompliance.

31 Sec. —. SUBCHAPTER 7  
 32 FILINGS. —. NEW SECTION. 523A.701 MISLEADING  
 33 It is unlawful for a person to make or cause to be  
 34 made, in any document filed with the commissioner, or  
 35 in any proceeding under this chapter, any statement of  
 36 material fact which is, at the time and in the light of  
 37 the circumstances under which it is made, false or  
 38 misleading, or, in connection with such statement, to  
 39 omit to state a material fact in necessary order to  
 40 make the statements made, in the light of the  
 41 circumstances under which they are made, not  
 42 misleading.  
 43 Sec. —. NEW SECTION. 523A.702  
 44 MISREPRESENTATIONS OF GOVERNMENT APPROVAL.  
 45 It is unlawful for a seller under this chap  
 46 to represent or imply in any manner that the s  
 47 has been sponsored, recommended, or approved  
 48 by the state.

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1 seller's abilities or qualifications have in any  
2 respect been passed upon by the commissioner.

3 Sec. \_\_\_\_ . NEW SECTION. 523A.703 FRAUDULENT  
4 PRACTICES.

5 A person who commits any of the following acts  
6 commits a fraudulent practice and is punishable as  
7 provided in chapter 714:

8 1. Knowingly fails to comply with any requirement  
9 of this chapter.

10 2. Knowingly makes, causes to be made, or  
11 subscribes to a false statement or representation in a  
12 report or other document required under this chapter,  
13 implementing rules, or orders, or renders such a  
14 report or document misleading through the deliberate  
15 omission of information properly belonging in the  
16 report or document.

17 3. Conspires to defraud in connection with the  
18 sale of cemetery merchandise, funeral merchandise,  
19 funeral services, or a combination thereof under this  
20 chapter.

21 4. Fails to deposit funds under sections 523A.201  
22 and 523A.202 or withdraws any funds in a manner  
23 inconsistent with this chapter.

24 5. Knowingly sells or offers cemetery merchandise,  
25 funeral merchandise, funeral services, or a  
26 combination thereof without an establishment permit.

27 6. Deliberately misrepresents or omits a material  
28 fact relative to the sale of cemetery merchandise,  
29 funeral merchandise, funeral services, or a  
30 combination thereof under this chapter. When selling  
31 cemetery merchandise or funeral merchandise, a seller  
32 shall not exclude the funeral services necessary for  
33 the delivery, use, or installation of the cemetery  
34 merchandise or funeral merchandise at the time of the  
35 funeral or burial unless the purchase agreement  
36 expressly provides otherwise.

37 SUBCHAPTER 8

38 ADMINISTRATION AND ENFORCEMENT

39 Sec. \_\_\_\_ . NEW SECTION. 523A.801 ADMINISTRATION.

40 1. This chapter shall be administered by the  
41 commissioner. The deputy administrator appointed  
42 pursuant to section 502.601 shall be the principal  
43 operations officer responsible to the commissioner for  
44 the routine administration of this chapter and  
45 management of the administrative staff. In the  
46 absence of the commissioner, whether because of  
47 vacancy in the office due to absence, physical  
48 disability, or other cause, the deputy administrator  
49 shall, for the time being, have and exercise the  
50 authority conferred upon the commissioner. The

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1 commissioner may by order from time to time delegate  
2 to the deputy administrator any or all of the  
3 functions assigned to the commissioner in this  
4 chapter. The deputy administrator shall employ  
5 officers, attorneys, accountants, and other employees  
6 as needed for administering this chapter.

7 2. It is unlawful for the commissioner or any  
8 administrative staff to use for personal benefit any  
9 information which is filed with or obtained by the  
10 commissioner and which is not made public. This  
11 chapter does not authorize the commissioner or any  
12 such staff member to disclose any such information  
13 except among themselves or to other cemetery and  
14 funeral administrators, regulatory authorities, or  
15 governmental agencies, or when necessary and  
16 appropriate in a proceeding or investigation under  
17 this chapter or as required by chapter 22. This  
18 chapter neither creates nor derogates any privileges  
19 that exist at common law or otherwise when documentary  
20 or other evidence is sought under a subpoena directed  
21 to the commissioner or any administrative staff.

22 Sec. \_\_\_\_ . NEW SECTION. 523A.802 SCOPE.

23 1. This chapter applies to any advertisement,  
24 sale, promotion, or offer made by a person to furnish,  
25 upon the future death of a person named or implied in  
26 a purchase agreement, cemetery merchandise, funeral  
27 merchandise, funeral services, or a combination  
28 thereof. Burial accounts and insurance policies are  
29 included if the account records or related documents  
30 identify the establishment that will provide the  
31 cemetery merchandise, funeral merchandise, funeral  
32 services, or a combination thereof.

33 2. This chapter applies when a purchase agreement  
34 is executed within this state or an advertisement,  
35 promotion, or offer to furnish is made or accepted  
36 within this state. An offer to furnish is made within  
37 this state, whether or not either party is then  
38 present in this state, when the offer originates from  
39 this state or is directed by the offeror to this state  
40 and received by the offeree in this state through the  
41 mail, over the telephone, by the internet, or through  
42 any other means of commerce.

43 3. If a foreign person does not have a registered  
44 agent or agents in the state of Iowa, doing business  
45 within this state shall constitute the person's  
46 appointment of the secretary of state of the state of  
47 Iowa to be its true and lawful attorney upon whom may  
48 be served all lawful process of original notice in  
49 actions or proceedings arising or growing out of any  
50 contract or tort.

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1 Sec. \_\_\_\_ NEW SECTION. 523A.803 INVESTIGATIONS  
2 AND SUBPOENAS.

3 1. The commissioner may, for the purpose of  
4 discovering violations of this chapter, implementing  
5 rules, or orders issued under this chapter:

6 a. Make such public or private investigations  
7 within or outside of this state as the commissioner  
8 deems necessary to determine whether any person has  
9 violated or is about to violate this chapter,  
10 implementing rules, or orders issued under this  
11 chapter, or to aid in enforcement of this chapter or  
12 in the prescribing of rules and forms under this  
13 chapter.

14 b. Require or permit any person to file a  
15 statement in writing, under oath or otherwise as the  
16 commissioner or attorney general determines, as to all  
17 the facts and circumstances concerning the matter to  
18 be investigated.

19 c. Notwithstanding chapter 22, keep confidential  
20 the information obtained in the course of an  
21 investigation. However, if the commissioner  
22 determines that it is necessary or appropriate in the  
23 public interest or for the protection of the public,  
24 the commissioner may share information with other  
25 administrators, regulatory authorities, or  
26 governmental agencies, or may publish information  
27 concerning a violation of this chapter, implementing  
28 rules, or orders issued under this chapter.

29 d. Investigate the establishment and examine the  
30 books, accounts, papers, correspondence, memoranda,  
31 purchase agreements, files, or other documents or  
32 records used by every applicant and permit holder  
33 under this chapter.

34 e. Administer oaths and affirmations, subpoena  
35 witnesses, compel their attendance, take evidence, and  
36 require the production of any books, accounts, papers,  
37 correspondence, memoranda, purchase agreements, files,  
38 or other documents or records which the commissioner  
39 deems relevant or material to any investigation or  
40 proceeding under this chapter and implementing rules,  
41 all of which may be enforced under chapter 17A.

42 f. Apply to the district court for an order  
43 requiring a person's appearance before the  
44 commissioner or attorney general, or a designee of  
45 either or both, in cases where the person has refused  
46 to obey a subpoena issued by the commissioner or  
47 attorney general. The person may also be required to  
48 produce documentary evidence germane to the subject of  
49 the investigation. Failure to obey a court order  
50 under this subsection constitutes contempt of court.

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1 2. The commissioner may issue and bring an action  
2 in district court to enforce subpoenas within this  
3 state at the request of an agency or administrator of  
4 another state, if the activity constituting an alleged  
5 violation for which the information is sought would be  
6 a violation of this chapter had the activity occurred  
7 in this state.

8 Sec. \_\_\_\_ NEW SECTION. 523A.804 MEDIATION.

9 The commissioner may order an establishment to  
10 participate in mediation in any dispute regarding a  
11 purchase agreement. Mediation performed under this  
12 section shall be conducted by a mediator appointed by  
13 the commissioner and shall comply with the provisions  
14 of chapter 679C.

15 Mediation of these disputes shall include  
16 attendance at a mediation session with the mediator  
17 and the parties to the dispute, listening to the  
18 mediator's explanation of the mediation process,  
19 presentation of one party's view of the dispute, and  
20 listening to the response of the other party.  
21 Participation in mediation does not require that the  
22 parties reach a mediation agreement.

23 Parties to the mediation shall have the right to  
24 advice and presence of counsel at all times. The  
25 parties to the mediation shall present any mediation  
26 agreement reached through the mediation to the  
27 commissioner. If a mediation agreement is not  
28 reached, the mediator shall file a report with the  
29 commissioner. The costs of the mediation shall be  
30 approved by the commissioner and shall be borne by the  
31 insurance division's regulatory fund.

32 Sec. \_\_\_\_ NEW SECTION. 523A.805 CEASE AND DESIST  
33 ORDERS -- INJUNCTIONS.

34 If it appears to the commissioner that a person has  
35 engaged or is about to engage in an act or practice  
36 constituting a violation of this chapter, implementing  
37 rules, or orders issued under this chapter, the  
38 commissioner or the attorney general may do either or  
39 both of the following:

40 1. Issue a summary order directed at the person  
41 requiring the person to cease and desist from engaging  
42 in such act or practice. A person may request a  
43 hearing within thirty days of issuance of the summary  
44 order. If a hearing is not timely requested, the  
45 summary order shall become final by operation of law.  
46 The order shall remain effective from the date of  
47 issuance until the date the order becomes final by  
48 operation of law or is overturned by a presiding  
49 officer following a request for hearing. Section  
50 17A.18A is inapplicable to summary cease and desist

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1 orders issued under this section.

2 2. Bring an action in the district court in any  
3 county of the state for an injunction to restrain a  
4 person subject to this chapter and any agents,  
5 employees, or associates of the person from engaging  
6 in conduct or practices deemed contrary to the public  
7 interest. In any proceeding for an injunction, the  
8 commissioner or attorney general may apply to the  
9 court for a subpoena to require the appearance of a  
10 defendant and the defendant's agents and for any  
11 books, accounts, papers, correspondence, memoranda,  
12 purchase agreements, files, or other documents or  
13 records germane to the hearing upon the petition for  
14 an injunction. Upon a proper showing, a permanent or  
15 temporary injunction, restraining order, or writ of  
16 mandamus shall be granted and a receiver may be  
17 appointed for the defendant or the defendant's assets.  
18 The commissioner or attorney general shall not be  
19 required to post a bond.

20 Sec. \_\_\_\_ . NEW SECTION. 523A.806 COURT ACTION FOR  
21 FAILURE TO COOPERATE.

22 If a person fails or refuses to file any statement  
23 or report or to produce any books, accounts, papers,  
24 correspondence, memoranda, purchase agreements, files,  
25 or other documents or records, or to obey any subpoena  
26 issued by the commissioner, the commissioner may refer  
27 the matter to the attorney general, who may apply to a  
28 district court to enforce compliance. The court may  
29 order any or all of the following:

30 1. Injunctive relief, restricting or prohibiting  
31 the offer or sale of cemetery merchandise, funeral  
32 merchandise, funeral services, or a combination  
33 thereof.

34 2. Revocation or suspension of any permit issued  
35 under this chapter.

36 3. Production of documents or records including  
37 but not limited to books, accounts, papers,  
38 correspondence, memoranda, purchase agreements, files,  
39 or other documents or records.

40 4. Such other relief as may be required.

41 Such an order shall be effective until the person  
42 files the statement or report or produces the  
43 documents requested, or obeys the subpoena.

44 Sec. \_\_\_\_ . NEW SECTION. 523A.807 PROSECUTION FOR  
45 VIOLATIONS OF LAW.

46 1. A violation of this chapter or rules adopted or  
47 orders issued under this chapter is a violation of  
48 section 714.16, subsection 2, paragraph "a". The  
49 remedies and penalties provided by section 714.16,  
50 including but not limited to injunctive relief and

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1 penalties, apply to violations of this chapter.  
2 2. If the commissioner believes that grounds exist  
3 for the criminal prosecution of persons subject to  
4 this chapter for violations of this chapter or any  
5 other law of this state, the commissioner may forward  
6 to the attorney general or the county attorney the  
7 grounds for the belief, including all evidence in the  
8 commissioner's possession, so that the attorney  
9 general or the county attorney may proceed with the  
10 matter as deemed appropriate.

11 Sec. \_\_\_\_ . NEW SECTION. 523A.808 COOPERATION WITH  
12 OTHER AGENCIES.

13 1. To encourage uniform interpretation and  
14 administration of this chapter and effective  
15 regulation of the sale of cemetery merchandise,  
16 funeral merchandise, and funeral services, the  
17 commissioner may cooperate with any governmental law  
18 enforcement or regulatory agency.

19 2. This cooperation includes but is not limited  
20 to:

- 21 a. Making a joint examination or investigation.
- 22 b. Holding a joint administrative hearing.
- 23 c. Filing and prosecuting a joint civil or  
24 administrative proceeding.
- 25 d. Sharing and exchanging personnel.
- 26 e. Sharing and exchanging relevant information and  
27 documents.
- 28 f. Formulating, in accordance with chapter 17A,  
29 rules or proposed rules on matters such as statements  
30 of policy, regulatory standards, guidelines, and  
31 interpretive opinions.

32 Sec. \_\_\_\_ . NEW SECTION. 523A.809 RULES, FORMS,  
33 AND ORDERS.

34 1. Under chapter 17A, the commissioner may from  
35 time to time make, amend, and rescind such rules,  
36 forms, and orders as are necessary or appropriate for  
37 the protection of purchasers and the public and to  
38 administer the provisions of this chapter, its  
39 implementing rules, and orders issued under this  
40 chapter.

41 2. A rule, form, or order shall not be made,  
42 amended, or rescinded unless the commissioner finds  
43 that the action is necessary or appropriate in the  
44 public interest or for the protection of purchasers  
45 and consistent with the purposes fairly intended by  
46 the policies and provisions of this chapter, its  
47 implementing rules, and orders issued under this  
48 chapter.

49 3. A provision of this chapter imposing any  
50 liability does not apply to any act done or omitted in

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1 good faith in conformity with any rules, form, or  
2 order of the commissioner, notwithstanding that the  
3 rule, form, or order may later be amended or rescinded  
4 or be determined by judicial or other authority to be  
5 invalid for any reason.

6 Sec. \_\_\_\_ . NEW SECTION. 523A.810 DATE OF FILING  
7 AND INTERPRETIVE OPINIONS.

8 1. A document is filed when it is received by the  
9 commissioner.

10 2. Requests for interpretive opinions may be  
11 granted in the commissioner's discretion.

12 Sec. \_\_\_\_ . NEW SECTION. 523A.811 RECEIVERSHIPS.

13 1. The commissioner shall notify the attorney  
14 general of the potential need for establishment of a  
15 receivership if the commissioner finds that a seller  
16 subject to this chapter meets one or more of the  
17 following conditions:

18 a. Is insolvent.

19 b. Has utilized trust funds for personal or  
20 business purposes in a manner inconsistent with this  
21 chapter.

22 c. The amount of funds currently held in trust for  
23 cemetery merchandise, funeral merchandise, and funeral  
24 services is less than eighty percent of all payments  
25 made under the purchase agreements referred to in  
26 section 523A.201.

27 d. Has refused to pay any just claim or demand  
28 based on a purchase agreement referred to in section  
29 523A.201.

30 e. The commissioner finds upon investigation that  
31 a seller is unable to pay any claim or demand based on  
32 a purchase agreement which has been legally determined  
33 to be just and outstanding.

34 2. The commissioner or attorney general may apply  
35 to the district court in any county of the state for  
36 the establishment of a receivership. Upon proof of  
37 any of the grounds for a receivership described in  
38 this section, the court may grant a receivership.

39 Sec. \_\_\_\_ . NEW SECTION. 523A.812 INSURANCE  
40 DIVISION'S REGULATORY FUND.

41 The insurance division may authorize the creation  
42 of a special revenue fund in the state treasury, to be  
43 known as the insurance division regulatory fund. The  
44 commissioner shall allocate annually from the fees  
45 paid pursuant to section 523A.204, two dollars for  
46 each purchase agreement reported on an establishment  
47 permit holder's annual report for deposit to the  
48 regulatory fund. The remainder of the fees collected  
49 pursuant to section 523A.204 shall be deposited into  
50 the general fund of the state. The moneys in the

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10 shall not be imposed if the current balance of the  
11 fund exceeds two hundred thousand dollars.  
12 Sec. \_\_\_\_ . NEW SECTION. 523A.813 LICENSE  
13 REVOCATION -- RECOMMENDATION BY COMMISSIONER TO BOARD  
14 OF MORTUARY SCIENCE EXAMINERS.  
15 Upon a determination by the commissioner that  
16 grounds exist for an administrative license revocation  
17 or suspension action by the board of mortuary science  
18 examiners under chapter 156, the commissioner may  
19 forward to the board the grounds for the  
20 determination, including all evidence in the  
21 possession of the commissioner, so that the board may  
22 proceed with the matter as deemed appropriate.

23 SUBCHAPTER 9

24 LIQUIDATION PROCEDURES

25 Sec. \_\_\_\_ . NEW SECTION. 523A.901 LIQUIDATION.  
26 1. GROUND FOR LIQUIDATION. The commissioner may  
27 petition the district court for an order directing the  
28 commissioner to liquidate an establishment on either  
29 of the following grounds:  
30 a. The establishment did not deposit funds  
31 pursuant to section 523A.201 or withdrew funds in a  
32 manner inconsistent with this chapter and is  
33 insolvent.  
34 b. The establishment did not deposit funds  
35 pursuant to section 523A.201 or withdrew funds in a  
36 manner inconsistent with this chapter and the  
37 condition of the establishment is such that further  
38 transaction of business would be hazardous,  
39 financially or otherwise, to purchasers or the public.  
40 2. LIQUIDATION ORDER.  
41 a. An order to liquidate the business of an  
42 establishment shall appoint the commissioner as  
43 liquidator and shall direct the liquidator to  
44 immediately take possession of the assets of the  
45 establishment and to administer them under the general  
46 supervision of the court. The liquidator is vested  
47 with the title to the property, contracts, and rights  
48 of action and the books and records of the  
49 establishment ordered liquidated, wherever located, as  
50 of the entry of the final order of liquidation. The

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1 filing or recording of the order with the clerk of  
2 court and the recorder of deeds of the county in which  
3 its principal office or place of business is located,  
4 or, in the case of real estate with the recorder of  
5 deeds of the county where the property is located, is  
6 notice as a deed, bill of sale, or other evidence of  
7 title duly filed or recorded with the recorder of  
8 deeds.

9 b. Upon issuance of an order, the rights and  
10 liabilities of an establishment and of the  
11 establishment's creditors, purchasers, owners, and  
12 other persons interested in the establishment's estate  
13 shall become fixed as of the date of the entry of the  
14 order of liquidation, except as provided in subsection  
15 14.

16 c. At the time of petitioning for an order of  
17 liquidation, or at any time after the time of  
18 petitioning, the commissioner, after making  
19 appropriate findings of an establishment's insolvency,  
20 may petition the court for a declaration of  
21 insolvency. After providing notice and hearing as it  
22 deems proper, the court may make the declaration.

23 d. An order issued under this section shall  
24 require accounting to the court by the liquidator.  
25 Accountings, at a minimum, must include all funds  
26 received or disbursed by the liquidator during the  
27 current period. An accounting shall be filed within  
28 one year of the liquidation order and at such other  
29 times as the court may require.

30 e. Within five days after the initiation of an  
31 appeal of an order of liquidation, which order has not  
32 been stayed, the commissioner shall present for the  
33 court's approval a plan for the continued performance  
34 of the establishment's obligations during the pendency  
35 of an appeal. The plan shall provide for the  
36 continued performance of purchase agreements in the  
37 normal course of events, notwithstanding the grounds  
38 alleged in support of the order of liquidation  
39 including the ground of insolvency. If the defendant  
40 establishment's financial condition, in the judgment  
41 of the commissioner, will not support the full  
42 performance of all obligations during the appeal  
43 pendency period, the plan may prefer the claims of  
44 certain purchasers and claimants over creditors and  
45 interested parties as well as other purchasers and  
46 claimants, as the commissioner finds to be fair and  
47 equitable considering the relative circumstances of  
48 such purchasers and claimants. The court shall  
49 examine the plan submitted by the commissioner and if  
50 it finds the plan to be in the best interests of the

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1 parties, the court shall approve the plan. An action  
2 shall not lie against the commissioner or any of the  
3 commissioner's deputies, agents, clerks, assistants,  
4 or attorneys by any party based on preference in an  
5 appeal pendency plan approved by the court.

6 3. POWERS OF LIQUIDATOR.

7 a. The liquidator may do any of the following:

8 (1) Appoint a special deputy to act for the  
9 liquidator under this chapter, and determine the  
10 special deputy's reasonable compensation. The special  
11 deputy shall have all the powers of the liquidator  
12 granted by this section. The special deputy shall  
13 serve at the pleasure of the liquidator.

14 (2) Hire employees and agents, legal counsel,  
15 accountants, appraisers, consultants, and other  
16 personnel as the commissioner may deem necessary to  
17 assist in the liquidation.

18 (3) With the approval of the court, fix reasonable  
19 compensation of employees and agents, legal counsel,  
20 accountants, appraisers, and consultants.

21 (4) Pay reasonable compensation to persons  
22 appointed and defray from the funds or assets of the  
23 establishment all expenses of taking possession of,  
24 conserving, conducting, liquidating, disposing of, or  
25 otherwise dealing with the business and property of  
26 the establishment. If the property of the  
27 establishment does not contain sufficient cash or  
28 liquid assets to defray the costs incurred, the  
29 commissioner may advance the costs so incurred out of  
30 the insurance division regulatory fund. Amounts so  
31 advanced for expenses of administration shall be  
32 repaid to the insurance division regulatory fund for  
33 the use of the division out of the first available  
34 moneys of the establishment.

35 (5) Hold hearings, subpoena witnesses, and compel  
36 their attendance, administer oaths, examine a person  
37 under oath, and compel a person to subscribe to the  
38 person's testimony after it has been correctly reduced  
39 to writing, and in connection to the proceedings  
40 require the production of books, accounts, papers,  
41 correspondence, memoranda, purchase agreements, files,  
42 or other documents or records which the liquidator  
43 deems relevant to the inquiry.

44 (6) Collect debts and moneys due and claims  
45 belonging to the establishment, wherever located.  
46 Pursuant to this subparagraph, the liquidator may do  
47 any of the following:

48 (a) Institute timely action in other jurisdictions  
49 to forestall garnishment and attachment proceedings  
50 against debts.

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1 (b) Perform acts as are necessary or expedient to  
2 collect, conserve, or protect its assets or property,  
3 including the power to sell, compound, compromise, or  
4 assign debts for purposes of collection upon terms and  
5 conditions as the liquidator deems best.

6 (c) Pursue any creditor's remedies available to  
7 enforce claims.

8 (7) Conduct public and private sales of the  
9 property of the establishment.

10 (8) Use assets of the establishment under a  
11 liquidation order to transfer obligations of purchase  
12 agreements to a solvent establishment, if the transfer  
13 can be accomplished without prejudice to the  
14 applicable priorities under subsection 18.

15 (9) Acquire, hypothecate, encumber, lease,  
16 improve, sell, transfer, abandon, or otherwise dispose  
17 of or deal with property of the establishment at its  
18 market value or upon terms and conditions as are fair  
19 and reasonable. The liquidator shall also have power  
20 to execute, acknowledge, and deliver deeds,  
21 assignments, releases, and other instruments necessary  
22 to effectuate a sale of property or other transaction  
23 in connection with the liquidation.

24 (10) Borrow money on the security of the  
25 establishment's assets or without security and execute  
26 and deliver documents necessary to that transaction  
27 for the purpose of facilitating the liquidation.  
28 Money borrowed pursuant to this subparagraph shall be  
29 repaid as an administrative expense and shall have  
30 priority over any other class 1 claims under the  
31 priority of distribution established in subsection 18.

32 (11) Enter into contracts as necessary to carry  
33 out the order to liquidate and affirm or disavow  
34 contracts to which the establishment is a party.

35 (12) Continue to prosecute and to institute in the  
36 name of the establishment or in the liquidator's own  
37 name any and all suits and other legal proceedings, in  
38 this state or elsewhere, and to abandon the  
39 prosecution of claims the liquidator deems  
40 unprofitable to pursue further.

41 (13) Prosecute an action on behalf of the  
42 creditors, purchasers, or owners against an officer of  
43 the establishment or any other person.

44 (14) Remove records and property of the  
45 establishment to the offices of the commissioner or to  
46 other places as may be convenient for the purposes of  
47 efficient and orderly execution of the liquidation.

48 (15) Deposit in one or more banks in this state  
49 sums as are required for meeting current  
50 administration expenses and distributions.

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1 (16) Unless the court orders otherwise, invest  
2 funds not currently needed.

3 (17) File necessary documents for recording in the  
4 office of the recorder of deeds or record office in  
5 this state or elsewhere where property of the  
6 establishment is located.

7 (18) Assert defenses available to the  
8 establishment against third persons including statutes  
9 of limitations, statutes of fraud, and the defense of  
10 usury. A waiver of a defense by the establishment  
11 after a petition in liquidation has been filed shall  
12 not bind the liquidator.

13 (19) Exercise and enforce the rights, remedies,  
14 and powers of a creditor, purchaser, or owner,  
15 including the power to avoid transfer or lien that may  
16 be given by the general law and that is not included  
17 within subsections 7 through 9.

18 (20) Intervene in a proceeding wherever instituted  
19 that might lead to the appointment of a receiver or  
20 trustee, and act as the receiver or trustee whenever  
21 the appointment is offered.

22 (21) Exercise powers now held or later conferred  
23 upon receivers by the laws of this state which are not  
24 inconsistent with this chapter.

25 b. This subsection does not limit the liquidator  
26 or exclude the liquidator from exercising a power not  
27 listed in paragraph "a" that may be necessary or  
28 appropriate to accomplish the purposes of this  
29 chapter.

30 4. NOTICE TO CREDITORS AND OTHERS.

31 a. Unless the court otherwise directs, the  
32 liquidator shall give notice of the liquidation order  
33 as soon as possible by doing both of the following:

34 (1) Mailing notice, by first-class mail, to all  
35 persons known or reasonably expected to have claims  
36 against the establishment, including purchasers, at  
37 their last known address as indicated by the records  
38 of the establishment.

39 (2) Publication of notice in a newspaper of  
40 general circulation in the county in which the  
41 establishment has its principal place of business and  
42 in other locations as the liquidator deems  
43 appropriate.

44 b. Notice to potential claimants under paragraph  
45 "a" shall require claimants to file with the  
46 liquidator their claims together with proper proofs of  
47 the claim under subsection 13 on or before a date the  
48 liquidator shall specify in the notice. Claimants  
49 shall keep the liquidator informed of their changes of  
50 address, if any.

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1 c. If notice is given pursuant to this subsection,  
2 the distribution of assets of the establishment under  
3 this chapter shall be conclusive with respect to  
4 claimants, whether or not a claimant actually received  
5 notice.

6 5. ACTIONS BY AND AGAINST LIQUIDATOR.

7 a. After issuance of an order appointing a  
8 liquidator of an establishment, an action at law or  
9 equity shall not be brought against the establishment  
10 within this state or elsewhere, and existing actions  
11 shall not be maintained or further presented after  
12 issuance of the order. Whenever in the liquidator's  
13 judgment, protection of the estate of the  
14 establishment necessitates intervention in an action  
15 against the establishment that is pending outside this  
16 state, the liquidator may intervene in the action.  
17 The liquidator may defend, at the expense of the  
18 estate of the establishment, an action in which the  
19 liquidator intervenes under this section.

20 b. Within two years or such additional time as  
21 applicable law may permit, the liquidator, after the  
22 issuance of an order for liquidation, may institute an  
23 action or proceeding on behalf of the estate of the  
24 establishment upon any cause of action against which  
25 the period of limitation fixed by applicable law has  
26 not expired at the time of the filing of the petition  
27 upon which the order is entered. If a period of  
28 limitation is fixed by agreement for instituting a  
29 suit or proceeding upon a claim, or for filing a  
30 claim, proof of claim, proof of loss, demand, notice,  
31 or the like, or if in a proceeding, judicial or  
32 otherwise, a period of limitation is fixed in the  
33 proceeding or pursuant to applicable law for taking an  
34 action, filing a claim or pleading, or doing an act,  
35 and if the period has not expired at the date of the  
36 filing of the petition, the liquidator may, for the  
37 benefit of the estate, take any action or do any act,  
38 required of or permitted to the establishment, within  
39 a period of one hundred eighty days subsequent to the  
40 entry of an order for liquidation, or within a further  
41 period as is shown to the satisfaction of the court  
42 not to be unfairly prejudicial to the other party.

43 c. A statute of limitations or defense of laches  
44 shall not run with respect to an action against an  
45 establishment between the filing of a petition for  
46 liquidation against the establishment and the denial  
47 of the petition. An action against the establishment  
48 that might have been commenced when the petition was  
49 filed may be commenced for at least sixty days after  
50 the petition is denied.

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1 6. COLLECTION AND LIST OF ASSETS.

2 a. As soon as practicable after the liquidation  
3 order but not later than one hundred twenty days after  
4 such order, the liquidator shall prepare in duplicate  
5 a list of the establishment's assets. The list shall  
6 be amended or supplemented as the liquidator may  
7 determine. One copy shall be filed in the office of  
8 the clerk of court, and one copy shall be retained for  
9 the liquidator's files. Amendments and supplements  
10 shall be similarly filed.

11 b. The liquidator shall reduce the assets to a  
12 degree of liquidity that is consistent with the  
13 effective execution of the liquidation.

14 c. A submission of a proposal to the court for  
15 distribution of assets in accordance with subsection  
16 11 fulfills the requirements of paragraph "a".

17 7. FRAUDULENT TRANSFERS PRIOR TO PETITION.

18 a. A transfer made and an obligation incurred by  
19 an establishment within one year prior to the filing  
20 of a successful petition for liquidation under this  
21 chapter is fraudulent as to then existing and future  
22 creditors if made or incurred without fair  
23 consideration, or with actual intent to hinder, delay,  
24 or defraud either existing or future creditors. A  
25 fraudulent transfer made or an obligation incurred by  
26 an establishment ordered to be liquidated under this  
27 chapter may be avoided by the liquidator, except as to  
28 a person who in good faith is a purchaser, lienor, or  
29 obligee for a present fair equivalent value. A  
30 purchaser, lienor, or obligee, who in good faith has  
31 given a consideration less than present fair  
32 equivalent value for such transfer, lien, or  
33 obligation, may retain the property, lien, or  
34 obligation as security for repayment. The court may,  
35 on due notice, order any such transfer, lien, or  
36 obligation to be preserved for the benefit of the  
37 estate, and in that event, the receiver shall succeed  
38 to and may enforce the rights of the purchaser,  
39 lienor, or obligee.

40 b. (1) A transfer of property other than real  
41 property is made when it becomes perfected so that a  
42 subsequent lien obtainable by legal or equitable  
43 proceedings on a simple contract could not become  
44 superior to the rights of the transferee under  
45 subsection 9, paragraph "c".

46 (2) A transfer of real property is made when it  
47 becomes perfected so that a subsequent bona fide  
48 purchaser from the establishment could not obtain  
49 rights superior to the rights of the transferee.

50 (3) A transfer which creates an equitable lien is

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1 not perfected if there are available means by which a  
2 legal lien could be perfected.

3 (4) A transfer not perfected prior to the filing  
4 of a petition for liquidation is deemed to be made  
5 immediately before the filing of the successful  
6 petition.

7 (5) This subsection applies whether or not there  
8 are or were creditors who might have obtained a lien  
9 or persons who might have become bona fide purchasers.

10 8. FRAUDULENT TRANSFER AFTER PETITION.

11 a. After a petition for liquidation has been  
12 filed, a transfer of real property of the  
13 establishment made to a person acting in good faith is  
14 valid against the liquidator if made for a present  
15 fair equivalent value. If the transfer is not made  
16 for a present fair equivalent value, then the transfer  
17 is valid to the extent of the present consideration  
18 actually paid for which amount the transferee shall  
19 have a lien on the property transferred. The  
20 commencement of a proceeding in liquidation is  
21 constructive notice upon the recording of a copy of  
22 the petition for or order of liquidation with the  
23 recording or deeds in the county where any real  
24 property in question is located. The exercise by a  
25 court of the United States or a state or jurisdiction  
26 to authorize a judicial sale of real property of the  
27 establishment within a county in a state shall not be  
28 impaired by the pendency of a proceeding unless the  
29 copy is recorded in the county prior to the  
30 consummation of the judicial sale.

31 b. After a petition for liquidation has been filed  
32 and before either the liquidator takes possession of  
33 the property of the establishment or an order of  
34 liquidation is granted:

35 (1) A transfer of the property, other than real  
36 property, of the establishment made to a person acting  
37 in good faith is valid against the liquidator if made  
38 for a present fair equivalent value. If the transfer  
39 was not made for a present fair equivalent value, then  
40 the transfer is valid to the extent of the present  
41 consideration actually paid for which amount the  
42 transferee shall have a lien on the property  
43 transferred.

44 (2) If acting in good faith, a person indebted to  
45 the establishment or holding property of the  
46 establishment may pay the debt or deliver the  
47 property, or any part of the property, to the  
48 establishment or upon the establishment's order as if  
49 the petition were not pending.

50 (3) A person having actual knowledge of the

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1 pending liquidation is not acting in good faith.

2 (4) A person asserting the validity of a transfer  
3 under this subsection has the burden of proof. Except  
4 as provided in this subsection, a transfer by or on  
5 behalf of the establishment after the date of the  
6 petition for liquidation by any person other than the  
7 liquidator is not valid against the liquidator.

8 c. A person receiving any property from the  
9 establishment or any benefit of the property of the  
10 establishment which is a fraudulent transfer under  
11 paragraph "a" is personally liable for the property or  
12 benefit and shall account to the liquidator.

13 d. This chapter does not impair the negotiability  
14 of currency or negotiable instruments.

15 9. VOIDABLE PREFERENCES AND LIENS.

16 a. (1) A preference is a transfer of the property  
17 of an establishment to or for the benefit of a  
18 creditor for an antecedent debt made or suffered by  
19 the establishment within one year before the filing of  
20 a successful petition for liquidation under this  
21 chapter, the effect of which transfer may be to enable  
22 the creditor to obtain a greater percentage of this  
23 debt than another creditor of the same class would  
24 receive. If a liquidation order is entered while the  
25 establishment is already subject to a receivership,  
26 then the transfers are preferences if made or suffered  
27 within one year before the filing of the successful  
28 petition for the receivership, or within two years  
29 before the filing of the successful petition for  
30 liquidation, whichever time is shorter.

31 (2) A preference may be avoided by the liquidator  
32 if any of the following exist:

33 (a) The establishment was insolvent at the time of  
34 the transfer.

35 (b) The transfer was made within four months  
36 before the filing of the petition.

37 (c) At the time the transfer was made, the  
38 creditor receiving it or to be benefited by the  
39 transfer or the creditor's agent acting with reference  
40 to the transfer had reasonable cause to believe that  
41 the establishment was insolvent or was about to become  
42 insolvent.

43 (d) The creditor receiving the transfer was an  
44 officer, or an employee, attorney, or other person who  
45 was in fact in a position of comparable influence in  
46 the establishment to an officer whether or not the  
47 person held the position of an officer, owner, or  
48 other person, firm, corporation, association, or  
49 aggregation of persons with whom the establishment did  
50 not deal at arm's length.

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1 (3) Where the preference is voidable, the  
2 liquidator may recover the property. If the property  
3 has been converted, the liquidator may recover its  
4 value from a person who has received or converted the  
5 property. However, if a bona fide purchaser or lienor  
6 has given less than the present fair equivalent value,  
7 the purchaser or lienor shall have a lien upon the  
8 property to the extent of the consideration actually  
9 given. Where a preference by way of lien or security  
10 interest is voidable, the court may on due notice  
11 order the lien or security interest to be preserved  
12 for the benefit of the estate, in which event the lien  
13 or title shall pass to the liquidator.

14 b. (1) A transfer of property other than real  
15 property is made when it becomes perfected so that a  
16 subsequent lien obtainable by legal or equitable  
17 proceedings on a simple contract could not become  
18 superior to the rights of the transferee.

19 (2) A transfer of real property is made when it  
20 becomes perfected so that a subsequent bona fide  
21 purchaser from the establishment could not obtain  
22 rights superior to the rights of the transferee.

23 (3) A transfer which creates an equitable lien is  
24 not perfected if there are available means by which a  
25 legal lien could be created.

26 (4) A transfer not perfected prior to the filing  
27 of a petition for liquidation is deemed to be made  
28 immediately before the filing of the successful  
29 petition.

30 (5) This subsection applies whether or not there  
31 are or were creditors who might have obtained liens or  
32 persons who might have become bona fide purchasers.

33 c. (1) A lien obtainable by legal or equitable  
34 proceedings upon a simple contract is one arising in  
35 the ordinary course of the proceedings upon the entry  
36 or docketing of a judgment or decree, or upon  
37 attachment, garnishment, execution, or like process,  
38 whether before, upon, or after judgment or decree and  
39 whether before or upon levy. It does not include  
40 liens which under applicable law are given a special  
41 priority over other liens which are prior in time.

42 (2) A lien obtainable by legal or equitable  
43 proceedings may become superior to the rights of a  
44 transferee, or a purchaser may obtain rights superior  
45 to the rights of a transferee within the meaning of  
46 paragraph "b", if such consequences follow only from  
47 the lien or purchase itself, or from the lien or  
48 purchase followed by a step wholly within the control  
49 of the respective lienholder or purchaser, with or  
50 without the aid of ministerial action by public

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1 officials. However, a lien could not become superior  
2 and a purchase could not create superior rights for  
3 the purpose of paragraph "b" through an act subsequent  
4 to the obtaining of a lien or subsequent to a purchase  
5 which requires the agreement or concurrence of any  
6 third party or which requires further judicial action  
7 or ruling.

8 d. A transfer of property for or on account of a  
9 new and contemporaneous consideration, which is under  
10 paragraph "b" made or suffered after the transfer  
11 because of delay in perfecting it, does not become a  
12 transfer for or on account of an antecedent debt if  
13 any acts required by the applicable law to be  
14 performed in order to perfect the transfer as against  
15 liens or a bona fide purchaser's rights are performed  
16 within twenty-one days or any period expressly allowed  
17 by the law, whichever is less. A transfer to secure a  
18 future loan, if a loan is actually made, or a transfer  
19 which becomes security for a future loan, shall have  
20 the same effect as a transfer for or on account of a  
21 new and contemporaneous consideration.

22 e. If a lien which is voidable under paragraph  
23 "a", subparagraph (2), has been dissolved by the  
24 furnishing of a bond or other obligation, the surety  
25 of which has been indemnified directly or indirectly  
26 by the transfer or the creation of a lien upon  
27 property of an establishment before the filing of a  
28 petition under this chapter which results in the  
29 liquidation order, the indemnifying transfer or lien  
30 is also voidable.

31 f. The property affected by a lien voidable under  
32 paragraphs "a" and "e" is discharged from the lien.  
33 The property and any of the indemnifying property  
34 transferred to or for the benefit of a surety shall  
35 pass to the liquidator. However, the court may on due  
36 notice order a lien to be preserved for the benefit of  
37 the estate and the court may direct that the  
38 conveyance be executed to evidence the title of the  
39 liquidator.

40 g. The court shall have summary jurisdiction of a  
41 proceeding by a liquidator to hear and determine the  
42 rights of the parties under this section. Reasonable  
43 notice of hearing in the proceeding shall be given to  
44 all parties in interest, including the obligee of a  
45 releasing bond or other like obligation. Where an  
46 order is entered for the recovery of indemnifying  
47 property in kind or for the avoidance of an  
48 indemnifying lien, upon application of any party in  
49 interest, the court shall in the same proceeding  
50 ascertain the value of the property or lien. If the

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1 value is less than the amount for which the property  
2 is indemnified or less than the amount of the lien,  
3 the transferee or lienholder may elect to retain the  
4 property or lien upon payment of its value, as  
5 ascertained by the court, to the liquidator within the  
6 time as fixed by the court.

7 h. The liability of a surety under a releasing  
8 bond or other like obligation is discharged to the  
9 extent of the value of the indemnifying property  
10 recovered or the indemnifying lien nullified and  
11 avoided by the liquidator. Where the property is  
12 retained under paragraph "g", the liability of the  
13 surety is discharged to the extent of the amount paid  
14 to the liquidator.

15 i. If a creditor has been preferred for property  
16 which becomes a part of the establishment's estate,  
17 and afterward in good faith gives the establishment  
18 further credit without security of any kind, the  
19 amount of the new credit remaining unpaid at the time  
20 of the petition may be set off against the preference  
21 which would otherwise be recoverable from the  
22 creditor.

23 j. If within four months before the filing of a  
24 successful petition for liquidation under this  
25 chapter, or at any time in contemplation of a  
26 proceeding to liquidate, an establishment, directly or  
27 indirectly, pays money or transfers property to an  
28 attorney for services rendered or to be rendered, the  
29 transaction may be examined by the court on its own  
30 motion or shall be examined by the court on petition  
31 of the liquidator. The payment or transfer shall be  
32 held valid only to the extent of a reasonable amount  
33 to be determined by the court. The excess may be  
34 recovered by the liquidator for the benefit of the  
35 estate. However, where the attorney is in a position  
36 of influence in the establishment or an affiliate,  
37 payment of any money or the transfer of any property  
38 to the attorney for services rendered or to be  
39 rendered shall be governed by the provisions of  
40 paragraph "a", subparagraph (2), subparagraph  
41 subdivision (d).

42 k. (1) An officer, manager, employee,  
43 shareholder, subscriber, attorney, or other person  
44 acting on behalf of the establishment who knowingly  
45 participates in giving any preference when the person  
46 has reasonable cause to believe the establishment is  
47 or is about to become insolvent at the time of the  
48 preference is personally liable to the liquidator for  
49 the amount of the preference. There is an inference  
50 that reasonable cause exists if the transfer was made

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1 within four months before the date of filing of this  
2 successful petition for liquidation.

3 (2) A person receiving property from the  
4 establishment or the benefit of the property of the  
5 establishment as a preference voidable under paragraph  
6 "a" is personally liable for the property and shall  
7 account to the liquidator.

8 (3) This subsection shall not prejudice any other  
9 claim by the liquidator against any person.

10 10. CLAIMS OF HOLDER OF VOID OR VOIDABLE RIGHTS.

11 a. A claim of a creditor who has received or  
12 acquired a preference, lien, conveyance, transfer,  
13 assignment, or encumbrance, voidable under this  
14 chapter, shall not be allowed unless the creditor  
15 surrenders the preference, lien, conveyance, transfer,  
16 assignment, or encumbrance. If the avoidance is  
17 effected by a proceeding in which a final judgment has  
18 been entered, the claim shall not be allowed unless  
19 the money is paid or the property is delivered to the  
20 liquidator within thirty days from the date of the  
21 entering of the final judgment. However, the court  
22 having jurisdiction over the liquidation may allow  
23 further time if there is an appeal or other  
24 continuation of the proceeding.

25 b. A claim allowable under paragraph "a" by reason  
26 of a voluntary or involuntary avoidance, preference,  
27 lien, conveyance, transfer, assignment, or encumbrance  
28 may be filed as an excused late filing under  
29 subsection 12, if filed within thirty days from the  
30 date of the avoidance or within the further time  
31 allowed by the court under paragraph "a".

32 11. LIQUIDATOR'S PROPOSAL TO DISTRIBUTE ASSETS.

33 a. From time to time as assets become available,  
34 the liquidator shall make application to the court for  
35 approval of a proposal to disburse assets out of  
36 marshaled assets.

37 b. The proposal shall at least include provisions  
38 for all of the following:

39 (1) Reserving amounts for the payment of all the  
40 following:

41 (a) Expenses of administration.

42 (b) To the extent of the value of the security  
43 held, the payment of claims of secured creditors.

44 (c) Claims falling within the priorities  
45 established in subsection 18, paragraphs "a" and "b".

46 (2) Disbursement of the assets marshaled to date  
47 and subsequent disbursement of assets as they become  
48 available.

49 c. Action on the application may be taken by the  
50 court provided that the liquidator's proposal complies

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1 with paragraph "b".

2 12. FILING OF CLAIMS.

3 a. Proof of all claims shall be filed with the  
4 liquidator in the form required by subsection 13 on or  
5 before the last day for filing specified in the notice  
6 required under subsection 4.

7 b. The liquidator may permit a claimant making a  
8 late filing to share in distributions, whether past or  
9 future, as if the claimant were not late, to the  
10 extent that the payment will not prejudice the orderly  
11 administration of the liquidation under any of the  
12 following circumstances:

13 (1) The existence of the claim was not known to  
14 the claimant and the claimant filed the claim as  
15 promptly as reasonably possible after learning of it.

16 (2) A transfer to a creditor was avoided under  
17 subsections 7 through 9, or was voluntarily  
18 surrendered under subsection 10, and the filing  
19 satisfies the conditions of subsection 10.

20 (3) The valuation under subsection 17 of security  
21 held by a secured creditor shows a deficiency, which  
22 is filed within thirty days after the valuation.

23 c. The liquidator may consider any claim filed  
24 late and permit the claimant to receive distributions  
25 which are subsequently declared on any claims of the  
26 same or lower priority if the payment does not  
27 prejudice the orderly administration of the  
28 liquidation. The late-filing claimant shall receive  
29 at each distribution the same percentage of the amount  
30 allowed on the claim as is then being paid to  
31 claimants of any lower priority. This shall continue  
32 until the claim has been paid in full.

33 13. PROOF OF CLAIM.

34 a. Proof of claim shall consist of a statement  
35 signed by the claimant that includes all of the  
36 following that are applicable:

37 (1) The particulars of the claim, including the  
38 consideration given for it.

39 (2) The identity and amount of the security on the  
40 claim.

41 (3) The payments, if any, made on the debt.

42 (4) A statement that the sum claimed is justly  
43 owing and that there is no setoff, counterclaim, or  
44 defense to the claim.

45 (5) Any right of priority of payment or other  
46 specific right asserted by the claimant.

47 (6) A copy of the written instrument which is the  
48 foundation of the claim.

49 (7) The name and address of the claimant and the  
50 attorney who represents the claimant, if any.

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1 b. A claim need not be considered or allowed if it  
2 does not contain all the information identified in  
3 paragraph "a" which is applicable. The liquidator may  
4 require that a prescribed form be used and may require  
5 that other information and documents be included.

6 c. At any time the liquidator may request the  
7 claimant to present information or evidence  
8 supplementary to that required under paragraph "a",  
9 and may take testimony under oath, require production  
10 of affidavits or depositions, or otherwise obtain  
11 additional information or evidence.

12 d. A judgment or order against an establishment  
13 entered after the date of filing of a successful  
14 petition for liquidation, or a judgment or order  
15 against the establishment entered at any time by  
16 default or by collusion need not be considered as  
17 evidence of liability or of the amount of damages. A  
18 judgment or order against an establishment before the  
19 filing of the petition need not be considered as  
20 evidence of liability or of the amount of damages.

21 14. SPECIAL CLAIMS.

22 a. A claim may be allowed even if contingent, if  
23 it is filed pursuant to subsection 12. The claim may  
24 be allowed and the claimant may participate in all  
25 distributions declared after it is filed to the extent  
26 that it does not prejudice the orderly administration  
27 of the liquidation.

28 b. Claims that are due except for the passage of  
29 time shall be treated as absolute claims are treated.  
30 However, the claims may be discounted at the legal  
31 rate of interest.

32 c. Claims made under employment contracts by  
33 directors, principal officers, or persons in fact  
34 performing similar functions or having similar powers  
35 are limited to payment for services rendered prior to  
36 the issuance of an order of liquidation under  
37 subsection 2.

38 15. DISPUTED CLAIMS.

39 a. If a claim is denied in whole or in part by the  
40 liquidator, written notice of the determination shall  
41 be given to the claimant or the claimant's attorney by  
42 first-class mail at the address shown in the proof of  
43 claim. Within sixty days from the mailing of the  
44 notice, the claimant may file objections with the  
45 liquidator. Unless a filing is made, the claimant  
46 shall not further object to the determination.

47 b. If objections are filed with the liquidator and  
48 the liquidator does not alter the denial of the claim  
49 as a result of the objections, the liquidator shall  
50 ask the court for a hearing as soon as practicable and

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1 give notice of the hearing by first-class mail to the  
2 claimant or the claimant's attorney and to any other  
3 persons directly affected. The notice shall be given  
4 not less than ten nor more than thirty days before the  
5 date of hearing. The matter shall be heard by the  
6 court or by a court-appointed referee. The referee  
7 shall submit findings of fact along with a  
8 recommendation.

9 16. CLAIMS OF OTHER PERSON. If a creditor, whose  
10 claim against an establishment is secured in whole or  
11 in part by the undertaking of another person, fails to  
12 prove and file that claim, then the other person may  
13 do so in the creditor's name and shall be subrogated  
14 to the rights of the creditor, whether the claim has  
15 been filed by the creditor or by the other person in  
16 the creditor's name to the extent that the other  
17 person discharges the undertaking. However, in the  
18 absence of an agreement with the creditor to the  
19 contrary, the other person is not entitled to any  
20 distribution until the amount paid to the creditor on  
21 the undertaking plus the distributions paid on the  
22 claim from the establishment's estate to the creditor  
23 equal the amount of the entire claim of the creditor.  
24 An excess received by the creditor shall be held by  
25 the creditor in trust for the other person.

26 17. SECURED CREDITOR'S CLAIMS.

27 a. The value of the security held by a secured  
28 creditor shall be determined in one of the following  
29 ways, as the court may direct:

30 (1) By converting the security into money  
31 according to the terms of the agreement pursuant to  
32 which the security was delivered to the creditors.

33 (2) By agreement, arbitration, compromise, or  
34 litigation between the creditor and the liquidator.

35 b. The determination shall be under the  
36 supervision and control of the court with due regard  
37 for the recommendation of the liquidator. The amount  
38 so determined shall be credited upon the secured  
39 claim. A deficiency shall be treated as an unsecured  
40 claim. If the claimant surrenders the security to the  
41 liquidator, the entire claim shall be allowed as if  
42 unsecured.

43 18. PRIORITY OF DISTRIBUTION. The priority of  
44 distribution of claims from the establishment's estate  
45 shall be in accordance with the order in which each  
46 class of claims is set forth. Claims in each class  
47 shall be paid in full or adequate funds retained for  
48 the payment before the members of the next class  
49 receive any payment. Subclasses shall not be  
50 established within a class. The order of distribution

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1 of claims is as follows:  
2 a. CLASS 1. The costs and expenses of  
3 administration, including but not limited to the  
4 following:  
5 (1) Actual and necessary costs of preserving or  
6 recovering the assets of the establishment.  
7 (2) Compensation for all authorized services  
8 rendered in the liquidation.  
9 (3) Necessary filing fees.  
10 (4) Fees and mileage payable to witnesses.  
11 (5) Authorized reasonable attorney fees and other  
12 professional services rendered in the liquidation.  
13 b. CLASS 2. Reasonable compensation to employees  
14 for services performed to the extent that they do not  
15 exceed two months of monetary compensation and  
16 represent payment for services performed within one  
17 year before the filing of the petition for  
18 liquidation. Officers and directors are not entitled  
19 to the benefit of this priority. The priority is in  
20 lieu of other similar priority which may be authorized  
21 by law as to wages or compensation of employees.  
22 c. CLASS 3. Claims under purchase agreements.  
23 d. CLASS 4. Claims of general creditors.  
24 e. CLASS 5. Claims of the federal or of any state  
25 or local government. Claims, including those of a  
26 governmental body for a penalty or forfeiture, are  
27 allowed in this class only to the extent of the  
28 pecuniary loss sustained from the act, transaction, or  
29 proceeding out of which the penalty or forfeiture  
30 arose, with reasonable and actual costs incurred. The  
31 remainder of such claims shall be postponed to the  
32 class of claims under paragraph "g".  
33 f. CLASS 6. Claims filed late or any other claims  
34 other than claims under paragraph "g".  
35 g. CLASS 7. The claims of shareholders or other  
36 owners.

37 19. LIQUIDATOR'S RECOMMENDATIONS TO THE COURT.  
38 a. The liquidator shall review claims duly filed  
39 in the liquidation and shall make further  
40 investigation as necessary. The liquidator may  
41 compound, compromise, or in any other manner negotiate  
42 the amount for which claims will be recommended to the  
43 court except where the liquidator is required by law  
44 to accept claims as settled by a person or  
45 organization. Unresolved disputes shall be determined  
46 under subsection 15. As soon as practicable, the  
47 liquidator shall present to the court a report of the  
48 claims against the establishment with the liquidator's  
49 recommendations. The report shall include the name  
50 and address of each claimant and the amount of the

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1 claim finally recommended.

2 b. The court may approve, disapprove, or modify  
3 the report on claims by the liquidator. Reports not  
4 modified by the court within sixty days following  
5 submission by the liquidator shall be treated by the  
6 liquidator as allowed claims, subject to later  
7 modification or to rulings made by the court pursuant  
8 to subsection 15. A claim under a policy of insurance  
9 shall not be allowed for an amount in excess of the  
10 applicable policy limits.

11 20. DISTRIBUTION OF ASSETS. Under the direction  
12 of the court, the liquidator shall pay distributions  
13 in a manner that will ensure the proper recognition of  
14 priorities and a reasonable balance between the  
15 expeditious completion of the liquidation and the  
16 protection of unliquidated and undetermined claims,  
17 including third-party claims. Distribution of assets  
18 in kind may be made at valuations set by agreement  
19 between the liquidator and the creditor and approved  
20 by the court.

21 21. UNCLAIMED AND WITHHELD FUNDS.

22 a. Unclaimed funds subject to distribution  
23 remaining in the liquidator's hands when the  
24 liquidator is ready to apply to the court for  
25 discharge, including the amount distributable to a  
26 creditor, owner, or other person who is unknown or  
27 cannot be found, shall be deposited with the treasurer  
28 of the state, and shall be paid without interest,  
29 except as provided in subsection 18, to the person  
30 entitled or to the person's legal representative upon  
31 proof satisfactory to the treasurer of state of the  
32 right to the funds. Any amount on deposit not claimed  
33 within six years from the discharge of the liquidator  
34 is deemed to have been abandoned and shall become the  
35 property of the state without formal escheat  
36 proceedings and be transferred to the insurance  
37 division regulatory fund.

38 b. Funds withheld under subsection 14 and not  
39 distributed shall upon discharge of the liquidator be  
40 deposited with the treasurer of state and paid  
41 pursuant to subsection 18. Sums remaining which under  
42 subsection 18 would revert to the undistributed assets  
43 of the establishment shall be transferred to the  
44 insurance division regulatory fund and become the  
45 property of the state as provided under paragraph "a",  
46 unless the commissioner in the commissioner's  
47 discretion petitions the court to reopen the  
48 liquidation pursuant to subsection 23.

49 c. Notwithstanding any other provision of this  
50 chapter, funds as identified in paragraph "a", with

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1 the approval of the court, shall be made available to  
2 the commissioner for use in the detection and  
3 prevention of future insolvencies. The commissioner  
4 shall hold these funds in the insurance division  
5 regulatory fund and shall pay without interest, except  
6 as provided in subsection 18, to the person entitled  
7 to the funds or to the person's legal representative  
8 upon proof satisfactory to the commissioner of the  
9 person's right to the funds. The funds shall be held  
10 by the commissioner for a period of two years at which  
11 time the rights and duties to the unclaimed funds  
12 shall vest in the commissioner.

13 22. TERMINATION OF PROCEEDINGS.

14 a. When all assets justifying the expense of  
15 collection and distribution have been collected and  
16 distributed under this chapter, the liquidator shall  
17 apply to the court for discharge. The court may grant  
18 the discharge and make any other orders, including an  
19 order to transfer remaining funds that are  
20 uneconomical to distribute, as appropriate.

21 b. Any other person may apply to the court at any  
22 time for an order under paragraph "a". If the  
23 application is denied, the applicant shall pay the  
24 costs and expenses of the liquidator in resisting the  
25 application, including a reasonable attorney fee.

26 23. REOPENING LIQUIDATION. At any time after the  
27 liquidation proceeding has been terminated and the  
28 liquidator discharged, the commissioner or other  
29 interested party may petition the court to reopen the  
30 proceedings for good cause including the discovery of  
31 additional assets. The court shall order the  
32 proceeding reopened if it is satisfied that there is  
33 justification for the reopening.

34 24. DISPOSITION OF RECORDS DURING AND AFTER  
35 TERMINATION OF LIQUIDATION. If it appears to the  
36 commissioner that the records of an establishment in  
37 the process of liquidation or completely liquidated  
38 are no longer useful, the commissioner may recommend  
39 to the court and the court shall direct what records  
40 shall be retained for future reference and what  
41 records shall be destroyed.

42 25. EXTERNAL AUDIT OF LIQUIDATOR'S BOOKS. The  
43 court may order audits to be made of the books of the  
44 commissioner relating to a liquidation established  
45 under this chapter, and a report of each audit shall  
46 be filed with the commissioner and with the court.  
47 The books, records, and other documents of the  
48 liquidation shall be made available to the auditor at  
49 any time without notice. The expense of an audit  
50 shall be considered a cost of administration of the

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1 liquidation.

2 Sec. \_\_\_\_\_. Section 537A.10, subsection 1, paragraph  
3 c, subparagraph (3), Code 2001, is amended to read as  
4 follows:

5 (3) "Franchise" also does not include any contract  
6 under which a petroleum retailer or petroleum  
7 distributor is authorized or permitted to occupy  
8 leased marketing premises, which premises are to be  
9 employed in connection with the sale, consignment, or  
10 distribution of motor fuel under a trademark which is  
11 owned or controlled by a refiner which is regulated by  
12 the federal Petroleum Marketing Practices Act, 15  
13 U.S.C. § 2801 et seq. The term "refiner" means any  
14 person engaged in the refining of crude oil to produce  
15 motor fuel, and includes any affiliate of such person.  
16 "Franchise" also does not include a contract entered  
17 into by any person regulated under chapter 123, 322,  
18 322A, 322B, 322C, 322D, 322F, ~~522~~ 522B, or 543B, or a  
19 contract establishing a franchise relationship with  
20 respect to the sale of construction equipment, lawn or  
21 garden equipment, or real estate.

22 Sec. \_\_\_\_\_. 2001 Iowa Acts, Senate File 500, section  
23 39, is amended to read as follows:

24 SEC. 39. EFFECTIVE DATE. Sections 4, 5, 7 through  
25 11, 13 through 22, 34, and 38 of this Act take effect  
26 January 1, 2002.

27 Sec. \_\_\_\_\_. Chapters 523A and 523E, Code 2001, are  
28 repealed."

29 \_\_\_\_\_. Title page, line 1, by inserting after the  
30 word "Act" the following: "concerning regulated  
31 industries under the jurisdiction of the commissioner  
32 of insurance relating to various issues relating to  
33 insurance,".

34 3. Title page, line 7, by inserting after the  
35 word "requirements" the following: ", and relating to  
36 cemetery and funeral merchandise and funeral services,  
37 establishing permit and purchase agreement  
38 requirements, establishing and appropriating fees, and  
39 providing administration, enforcement, and liquidation  
40 procedures, and penalties".

41 4. By renumbering as necessary.

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(P.126)

Commission or other remuneration is not either directly or indirectly paid any person for soliciting in this state.

Sec. 2. Section 502.102, subsection 19, Code 2001, is amended to read as follows:

19. "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit sharing agreement; collateral trust certificate; reorganization certificate or subscription; transferable share; investment contract; viatical settlement contract, or any fractional or pooled interest in such contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under such a lease, right, or royalty; an interest in a limited liability company or in a limited liability partnership or any class or series of such interest, including any fractional or other interest in such interest; or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or for some other specified period. "Security" also does not include an interest in a limited liability company or a limited liability partnership if the person claiming that such an interest is not a security proves that all of the members of the limited liability company or limited liability partnership are actively engaged in the management of the limited liability company or limited liability partnership; provided that the evidence that members vote or have the right to vote, or the right to information concerning the business and affairs of the limited liability company or limited liability partnership, or the right to

SENATE FILE 473

AN ACT

CONCERNING REGULATED INDUSTRIES UNDER THE JURISDICTION OF THE COMMISSIONER OF INSURANCE RELATING TO VARIOUS ISSUES RELATING TO INSURANCE, RELATING TO THE REGULATION OF SECURITIES, BY DEFINING THE TERMS "AGENT" AND "SECURITY", PROVIDING REGISTRATION REQUIREMENTS, PROVIDING FOR DISCIPLINARY ACTIONS, IMPOSING FEES AND CIVIL PENALTIES, PROVIDING FOR TESTIMONY AND THE PRODUCTION OF EVIDENCE, AUTHORIZING COOPERATION WITH LAW ENFORCEMENT ENTITIES, PROVIDING CRIMINAL PENALTIES, AND ELIMINATING REPORTING REQUIREMENTS, AND RELATING TO CEMETERY AND FUNERAL MERCHANDISE AND FUNERAL SERVICES, ESTABLISHING PERMIT AND PURCHASE AGREEMENT REQUIREMENTS, ESTABLISHING AND APPROPRIATING FEES, AND PROVIDING ADMINISTRATION, ENFORCEMENT, AND LIQUIDATION PROCEDURES, AND PENALTIES.

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

Section 1. Section 502.102, subsection 3, paragraph a, subparagraph (3), Code 2001, is amended to read as follows:

(3) Effecting transactions in a federal covered security as described in sections 18(b)(3) and 18(b)(4)(D) of the Securities Act of 1933 as amended in Pub. L. No. 104-290, if a

participate in management, shall not establish, without more, that all members are actively engaged in the management of the limited liability company or limited liability partnership. "Security" is any of the foregoing as provided in this subsection whether or not it is evidenced by a written instrument.

Sec. 3. Section 502.203, subsection 18, Code 2001, is amended to read as follows:

18. An offer or sale of securities which are exempt from registration under 15 U.S.C. § 77a-77aa pursuant to rule 801 or 802 promulgated by the securities and exchange commission as provided in the Securities Act of 1933.

19. Any other security or transaction or offering or class of securities or transactions or offers exempted or requirements for exemption waived, by the administrator by rule or order, from requirements provided in section 502.201 or 502.602.

Sec. 4. Section 502.207A, subsection 7, Code 2001, is amended to read as follows:

7. Notwithstanding any other provision of this chapter, the administrator shall not deny effectiveness to or suspend or revoke the effectiveness of a registration under this section on the basis of section 502.209, subsection 1, paragraph "h", and the administrator shall not impose the conditions specified in section 502.208, subsection 8, subsection 9, paragraph "b", or subsection 12. ~~The administrator may issue a stop order pursuant to section 502.209 to filers under this section for any of the following additional reasons:~~

~~a.--The issuer's principal place of business is not in this state;~~

~~b.--At least fifty percent of the issuer's full-time employees are not located in this state;~~

~~c.--At least eighty percent of the net proceeds of the offering are not going to be used in connection with the operations of the issuer in this state;~~

~~d.--If the issuer is a seed or venture capital fund, at least fifty percent of the moneys received from the sale of the securities will not be used to make seed or venture capital investments in this state;~~

Sec. 5. Section 502.302, subsections 1 and 3, Code 2001, are amended to read as follows:

1. A broker-dealer, agent, investment adviser, or investment adviser representative may obtain an initial or renewal license by filing with the administrator, or an organization person which the administrator by rule designates assigns as a designee, an application together with a consent to service of process pursuant to section 502.609 and the appropriate filing fee as required in this section. If the application is filed with a designee, the applicant must also pay any reasonable costs charged by the designee. The applicant may transmit the fee to the administrator through the designee according to rules adopted by the administrator. The application shall contain information the administrator requires by rule concerning the applicant's form and place of organization, proposed method of doing business and financial condition, and the qualifications and experience of the applicant. In the case of a broker-dealer or investment adviser, the application shall include the qualifications and experience of any partner, officer, director or controlling person, any injunction or administrative order or conviction of a misdemeanor involving securities and any conviction of a felony, and any other matters which the administrator determines are relevant to the application. In addition, in the case of an investment adviser, the application shall include any information to be furnished or disseminated to any client or prospective client, and any other information which the administrator determines is relevant to the application. If no denial order is in effect and no proceeding is pending under section 502.304, registration becomes effective at noon of the sixtieth day after a completed application or an

amendment completing the application is filed, unless waived by the applicant. The administrator may by rule or order specify an earlier effective date.

3. Every applicant for initial or renewal registration as a broker-dealer or investment adviser shall pay a filing fee of two hundred dollars. Every applicant for an initial or renewal registration as an investment adviser shall pay a filing fee of one hundred dollars. Every applicant for initial or renewal registration as an agent or investment adviser representative shall pay a filing fee of thirty dollars. However, an investment adviser representative is not required to pay a filing fee if the investment adviser is a sole proprietorship or the substantial equivalent and the investment adviser representative is the same individual as the investment adviser. A filing fee is not refundable. Every person acting as a federal covered adviser in this state, except with respect to federal covered advisers whose only clients are those described in section 502.301, subsection 3, paragraph "b", shall pay an initial and renewal notice filing fee of one hundred dollars.

Sec. 6. Section 502.304, subsection 1, paragraph m, subparagraph (1), Code 2001, is amended to read as follows:

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

Sec. 7. Section 502.304, subsection 1, Code 2001, is amended by adding the following new paragraph:

NEW PARAGRAPH. o. Is the subject of a cease and desist order issued by the administrator under section 502.604, another state, or the securities and exchange commission.

Sec. 8. Section 502.304, subsection 2, Code 2001, is amended to read as follows:

2. A civil penalty levied imposed under subsection 1 shall not exceed one five thousand dollars per violation per person and shall not exceed one five hundred thousand dollars in a

single proceeding against any one person. All administrative fines Moneys received from the imposition of civil penalties shall be deposited in the general fund of the state.

Sec. 9. Section 502.603, subsection 3, Code 2001, is amended by striking the subsection and inserting in lieu thereof the following:

3. A person is not excused from attending or testifying in a proceeding required by this section, or from producing any evidence, including a document or record in obedience to a subpoena of the administrator or any officer designated by the administrator, on the ground that the testimony or evidence required, whether documentary or otherwise, may tend to incriminate such person or subject such person to a penalty or forfeiture. If a person makes a claim against self-incrimination, the administrator may file a petition to compel compliance with this section in the district court for Polk county. The court may make a threshold determination on the applicability of the self-incrimination privilege. Any evidence compelled under order of the district court, or any information directly or indirectly derived from such evidence or other information, shall not be used against the person in any criminal case. The limitation on the use of evidence in a criminal proceeding contained in this section does not apply to any prosecution or proceeding for perjury or contempt of court committed in the course of giving or producing information, documents, testimony, or other evidence.

Sec. 10. Section 502.604, unnumbered paragraph 1, Code 2001, is amended to read as follows:

If it appears to the administrator that a person has engaged or is about to engage in an act or practice constituting a violation of this chapter or any rule or order adopted or issued pursuant to this chapter, the administrator may do either-or-both any of the following:

Sec. 11. Section 502.604, Code 2001, is amended by adding the following new subsection:

NEW SUBSECTION. 3. Assess a civil penalty against the person, if the violation was made knowingly or recklessly. The penalty shall be assessed as an agency action provided for under chapter 17A. The amount of the civil penalty shall not exceed five thousand dollars for each violation.

Sec. 12. NEW SECTION. 502.604B LIMITED LAW ENFORCEMENT AUTHORITY.

The administrator or designee, when carrying out the provisions of section 502.603, 502.603A, or 502.604, may develop, share, and receive information related to any law enforcement purpose, including any criminal investigation. The administrator or designee shall not have the authority to issue criminal subpoenas or make arrests. The administrator or designee shall not be considered a peace officer, including as provided in chapter 801.

Sec. 13. Section 502.605, subsection 1, Code 2001, is amended to read as follows:

1. a. Except as provided in paragraph "b", a person who willfully and knowingly violates any provision of this chapter, or any rule or order under this chapter, is guilty of a class "D" felony.

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

Sec. 14. Section 502.605, Code 2001, is amended by adding the following new subsection:

NEW SUBSECTION. 4. In a criminal proceeding brought under this chapter, the applicability of any exemption, exception, exclusion from a definition, or preemption shall be an affirmative defense. The defendant claiming such an exemption, exception, exclusion, or preemption has the burden of going forward with the evidence of the claim.

Sec. 15. Section 507B.4, subsection 10B, unnumbered paragraph 1, as enacted by 2001 Iowa Acts, Senate File 500, section 7, is amended to read as follows:

Failure of an insurer to pay interest at the rate of ten percent per annum on all health insurance claims that the insurer fails to timely accept and pay pursuant to section 507B.4A, subsection 2, paragraph "e" "d". Interest shall accrue commencing on the thirty-first day after receipt of all properly completed proof of loss forms.

Sec. 16. Section 518.16, Code 2001, is amended to read as follows:

518.16 QUALIFICATION OF AGENTS.

A person shall not solicit any application for insurance for an association in this state without having procured from the commissioner of insurance a license authorizing the person to act as an agent insurance producer pursuant to chapter 522 522B.

#### SUBCHAPTER 1

##### SHORT TITLE AND DEFINITIONS

Sec. 17. NEW SECTION. 523A.101 SHORT TITLE.

This chapter may be cited as the "Iowa Cemetery and Funeral Merchandise and Funeral Services Act".

Sec. 18. NEW SECTION. 523A.102 DEFINITIONS.

For purposes of this chapter, unless the context otherwise requires:

1. "Authorized to do business within this state" means a person licensed, registered, or subject to regulation by an agency of the state of Iowa or who has filed a consent to service of process with the commissioner for purposes of this chapter.

2. "Beneficiary" means any natural person specified or included in a purchase agreement, upon whose future death cemetery merchandise, funeral merchandise, funeral services, or a combination thereof are to be provided under the purchase agreement.

3. "Burial account" means an account established by a person with a financial institution for the purpose of funding the future purchase of cemetery merchandise, funeral

merchandise, or a combination thereof without any related trust agreement.

4. "Burial trust fund" means an irrevocable burial trust fund established by a person with a financial institution for the purpose of funding the future purchase of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof upon the death of the person named in the burial trust fund's records or a related purchase agreement. "Burial trust fund" does not include or imply the existence of any oral or written purchase agreement for cemetery merchandise, funeral merchandise, funeral services, or a combination thereof between the person and a seller.

5. "Cemetery merchandise" means foundations, grave markers, tombstones, ornamental merchandise, memorials, and monuments sold under a purchase agreement that does not require installation within twelve months of the purchase.

6. "Commissioner" means the commissioner of insurance or the deputy administrator authorized in section 523A.801 to the extent the commissioner delegates functions to the deputy administrator.

7. "Common business enterprise" means a group of two or more business entities that share common ownership in excess of fifty percent.

8. "Credit sale" means a sale of goods, services, or an interest in land in which all of the following are applicable:

- a. Credit is granted either under a seller credit card or by a seller who regularly engages as a seller in credit transactions of the same kind.
- b. The buyer is a person other than an organization.
- c. The goods, services, or interest in land are purchased primarily for a personal, family, or household purpose.
- d. Either the debt is payable in installments or a finance charge is made.
- e. For goods and services, the amount financed does not exceed twenty-five thousand dollars.

9. "Delivery" occurs when:

a. The cemetery merchandise, funeral merchandise, or the title document establishing an easement for burial rights is physically delivered to the purchaser or installed, except that burial of any item at the site of its ultimate use shall not constitute delivery for purposes of this chapter.

b. If authorized by a purchaser under a purchase agreement, cemetery merchandise has been permanently identified with the name of the purchaser or the beneficiary and delivered to a bonded warehouse or storage facility approved by the commissioner and both title to the merchandise and a warehouse receipt have been delivered to the purchaser or beneficiary and a copy of the warehouse receipt has been delivered to the establishment for retention in its files.

c. If authorized by a purchaser under a purchase agreement, a polystyrene or polypropylene outer burial container has been permanently identified with the name of the purchaser or the beneficiary and delivered to a bonded warehouse or storage facility approved by the commissioner and both title to the merchandise and a warehouse receipt have been delivered to the purchaser or beneficiary and a copy of the warehouse receipt has been delivered to the establishment for retention in its files.

10. "Doing business in this state" means issuing or performing wholly or in part any term of a purchase agreement executed within the state of Iowa.

11. "Establishment" means each business establishment that advertises, sells, promotes, or offers cemetery merchandise, funeral merchandise, funeral services, or a combination thereof prior to the death of the person named or implied in a purchase agreement.

12. "Financial institution" means a state or federally insured bank, savings and loan association, credit union, trust department thereof, or a trust company authorized to do business within this state and which has been granted trust powers under the laws of this state or the United States.

which holds funds under a trust agreement. "Financial institution" does not include:

a. A seller.

b. Anyone employed by or directly involved with the seller in the seller's cemetery merchandise, funeral merchandise, or funeral services business.

13. "Funeral merchandise" means personal property used for the final disposition of a dead human body, including but not limited to clothing, caskets, vaults, urns, and interment receptacles. "Funeral merchandise" does not include easements for burial rights in a completed space or cemetery merchandise.

14. "Funeral services" means services provided for the final disposition of a dead human body, including but not limited to services necessarily or customarily provided for a funeral, or for the interment, entombment, or cremation of a dead human body, or any combination thereof. "Funeral services" does not include perpetual care or maintenance.

15. "Inner burial container" means a container in which human remains are placed for burial or entombment. Where only one container is used for burial or entombment, "inner burial container" includes a container serving as a burial vault, urn vault, grave box, grave liner, or lawn crypt.

16. "Insolvent" means the inability to pay debts as they become due in the usual course of business.

17. "Interest or income" means unrealized net appreciation or loss in the fair value of cemetery merchandise, funeral merchandise, and funeral services trust assets for which a market value may be determined with reasonable certainty, plus the return in money or property derived from the use of trust principal or income, net of investment losses, taxes, and expenses incurred in the sale of trust assets, any cost of the operation of the trust, and any annual audit fee. "Interest or income" includes but is not limited to:

a. Rent of real or personal property, including sums received for cancellation or renewal of a lease and any royalties.

b. Interest on money lent, including sums received as consideration for prepayment of principal.

c. Cash dividends paid on corporate stock.

d. Interest paid on deposit funds or debt obligations.

e. Gain realized from the sale of trust assets.

18. "Next of kin" means the surviving spouse and heirs at law of the deceased.

19. "Nonguaranteed" means that the price of the merchandise and services selected has not been fixed or guaranteed and will be determined by existing prices at the time the merchandise and services are delivered or provided.

20. "Outer burial container" means a container used for the burial of human remains that is used exclusively to surround or enclose an inner burial container and to support the earth above the container, commonly known as a burial vault, urn vault, grave box, or grave liner, but not including a lawn crypt.

21. "Parent company" means a corporation that has a controlling interest in an establishment.

22. "Person" means an individual, business, corporation, trust, firm, partnership, association, or any other legal entity.

23. "Personal representative" means a personal representative as defined in section 633.3.

24. "Provider" means a person that provides funeral services, funeral merchandise, or cemetery merchandise purchased in a purchase agreement.

25. "Purchase agreement" means an agreement to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof when performance or delivery may be more than one hundred twenty days following the initial payment on the account.

26. "Purchase price" means the negotiated price for the item of merchandise or service, if itemized in the purchase agreement, or the price of the item listed in the seller's general price list at the time the purchase agreement is signed.

27. "Purchaser" means a person who purchases cemetery merchandise, funeral merchandise, funeral services, or a combination thereof. The purchaser need not be a beneficiary of the agreement.

28. "Seller" means a person doing business within this state, including a person doing business within this state who sells insurance, who advertises, sells, promotes, or offers to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof when performance or delivery may be more than one hundred twenty days following the initial payment on the account whether the transaction is completed or offered in person, through the mail, over the telephone, by the internet, or through any other means of commerce. "Seller" includes any person performing any term of a purchase agreement executed within this state, and any person identified under a burial account as the provider of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof.

29. "Total purchase price" means the aggregate amount the purchaser is obligated to pay for merchandise or services pursuant to the purchase agreement, excluding any taxes, administrative charges, or financing charges.

#### SUBCHAPTER 2

#### ESTABLISHMENT OF TRUSTS, DEPOSIT, INVESTMENT, AND REPORTING REQUIREMENTS

Sec. 19. NEW SECTION. 523A.201 ESTABLISHMENT OF TRUST FUNDS.

Unless proceeding under section 523A.401, 523A.402, or 523A.403, a seller must establish a trust fund prior to advertising, selling, promoting, or offering cemetery

merchandise, funeral merchandise, funeral services, or a combination thereof in this state as follows:

1. The trust fund must be established at a financial institution.
2. If a seller agrees to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof and performance or delivery may be more than one hundred twenty days following the initial payment on the account, a minimum of eighty percent of all payments made under the purchase agreement shall be placed and remain in trust until the person for whose benefit the funds were paid dies.
3. If a purchase agreement for cemetery merchandise, funeral merchandise, funeral services, or a combination thereof provides that payments are to be made in installments, the seller shall deposit eighty percent of each payment in the trust fund until the full amount required to be placed in trust has been deposited. If the purchase agreement is financed with or sold to a financial institution, the purchase agreement shall be considered paid in full and the trust requirements shall be satisfied within fifteen days after the close of the month in which the seller receives funds from the financial institution.
4. A seller shall not invade the trust principal for any purpose.
5. A seller who lacks insurance coverage which protects against the loss of purchaser payments not placed in trust within the time period required by this section and section 523A.202 shall not commingle these payments with any other seller funds. A seller who lacks insurance coverage may use one or more of the following methods to dispose of these payments:
  - a. Deposit purchaser funds into an escrow account until the required amount has been deposited into a trust account at a financial institution.

b. Make a prior delivery or warehouse cemetery or funeral merchandise or a combination thereof as provided by this chapter.

c. Make a prior filing of a surety bond in lieu of establishing a trust fund as required by this section.

d. Make a simultaneous, same-day deposit of the purchaser's payments into the seller's bank account and the required amount into the seller's trust fund.

6. Payments otherwise subject to this section are not exempt merely because they are held in certificates of deposit.

7. Commingling of trust funds with other funds of the seller is prohibited.

8. Interest or income earned on amounts deposited in trust shall remain in trust under the same terms and conditions as payments made under the purchase agreement, except that the seller may withdraw so much of the interest or income as represents the difference between the amount needed to adjust the trust funds for inflation as set by the commissioner based on the consumer price index and the interest or income earned during the preceding year not to exceed fifty percent of the total interest or income on a calendar-year basis. The early withdrawal of interest or income under this provision does not affect the purchaser's right to a credit of such interest or income in the event of a nonguaranteed price agreement, cancellation, or nonperformance by the seller.

9. The commissioner may require amendments to a trust agreement not in accord with the provisions of this chapter.

10. If a seller voluntarily or involuntarily ceases doing business and the seller's obligation to provide merchandise or services has not been assumed by another establishment holding a current establishment permit, all trust funds, including accrued interest or income, shall be repaid to the purchaser within one hundred twenty days following the seller's cessation of business or, in the event of circumstances where

a payment is not possible within one hundred twenty days, as soon as is reasonably practicable.

Sec. 20. NEW SECTION. 523A.202 TRUST FUND DEPOSIT REQUIREMENTS.

1. All funds held in trust pursuant to section 523A.201 shall be deposited in a financial institution, within fifteen days after the close of the month a seller receives the funds. The financial institution shall hold the funds for the designated beneficiary until released.

2. All funds required to be deposited by the purchaser for a purpose described in section 523A.201 shall be deposited consistent with one of the following methods:

a. The payments shall be deposited directly into an interest-bearing burial account in the purchaser's name.

b. The purchaser shall deposit payments directly into a separate trust account in the purchaser's name. The account may be made payable to the seller upon the death of the purchaser or the designated beneficiary, provided that, until death, the purchaser retains the exclusive power to hold, manage, pledge, and invest the trust account funds and may revoke the trust and withdraw the funds, in whole or in part, at any time during the term of the agreement.

c. The purchaser or the seller shall deposit payments directly into a separate trust account in the name of the purchaser, as trustee, for the named beneficiary, to be held, invested, and administered as a trust account for the benefit and protection of the beneficiary. The depositor shall notify the financial institution of the existence and terms of the trust, including at a minimum, the name of each party to the agreement, the name and address of the trustee, and the name and address of the beneficiary. The account may be made payable to the seller upon the beneficiary's death.

d. The payments shall be deposited in the name of the trustee, as trustee, under the terms of a master trust agreement and the trustee may invest, reinvest, exchange,

retain, sell, and otherwise manage the trust fund for the benefit and protection of the named beneficiary.

3. The commissioner may by rule authorize other methods of deposit upon a finding that such methods provide equivalent safety of the principal and interest or income and the seller lacks access to the proceeds prior to performance.

4. This section does not prohibit moving trust funds from one financial institution to another.

Sec. 21. NEW SECTION. 523A.203 FINANCIAL INSTITUTION TRUSTEE QUALIFICATION AND INVESTMENT REQUIREMENTS.

1. A financial institution may serve as a trustee if granted those powers under the laws of this state or of the United States. A financial institution acting as a trustee of trust funds under this chapter shall invest the funds in accordance with applicable law.

2. A financial institution acting as a trustee of trust funds under this chapter has a fiduciary duty to make reasonable investment decisions and to properly oversee and manage the funds entrusted to it. The trustee shall use the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. The commissioner may take enforcement action against a financial institution in its capacity as trustee for a breach of fiduciary duty proven under this chapter.

3. Moneys deposited under a master trust agreement may be commingled by the financial institution for investment purposes if each deposit includes a detailed listing of the amount deposited in trust for each beneficiary and maintenance of a separate accounting of each purchaser's principal, interest, and income.

4. Subject to a master trust agreement, the seller may appoint an independent investment adviser to advise the financial institution about investment of the trust funds.

5. Subject to agreement between the parties, the financial institution may receive a reasonable fee from the trust funds for services rendered as trustee. The trust shall pay the trust operation costs and any annual audit fees.

6. The seller or any officer, director, agent, employee, or affiliate of the seller shall not serve as trustee. A financial institution holding trust funds shall not do any of the following:

a. Be owned, under the control of, or affiliated with a seller.

b. Use any funds required to be held in trust under this chapter or chapter 566A to purchase an interest in any contract or agreement to which a seller is a party.

c. Otherwise invest, directly or indirectly, in a seller's business operations.

Sec. 22. NEW SECTION. 523A.204 ESTABLISHMENT ANNUAL REPORTING REQUIREMENTS.

1. An establishment shall file with the commissioner not later than March 1 of each year an annual report on a form prescribed by the commissioner containing all of the following:

a. The seller's name and address and the name and address of the establishment that will provide the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof.

b. The balance of each trust account as of the end of the preceding calendar year, identified by purchaser or beneficiary name.

c. A report of any amounts withdrawn from the trust account including the reason for each withdrawal.

d. A detailed listing of the insurance funding outstanding at the end of the preceding calendar year, identified by the name of the purchaser or the beneficiary.

e. A complete inventory of the cemetery merchandise, funeral merchandise, or a combination thereof delivered in lieu of trust fund requirements under section 523A.401, including the following:

- (1) The location of the merchandise.
- (2) Merchandise serial numbers or warehouse receipt numbers identified by the name of the purchaser or the beneficiary.
- (3) A verified statement of a certified public accountant on a form prescribed by the commissioner that all of the following have occurred:
  - (a) A physical inventory of the cemetery merchandise or funeral merchandise has been conducted.
  - (b) Each item of that merchandise is in the seller's possession at the specified location.

f. The purchaser and beneficiary names, the amount of each purchase agreement made in the preceding year, and the date the purchase agreement was made.

g. A summary of any purchase agreements converted from trust-funded benefits to insurance-funded or annuity benefits during the preceding year which shall include, as of the conversion date, the following information, as well as aggregated totals for each of the following categories of information, if appropriate:

- (1) Insured's name.
- (2) Insured's policy number.
- (3) Original prepaid purchase agreement amount.
- (4) Amount paid in.
- (5) Unpaid balance of the prepaid purchase agreement.
- (6) Unpaid balance of the purchase agreement.
- (7) Amount retained by the establishment.
- (8) Amount applied to the purchase of the insurance policy or annuity.
- (9) Initial cash surrender value and initial death benefit under the insurance policy.

The establishment shall include a notarized statement attesting that the insurance policies or annuities have been issued and funded on behalf of the purchasers listed in the summary and that all notices required under this section have been given.

h. A summary of any purchase agreements converted from trust-funded benefits to a surety bond during the preceding year which shall include, as of the conversion date, the following information, as well as aggregated totals for each of the following categories of information, if appropriate:

- (1) Name of the purchaser and beneficiary.
- (2) Original prepaid purchase agreement amount.
- (3) Amount paid in.
- (4) Unpaid balance of the prepaid purchase agreement.
- (5) Unpaid balance of the purchase agreement.
- (6) Amount retained by the establishment.
- (7) Amount applied to the purchase of the surety bond.
- (8) A description of the surety bond and the applicable amount of coverage.

1. Any other information the commissioner deems necessary for the administration of this chapter.

2. A person holding multiple establishment permits may elect to file only one annual report after noting all establishments on the report.

3. An establishment shall make a good faith effort to complete the annual report. The establishment shall note on the annual report any information not reasonably available to the establishment as an exception or variance. Account balances within twelve months of the date of the filing of the annual report shall be accepted if the actual date of the account balances is noted.

4. In lieu of the annual report form described in subsection 1, the commissioner may authorize an establishment to file a short form annual report on a form prescribed by the commissioner. The short form annual report may incorporate by

reference information readily available to the establishment. The commissioner may certify and decertify establishments authorized to file the short form based upon:

- a. The establishment's recordkeeping system.
- b. The number of purchase agreements which the establishment has sold that are subject to regulation under chapter 523A.
- c. The availability and accessibility of information at the establishment for purchase agreements subject to regulation.
- d. Whether the establishment places one hundred percent of funds received pursuant to its purchase agreements in trust.
- e. The findings of the commissioner concerning audits and consumer complaints.

The commissioner shall retain the authority to require establishments permitted to file the short form annual report to provide all of the information required in the annual report form required by subsection 1 for audit purposes or otherwise.

5. An establishment filing an annual report shall pay a filing fee of ten dollars per purchase agreement sold during the year covered by the report. The fee does not apply to any of the following:

- a. A purchase agreement where the beneficiary dies in the same year the agreement was sold.
- b. Any modifications or additions, such as payments, for an existing purchase agreement sold in a previous year.
- c. An additional agreement purchased and already reported to the commissioner by the purchaser.
- d. A purchase agreement canceled or revoked in the same year it was sold.

All purchase agreement changes for which a filing fee is not required must be reported to the commissioner on the annual report for the year covered.

6. As part of the annual filing with the commissioner, an establishment shall file an authorization for the commissioner or a designee to investigate, audit, and verify all funds, accounts, safe deposit boxes, and other evidence of establishment trust funds held by or in a financial institution.

7. Forms may be obtained at cost from the commissioner upon request. The commissioner may accept annual reports submitted in an electronic format, including but not limited to computer diskettes.

8. Notwithstanding chapter 22, all records maintained by the commissioner under this section shall be confidential and shall not be made available for inspection or copying except upon approval of the commissioner or the attorney general.

Sec. 23. NEW SECTION. 523A.205 FINANCIAL INSTITUTION ANNUAL REPORTING REQUIREMENTS.

1. A financial institution shall file with the commissioner not later than March 1 of each year an annual report on a form prescribed by the commissioner showing all funds deposited by an establishment under a trust agreement during the previous year. Each report shall contain all information requested.

2. Forms may be obtained from the commissioner upon request. The commissioner may accept annual reports submitted in an electronic format, including but not limited to computer diskettes.

3. Notwithstanding chapter 22, all records maintained by the commissioner under this section shall be confidential and shall not be made available for inspection or copying except upon approval of the commissioner or the attorney general.

Sec. 24. NEW SECTION. 523A.206 AUDITS.

1. The commissioner may make audits of the establishment and of the records of a seller, at the times and in the scope the commissioner determines. The audits may be made without prior notice to the seller. The commissioner may copy all

records the commissioner feels are necessary to conduct the audit. The commissioner may require an audit of a seller or other person by a certified public accountant to verify compliance with this chapter, implementing rules, or orders.

2. A seller or other person shall pay for the audit unless the commissioner waives this requirement. The cost of an audit involving multiple sellers or other persons shall be prorated among them upon any reasonable basis as determined by the commissioner. The accountant shall deliver the audit report to the commissioner and to the seller or other persons.

3. The commissioner shall not make public the information obtained in the course of an audit, except when a duty under this chapter requires the commissioner to take action against a seller or to cooperate with another enforcement or regulatory agency, or except when the commissioner is called as a witness in a civil or criminal proceeding.

#### SUBCHAPTER 3

#### DISBURSEMENT OF REMAINING BURIAL ACCOUNT FUNDS, BURIAL TRUST FUNDS, AND INSURANCE OR ANNUITY PROCEEDS UNDER THE REQUIREMENTS OF SECTION 249A.5

##### Sec. 25. NEW SECTION. 523A.301 DEFINITION.

As used in sections 523A.302 and 523A.303, "director" means the director of human services.

##### Sec. 26. NEW SECTION. 523A.302 IDENTIFICATION OF MERCHANDISE AND SERVICE PROVIDER.

If a burial trust fund identifies, either in the trust fund records or in a related purchase agreement, the seller who will provide the cemetery merchandise, funeral merchandise, funeral services or a combination thereof, the trust fund records or the related purchase agreements must contain a statement signed by an authorized representative of the seller agreeing to furnish the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof upon the death of the beneficiary. The burial trust fund shall not identify a specific seller as payee unless the trust fund

records or the related purchase agreements, if any, contain the signature of an authorized representative of the seller and, if the agreement is for funeral services as defined in chapter 156, the name of a funeral director licensed to deliver those services. A person may enter into agreements authorizing the establishment of more than one burial trust fund and agreeing to furnish the applicable merchandise and services.

##### Sec. 27. NEW SECTION. 523A.303 DISBURSEMENT OF REMAINING FUNDS.

1. If funds remain in a nonguaranteed irrevocable burial trust fund or from the proceeds of an insurance policy or annuity made payable or assigned to the seller or a provider after the payment of funeral and burial expenses in accordance with the conditions and terms of the purchase agreement for cemetery merchandise, funeral merchandise, or funeral services, the seller shall comply with all of the following:

a. The seller shall provide written notice by mail to the director under subsection 2.

b. At least sixty days after mailing notice to the director, the seller shall disburse any remaining funds from the burial trust fund as follows:

(1) If within the sixty-day period the seller receives a claim from the personal representative of the deceased, any remaining funds shall be disbursed to the personal representative, notwithstanding any claim by the director.

(2) If within the sixty-day period the seller has not received a claim from the personal representative of the deceased but receives a claim from the director, the seller shall disburse the remaining funds up to the amount of the claim to the director.

(3) Any remaining funds not disposed of pursuant to subparagraphs (1) and (2) shall be disbursed to any person who is identified as the next of kin of the deceased in an affidavit submitted in accordance with subsection 5.

2. The notice mailed to the director shall meet all of the following requirements and is subject to all of the following conditions:

- a. The notice shall be mailed with postage prepaid.
- b. If the notice is sent by regular mail, the sixty-day period for receipt of a response is deemed to commence three days following the date of mailing.
- c. If the notice is sent by certified mail, the sixty-day period for receipt of a response is deemed to commence on the date of mailing.

d. The notice shall provide all of the following information:

- (1) Current name, address, and telephone number of the seller.
- (2) Full name of the deceased.
- (3) Date of the deceased's death.
- (4) Amount of funds remaining in the burial trust fund.
- (5) Statement that any claim by the director must be received by the seller within sixty days after the date of mailing of the notice.

e. A notice in substantially the following form complies with this subsection:

"TO: THE DIRECTOR OF HUMAN SERVICES  
FROM: (SELLER'S NAME, CURRENT ADDRESS, AND TELEPHONE NUMBER)

YOU ARE HEREBY NOTIFIED THAT (NAME OF DECEASED), WHO HAD AN IRREVOCABLE BURIAL TRUST FUND, HAS DIED, THAT FINAL PAYMENT FOR CEMETERY MERCHANDISE, FUNERAL MERCHANDISE, AND FUNERAL SERVICES HAS BEEN MADE, AND THAT (REMAINING AMOUNT) REMAINS IN THE IRREVOCABLE BURIAL TRUST FUND.

THE ABOVE-NAMED SELLER MUST RECEIVE A WRITTEN RESPONSE REGARDING ANY CLAIM BY THE DIRECTOR WITHIN SIXTY DAYS AFTER THE MAILING OF THIS NOTICE TO THE DIRECTOR.

IF THE ABOVE-NAMED SELLER DOES NOT RECEIVE A WRITTEN RESPONSE REGARDING A CLAIM BY THE DIRECTOR WITHIN SIXTY DAYS

AFTER THE MAILING OF THIS NOTICE, THE SELLER MAY DISPOSE OF THE REMAINING FUNDS IN ACCORDANCE WITH SECTION 523A.303, CODE OF IOWA."

3. Upon receipt of the seller's written notice, the director shall determine if a debt is due the department of human services pursuant to section 249A.5. If the director determines that a debt is owing, the director shall provide a written response to the seller within sixty days after the mailing of the seller's notice. If the director does not respond with a claim within the sixty-day period, any claim made by the director shall not be enforceable against the seller, the trust, or a trustee.

4. A personal representative who wishes to make a claim shall send written notice of the claim to the seller. If the seller does not receive any claim from a personal representative within the sixty-day period provided for response by the director regarding a claim, the claim of the personal representative shall not be enforceable against the seller, the trust, or a trustee.

5. Any person other than a personal representative or the director claiming an interest in the remaining funds shall submit an affidavit claiming an interest which provides the following information:

- a. Full name, current address, and telephone number of the claimant.
- b. Claimant's relationship to the deceased.
- c. Name of any surviving next of kin of the deceased, and the relationship of any named surviving next of kin.
- d. That the claimant has no knowledge of the existence of a personal representative for the deceased's estate.
- e. The seller may retain not more than fifty dollars of the remaining funds in the burial trust fund for the administrative expenses associated with the requirements of this section.

7. If the funds remaining in a burial trust fund are disbursed under the requirements of this section, the seller, the provider, the burial trust fund, and any trustee shall not be liable to the director, the estate of the deceased, any personal representative, or any other interested person for the remaining funds and any lien imposed by the director shall be unenforceable against the seller, the burial trust fund, or any trustee.

SUBCHAPTER 4

TRUSTING ALTERNATIVES

Sec. 28. NEW SECTION. 523A.401 PURCHASE AGREEMENTS FUNDED BY INSURANCE PROCEEDS.

1. A purchase agreement may be funded by insurance proceeds derived from a new or existing insurance policy issued by an insurance company authorized to do business and doing business within this state.

2. Such funding may be in lieu of the trusting requirements of this chapter when the purchaser assigns the proceeds of an existing insurance policy.

3. Such funding may be in lieu of the trusting requirements of this chapter when a new insurance policy is purchased to fund the purchase agreement, with a face amount equal to or greater than the current retail price of the cemetery merchandise, funeral merchandise, and funeral services to be delivered under the purchase agreement or, if less, a face amount equal to the total of all payments to be submitted by the purchaser pursuant to the purchase agreement.

4. The premiums of any new insurance policy shall be fully paid within thirty days after execution of the purchase agreement or, with respect to a purchase agreement that provides for periodic payments, the premiums shall be paid directly by the purchaser to the insurance company issuing the policy.

5. Any new insurance policy shall satisfy the following conditions:

a. Except as necessary and appropriate to satisfy the requirements regarding burial trust funds under Title XIX of the Federal Social Security Act, the policy shall not be owned by the establishment, the policy shall not be irrevocably assigned to the establishment, and the assignment of proceeds from the insurance policy to the establishment shall be limited to the establishment's interests as they appear in the purchase agreement, and conditioned on the establishment's delivery of cemetery merchandise, funeral merchandise, and funeral services pursuant to a purchase agreement.

b. The policy shall provide that any assignment of benefits is contingent upon the establishment's delivery of cemetery merchandise, funeral merchandise, and funeral services pursuant to a purchase agreement.

c. The policy shall have an increasing death benefit or similar feature that provides some means for increasing the funding as the cost of funeral and cemetery goods and services increases.

6. With the written consent of the purchaser, an existing prepaid purchase agreement with trust-funded benefits may be converted to a prepaid purchase agreement with insurance-funded benefits provided the establishment and the insurance benefits comply with the following provisions:

a. The transfer of the trust funds to the insurance company must be at least equal to the full sum required to be deposited as trust principal under the trust-funded prepaid purchase agreement plus all net earnings accumulated with respect thereto, as of the transfer date. Commissions, allowances, surrender charges or other forms of compensation or expense loads, premium expense, administrative charges or expenses, or policy fees shall not be deducted from the trust funds transferred pursuant to the conversion.

b. The face amount of any insurance policy issued on an individual must be no less than the amount of principal and interest transferred for that individual to the insurance

company, and any supplemental insurance policy issued to cover the unfunded portion of the purchase agreement must have a face amount that is at least as great as the unfunded principal balance. The face amount of the insurance purchased shall not, under any circumstances, be less than the total of all payments made by the purchaser pursuant to the agreement plus all net earnings accumulated with respect thereto, as of the transfer date.

c. The insurance policy shall not allow for contesting coverage, limit death benefits in the case of suicide, refer to physical examination, or otherwise operate as an exclusion, limitation, or condition other than requiring submission of proof of death or surrender of policy at the time the prepaid purchase agreement is funded, matures, or is canceled, as the case may be.

d. The establishment shall maintain a copy of any prepaid trust-funded purchase agreement that was converted to a prepaid insurance-funded purchase agreement and retain the payment history records for each converted purchase agreement prior to conversion until the cemetery merchandise, funeral merchandise, and funeral services have been delivered.

7. The seller of a purchase agreement subject to this chapter which is to be funded by insurance proceeds shall obtain all permits required to be obtained and comply with all reporting requirements under this chapter.

8. An insurance company issuing policies funding purchase agreements subject to this chapter shall file an annual report with the commissioner on a form prescribed by the commissioner. The report shall list the applicable insurance policies outstanding for each establishment. Computer printouts may be submitted so long as each legibly provides the same information required in the prescribed form.

Sec. 29. NEW SECTION. 523A.402 PURCHASE AGREEMENTS FUNDED BY ANNUITY PROCEEDS.

1. A purchase agreement may be funded by proceeds derived from a new or existing annuity issued by an insurance company authorized to do business and doing business within this state.

2. Such funding may be in lieu of the trust requirements of this chapter when the purchaser assigns the proceeds of an existing annuity.

3. Such funding may be in lieu of the trust requirements of this chapter when a new annuity is purchased to fund the purchase agreement, with a face amount equal to or greater than the current retail price of the cemetery merchandise, funeral merchandise, and funeral services to be delivered under the purchase agreement or, if less, a face amount equal to the total of all payments to be submitted by the purchaser pursuant to the purchase agreement.

4. The premiums of any new annuity shall be fully paid within thirty days after execution of the purchase agreement or, with respect to a purchase agreement that provides for periodic payments, the premiums shall be paid directly by the purchaser to the insurance company issuing the annuity.

5. The annuity shall satisfy the following conditions:

a. Except as necessary and appropriate to satisfy the requirements regarding burial trust funds under Title XIX of the federal Social Security Act, the annuity shall not be owned by the establishment or irrevocably assigned and any designation of the establishment as a beneficiary shall not be made irrevocable.

b. The annuity shall provide that any assignment of benefits is contingent upon the establishment's delivery of cemetery merchandise, funeral merchandise, and funeral services pursuant to a purchase agreement.

c. The annuity shall have an increasing death benefit or similar feature that provides some means for increasing the funding as the cost of cemetery merchandise, funeral merchandise, and funeral services increases.

6. With the written consent of the purchaser, an existing prepaid purchase agreement with trust-funded benefits may be converted to a prepaid purchase agreement with annuity-funded benefits provided the establishment and the annuity benefits comply with the following provisions:

a. The transfer of the trust funds to the insurance company must be at least equal to the full sum required to be deposited as trust principal under the trust-funded prepaid purchase agreement plus all net earnings accumulated with respect thereto, as of the transfer date. Commissions, allowances, surrender charges or other forms of compensation or expense loads, premium expense, administrative charges or expenses, or fees shall not be deducted from the trust funds transferred pursuant to the conversion.

b. The face amount of any annuity issued on an individual must be no less than the amount of principal and interest transferred for that individual to the insurance company, and any supplemental annuity issued to cover the unfunded portion of the purchase agreement must have a face amount that is at least as great as the unfunded principal balance. The face amount of the annuity purchased shall not, under any circumstances, be less than the total of all payments made by the purchaser pursuant to the agreement plus all net earnings accumulated with respect thereto, as of the transfer date.

c. The annuity shall not allow for contesting coverage, limit death benefits in the case of suicide, refer to physical examination, or otherwise operate as an exclusion, limitation, or condition other than requiring submission of proof of death or surrender of the annuity at the time the prepaid purchase agreement is funded, matures, or is canceled, as the case may be.

d. The establishment shall maintain a copy of any prepaid trust-funded purchase agreement that was converted to a prepaid annuity-funded purchase agreement and retain the payment history records for each converted purchase agreement

prior to conversion until the cemetery merchandise, funeral merchandise, and funeral services have been delivered.

7. The seller of a purchase agreement subject to this chapter which is to be funded by annuity proceeds shall obtain all permits required to be obtained and comply with all reporting requirements under this chapter.

8. An insurance company issuing annuities funding purchase agreements subject to this chapter shall file an annual report with the commissioner on a form prescribed by the commissioner. The report shall list the applicable annuities outstanding for each establishment. Computer printouts may be submitted so long as each legibly provides the same information required in the prescribed form.

Sec. 30. NEW SECTION. 523A.403 PURCHASE AGREEMENTS FUNDED BY CERTIFICATES OF DEPOSIT.

1. A purchase agreement may be funded by proceeds derived from a certificate of deposit in the name of the purchaser made payable to the seller upon the purchaser's death.

2. The seller of a purchase agreement subject to this chapter which is to be funded by a certificate of deposit shall obtain all permits required to be obtained and comply with all reporting requirements under this chapter, implementing rules, and orders.

Sec. 31. NEW SECTION. 523A.404 MERCHANDISE DELIVERED TO THE PURCHASER OR WAREHOUSED.

1. Trust requirements do not apply to payments for outer burial containers made of either polystyrene or polypropylene or cemetery merchandise delivered to the purchaser or stored in an independent third-party storage facility not owned or controlled by the seller when approved by the commissioner. The seller or the storage facility must demonstrate that they will do all of the following:

a. Issue a receipt of ownership in the name of the purchaser and deliver it to the purchaser.

b. Insure the merchandise against loss.

- c. Protect the merchandise against damage.
  - d. Transfer title to the purchaser.
  - e. Appropriately identify and describe the merchandise in a manner that it can be distinguished from other similar items.
  - f. Use a method of storage that allows for visual audits of the merchandise.
  - g. Have adequate, computerized, recordkeeping systems in place to identify, describe, and count each item in storage, including the ownership of each item, and provide an aggregate listing with numerical totals.
  - h. File a consent to be audited and inspected by the commissioner.
  - i. Provide reports to the commissioner, annually, by an independent certified public accountant, which shall include a physical count of merchandise held in storage and a review of information, including the seller's revenue and sales records, as necessary to verify the adequacy of the number of items held at the storage facility.
  - j. Satisfy the annual reporting requirements of section 523A.204.
2. Lawn crypts may be delivered in lieu of trusting. For this purpose, delivery means installation in a grave owned by the purchaser. The seller shall do all of the following:
    - a. Notify the administrator before the lawn crypts are installed.
    - b. Identify the intended location of the lawn crypts within the cemetery.
    - c. Provide documentation adequately demonstrating delivery has occurred. Adequate documentation includes but is not limited to photographs and third-party certifications.
  3. Cemetery merchandise and funeral merchandise shall not be deemed delivered to the purchaser or warehoused if the merchandise is subject to a lien or security interest by any party other than the seller.

4. An establishment is prohibited from requiring delivery as a condition of the sale.
5. A seller shall provide services necessary for the installation or burial of outer burial containers sold by the seller. This subsection shall not require the seller to provide for the opening or closing of the interment or entombment space, unless the purchase agreement provides otherwise.

Sec. 32. NEW SECTION. 523A.405 BOND IN LIEU OF TRUST FUND.

1. In lieu of trust requirements, a seller may file with the commissioner a surety bond issued by a surety company authorized to do business and doing business within this state. The bond must be conditioned upon the seller's faithful performance of purchase agreements subject to this chapter. The surety's liability extends to each such agreement executed while the bond is in force and until performance or rescision of the purchase agreement. To the extent expressly agreed to in writing by the surety, the surety's liability extends to each such agreement subject to this chapter executed prior to the time the bond was in force and until performance or rescision of the agreement. A purchaser aggrieved by a breach of a condition of the bond covering the purchaser's agreement may maintain an action against the bond. If, at the time of the breach, the purchaser is aware of the purchaser's rights under the bond and how to file a claim against the bond, the surety shall not be liable for any breach of condition unless the surety receives notice of a claim within sixty days following discovery of the acts, omissions, or conditions constituting the breach of condition, except as otherwise provided in this section. A surety bond shall not be canceled by a surety except upon a written notice of cancellation given by the surety to the commissioner by restricted certified mail, and not prior to the expiration of sixty days after receipt of the

notice by the commissioner. The surety's liability shall extend to each purchase agreement subject to this chapter executed prior to cancellation of the surety bond until the seller has complied with section 3.

2. If a seller becomes insolvent or otherwise ceases to engage in business prior to or within sixty days after cancellation of a bond, the seller shall be deemed to have breached the bond conditions for outstanding agreements under this chapter as of the day prior to cancellation of the bond. The commissioner shall mail written notice by restricted certified mail to the purchaser under each outstanding purchase agreement of the seller that a claim against the bond must be filed with the surety company within sixty days after the mailing date of the notice. The surety shall cease to be liable for all purchase agreements except those for which claims are filed with the surety company within sixty days after the date the commissioner mails the notices.

3. If a surety bond is canceled by a surety under any conditions other than those specified in subsection 2, the seller shall comply with all of the following:

a. The seller shall comply with the trust requirements of section 523A.201 for all purchase agreements subject to this chapter executed on or after the effective date of cancellation of the surety bond. In the alternative, the seller may submit a substitute surety bond meeting the requirements of subsection 1, but the seller must comply with section 523A.201 for any purchase agreements executed on or after the effective cancellation date of the earlier surety bond and prior to the effective date of the later surety bond.

b. Within sixty days after the effective cancellation date of the surety bond, the seller shall submit to the commissioner an undertaking by another surety company that a substitute surety bond meeting the requirements of subsection 1 is in effect and that the liability of the substitute surety bond extends to all outstanding purchase agreements of the

seller that were executed but not performed or extinguished prior to the effective date of the substitute surety bond, or the seller shall submit to the commissioner a financial statement accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state certifying the total amount of outstanding liabilities of the seller on purchase agreements subject to this chapter and proof of deposit by the seller in trust under section 523A.201 of either the amount specified in section 523A.201, including interest as set by the commissioner based on the interest which would have been earned had the funds been maintained in trust, with respect to all of those outstanding purchase agreements or, where applicable, that delivery of merchandise has been made in compliance with section 523A.404. The surety may require such security as is necessary to comply with this section. Upon compliance by the seller with this paragraph, the surety company canceling the surety bond shall cease to be liable with respect to any outstanding purchase agreements of the seller except those purchase agreements with respect to which a breach of condition occurred prior to cancellation and for which timely claims were filed.

4. Section 523A.202, and, to the extent it is applicable, section 523A.206, apply to sellers whose purchase agreements are covered by a surety bond maintained under this section, and section 523A.202 continues to apply to any purchase agreements of those sellers that are not covered by a surety bond maintained under this section.

5. Upon receiving a notice of cancellation of a surety bond, the commissioner shall notify the seller of the requirements of this chapter resulting from cancellation of the bond. The notice may be in the form of a copy of this section and sections 523A.201 and 523A.202.

6. Upon receiving a notice of cancellation, unless the seller has complied with the requirements of this section, the

attorney general shall seek an injunction to prohibit the seller from making further purchase agreements subject to this chapter. The attorney general shall commence an action to attach and levy execution upon property of the seller when the seller fails to perform a purchase agreement subject to this chapter, to the extent necessary to secure compliance with this chapter. The county attorney may bring criminal charges under subchapter 7.

7. The surety under this section shall not be owned, under the control of, or affiliated with the seller.

8. The amount of the surety bond shall equal eighty percent of the payments received pursuant to purchase agreements, or the applicable portion thereof, for cemetery merchandise, funeral merchandise, funeral services, or a combination thereof and the amount needed to adjust the amount of the surety bond for inflation as set by the commissioner based on the consumer price index. The seller shall review the amount of the surety bond no less than annually and shall increase the bond as necessary to reflect additional payments. The amount needed to adjust for inflation shall be added annually to the surety bond during the first quarter of the establishment's fiscal year.

9. With the consent of the purchaser, an existing prepaid purchase agreement with trust-funded benefits may be converted to a prepaid purchase agreement funded by a surety bond provided the establishment and the surety bond comply with the following provisions:

a. The amount of the trust funds transferred to the surety company must be at least equal to the full sum required to be deposited as trust principal under the trust-funded prepaid purchase agreement plus all net earnings accumulated with respect thereto, as of the transfer date. Commissions, allowances, surrender charges or other forms of compensation or expense loads, premium expense, administrative charges or expenses, or fees shall not be deducted from the trust funds transferred pursuant to the conversion.

b. The face amount of the surety bond issued on an individual must be no less than the amount of principal and interest transferred for that individual to the surety company, and any supplemental surety bond issued to cover the unfunded portion of the purchase agreement must have a face amount that is at least as great as the unfunded principal balance. The face amount of the surety bond purchased shall not, under the circumstances, be less than the total of all payments made by the purchaser pursuant to the agreement plus all net earnings accumulated with respect thereto, as of the transfer date.

c. The establishment shall maintain a copy of any prepaid trust-funded agreement that was converted to a prepaid purchase agreement funded by a surety bond and retain the payment history records for each converted purchase agreement prior to conversion until the cemetery merchandise, funeral merchandise, and funeral services have been delivered.

#### SUBCHAPTER 5

#### PERMIT REQUIREMENTS FOR SELLERS OF CEMETERY MERCHANDISE, FUNERAL MERCHANDISE, FUNERAL SERVICES, OR A COMBINATION THEREOF

#### Sec. 33. NEW SECTION. 523A.501 ESTABLISHMENT PERMITS.

1. A person shall not advertise, sell, promote, or offer to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof when performance or delivery may be more than one hundred twenty days following the initial payment on the account without an establishment permit. Each establishment must have an establishment permit.

2. An application for an establishment permit shall be filed on a form prescribed by the commissioner, be accompanied by a fifty dollar filing fee, and include a copy of each purchase agreement the person will use for sales of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof.

3. The application shall contain:

- a. The name and address of the establishment.
  - b. The name and address of any additional provider of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof.
  - c. The name and address of each owner, officer, or other official of the establishment, including when relevant the chief executive officer and the members of the board of directors.
  - d. A description of any common business enterprise or parent company.
  - e. The types of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof to be sold.
  - f. The types of trust or trust alternatives utilized by the establishment and a list of the financial institutions, storage facilities, surety companies, and insurance companies utilized by the establishment on a regular basis.
4. A permit holder shall inform the commissioner of changes in the information required to be provided by subsection 3 within thirty days of the change.
5. An establishment permit is not assignable or transferable. A permit holder selling all or part of an establishment shall cancel the permit and the purchaser shall apply for a new permit in the purchaser's name within thirty days of the sale.
6. The commissioner shall grant or deny a permit application within thirty days after receipt, but the commissioner's failure to act within that time period 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.

7. An initial permit is valid for two years from the date the application is filed. A permit may be renewed for two years by filing the form prescribed by the commissioner under subsection 2, accompanied by a ten dollar renewal fee. Submission of purchase agreements is not required for renewals unless the purchase agreements have been modified since the last filing.

8. The commissioner may by rule create or accept a multi-jurisdiction establishment permit. If the establishment permit is issued by another jurisdiction, the rules shall require the filing of an application or notice form and payment of the applicable filing fee of fifty dollars for an initial application and ten dollars for a renewal application. The application or notice form utilized and the effective dates and terms of the permit may vary from the provisions set forth in subsections 2, 3, and 7.

Sec. 14. NEW SECTION. 523A.502 SALES PERMITS.

1. A person shall not advertise, sell, promote, or offer to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof when performance or delivery may be more than one hundred twenty days following initial payment on the account without a sales permit. A permit holder must be an employee or agent of a person holding an establishment permit who can deliver the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof being sold. A person must have a sales permit for each establishment at which the person works. However, a person may apply for a sales permit covering multiple establishments, if the establishments have common ownership. The establishment permit holder is liable for the acts of its employees and agents performed in advertising, selling, promoting, or offering to furnish, upon the future death of a person named or implied in a purchase agreement, cemetery merchandise, funeral merchandise, funeral services, or a combination thereof.

2. This chapter does not permit a person to practice mortuary science without a license. A person holding a current sales permit may advertise, sell, promote, or offer to furnish a funeral director's services as an employee or agent of a funeral establishment furnishing the funeral services under chapter 156.

3. An application for a sales permit shall be filed on a form prescribed by the commissioner and be accompanied by a five dollar filing fee.

4. The application shall contain:

a. The name and address of the person.  
b. The name and address of the person's employer and each establishment on whose behalf the person will be advertising, selling, promoting, or offering to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof.

c. The name and address of the provider who will provide the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof if different from the person's employer.

5. An initial permit expires one year from the date the application is filed. The permit may be renewed for four years by filing the form prescribed by the commissioner under subsection 3, accompanied by a twenty dollar filing fee.

6. A permit holder shall inform the commissioner of changes in the information required to be provided by subsection 4 within thirty days of the change.

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

8. The commissioner shall grant or deny a permit application within thirty days after receipt, but the commissioner's failure to act within that time period shall not be deemed approval of the application. If the

commissioner does not grant the permit, the commissioner shall notify the applicant in writing of the reasons for the denial.

9. The commissioner may by rule create or accept a multijurisdiction sales permit. If the sales permit is issued by another jurisdiction, the rules shall require the filing of an application or notice form and payment of the applicable filing fee of five dollars for each year. The application or notice form utilized and the effective dates and terms of the permit may vary from the provisions set forth in subsections 3 and 5.

Sec. 35. NEW SECTION. 523A.503 DENIAL, SUSPENSION, REVOCATION, AND SURRENDER OF PERMITS.

1. The commissioner may, pursuant to chapter 17A, deny any permit application or immediately suspend or revoke any permit issued under this chapter for several reasons, including but not limited to:

a. Committing a fraudulent act, engaging in a fraudulent practice, or violating any provision of this chapter or, any implementing rule or order issued under this chapter.

b. Violating any other state or federal law applicable to the conduct of the applicant's or permit holder's business.

c. Insolvency or financial condition.

d. The permit holder, for the purpose of avoiding the trust requirement for funeral services, attributes amounts paid under the purchase agreement to cemetery merchandise or funeral merchandise that is delivered under section 523A.404 rather than to funeral services sold to the purchaser. The sale of funeral services at a lower price when the sale is made in conjunction with the sale of cemetery merchandise or funeral merchandise to be delivered under section 523A.404 than the services are regularly and customarily sold for when not sold in conjunction with cemetery merchandise or funeral merchandise is evidence that the permit holder is acting with the purpose of avoiding the trust requirement for funeral services under section 523A.201.

e. Engaging in a deceptive act or practice or deliberately misrepresenting or omitting a material fact regarding the sale of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof under this chapter.

f. Conviction of a criminal offense involving dishonesty or a false statement.

g. Inability to provide the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof which the applicant or permit holder purports to sell.

h. The applicant or permit holder sells the business without filing a prior notice of sale with the commissioner. The permit shall be revoked thirty days following such sale.

1. Selling by a person who is not an employee or agent of the applicant or permit holder.

2. The commissioner may, for good cause shown, suspend any permit for a period not exceeding thirty days, pending investigation.

3. Except as provided in subsection 2, a permit shall not be revoked or suspended except after notice and hearing under chapter 17A.

4. Any permit holder may surrender a permit by delivering to the commissioner written notice that the permit holder surrenders the permit, but the surrender shall not affect the permit holder's civil or criminal liability for acts committed before the surrender.

5. Denial, revocation, suspension, or surrender of a permit does not impair or affect the obligation of any preexisting lawful agreement between the permit holder and any person.

#### SUBCHAPTER 6

##### PURCHASE AGREEMENT REQUIREMENTS

##### Sec. 36. NEW SECTION. 523A.601 DISCLOSURES.

1. A purchase agreement for cemetery merchandise, funeral merchandise, funeral services, or a combination thereof shall be written in clear, understandable language, and shall be

printed or typed in an easy-to-read font, size, and style, and shall:

a. Identify the seller, the salesperson's permit and establishment name and permit number, the expiration date of the salesperson's permit, the purchaser, and the person for whom the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof is purchased, if other than the purchaser.

b. Specify the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, to be provided, and the cost of each merchandise item or service.

c. State clearly the conditions upon which substitution will be allowed.

d. State the total purchase price and the terms under which it is to be paid.

e. State clearly whether the purchase agreement is a guaranteed price agreement or a nonguaranteed price agreement. A nonguaranteed price agreement shall contain in twelve point bold-faced type an explanation of the consequences of such agreement in substantially the following language:

THE PRICES OF MERCHANDISE AND SERVICES UNDER THIS AGREEMENT ARE SUBJECT TO CHANGE IN THE FUTURE. ANY FUNDS PAID UNDER THIS AGREEMENT ARE ONLY A DEPOSIT TO BE APPLIED, TOGETHER WITH ACCRUED INCOME, TOWARD THE FINAL COSTS OF THE MERCHANDISE OR SERVICES AGREED UPON. ADDITIONAL CHARGES MAY BE INCURRED WHEN ADDITIONAL MERCHANDISE OR SERVICES OR BOTH ARE PROVIDED OR WHEN PRICES HAVE INCREASED MORE THAN ACCRUED INCOME.

f. State that the purchase of the cemetery merchandise, funeral merchandise, and funeral services is revocable and specify the damages for cancellation, if any.

g. State clearly who has the authority to cancel, amend, or revoke the purchase agreement to purchase cemetery merchandise, funeral merchandise, and funeral services.

h. State clearly that the purchaser is entitled to rescind the purchase agreement under terms and conditions specified by section 523A.602.

1. Include an explanation of regulatory oversight by the insurance division in twelve point bold-faced type, in substantially the following language:

THIS AGREEMENT IS SUBJECT TO RULES ADMINISTERED BY THE IOWA INSURANCE DIVISION. YOU MAY CALL THE INSURANCE DIVISION AT ( ) . WRITTEN INQUIRIES OR COMPLAINTS SHOULD BE MAILED TO THE IOWA SECURITIES BUREAU, (STREET ADDRESS), (CITY), IOWA (ZIP CODE).

2. A purchase agreement that is funded by a trust shall also:

- a. State the percentage of money to be placed in trust.
- b. Explain the disposition of the income generated from investments and include a statement of the purchaser's responsibility for income taxes owed on the income if applicable.
- c. State that if, after all payments are made under the conditions and terms of the purchase agreement for cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, any funds remain in the nonguaranteed irrevocable burial trust fund, the seller shall disburse the remaining funds according to law.
- d. State clearly the terms of the funeral and burial trust agreement and whether it is revocable or irrevocable.
- e. State clearly that the purchaser is entitled to transfer the trust funding, insurance funding, or other trust assets or select another establishment to receive the trust funding, insurance funding, or any other trust assets.
- f. State clearly who has the authority to amend or revoke the trust agreement, if revocable, and who has the authority to appoint successor trustees if the purchase agreement is canceled.

3. The commissioner may adopt rules establishing disclosure and format requirements to promote consumer understanding of the merchandise and services purchased and the available funding mechanisms for a purchase agreement under this chapter.

4. A purchase agreement shall be signed by the purchaser, the seller, and if the agreement is for funeral services as defined in chapter 156, a person licensed to deliver funeral services.

5. The seller shall disclose the following information prior to accepting the initial payment under a purchase agreement:

- a. The specific method or methods (trust deposits, certificates of deposit, life insurance or an annuity, a surety bond, or warehousing) that will be used to fund the purchase agreement.
- b. The relationship between the soliciting agent or agents, the provider of the cemetery merchandise, funeral merchandise, or funeral services, or combination thereof, the commissioner, and any other person.
- c. The relationship of the life insurance policy or other trust assets to the funding of the purchase agreement and the nature and existence of any guarantees regarding the purchase agreement.
- d. The impact on the purchase agreement of the following:
  - (1) Changes in the funding, including but not limited to changes in the assignment, beneficiary designation, trustee, or use of proceeds.
  - (2) Any penalties to be incurred by the purchaser as a result of the failure to make any additional payments required.
  - (3) Penalties to be incurred upon cancellation.
- e. A list of cemetery merchandise, funeral merchandise, and funeral services which are agreed upon under the purchase agreement and all relevant information concerning the price of the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, including a statement that the purchase price is either guaranteed at the time of purchase or to be determined at the time of need.

f. All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the funding and the amount actually needed to fund the purchase agreement.

g. Any penalties or restrictions including but not limited to geographic restrictions or the inability of the provider to perform, upon delivery of cemetery merchandise, funeral merchandise, or funeral services, or the purchase agreement guarantee.

h. If the funding is being transferred from another establishment, any material facts related to the revocation of the prior purchase agreement and the transfer of the existing trust funds.

Sec. 37. NEW SECTION. 523A.602 CONSUMER RESCISSION, CANCELLATION, AND REFUND RIGHTS, AND PURCHASE AGREEMENT COMPLIANCE WITH OTHER LAWS.

1. A seller shall furnish the purchaser with a completed copy of a purchase agreement pertaining to the sale at the time the purchase agreement is signed. The seller shall comply with the following terms:

a. The same language shall be used in both the oral sales representation and the written purchase agreement.

b. The seller shall give notice in the purchase agreement of the purchaser's right to rescind after signing the purchase agreement. The rescission period must be but may be greater than three business days after the date of the purchase agreement. The notice must:

- (1) Be located close to the signature line.
- (2) Be printed in twelve point bold-faced type.
- (3) State that "YOU, THE PURCHASER, HAVE THE RIGHT TO RESCIND THIS AGREEMENT AT ANY TIME PRIOR TO MIDNIGHT OF THE (INSERT RELEVANT NUMBER, NOT LESS THAN THREE) BUSINESS DAYS AFTER THE DATE OF THIS AGREEMENT."

c. All moneys shall be refunded without penalty within ten days after rescission.

2. CANCELLATION REFUND.

a. A purchase agreement must include a statement that the purchaser has the right to cancel the agreement for the purchase of cemetery merchandise, funeral merchandise, and funeral services upon written demand and designate or appoint a trustee to hold, manage, invest, and distribute the trust assets.

b. If a purchase agreement is canceled, a purchaser requests a transfer of the trust assets upon cancellation of a purchase agreement, or another establishment provides merchandise or services designated in a purchase agreement, the seller shall refund or transfer within thirty days of receiving a written demand no less than the purchase price of the applicable cemetery merchandise, funeral merchandise, and funeral services adjusted for inflation, using the consumer price index amounts announced by the commissioner annually, less any cancellation penalty set forth in the purchase agreement. The amount of the cancellation penalty shall not exceed ten percent of the purchase price of the applicable cemetery merchandise, funeral merchandise, and funeral services. The seller may also deduct the value of the cemetery merchandise, funeral merchandise, and funeral services already received by, delivered to, or warehoused for the purchaser.

c. A purchase agreement must include a statement that the purchaser is entitled to a refund of the purchase price of the applicable funeral merchandise adjusted for inflation, using the consumer price index amounts announced by the commissioner annually for any item of funeral merchandise that cannot be delivered to the location specified in the purchase agreement within forty-eight hours of notice of the individual's death, unless the delay is caused by weather conditions or a natural disaster. The seller must return such refund to the purchaser within thirty days of receiving the written demand.

3. This section does not prohibit a purchaser who is or may become eligible for benefits under Title XIX of the

federal Social Security Act from making a guaranteed price purchase agreement irrevocable to the extent that federal law or regulations require that such an agreement be irrevocable for purposes of a purchaser's eligibility for benefits under Title XIX of the federal Social Security Act, as permitted under federal law. The seller of credit sale agreements shall comply with the requirements of chapter 537, the Iowa consumer credit code, and is subject to the remedies and penalties provided in that chapter for noncompliance.

#### SUBCHAPTER 7

##### FRAUDULENT PRACTICES

###### Sec. 38. NEW SECTION. 523A.701 MISLEADING FILINGS.

It is unlawful for a person to make or cause to be made, in any document filed with the commissioner, or in any proceeding under this chapter, any statement of material fact which is, at the time and in the light of the circumstances under which it is made, false or misleading, or, in connection with such statement, to omit 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. 39. NEW SECTION. 523A.702 MISREPRESENTATIONS OF GOVERNMENT APPROVAL.

It is unlawful for a seller under this chapter to represent or imply in any manner that the seller has been sponsored, recommended, or approved, or that the seller's abilities or qualifications have in any respect been passed upon by the commissioner.

###### Sec. 40. NEW SECTION. 523A.703 FRAUDULENT PRACTICES.

A person who commits any of the following acts commits a fraudulent practice and is punishable as provided in chapter 714:

1. Knowingly fails to comply with any requirement of this chapter.
2. Knowingly makes, causes to be made, or subscribes to a false statement or representation in a report or other

document required under this chapter, implementing rules, or orders, or renders such a report or document misleading through the deliberate omission of information properly belonging in the report or document.

3. Conspires to defraud in connection with the sale of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof under this chapter.

4. Fails to deposit funds under sections 523A.201 and 523A.202 or withdraws any funds in a manner inconsistent with this chapter.

5. Knowingly sells or offers cemetery merchandise, funeral merchandise, funeral services, or a combination thereof without an establishment permit.

6. Deliberately misrepresents or omits a material fact relative to the sale of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof under this chapter. When selling cemetery merchandise or funeral merchandise, a seller shall not exclude the funeral services necessary for the delivery, use, or installation of the cemetery merchandise or funeral merchandise at the time of the funeral or burial unless the purchase agreement expressly provides otherwise.

#### SUBCHAPTER 8

##### ADMINISTRATION AND ENFORCEMENT

###### Sec. 41. NEW SECTION. 523A.801 ADMINISTRATION.

1. This chapter shall be administered by the commissioner. The deputy administrator appointed pursuant to section 502.601 shall be the principal operations officer responsible to the commissioner for the routine administration of this chapter and management of the administrative staff. In the absence of the commissioner, whether because of vacancy in the office due to absence, physical disability, or other cause, the deputy administrator shall, for the time being, have and exercise the authority conferred upon the commissioner. The commissioner may by order from time to time delegate to the deputy

administrator any or all of the functions assigned to the commissioner in this chapter. The deputy administrator shall employ officers, attorneys, accountants, and other employees as needed for administering this chapter.

2. It is unlawful for the commissioner or any administrative staff to use for personal benefit any information which is filed with or obtained by the commissioner and which is not made public. This chapter does not authorize the commissioner or any such staff member to disclose any such information except among themselves or to other cemetery and funeral administrators, regulatory authorities, or governmental agencies, or when necessary and appropriate in a proceeding or investigation under this chapter or as required by chapter 22. This chapter neither creates nor derogates any privileges that exist at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the commissioner or any administrative staff.

Sec. 42. NEW SECTION. 523A.802 SCOPE.

1. This chapter applies to any advertisement, sale, promotion, or offer made by a person to furnish, upon the future death of a person named or implied in a purchase agreement, cemetery merchandise, funeral merchandise, funeral services, or a combination thereof. Burial accounts and insurance policies are included if the account records or related documents identify the establishment that will provide the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof.

2. This chapter applies when a purchase agreement is executed within this state or an advertisement, promotion, or offer to furnish is made or accepted within this state. An offer to furnish is made within this state, whether or not either party is then present in this state, when the offer originates from this state or is directed by the offeror to this state and received by the offeree in this state through

the mail, over the telephone, by the internet, or through any other means of commerce.

3. If a foreign person does not have a registered agent or agents in the state of Iowa, doing business within this state shall constitute the person's appointment of the secretary of state of the state of Iowa to be its true and lawful attorney upon whom may be served all lawful process of original notice in actions or proceedings arising or growing out of any contract or tort.

Sec. 43. NEW SECTION. 523A.803 INVESTIGATIONS AND SUBPOENAS.

1. The commissioner may, for the purpose of discovering violations of this chapter, implementing rules, or orders issued under this chapter:

a. Make such public or private investigations within or outside of this state as the commissioner deems necessary to determine whether any person has violated or is about to violate this chapter, implementing rules, or orders issued under this chapter, or to aid in enforcement of this chapter or in the prescribing of rules and forms under this chapter.

b. Require or permit any person to file a statement in writing, under oath or otherwise as the commissioner or attorney general determines, as to all the facts and circumstances concerning the matter to be investigated.

c. Notwithstanding chapter 22, keep confidential the information obtained in the course of an investigation. However, if the commissioner determines that it is necessary or appropriate in the public interest or for the protection of the public, the commissioner may share information with other administrators, regulatory authorities, or governmental agencies, or may publish information concerning a violation of this chapter, implementing rules, or orders issued under this chapter.

d. Investigate the establishment and examine the books, accounts, papers, correspondence, memoranda, purchase

agreements, files, or other documents or records used by every applicant and permit holder under this chapter.

e. Administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records which the commissioner deems relevant or material to any investigation or proceeding under this chapter and implementing rules, all of which may be enforced under chapter 17A.

f. Apply to the district court for an order requiring a person's appearance before the commissioner or attorney general, or a designee of either or both, in cases where the person has refused to obey a subpoena issued by 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.

7. The commissioner may issue and bring an action in district court to enforce subpoenas within this state at the request of an agency or administrator of another state, if the activity constituting an alleged violation for which the information is sought would be a violation of this chapter had the activity occurred in this state.

Sec. 44. NEW SECTION. 523A.804 MEDIATION.

The commissioner may order an establishment to participate in mediation in any dispute regarding a purchase agreement. Mediation performed under this section shall be conducted by a mediator appointed by the commissioner and shall comply with the provisions of chapter 679C.

Mediation of these disputes shall include attendance at a mediation session with the mediator and the parties to the dispute, listening to the mediator's explanation of the mediation process, presentation of one party's view of the dispute, and listening to the response of the other party.

Participation in mediation does not require that the parties reach a mediation agreement.

Parties to the mediation shall have the right to advice and presence of counsel at all times. The parties to the mediation shall present any mediation agreement reached through the mediation to the commissioner. If a mediation agreement is not reached, the mediator shall file a report with the commissioner. The costs of the mediation shall be approved by the commissioner and shall be borne by the insurance division's regulatory fund.

Sec. 45. NEW SECTION. 523A.805 CEASE AND DESIST ORDERS -- INJUNCTIONS.

If it appears to the commissioner that a person has engaged or is about to engage in an act or practice constituting a violation of this chapter, implementing rules, or orders issued under this chapter, the commissioner or the attorney general may do either or both of the following:

1. Issue a summary order directed at the person requiring the person to cease and desist from engaging in such act or practice. A person may request a hearing within thirty days of issuance of the summary order. If a hearing is not timely requested, the summary order shall become final by operation of law. The order shall remain effective from the date of issuance until the date the order becomes final by operation of law or is overturned by a presiding officer following a request for hearing. Section 17A.18A is inapplicable to summary cease and desist orders issued under this section.

2. Bring an action in 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 deemed contrary to the public interest. In any proceeding for an injunction, the commissioner or attorney general may apply to the court for a subpoena to require the appearance of a defendant and the defendant's agents and for any books, accounts, papers,

correspondence, memoranda, purchase agreements, files, or other documents or records germane to the hearing upon the petition for an injunction. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver may be appointed for the defendant or the defendant's assets. The commissioner or attorney general shall not be required to post a bond.

Sec. 46. NEW SECTION. 523A.806 COURT ACTION FOR FAILURE TO COOPERATE.

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

1. Injunctive relief, restricting or prohibiting the offer or sale of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof.
2. Revocation or suspension of any permit issued under this chapter.
3. Production of documents or records including but not limited to books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records.
4. Such other relief as may be required.

Such an order shall be effective until the person files the statement or report or produces the documents requested, or obeys the subpoena.

Sec. 47. NEW SECTION. 523A.807 PROSECUTION FOR VIOLATIONS OF LAW.

1. A violation of this chapter or rules adopted or orders issued under 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 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, so that the attorney general or the county attorney may proceed with the matter as deemed appropriate.

Sec. 48. NEW SECTION. 523A.808 COOPERATION WITH OTHER AGENCIES.

1. To encourage uniform interpretation and administration of this chapter and effective regulation of the sale of cemetery merchandise, funeral merchandise, and funeral services, the commissioner may cooperate with any governmental law enforcement or regulatory agency.

2. This cooperation includes but is not limited to:
  - a. Making a joint examination or investigation.
  - b. Holding a joint administrative hearing.
  - c. Filing and prosecuting a joint civil or administrative proceeding.
  - d. Sharing and exchanging personnel.
  - e. Sharing and exchanging relevant information and documents.

f. Formulating, in accordance with chapter 17A, rules or proposed rules on matters such as statements of policy, regulatory standards, guidelines, and interpretive opinions.

Sec. 49. NEW SECTION. 523A.809 RULES, FORMS, AND ORDERS.

1. Under chapter 17A, the commissioner may from time to time make, amend, and rescind such rules, forms, and orders as are necessary or appropriate for the protection of purchasers and the public and to administer the provisions of this chapter, its implementing rules, and orders issued under this chapter.

2. A rule, form, or order shall not be made, amended, or rescinded unless the commissioner finds that the action is

necessary or appropriate in the public interest or for the protection of purchasers and consistent with the purposes fairly intended by the policies and provisions of this chapter, its implementing rules, and orders issued under this chapter.

3. A provision of this chapter imposing any liability does not apply to any act done or omitted in good faith in conformity with any rules, form, or order of the commissioner, notwithstanding that the rule, form, or order may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

Sec. 50. NEW SECTION. 523A.810 DATE OF FILING AND INTERPRETIVE OPINIONS.

1. A document is filed when it is received by the commissioner.

2. Requests for interpretive opinions may be granted in the commissioner's discretion.

Sec. 51. NEW SECTION. 523A.811 RECEIVERSHIPS.

1. The commissioner shall notify the attorney general of the potential need for establishment of a receivership if the commissioner finds that a seller subject to this chapter meets one or more of the following conditions:

- a. Is insolvent.
- b. Has utilized trust funds for personal or business purposes in a manner inconsistent with this chapter.
- c. The amount of funds currently held in trust for cemetery merchandise, funeral merchandise, and funeral services is less than eighty percent of all payments made under the purchase agreements referred to in section 523A.201.
- d. Has refused to pay any just claim or demand based on a purchase agreement referred to in section 523A.201.
- e. The commissioner finds upon investigation that a seller is unable to pay any claim or demand based on a purchase agreement which has been legally determined to be just and outstanding.

2. The commissioner or attorney general may apply to the district court in any county of the state for the establishment of a receivership. Upon proof of any of the grounds for a receivership described in this section, the court may grant a receivership.

Sec. 52. NEW SECTION. 523A.812 INSURANCE DIVISION'S REGULATORY FUND.

The insurance division may authorize the creation of a special revenue fund in the state treasury, to be known as the insurance division regulatory fund. The commissioner shall allocate annually from the fees paid pursuant to section 523A.204, two dollars for each purchase agreement reported on an establishment permit holder's annual report for deposit to the regulatory fund. The remainder of the fees collected pursuant to section 523A.204 shall be deposited into the general fund of the state. The moneys in the regulatory fund shall be retained in the fund. The moneys are appropriated and, subject to authorization by the commissioner, may be used to pay auditors, audit expenses, investigative expenses, the expenses of mediation ordered by the commissioner, consumer education expenses, the expenses of a toll-free telephone line to receive consumer complaints, and the expenses of receiverships established under section 523A.811. An annual allocation to the regulatory fund shall not be imposed if the current balance of the fund exceeds two hundred thousand dollars.

Sec. 53. NEW SECTION. 523A.813 LICENSE REVOCATION -- RECOMMENDATION BY COMMISSIONER TO BOARD OF MORTUARY SCIENCE EXAMINERS.

Upon a determination by the commissioner that grounds exist for an administrative license revocation or suspension action by the board of mortuary science examiners under chapter 156, the commissioner may forward to the board the grounds for the determination, including all evidence in the possession of the commissioner, so that the board may proceed with the matter as deemed appropriate.

SUBCHAPTER 9

LIQUIDATION PROCEDURES

Sec. 54. NEW SECTION. 523A.901 LIQUIDATION.

1. GROUND FOR LIQUIDATION. The commissioner may petition the district court for an order directing the commissioner to liquidate an establishment on either of the following grounds:

a. The establishment did not deposit funds pursuant to section 523A.201 or withdrew funds in a manner inconsistent with this chapter and is insolvent.

b. The establishment did not deposit funds pursuant to section 523A.201 or withdrew funds in a manner inconsistent with this chapter and the condition of the establishment is such that further transaction of business would be hazardous, financially or otherwise, to purchasers or the public.

2. LIQUIDATION ORDER.

a. An order to liquidate the business of an establishment shall appoint the commissioner as liquidator and shall direct the liquidator to immediately take possession of the assets of the establishment and to administer them under the general supervision of the court. The liquidator is vested with the title to the property, contracts, and rights of action and the books and records of the establishment ordered liquidated, wherever located, as of the entry of the final order of liquidation. The filing or recording of the order with the clerk of court and the recorder of deeds of the county in which its principal office or place of business is located, or, in the case of real estate with the recorder of deeds of the county where the property is located, is notice as a deed, bill of sale, or other evidence of title duly filed or recorded with the recorder of deeds.

b. Upon issuance of an order, the rights and liabilities of an establishment and of the establishment's creditors, purchasers, owners, and other persons interested in the establishment's estate shall become fixed as of the date of the entry of the order of liquidation, except as provided in subsection 14.

c. At the time of petitioning for an order of liquidation, or at any time after the time of petitioning, the commissioner, after making appropriate findings of an establishment's insolvency, may petition the court for a declaration of insolvency. After providing notice and hearing as it deems proper, the court may make the declaration.

d. An order issued under this section shall require accounting to the court by the liquidator. Accountings, at a minimum, must include all funds received or disbursed by the liquidator during the current period. An accounting shall be filed within one year of the liquidation order and at such other times as the court may require.

e. Within five days after the initiation of an appeal of an order of liquidation, which order has not been stayed, the commissioner shall present for the court's approval a plan for the continued performance of the establishment's obligations during the pendency of an appeal. The plan shall provide for the continued performance of purchase agreements in the normal course of events, notwithstanding the grounds alleged in support of the order of liquidation including the ground of insolvency. If the defendant establishment's financial condition, in the judgment of the commissioner, will not support the full performance of all obligations during the appeal pendency period, the plan may prefer the claims of certain purchasers and claimants over creditors and interested parties as well as other purchasers and claimants, as the commissioner finds to be fair and equitable considering the relative circumstances of such purchasers and claimants. The court shall examine the plan submitted by the commissioner and if it finds the plan to be in the best interests of the parties, the court shall approve the plan. An action shall not lie against the commissioner or any of the commissioner's deputies, agents, clerks, assistants, or attorneys by any party based on preference in an appeal pendency plan approved by the court.

3. POWERS OF LIQUIDATOR.

a. The liquidator may do any of the following:

- (1) Appoint a special deputy to act for the liquidator under this chapter, and determine the special deputy's reasonable compensation. The special deputy shall have all the powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator.
- (2) Hire employees and agents, legal counsel, accountants, appraisers, consultants, and other personnel as the commissioner may deem necessary to assist in the liquidation.
- (3) With the approval of the court, fix reasonable compensation of employees and agents, legal counsel, accountants, appraisers, and consultants.
- (4) Pay reasonable compensation to persons appointed and defray from the funds or assets of the establishment all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the establishment. If the property of the establishment does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs so incurred out of the insurance division regulatory fund. Amounts so advanced for expenses of administration shall be repaid to the insurance division regulatory fund for the use of the division out of the first available moneys of the establishment.
- (5) Hold hearings, subpoena witnesses, and compel their attendance, administer oaths, examine a person under oath, and compel a person to subscribe to the person's testimony after it has been correctly reduced to writing, and in connection to the proceedings require the production of books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records which the liquidator deems relevant to the inquiry.
- (6) Collect debts and moneys due and claims belonging to the establishment, wherever located. Pursuant to this subparagraph, the liquidator may do any of the following:

(a) Institute timely action in other jurisdictions to forestall garnishment and attachment proceedings against debts.

(b) Perform acts as are necessary or expedient to collect, conserve, or protect its assets or property, including the power to sell, compound, compromise, or assign debts for purposes of collection upon terms and conditions as the liquidator deems best.

(c) Pursue any creditor's remedies available to enforce claims.

(7) Conduct public and private sales of the property of the establishment.

(8) Use assets of the establishment under a liquidation order to transfer obligations of purchase agreements to a solvent establishment, if the transfer can be accomplished without prejudice to the applicable priorities under subsection 18.

(9) Acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with property of the establishment at its market value or upon terms and conditions as are fair and reasonable. The liquidator shall also have power to execute, acknowledge, and deliver deeds, assignments, releases, and other instruments necessary to effectuate a sale of property or other transaction in connection with the liquidation.

(10) Borrow money on the security of the establishment's assets or without security and execute and deliver documents necessary to that transaction for the purpose of facilitating the liquidation. Money borrowed pursuant to this subparagraph shall be repaid as an administrative expense and shall have priority over any other class 1 claims under the priority of distribution established in subsection 18.

(11) Enter into contracts as necessary to carry out the order to liquidate and affirm or disavow contracts to which the establishment is a party.

(12) Continue to prosecute and to institute in the name of the establishment or in the liquidator's own name any and all suits and other legal proceedings, in this state or elsewhere, and to abandon the prosecution of claims the liquidator deems unprofitable to pursue further.

(13) Prosecute an action on behalf of the creditors, purchasers, or owners against an officer of the establishment or any other person.

(14) Remove records and property of the establishment to the offices of the commissioner or to other places as may be convenient for the purposes of efficient and orderly execution of the liquidation.

(15) Deposit in one or more banks in this state sums as are required for meeting current administration expenses and distributions.

(16) Unless the court orders otherwise, invest funds not currently needed.

(17) File necessary documents for recording in the office of the recorder of deeds or record office in this state or elsewhere where property of the establishment is located.

(18) Assert defenses available to the establishment against third persons including statutes of limitations, statutes of fraud, and the defense of usury. A waiver of a defense by the establishment after a petition in liquidation has been filed shall not bind the liquidator.

(19) Exercise and enforce the rights, remedies, and powers of a creditor, purchaser, or owner, including the power to avoid transfer or lien that may be given by the general law and that is not included within subsections 7 through 9.

(20) Intervene in a proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and act as the receiver or trustee whenever the appointment is offered.

(21) Exercise powers now held or later conferred upon receivers by the laws of this state which are not inconsistent with this chapter.

b. This subsection does not limit the liquidator or exclude the liquidator from exercising a power not listed in paragraph "a" that may be necessary or appropriate to accomplish the purposes of this chapter.

4. NOTICE TO CREDITORS AND OTHERS.

a. Unless the court otherwise directs, the liquidator shall give notice of the liquidation order as soon as possible by doing both of the following:

(1) Mailing notice, by first-class mail, to all persons known or reasonably expected to have claims against the establishment, including purchasers, at their last known address as indicated by the records of the establishment.

(2) Publication of notice in a newspaper of general circulation in the county in which the establishment has its principal place of business and in other locations as the liquidator deems appropriate.

b. Notice to potential claimants under paragraph "a" shall require claimants to file with the liquidator their claims together with proper proofs of the claim under subsection 13 on or before a date the liquidator shall specify in the notice. Claimants shall keep the liquidator informed of their changes of address, if any.

c. If notice is given pursuant to this subsection, the distribution of assets of the establishment under this chapter shall be conclusive with respect to claimants, whether or not a claimant actually received notice.

5. ACTIONS BY AND AGAINST LIQUIDATOR.

a. After issuance of an order appointing a liquidator of an establishment, an action at law or equity shall not be brought against the establishment within this state or elsewhere, and existing actions shall not be maintained or further presented after issuance of the order. Whenever in the liquidator's judgment, protection of the estate of the establishment necessitates intervention in an action against the establishment that is pending outside this state, the

liquidator may intervene in the action. The liquidator may defend, at the expense of the estate of the establishment, an action in which the liquidator intervenes under this section.

b. Within two years or such additional time as applicable law may permit, the liquidator, after the issuance of an order for liquidation, may institute an action or proceeding on behalf of the estate of the establishment upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which the order is entered. If a period of limitation is fixed by agreement for instituting a suit or proceeding upon a claim, or for filing a claim, proof of claim, proof of loss, demand, notice, or the like, or if in a proceeding, judicial or otherwise, a period of limitation is fixed in the proceeding or pursuant to applicable law for taking an action, filing a claim or pleading, or doing an act, and if the period has not expired at the date of the filing of the petition, the liquidator may, for the benefit of the estate, take any action or do any act, required of or permitted to the establishment, within a period of one hundred eighty days subsequent to the entry of an order for liquidation, or within a further period as is shown to the satisfaction of the court not to be unfairly prejudicial to the other party.

c. A statute of limitations or defense of laches shall not run with respect to an action against an establishment between the filing of a petition for liquidation against the establishment and the denial of the petition. An action against the establishment that might have been commenced when the petition was filed may be commenced for at least sixty days after the petition is denied.

#### 6. COLLECTION AND LIST OF ASSETS.

a. As soon as practicable after the liquidation order but not later than one hundred twenty days after such order, the liquidator shall prepare in duplicate a list of the

establishment's assets. The list shall be amended or supplemented as the liquidator may determine. One copy shall be filed in the office of the clerk of court, and one copy shall be retained for the liquidator's files. Amendments and supplements shall be similarly filed.

b. The liquidator shall reduce the assets to a degree of liquidity that is consistent with the effective execution of the liquidation.

c. A submission of a proposal to the court for distribution of assets in accordance with subsection 11 fulfills the requirements of paragraph "a".

#### 7. FRAUDULENT TRANSFERS PRIOR TO PETITION.

a. A transfer made and an obligation incurred by an establishment within one year prior to the filing of a successful petition for liquidation under this chapter is fraudulent as to then existing and future creditors if made or incurred without fair consideration, or with actual intent to hinder, delay, or defraud either existing or future creditors. A fraudulent transfer made or an obligation incurred by an establishment ordered to be liquidated under this chapter may be avoided by the liquidator, except as to a person who in good faith is a purchaser, lienor, or obligee for a present fair equivalent value. A purchaser, lienor, or obligee, who in good faith has given a consideration less than present fair equivalent value for such transfer, lien, or obligation, may retain the property, lien, or obligation as security for repayment. The court may, on due notice, order any such transfer, lien, or obligation to be preserved for the benefit of the estate, and in that event, the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.

b. (1) A transfer of property other than real property is made when it becomes perfected so that a subsequent lien obtainable by legal or equitable proceedings on a simple contract could not become superior to the rights of the transferee under subsection 9, paragraph "c".

(2) A transfer of real property is made when it becomes perfected so that a subsequent bona fide purchaser from the establishment could not obtain rights superior to the rights of the transferee.

(3) A transfer which creates an equitable lien is not perfected if there are available means by which a legal lien could be perfected.

(4) A transfer not perfected prior to the filing of a petition for liquidation is deemed to be made immediately before the filing of the successful petition.

(5) This subsection applies whether or not there are or were creditors who might have obtained a lien or persons who might have become bona fide purchasers.

8. FRAUDULENT TRANSFER AFTER PETITION.

a. After a petition for liquidation has been filed, a transfer of real property of the establishment made to a person acting in good faith is valid against the liquidator if made for a present fair equivalent value. If the transfer is not made for a present fair equivalent value, then the transfer is valid to the extent of the present consideration actually paid for which amount the transferee shall have a lien on the property transferred. The commencement of a proceeding in liquidation is constructive notice upon the recording of a copy of the petition for or order of liquidation with the recording or deeds in the county where any real property in question is located. The exercise by a court of the United States or a state or jurisdiction to authorize a judicial sale of real property of the establishment within a county in a state shall not be impaired by the pendency of a proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.

b. After a petition for liquidation has been filed and before either the liquidator takes possession of the property of the establishment or an order of liquidation is granted:

(1) A transfer of the property, other than real property, of the establishment made to a person acting in good faith is valid against the liquidator if made for a present fair equivalent value. If the transfer was not made for a present fair equivalent value, then the transfer is valid to the extent of the present consideration actually paid for which amount the transferee shall have a lien on the property transferred.

(2) If acting in good faith, a person indebted to the establishment or holding property of the establishment may pay the debt or deliver the property, or any part of the property, to the establishment or upon the establishment's order as if the petition were not pending.

(3) A person having actual knowledge of the pending liquidation is not acting in good faith.

(4) A person asserting the validity of a transfer under this subsection has the burden of proof. Except as provided in this subsection, a transfer by or on behalf of the establishment after the date of the petition for liquidation by any person other than the liquidator is not valid against the liquidator.

c. A person receiving any property from the establishment or any benefit of the property of the establishment which is a fraudulent transfer under paragraph "a" is personally liable for the property or benefit and shall account to the liquidator.

d. This chapter does not impair the negotiability of currency or negotiable instruments.

9. VOIDABLE PREFERENCES AND LIENS.

a. (1) A preference is a transfer of the property of an establishment to or for the benefit of a creditor for an antecedent debt made or suffered by the establishment within one year before the filing of a successful petition for liquidation under this chapter, the effect of which transfer may be to enable the creditor to obtain a greater percentage

of this debt than another creditor of the same class would receive. If a liquidation order is entered while the establishment is already subject to a receivership, then the transfers are preferences if made or suffered within one year before the filing of the successful petition for the receivership, or within two years before the filing of the successful petition for liquidation, whichever time is shorter.

(2) A preference may be avoided by the liquidator if any of the following exist:

(a) The establishment was insolvent at the time of the transfer.

(b) The transfer was made within four months before the filing of the petition.

(c) At the time the transfer was made, the creditor receiving it or to be benefited by the transfer or the creditor's agent acting with reference to the transfer had reasonable cause to believe that the establishment was insolvent or was about to become insolvent.

(d) The creditor receiving the transfer was an officer, or an employee, attorney, or other person who was in fact in a position of comparable influence in the establishment to an officer whether or not the person held the position of an officer, owner, or other person, firm, corporation, association, or aggregation of persons with whom the establishment did not deal at arm's length.

(3) Where the preference is voidable, the liquidator may recover the property. If the property has been converted, the liquidator may recover its value from a person who has received or converted the property. However, if a bona fide purchaser or lienor has given less than the present fair equivalent value, the purchaser or lienor shall have a lien upon the property to the extent of the consideration actually given. Where a preference by way of lien or security interest is voidable, the court may on due notice order the lien or

security interest to be preserved for the benefit of the estate, in which event the lien or title shall pass to the liquidator.

b. (1) A transfer of property other than real property is made when it becomes perfected so that a subsequent lien obtainable by legal or equitable proceedings on a simple contract could not become superior to the rights of the transferee.

(2) A transfer of real property is made when it becomes perfected so that a subsequent bona fide purchaser from the establishment could not obtain rights superior to the rights of the transferee.

(3) A transfer which creates an equitable lien is not perfected if there are available means by which a legal lien could be created.

(4) A transfer not perfected prior to the filing of a petition for liquidation is deemed to be made immediately before the filing of the successful petition.

(5) This subsection applies whether or not there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers.

c. (1) A lien obtainable by legal or equitable proceedings upon a simple contract is one arising in the ordinary course of the proceedings upon the entry or docketing of a judgment or decree, or upon attachment, garnishment, execution, or like process, whether before, upon, or after judgment or decree and whether before or upon levy. It does not include liens which under applicable law are given a special priority over other liens which are prior in time.

(2) A lien obtainable by legal or equitable proceedings may become superior to the rights of a transferee, or a purchaser may obtain rights superior to the rights of a transferee within the meaning of paragraph "b", if such consequences follow only from the lien or purchase itself, or from the lien or purchase followed by a step wholly within the

control of the respective lienholder or purchaser, with or without the aid of ministerial action by public officials. However, a lien could not become superior and a purchase could not create superior rights for the purpose of paragraph "b" through an act subsequent to the obtaining of a lien or subsequent to a purchase which requires the agreement or concurrence of any third party or which requires further judicial action or ruling.

d. A transfer of property for or on account of a new and contemporaneous consideration, which is under paragraph "b" made or suffered after the transfer because of delay in perfecting it, does not become a transfer for or on account of an antecedent debt if any acts required by the applicable law to be performed in order to perfect the transfer as against liens or a bona fide purchaser's rights are performed within twenty-one days or any period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if a loan is actually made, or a transfer which becomes security for a future loan, shall have the same effect as a transfer for or on account of a new and contemporaneous consideration.

e. If a lien which is voidable under paragraph "a", subparagraph (2), has been dissolved by the furnishing of a bond or other obligation, the surety of which has been indemnified directly or indirectly by the transfer or the creation of a lien upon property of an establishment before the filing of a petition under this chapter which results in the liquidation order, the indemnifying transfer or lien is also voidable.

f. The property affected by a lien voidable under paragraphs "a" and "e" is discharged from the lien. The property and any of the indemnifying property transferred to or for the benefit of a surety shall pass to the liquidator. However, the court may on due notice order a lien to be preserved for the benefit of the estate and the court may direct that the conveyance be executed to evidence the title of the liquidator.

g. The court shall have summary jurisdiction of a proceeding by a liquidator to hear and determine the rights of the parties under this section. Reasonable notice of hearing in the proceeding shall be given to all parties in interest, including the obligee of a releasing bond or other like obligation. Where an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, upon application of any party in interest, the court shall in the same proceeding ascertain the value of the property or lien. If the value is less than the amount for which the property is indemnified or less than the amount of the lien, the transferee or lienholder may elect to retain the property or lien upon payment of its value, as ascertained by the court, to the liquidator within the time as fixed by the court.

h. The liability of a surety under a releasing bond or other like obligation is discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and avoided by the liquidator. Where the property is retained under paragraph "g", the liability of the surety is discharged to the extent of the amount paid to the liquidator.

i. If a creditor has been preferred for property which becomes a part of the establishment's estate, and afterward in good faith gives the establishment further credit without security of any kind, the amount of the new credit remaining unpaid at the time of the petition may be set off against the preference which would otherwise be recoverable from the creditor.

j. If within four months before the filing of a successful petition for liquidation under this chapter, or at any time in contemplation of a proceeding to liquidate, an establishment, directly or indirectly, pays money or transfers property to an attorney for services rendered or to be rendered, the transaction may be examined by the court on its own motion or

shall be examined by the court on petition of the liquidator. The payment or transfer shall be held valid only to the extent of a reasonable amount to be determined by the court. The excess may be recovered by the liquidator for the benefit of the estate. However, where the attorney is in a position of influence in the establishment or an affiliate, payment of any money or the transfer of any property to the attorney for services rendered or to be rendered shall be governed by the provisions of paragraph "a", subparagraph (2), subparagraph subdivision (d).

k. (1) An officer, manager, employee, shareholder, subscriber, attorney, or other person acting on behalf of the establishment who knowingly participates in giving any preference when the person has reasonable cause to believe the establishment is or is about to become insolvent at the time of the preference is personally liable to the liquidator for the amount of the preference. There is an inference that reasonable cause exists if the transfer was made within four months before the date of filing of this successful petition for liquidation.

(2) A person receiving property from the establishment or the benefit of the property of the establishment as a preference voidable under paragraph "a" is personally liable for the property and shall account to the liquidator.

(3) This subsection shall not prejudice any other claim by the liquidator against any person.

#### 10. CLAIMS OF HOLDER OF VOID OR VOIDABLE RIGHTS.

a. A claim of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment, or encumbrance, voidable under this chapter, shall not be allowed unless the creditor surrenders the preference, lien, conveyance, transfer, assignment, or encumbrance. If the avoidance is effected by a proceeding in which a final judgment has been entered, the claim shall not be allowed unless the money is paid or the property is delivered to the

liquidator within thirty days from the date of the entering of the final judgment. However, the court having jurisdiction over the liquidation may allow further time if there is an appeal or other continuation of the proceeding.

b. A claim allowable under paragraph "a" by reason of a voluntary or involuntary avoidance, preference, lien, conveyance, transfer, assignment, or encumbrance may be filed as an excused late filing under subsection 12, if filed within thirty days from the date of the avoidance or within the further time allowed by the court under paragraph "a".

#### 11. LIQUIDATOR'S PROPOSAL TO DISTRIBUTE ASSETS.

a. From time to time as assets become available, the liquidator shall make application to the court for approval of a proposal to disburse assets out of marshaled assets.

b. The proposal shall at least include provisions for all of the following:

(1) Reserving amounts for the payment of all the following:

(a) Expenses of administration.

(b) To the extent of the value of the security held, the payment of claims of secured creditors.

(c) Claims falling within the priorities established in subsection 18, paragraphs "a" and "b".

(2) Disbursement of the assets marshaled to date and subsequent disbursement of assets as they become available.

c. Action on the application may be taken by the court provided that the liquidator's proposal complies with paragraph "b".

#### 12. FILING OF CLAIMS.

a. Proof of all claims shall be filed with the liquidator in the form required by subsection 13 on or before the last day for filing specified in the notice required under subsection 4.

b. The liquidator may permit a claimant making a late filing to share in distributions, whether past or future, as

if the claimant were not late, to the extent that the payment will not prejudice the orderly administration of the liquidation under any of the following circumstances:

- (1) The existence of the claim was not known to the claimant and the claimant filed the claim as promptly as reasonably possible after learning of it.
- (2) A transfer to a creditor was avoided under subsections 7 through 9, or was voluntarily surrendered under subsection 10, and the filing satisfies the conditions of subsection 10.
- (3) The valuation under subsection 17 of security held by a secured creditor shows a deficiency, which is filed within thirty days after the valuation.

c. The liquidator may consider any claim filed late and permit the claimant to receive distributions which are subsequently declared on any claims of the same or lower priority if the payment does not prejudice the orderly administration of the liquidation. The late-filing claimant shall receive at each distribution the same percentage of the amount allowed on the claim as is then being paid to claimants of any lower priority. This shall continue until the claim has been paid in full.

13. PROOF OF CLAIM.

a. Proof of claim shall consist of a statement signed by the claimant that includes all of the following that are applicable:

- (1) The particulars of the claim, including the consideration given for it.
- (2) The identity and amount of the security on the claim.
- (3) The payments, if any, made on the debt.
- (4) A statement that the sum claimed is justly owing and that there is no setoff, counterclaim, or defense to the claim.
- (5) Any right of priority of payment or other specific right asserted by the claimant.

(6) A copy of the written instrument which is the foundation of the claim.

(7) The name and address of the claimant and the attorney who represents the claimant, if any.

b. A claim need not be considered or allowed if it does not contain all the information identified in paragraph "a" which is applicable. The liquidator may require that a prescribed form be used and may require that other information and documents be included.

c. At any time the liquidator may request the claimant to present information or evidence supplementary to that required under paragraph "a", and may take testimony under oath, require production of affidavits or depositions, or otherwise obtain additional information or evidence.

d. A judgment or order against an establishment entered after the date of filing of a successful petition for liquidation, or a judgment or order against the establishment entered at any time by default or by collusion need not be considered as evidence of liability or of the amount of damages. A judgment or order against an establishment before the filing of the petition need not be considered as evidence of liability or of the amount of damages.

14. SPECIAL CLAIMS.

a. A claim may be allowed even if contingent, if it is filed pursuant to subsection 12. The claim may be allowed and the claimant may participate in all distributions declared after it is filed to the extent that it does not prejudice the orderly administration of the liquidation.

b. Claims that are due except for the passage of time shall be treated as absolute claims are treated. However, the claims may be discounted at the legal rate of interest.

c. Claims made under employment contracts by directors, principal officers, or persons in fact performing similar functions or having similar powers are limited to payment for services rendered prior to the issuance of an order of liquidation under subsection 2.

15. DISPUTED CLAIMS.

a. If a claim is denied in whole or in part by the liquidator, written notice of the determination shall be given to the claimant or the claimant's attorney by first-class mail at the address shown in the proof of claim. Within sixty days from the mailing of the notice, the claimant may file objections with the liquidator. Unless a filing is made, the claimant shall not further object to the determination.

b. If objections are filed with the liquidator and the liquidator does not alter the denial of the claim as a result of the objections, the liquidator shall ask the court for a hearing as soon as practicable and give notice of the hearing by first-class mail to the claimant or the claimant's attorney and to any other persons directly affected. The notice shall be given not less than ten nor more than thirty days before the date of hearing. The matter shall be heard by the court or by a court-appointed referee. The referee shall submit findings of fact along with a recommendation.

16. CLAIMS OF OTHER PERSON. If a creditor, whose claim against an establishment is secured in whole or in part by the undertaking of another person, fails to prove and file that claim, then the other person may do so in the creditor's name and shall be subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by the other person in the creditor's name to the extent that the other person discharges the undertaking. However, in the absence of an agreement with the creditor to the contrary, the other person is not entitled to any distribution until the amount paid to the creditor on the undertaking plus the distributions paid on the claim from the establishment's estate to the creditor equal the amount of the entire claim of the creditor. An excess received by the creditor shall be held by the creditor in trust for the other person.

17. SECURED CREDITOR'S CLAIMS.

a. The value of the security held by a secured creditor shall be determined in one of the following ways, as the court may direct:

(1) By converting the security into money according to the terms of the agreement pursuant to which the security was delivered to the creditors.

(2) By agreement, arbitration, compromise, or litigation between the creditor and the liquidator.

b. The determination shall be under the supervision and control of the court with due regard for the recommendation of the liquidator. The amount so determined shall be credited upon the secured claim. A deficiency shall be treated as an unsecured claim. If the claimant surrenders the security to the liquidator, the entire claim shall be allowed as if unsecured.

18. PRIORITY OF DISTRIBUTION. The priority of distribution of claims from the establishment's estate shall be in accordance with the order in which each class of claims is set forth. Claims in each class shall be paid in full or adequate funds retained for the payment before the members of the next class receive any payment. Subclasses shall not be established within a class. The order of distribution of claims is as follows:

a. CLASS 1. The costs and expenses of administration, including but not limited to the following:

(1) Actual and necessary costs of preserving or recovering the assets of the establishment.

(2) Compensation for all authorized services rendered in the liquidation.

(3) Necessary filing fees.

(4) Fees and mileage payable to witnesses.

(5) Authorized reasonable attorney fees and other professional services rendered in the liquidation.

b. CLASS 2. Reasonable compensation to employees for services performed to the extent that they do not exceed two

months of monetary compensation and represent payment for services performed within one year before the filing of the petition for liquidation. Officers and directors are not entitled to the benefit of this priority. The priority is in lieu of other similar priority which may be authorized by law as to wages or compensation of employees.

c. CLASS 3. Claims under purchase agreements.

d. CLASS 4. Claims of general creditors.

e. CLASS 5. Claims of the federal or of any state or local government. Claims, including those of a governmental body for a penalty or forfeiture, are allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs incurred. The remainder of such claims shall be postponed to the class of claims under paragraph "g".

f. CLASS 6. Claims filed late or any other claims other than claims under paragraph "g".

g. CLASS 7. The claims of shareholders or other owners.

19. LIQUIDATOR'S RECOMMENDATIONS TO THE COURT.

a. The liquidator shall review claims duly filed in the liquidation and shall make further investigation as necessary. The liquidator may compound, compromise, or in any other manner negotiate the amount for which claims will be recommended to the court except where the liquidator is required by law to accept claims as settled by a person or organization. Unresolved disputes shall be determined under subsection 15. As soon as practicable, the liquidator shall present to the court a report of the claims against the establishment with the liquidator's recommendations. The report shall include the name and address of each claimant and the amount of the claim finally recommended.

b. The court may approve, disapprove, or modify the report on claims by the liquidator. Reports not modified by the court within sixty days following submission by the liquidator

shall be treated by the liquidator as allowed claims, subject to later modification or to rulings made by the court pursuant to subsection 15. A claim under a policy of insurance shall not be allowed for an amount in excess of the applicable policy limits.

20. DISTRIBUTION OF ASSETS. Under the direction of the court, the liquidator shall pay distributions in a manner that will ensure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third-party claims. Distribution of assets in kind may be made at valuations set by agreement between the liquidator and the creditor and approved by the court.

21. UNCLAIMED AND WITHHELD FUNDS.

a. Unclaimed funds subject to distribution remaining in the liquidator's hands when the liquidator is ready to apply to the court for discharge, including the amount distributable to a creditor, owner, or other person who is unknown or cannot be found, shall be deposited with the treasurer of the state, and shall be paid without interest, except as provided in subsection 18, to the person entitled or to the person's legal representative upon proof satisfactory to the treasurer of state of the right to the funds. Any amount on deposit not claimed within six years from the discharge of the liquidator is deemed to have been abandoned and shall become the property of the state without formal escheat proceedings and be transferred to the insurance division regulatory fund.

b. Funds withheld under subsection 14 and not distributed shall upon discharge of the liquidator be deposited with the treasurer of state and paid pursuant to subsection 18. Sums remaining which under subsection 18 would revert to the undistributed assets of the establishment shall be transferred to the insurance division regulatory fund and become the property of the state as provided under paragraph "a", unless

the commissioner in the commissioner's discretion petitions the court to reopen the liquidation pursuant to subsection 23.

c. Notwithstanding any other provision of this chapter, funds as identified in paragraph "a", with the approval of the court, shall be made available to the commissioner for use in the detection and prevention of future insolvencies. The commissioner shall hold these funds in the insurance division regulatory fund and shall pay without interest, except as provided in subsection 18, to the person entitled to the funds or to the person's legal representative upon proof satisfactory to the commissioner of the person's right to the funds. The funds shall be held by the commissioner for a period of two years at which time the rights and duties to the unclaimed funds shall vest in the commissioner.

#### 22. TERMINATION OF PROCEEDINGS.

a. When all assets justifying the expense of collection and distribution have been collected and distributed under this chapter, the liquidator shall apply to the court for discharge. The court may grant the discharge and make any other orders, including an order to transfer remaining funds that are uneconomical to distribute, as appropriate.

b. Any other person may apply to the court at any time for an order under paragraph "a". If the application is denied, the applicant shall pay the costs and expenses of the liquidator in resisting the application, including a reasonable attorney fee.

23. REOPENING LIQUIDATION. At any time after the liquidation proceeding has been terminated and the liquidator discharged, the commissioner or other interested party may petition the court to reopen the proceedings for good cause including the discovery of additional assets. The court shall order the proceeding reopened if it is satisfied that there is justification for the reopening.

24. DISPOSITION OF RECORDS DURING AND AFTER TERMINATION OF LIQUIDATION. If it appears to the commissioner that the

records of an establishment in the process of liquidation or completely liquidated are no longer useful, the commissioner may recommend to the court and the court shall direct what records shall be retained for future reference and what records shall be destroyed.

25. EXTERNAL AUDIT OF LIQUIDATOR'S BOOKS. The court may order audits to be made of the books of the commissioner relating to a liquidation established under this chapter, and a report of each audit shall be filed with the commissioner and with the court. The books, records, and other documents of the liquidation shall be made available to the auditor at any time without notice. The expense of an audit shall be considered a cost of administration of the liquidation.

Sec. 55. Section 537A.10, subsection 1, paragraph c, subparagraph (3), Code 2001, is amended to read as follows:

(3) "Franchise" also does not include any contract under which a petroleum retailer or petroleum distributor is authorized or permitted to occupy leased marketing premises, which premises are to be employed in connection with the sale, consignment, or distribution of motor fuel under a trademark which is owned or controlled by a refiner which is regulated by the federal Petroleum Marketing Practices Act, 15 U.S.C. § 2801 et seq. The term "refiner" means any person engaged in the refining of crude oil to produce motor fuel, and includes any affiliate of such person. "Franchise" also does not include a contract entered into by any person regulated under chapter 123, 322, 322A, 322B, 322C, 322D, 322P, 522, 522B, or 543B, or a contract establishing a franchise relationship with respect to the sale of construction equipment, lawn or garden equipment, or real estate.

Sec. 56. 2001 Iowa Acts, Senate File 500, section 39, is amended to read as follows:

SEC. 39. EFFECTIVE DATE. Sections 4, 5, 7 through 11, 13 through 22, 34, and 38 of this Act take effect January 1, 2002.

Sec. 57. Chapters 523A and 523E, Code 2001, are repealed.

Sec. 58. Section 502.207B, Code 2001, is repealed.

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MARY E. KRAMER  
President of the Senate

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BRENT SIEGRIST  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 473, Seventy-ninth General Assembly.

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MICHAEL E. MARSHALL  
Secretary of the Senate

Approved May 7, 2001

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THOMAS J. VILSACK  
Governor