

shall not grant application for any new license or permit until the expiration of one year or until the licensee attains his or her sixteenth birthday whichever is the longer period.

Approved May 12, 1982

CHAPTER 1249
PREARRANGED FUNERAL PLANS
H.F. 2218

AN ACT relating to prearranged agreements for the final disposition of dead human bodies, and providing a penalty.

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

Section 1. Section 523A.2, Code 1981, is amended to read as follows:

523A.2 DEPOSIT OF FUNDS — RECORDS — EXAMINATIONS.

1. a. All such trust funds held in trust under section 523A.1 shall be deposited in a an insured bank or trust company, savings and loan association, or credit union authorized to transact conduct business in this state within thirty days after the receipt thereof of the funds and shall be held in a separate account or in one common trust fund under a trust agreement in the name of the depositor in trust for the designated beneficiary until said trust fund is released under either of the conditions provided in section 523A.1.

b. The seller under an agreement referred to in section 523A.1 shall maintain accurate records of all receipts, expenditures, interest or earnings, and disbursements relating to funds held in trust, and shall make these records available to the county attorney of the county in which the principal place of business of the seller is located for examination at any reasonable time upon request.

c. The seller under an agreement referred to in section 523A.1 shall file not later than March 1 of each year with the county recorder of the county in which the seller maintains its principal place of business a copy of each trust agreement created as required by paragraph a of this subsection for sales made during the previous calendar year.

d. The seller under an agreement referred to in section 523A.1 shall give notice to the county recorder for the county in which the trust agreement is filed of each receipt of funds held in trust under section 523A.1. This notice shall be given on forms furnished by the seller, and shall be given not later than March 1 of each year. Each notice shall contain the required information for all receipts of the seller during the previous calendar year.

e. A financial institution referred to in paragraph a of this subsection shall give notice to the county recorder for the county in which the trust agreement is filed of all funds deposited under the trust agreement. This notice shall be on forms furnished by the seller and shall be given not later than March 1 of each year. Each notice shall contain the required information for all deposits made during the previous calendar year. The seller shall furnish the financial institution with the appropriate forms.

f. Notwithstanding chapter 68A, all records maintained by a county recorder under this subsection shall be confidential and shall not be made available for inspection or copying by any person except the county attorney or a representative of the county attorney.

2. In addition to complying with subsection 1, each seller under an agreement referred to in section 523A.1 shall file annually with the county attorney of the county in which the seller maintains its principal place of business a written statement that is signed by the seller and notarized and that contains all of the following information:

a. Identification of each financial institution in which trust funds are held under subsection 1, paragraph a, and a listing of each trust agreement governing funds held in the respective financial institutions and the date each agreement was filed with the county recorder.

b. Authorization for the county attorney or a designee to investigate, audit, and verify all funds, accounts, safe-deposit boxes and other evidence of trust funds held by or in a financial institution under paragraph a of this subsection.

3. The insurance department shall adopt rules under chapter 17A specifying the form, content and cost of the forms for the notices and disclosures required by this section, and shall sell blank forms at that cost to any person on request.

4. If a seller under an agreement referred to in section 523A.1 ceases to do business, whether voluntarily or involuntarily, all funds held in trust under section 523A.1, including accrued interest or earnings, shall be repaid to the purchaser under the agreement.

5. The county attorney of the county in which a sale referred to in section 523A.1 takes place may require the performance of an audit of the seller's business by a certified public accountant if the county attorney receives reasonable evidence that the seller is not complying with this chapter. The audit shall be paid for by the seller, and a copy of the report of audit shall be delivered to the county attorney and to the seller.

6. A seller or financial institution that knowingly fails to comply with any requirement of this section or that knowingly submits false information in a document or notice required by this section commits a serious misdemeanor.

Sec. 2. Section 523A.4, Code 1981, is repealed and the following inserted in lieu thereof:
523A.4 SCOPE OF CHAPTER.

1. This chapter applies only to the sale of funeral services, funeral merchandise, or a combination of these, pursuant to a prearranged funeral plan.

2. As used in this chapter:

a. "Funeral services" means one or more services to be provided at the time of the final disposition of a dead human body, including but not limited to services necessarily or customarily provided in connection with a funeral, or services necessarily or customarily provided in connection with the interment, entombment, or cremation of a dead human body, or a combination of these. "Funeral services" does not include perpetual care or maintenance.

b. "Funeral merchandise" means one or more types of personal property to be used at the time of the final disposition of a dead human body, including but not limited to clothing, caskets, vaults, and interment receptacles. "Funeral merchandise" does not include real property, and does not include grave markers, tombstones, ornamental merchandise, and monuments.

Sec. 3. Chapter 523A, Code 1981, is amended by adding the following new section:

NEW SECTION. COMPLIANCE WITH OTHER LAWS. The seller of funeral services or funeral merchandise shall comply with chapter 82 with respect to all contracts that are subject to regulation under this chapter. A failure to comply is subject to the remedies and penalties provided in that chapter.

Sec. 4. Chapter 523A, Code 1981, is amended by adding the following new section:

NEW SECTION. BOND IN LIEU OF TRUST FUND.

1. In lieu of the trust fund required by sections 523A.1 and 523A.2, a seller may file with the county attorney of the county in which the seller maintains its principal place of business a surety bond in open penalty that is issued by a surety company authorized to do business in this state and that is conditioned on the faithful performance by the seller of agreements subject to this chapter. The liability of the surety extends to each agreement that is subject to this chapter and that is executed during the time the bond is in force and until performance of the agreement or rescission of the agreement by mutual consent of the parties; and, to the extent expressly agreed to in writing by the surety company under subsection 3, paragraph b, the liability of the surety extends to each agreement that is subject to this chapter and that was executed prior to the time the bond was in force and until performance of the agreement or rescission of the agreement by mutual consent of the parties. A buyer who is aggrieved by a breach of a condition of the bond covering the contract of that buyer may maintain an action against the bond, provided that the surety shall not be liable as a result of any breach of condition unless notice of a claim is received by the surety within sixty days following the acts, omissions or conditions constituting the breach of condition, except as otherwise provided in subsection 2. A surety bond submitted under this subsection shall not be canceled by a surety company except upon a written notice of cancellation given by the surety company to the county attorney by restricted certified mail, and the surety bond shall not be canceled prior to the expiration of sixty days after the receipt by the county attorney of the notice of cancellation.

2. If a seller becomes insolvent or otherwise ceases to engage in business prior to or within sixty days after the cancellation of a bond submitted under subsection 1, the seller shall be deemed to have breached the conditions of the surety bond with respect to all outstanding contracts subject to this chapter as of the day prior to cancellation of the bond. The county attorney shall mail written notice by restricted certified mail to the buyer under each outstanding contract of the seller that a claim against the bond must be filed with the surety company within sixty days after the date of mailing of the notice. The surety company shall cease to be liable with respect to all agreements except those for which claims are filed with the surety company within sixty days after the date the notices are mailed by the county attorney.

3. If a surety bond is canceled by a surety company under any conditions other than those specified in subsection 2, the seller shall comply with paragraphs a and b of this subsection:

a. The seller shall comply with the trust requirements of sections 523A.1 and 523A.2 with respect to all contracts subject to this chapter that are executed on or after the effective date of cancellation of the surety bond, or the seller may submit a substitute surety bond meeting the requirements of subsection 1, provided that the seller shall comply with sections 523A.1 and 523A.2 with respect to any contracts executed on or after the effective date of cancellation of the earlier surety bond and prior to the date on which the later surety bond takes effect.

b. Within sixty days after the effective date of the cancellation of the surety bond, the seller shall submit to the county attorney 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 contracts 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 county attorney 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 contracts subject to this chapter and proof of deposit by the seller in trust under sections 523A.1 and 523A.2 of either the amount specified in sections 523A.1 with respect to all of those

outstanding contracts or such lesser amount as is certified in the report of the certified public accountant to be adequate to assure the performance by the seller of each of those outstanding contracts. 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 contracts of the seller except those with respect to which a breach of condition occurred prior to cancellation and timely claims were filed.

4. Section 523A.2, subsection 1, paragraphs b and f, subsection 5, and, to the extent it is applicable, subsection 6, apply to sellers whose agreements are covered by a surety bond maintained under this section, and section 523A.2 continues to apply to any 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 county attorney 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.1 and 523A.2.

6. Upon receiving a notice of cancellation, unless the seller has complied with the requirements of this section, the county attorney shall seek an injunction to prohibit the seller from making further agreements subject to this chapter and shall commence an action to attach and levy execution upon property of the seller when the seller fails to perform an agreement subject to this chapter, to the extent necessary to secure compliance with this chapter, and may bring criminal charges under section 523A.2, subsection 6.

Sec. 5. Section 82.1, Code 1981, is amended by adding the following new subsection:

NEW SUBSECTION. "Door-to-door sale" also means a sale of funeral services or funeral merchandise regulated under chapter 523A, irrespective of the place or manner of sale.

Sec. 6. Chapter 523A, Code 1981, as amended by this Act, applies only to agreements executed on or after the effective date of this Act. Agreements executed prior to the effective date of this Act shall be governed by chapter 523A as it existed on the date those agreements were executed.

Approved May 20, 1982

CHAPTER 1250
CHILD CUSTODY IN DISSOLUTIONS
H.F. 2442

AN ACT relating to custody of children upon dissolution of marriage.

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

Section 1. Section 598.1, Code 1981, is amended by adding the following new subsections:

NEW SUBSECTION. "Joint custody" or "joint legal custody" means an award of custody of a minor child to both parents under which both parents have rights and responsibilities toward the child and under which neither parent has rights superior to those of the other parent. The court may award physical care to one parent only.