

religion, marital status, sex, or physical disability, or familial status.

2. Person authorized or licensed to do business in this state pursuant to chapter 524, 533, 534, 536, or 536A to refuse to loan or extend credit or to impose terms or conditions more onerous than those regularly extended to persons of similar economic backgrounds because of age, color, creed, national origin, race, religion, marital status, sex, or physical disability, or familial status.

3. Creditor to refuse to offer credit life or health and accident insurance because of color, creed, national origin, race, religion, marital status, age, physical disability or sex, or familial status. Refusal by a creditor to offer credit life or health and accident insurance based upon the age or physical disability of the consumer shall not be an unfair or discriminatory practice if such denial is based solely upon bona fide underwriting considerations not prohibited by title XX.

The provisions of this section shall not be construed by negative implication or otherwise to narrow or restrict any other provisions of this chapter.

Approved April 27, 1990

---

## CHAPTER 1213

### FUNERAL AND CEMETERY SERVICES AND MERCHANDISE

*H.F. 2537*

AN ACT relating to the sale of funeral services and merchandise.

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

Section 1. Section 523A.1, unnumbered paragraphs 3 and 4, Code 1989, are amended to read as follows:

If an agreement pursuant to this section is to be paid in installment payments, the seller shall deposit eighty percent of each payment in trust until the full amount to be trusted has been deposited. If the agreement is financed with or sold to a financial institution, then the agreement shall be considered paid in full and the deposit requirements of this section shall be satisfied within ~~thirty~~ fifteen days after the close of the month of receipt of the funds in which payment is received from the financial institution.

This section does not apply to payments for merchandise delivered to the purchaser. Delivery includes storage in a warehouse under the control of the seller or any other warehouse or storage facility approved by the commissioner when a receipt of ownership in the name of the purchaser is delivered to the purchaser, the merchandise is insured against loss, the merchandise is protected against damage, title has been transferred to the purchaser, the merchandise is appropriately identified and described in a manner that it can be distinguished from other similar items of merchandise, the method of storage allows for visual audits of the merchandise, and the annual reporting requirements of section 523A.2, subsection 1, are satisfied.

Sec. 2. Section 523A.2, subsection 1, paragraphs a, f, and g, Code Supplement 1989, are amended to read as follows:

a. All funds held in trust under section 523A.1 shall be deposited in a state or federally insured bank, savings and loan association, or credit union authorized to conduct business in this state, or trust department thereof, or in a trust company authorized to conduct business in this state, within ~~thirty~~ fifteen days after the close of the month of receipt 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 as provided in paragraph "g" for the designated beneficiary until released pursuant to section 523A.1.

f. The state or federally insured bank, savings and loan association, or credit union financial institution in which trust funds are held shall not be owned or under the control of the seller and shall not use any funds required to be held in trust pursuant to this chapter or chapter 566A to purchase an interest in any contract or agreement to which the seller is a party, or otherwise to invest, directly or indirectly, in the seller's business operations.

g. The bank, savings and loan, credit union, or trust department thereof, in which trust funds are held shall serve as trustee to the extent that organization has been granted those powers under the laws of this state or the United States and All funds required to be deposited for a purpose described in section 523A.1 shall be deposited in a manner consistent with one of the following:

(1) The payments will be deposited directly by the purchaser in an irrevocable interest-bearing burial account in the name of the purchaser.

(2) The payments will be deposited directly by the purchaser in a separate account in the name of the purchaser. The account may be made payable to the seller on 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 funds in the account and may revoke the trust and withdraw the funds, in whole or in part, at any time.

(3) The payments will be deposited by the purchaser or the seller in a separate burial trust account in the name of the purchaser, as trustee, in trust for the named beneficiary, to be held, invested, and administered as a trust account for the benefit and protection of the person for whose benefit the funds were paid. 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 death of the designated beneficiary.

(4) The payments will 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 person for whose benefit the funds were paid. The trustee may combine trust accounts established pursuant to this chapter

PARAGRAPH DIVIDED. In addition to the methods provided for above, the commissioner may by rule authorize other methods of deposit upon a finding that the other method provides equivalent safety of the principal and interest or income and the seller does not have the ability to utilize any of the proceeds prior to performance. Moneys deposited under the master trust agreement may be commingled for investment purposes as long as each deposit includes a detailed listing of the amount deposited in trust for each beneficiary and a separate accounting of each purchaser's principal, interest, and income is maintained. The Subject to the master trust agreement, the seller may appoint an independent investment advisor to act in an advisory capacity with the trustee relative to the investment of the trust funds. The trust shall pay the cost of the operation of the trust and any annual audit fees.

The financial institution, or the trust department of the financial institution in which trust funds are held, may serve as trustee to the extent the institution or department has been granted those powers under the laws of this state or the United States. The seller or any officer, director, agent, employee, or affiliate of the seller shall not serve as trustee.

Sec. 3. Section 523A.2, subsection 4, Code Supplement 1989, is amended to read as follows:

4. If a seller under an agreement referred to in section 523A.1 ceases to do business, whether voluntarily or involuntarily, and the obligation to provide the merchandise and services has not been assumed by another funeral home or cemetery holding an establishment permit issued under this chapter, all funds held in trust under section 523A.1, including accrued interest or earnings, shall be repaid to the purchaser under the agreement.

Sec. 4. Section 523A.9, subsection 5, Code 1989, is amended to read as follows:

5. Upon the filing of an application for a permit, if the commissioner shall issue the permit, unless the commissioner finds that the any of the following apply:

- a. The applicant is insolvent.
- b. The applicant has failed to comply with any terms or conditions of this chapter and such failure is deemed by the commissioner to substantially impede the applicant's ability to abide by the provisions of this chapter.
- c. The applicant has not been convicted of a criminal offense involving dishonesty or false statement, and can
- d. The applicant cannot provide the funeral services or funeral merchandise the applicant purports to sell; the commissioner shall issue the permit.

Sec. 5. Section 523A.12, subsection 1, paragraph a, Code 1989, is amended to read as follows:

- a. The permit holder has committed a fraudulent act, engaged in a fraudulent practice, or violated any provisions of this chapter or any rule adopted under this chapter or any other state or federal law applicable to the conduct of the permit holder's business.

Sec. 6. Section 523A.12, subsection 1, Code 1989, is amended by adding the following new paragraph:

NEW PARAGRAPH. e. The permit holder is found upon investigation to have engaged in a deceptive act or practice or has deliberately misrepresented or omitted a material fact relative to the sale of funeral services or funeral merchandise under this chapter.

Sec. 7. Section 523A.13, Code 1989, is amended to read as follows:

**523A.13 PROSECUTION FOR VIOLATIONS OF LAW.**

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

Sec. 8. Section 523A.15, Code 1989, is amended to read as follows:

**523A.15 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, 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 funeral services or funeral merchandise under this chapter.
- 4. Fails to deposit funds in compliance with section 523A.1 or withdraws any funds in a manner inconsistent with this chapter.
- 5. Knowingly sells or offers funeral merchandise or funeral services without an establishment permit.
- 6. Deliberately misrepresents or omits a material fact relative to the sale of funeral services or funeral merchandise under this chapter.

Sec. 9. NEW SECTION. 523A.17 CEASE AND DESIST ORDERS.

If an audit or investigation provides reasonable evidence that a seller has violated any provisions of this chapter or any rule adopted under this chapter, the commissioner may issue an order directed at the seller to cease and desist from engaging in such act or practice.

Sec. 10. NEW SECTION. 523A.18 VIOLATIONS AND PENALTIES.

A violation of this chapter or rules adopted by the commissioner pursuant to this chapter is a violation of section 714.16, subsection 2, paragraph "a". The remedies and penalties provided

by section 714.16, including but not limited to, provisions relating to injunctive relief and penalties, apply to violations of this chapter.

Sec. 11. NEW SECTION. 523A.19 RECEIVERSHIPS.

1. The commissioner shall notify the attorney general if the commissioner finds that any seller engaged in the business 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 and the amount of funds currently held in trust is less than eighty percent of all payments made under the agreements referred to in section 523A.1.
- c. Has refused to pay any just claim or demand based on an agreement referred to in section 523A.1.
- d. The commissioner finds upon investigation that a seller is unable to pay any just claim or demand based on such agreements which have been legally determined to be just and outstanding.

2. The attorney general may apply to the district court in any county of the state for a receivership. Upon proof of any of the grounds for a receivership described in this section, the court may grant a receivership.

Sec. 12. NEW SECTION. 523A.20 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. Commencing July 1, 1990, and annually thereafter, the commissioner shall allocate from the fees paid pursuant to section 523A.2, one dollar for each 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.2 shall be deposited into the insurance revolving fund; provided, however, that if the balance of the regulatory fund on that July 1 exceeds two hundred thousand dollars, the allocation to the regulatory fund shall not be made and the total sum of the fees paid pursuant to section 523A.2 shall be deposited in the insurance revolving fund. The moneys in the regulatory fund shall be retained in the fund together with any interest or earnings that are earned on the balance. The moneys are appropriated and, subject to authorization by the commissioner, may be used to pay investigative expenses and the expenses of receiverships established pursuant to section 523A.19. An annual assessment shall not be imposed if the current balance of the fund exceeds two hundred thousand dollars.

Sec. 13. NEW SECTION. 523E.1 TRUST FUND ESTABLISHED.

1. If an agreement is made by a person to furnish, upon the future death of a person named or implied in the agreement, cemetery merchandise, a minimum of one hundred twenty-five percent of the wholesale cost of the cemetery merchandise, based upon the current advertised prices available from a manufacturer or wholesaler who has delivered the same or substantially the same type of merchandise to the seller during the last twelve months, shall be and remain trust funds until purchase of the merchandise or the occurrence of the death of the person for whose benefit the funds were paid, unless the funds are sooner released to the person making the payment by mutual consent of the parties. Payments otherwise subject to this section are not exempt merely because they are held in certificates of deposit.

2. The seller shall keep copies of all price advertisements upon which the seller relies to determine the wholesale cost. The copies of price advertisements so maintained shall be made available to the commissioner upon request. The seller shall review wholesale costs no less than annually and make additional deposits as necessary to assure that the amount held in trust is always equal to or in excess of one hundred twenty-five percent of the wholesale cost of the merchandise. The seller and the manufacturer or wholesaler upon whose price the seller relies to determine the wholesale cost shall not be commonly owned or affiliated.

3. Interest or income earned on amounts deposited in trust under this subsection shall remain in trust under the same terms and conditions as the payments made under the agreement and

purchasers shall have a right to a total refund of principal and interest or income in the event of nonperformance.

4. If an agreement subject to this subsection is to be paid in installment payments, the seller shall deposit fifty percent of each payment in trust until the full amount to be trusted has been deposited. If the agreement is financed with or sold to a financial institution, the agreement shall be considered paid in full and the deposit requirements of this section shall be satisfied within fifteen days after the close of the month of receipt of the funds from the financial institution.

This section does not apply to payments for merchandise delivered to the purchaser. Delivery includes storage in a warehouse under the control of the seller or any other warehouse or storage facility approved by the commissioner when a receipt of ownership in the name of the purchaser is delivered to the purchaser, the merchandise is insured against loss, the merchandise is protected against damage, title has been transferred to the purchaser, the merchandise is appropriately identified and described in a manner that it can be distinguished from other similar items of merchandise, the method of storage allows for visual audits of the merchandise, and the annual reporting requirements of section 523E.2, subsection 1, are satisfied.

**Sec. 14. NEW SECTION. 523E.2 DEPOSIT OF FUNDS — RECORDS — EXAMINATIONS — REPORTS.**

1. a. All funds held in trust under section 523E.1 shall be deposited in a state or federally insured bank, savings and loan association, or credit union authorized to conduct business in this state, or trust department thereof, or in a trust company authorized to conduct business in this state, within fifteen days after the close of the month of receipt of the funds and shall be held as provided in paragraph "g" for the designated beneficiary until released pursuant to section 523E.1.

b. The seller under an agreement referred to in section 523E.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 commissioner for examination at any reasonable time upon request.

c. The seller under an agreement referred to in section 523E.1 shall file with the commissioner not later than March 1 of each year a report including the following information:

(1) The name and address of the seller and the name and address of the establishment that will provide the cemetery merchandise.

(2) The name of the purchaser, beneficiary, and the amount of each agreement under section 523E.1 made in the preceding year and the date on which it was made.

(3) The total value of agreements subject to section 523E.1 entered into, the total amount paid pursuant to those agreements, and the total amount deposited in trust as required under section 523E.1, during the preceding year.

(4) The amount of any payments received pursuant to agreements reported in previous years in accordance with subparagraphs (2) and (3) and the amount of those payments deposited in trust for each purchaser.

(5) The change in status of any trust account, for each purchaser, any other amounts withdrawn from trust and the reason for each withdrawal. However, regular increments of interest or income need not be reported on a yearly basis.

(6) The name and address of the financial institution in which trust funds were deposited, and the name and address of each insurance company which funds agreements under section 523E.1.

(7) The name and address of each purchaser of cemetery merchandise delivered in lieu of trusting pursuant to section 523E.1, and a description of that merchandise for each purchaser.

(8) The complete inventory of cemetery merchandise and its location in the seller's possession that has been delivered in lieu of trusting pursuant to section 523E.1.

(9) Other information reasonably required by the commissioner for purposes of administration of this chapter.

The information required by subparagraphs (7) and (8) shall include a verified statement of a certified public accountant that the certified public accountant has conducted a physical inventory of the cemetery merchandise specified in subparagraph (8) and that each item of that merchandise is in the seller's possession at the specified location. The statement shall be on a form prescribed by the commissioner. The commissioner shall permit the filing of a unified annual report by a seller subject to both chapter 523A and this chapter.

The report shall be accompanied by a filing fee determined by the commissioner which shall be sufficient to defray the costs of administering this chapter.

d. A financial institution referred to in paragraph "a" shall file notice with the commissioner of all funds deposited under the trust agreement. The notice shall be on forms prescribed by the commissioner and shall be filed not later than March 1 of each year. Each notice shall contain the required information for all deposits made during the previous calendar year. Forms may be obtained from the commissioner.

e. Notwithstanding chapter 22, all records maintained by the commissioner under this subsection shall be confidential and shall not be made available for inspection or copying except upon approval of the commissioner or the attorney general.

f. The financial institution in which trust funds are held shall not be owned or under the control of the seller and shall not use any funds required to be held in trust pursuant to this chapter or chapter 566A to purchase an interest in any contract or agreement to which the seller is a party, or otherwise to invest, directly or indirectly, in the seller's business operations.

g. All funds required to be deposited for a purpose described in section 523E.1 shall be deposited in a manner consistent with one of the following:

(1) The payments shall be deposited directly by the purchaser in an irrevocable interest-bearing burial account in the name of the purchaser.

(2) The payments shall be deposited directly by the purchaser in a separate account in the name of the purchaser. The account may be made payable to the seller on 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 funds in the account and may revoke the trust and withdraw the funds, in whole or in part, at any time.

(3) The payments shall be deposited by the purchaser or the seller in a separate burial trust account in the name of the purchaser, as trustee, in trust for the named beneficiary, to be held, invested, and administered as a trust account for the benefit and protection of the person for whose benefit the funds were paid. 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 death of the designated beneficiary.

(4) 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 person for whose benefit the funds were paid.

In addition to the methods provided for in this section, the commissioner may by rule authorize other methods of deposit upon a finding that that method provides equivalent safety of the principal and interest or income and the seller does not have the ability to utilize any of the proceeds prior to performance. Money deposited under the master trust agreement may be commingled for investment purposes as long as each deposit includes a detailed listing of the amount deposited in trust for each beneficiary and a separate accounting of each purchaser's principal, interest, and income is maintained. Subject to the master trust agreement, the seller may appoint an independent investment advisor to act in an advisory capacity with the trustee relative to the investment of the trust funds. The trust shall pay the cost of the operation of the trust and any annual audit fees.

The financial institution, or the trust department of the financial institution, in which trust funds are held may serve as trustee to the extent that the organization has been granted those

powers under the laws of this state or the United States. The seller or any officer, director, agent, employee, or affiliate of the seller shall not serve as trustee.

2. In addition to complying with subsection 1, each seller under an agreement referred to in section 523E.1 shall file annually with the commissioner an authorization for the commissioner 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.

3. The commissioner 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 523E.1 ceases to do business, whether voluntarily or involuntarily, and the obligation to provide the merchandise and services has not been assumed by another funeral home or cemetery holding an establishment permit issued under this chapter, all funds held in trust under section 523E.1, including accrued interest or earnings, shall be repaid to the purchaser under the agreement.

5. The commissioner may require the performance of an audit of the seller's business by a certified public accountant if the commissioner 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 commissioner and to the seller.

6. This chapter does not prohibit the funding of an agreement otherwise subject to section 523E.1 by insurance proceeds derived from a policy issued by an insurance company authorized to conduct business in this state. The seller of an agreement subject to this chapter which is to be funded by insurance proceeds shall obtain all permits required to be obtained under this chapter and comply with the reporting requirements of this section.

**Sec. 15. NEW SECTION. 523E.5 SCOPE OF CHAPTER — DEFINITIONS.**

1. This chapter applies only to the sale of cemetery merchandise.

2. As used in this chapter:

a. "Cemetery merchandise" means grave markers, tombstones, ornamental merchandise, and monuments if the agreement does not require installation within twelve months of the purchase.

b. "Commissioner" means the commissioner of insurance or the deputy appointed under section 502.601.

**Sec. 16. NEW SECTION. 523E.6 COMPLIANCE WITH OTHER LAWS.**

The seller of cemetery 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. 17. NEW SECTION. 523E.7 BOND IN LIEU OF TRUST FUND.**

1. In lieu of the trust fund required by sections 523E.1 and 523E.2, a seller may file with the commissioner a surety bond 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 if, at the time of the breach, the buyer is aware of the buyer's rights under the bond and how to file a claim against the bond, 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 discovery of 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 commissioner by restricted certified mail, and the surety bond shall not be canceled prior to the expiration of sixty days after the receipt by the commissioner 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 commissioner 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 commissioner.

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":

a. The seller shall comply with the trust requirements of sections 523E.1 and 523E.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, but the seller must comply with sections 523E.1 and 523E.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 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 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 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 contracts subject to this chapter and proof of deposit by the seller in trust under sections 523E.1 and 523E.2 of either the amount specified in sections 523E.1, 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 contracts or, where applicable, that delivery of merchandise has been made in compliance with section 523E.1. 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 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 523E.2, subsection 1, paragraphs "b", "c", and "e", 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 523E.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 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 523E.1 and 523E.2.

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 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 the county attorney may bring criminal charges under section 523E.15.

7. The surety under this section shall not be owned or under the control of the seller.



Sec. 18. NEW SECTION. 523E.8 DISCLOSURES.

1. Every agreement for cemetery merchandise under this chapter shall be written in clear, understandable language and shall be printed or typed in easy-to-read type, 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 is purchased if other than the purchaser.
  - b. Specify the cemetery merchandise to be provided, and the cost of each merchandise item.
  - c. State clearly the conditions on which substitution will be allowed.
  - d. Set forth the total purchase price and the terms under which it is to be paid.
  - e. State clearly whether the agreement is a guaranteed price contract or a nonguaranteed price contract.
  - f. State clearly whether the agreement is a revocable or irrevocable contract, and who has the authority to revoke the contract.
  - g. State the amount or percentage of money to be placed in trust.
  - h. Explain the disposition of the interest and disclose what fees and expenses may be charged if incurred.
  - i. Specify the purchaser's right to cancel and damages for cancellation, if any.
  - j. State the name and address of the commissioner.
2. Every agreement shall be signed by the purchaser and the seller.

Sec. 19. NEW SECTION. 523E.9 ESTABLISHMENT PERMITS.

1. A person, as defined in section 4.1, subsection 13, shall not engage in the business of selling, promoting, or otherwise entering into agreements to furnish, upon the future death of a person named or implied in the agreement, cemetery merchandise without an establishment permit as provided for in this section. An establishment doing business shall obtain a permit for each location.

2. An applicant for a permit under this section shall submit to the commissioner an application on a form provided by the commissioner. The commissioner shall permit application for a permit under section 523A.9 on the same form as for this section provided the scope of sales by the establishment is clearly indicated to include funeral services, funeral merchandise, or cemetery merchandise, or a combination of any of these. The application shall include at a minimum the following information:

- a. The name and location of the applicant's business.
- b. The name and location of the provider who will provide the cemetery merchandise.
- c. The name and address of each owner, officer, or other official of the applicant's business, or in the event that the applicant is a corporation, the names and addresses of the chief executive officer and the members of the board of directors.
- d. The types of cemetery merchandise to be sold.

An application for a permit pursuant to this section shall be accompanied by a copy of each sales agreement the permit holder will use for sales of cemetery merchandise under section 523E.1.

A permit holder shall inform the commissioner of changes in the information within thirty days of the change.

3. The applicant for a permit shall submit a fee in the amount of fifty dollars; provided, however, that if an applicant also applies for or has a permit under section 523A.9, no additional fee shall be required under this subsection.

4. Permits granted under this section are not assignable.

5. Upon the filing of an application for a permit, the commissioner shall issue the permit unless the commissioner finds any of the following:

- a. The applicant is insolvent.
- b. The applicant has failed to comply with any terms or conditions of this chapter and that failure is deemed by the commissioner to substantially impede the applicant's ability to abide by this chapter.

c. The applicant has been convicted of a criminal offense involving dishonesty or false statement.

d. The applicant cannot provide the cemetery merchandise the applicant purports to sell.

6. If the commissioner does not grant the permit, the commissioner shall notify the applicant in writing of the denial and the reasons for the denial. The commissioner shall approve or deny every application for a license within ninety days after the filing thereof, but any failure of the commissioner to act within that time period shall not be deemed to be an approval of the application.

Sec. 20. NEW SECTION. 523E.10 SALES PERMITS.

1. An individual shall not sell, promote, or otherwise enter into an agreement to furnish, upon the future death of a person named or implied in the agreement, cemetery merchandise without a permit as provided for in this section. An individual permit holder must be an employee or agent of an establishment which holds a permit pursuant to section 523E.9 and which can deliver the cemetery merchandise being sold. The establishment is liable for the acts of its employees and agents, independent or otherwise, performed in the course of obtaining or attempting to obtain an agreement for the sale of cemetery merchandise under section 523E.1.

2. An applicant for a permit under this section shall submit to the commissioner an application on a form provided by the commissioner. The commissioner shall permit application for a permit under section 523A.10 on the same form as for this section provided the scope of sales by the individual is clearly indicated to include funeral services, funeral merchandise, or cemetery merchandise, or a combination of any of these. The application shall include at a minimum the following information:

a. The name and address of the applicant.

b. The name and address of the applicant's employer or the establishment on whose behalf the applicant will be making or attempting to make sales, and, if different, the name and address of the provider who will provide the cemetery merchandise.

A permit holder shall inform the commissioner of changes in the information within thirty days of the change.

3. The permit shall be deemed effective upon filing the application with the commissioner. 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. A permit under this section shall expire one year from the date the application is filed.

4. The application fee shall be five dollars; provided, however, that if an applicant also applies for or has a permit under section 523A.10, no additional fee shall be required under this subsection.

5. Permits granted under this section are not assignable.

6. The commissioner may revoke a permit if the commissioner determines that the permit holder has been convicted of a criminal offense involving dishonesty or false statement or that the establishment cannot provide the cemetery merchandise the establishment purports to sell.

Sec. 21. NEW SECTION. 523E.11 INVESTIGATIONS.

The attorney general or the commissioner may, for the purpose of discovering violations of this chapter or any rules adopted under this chapter:

1. Investigate the business and examine the books, accounts, records, and files used by every permit holder under this chapter.

2. Administer oaths and affirmations, subpoena witnesses, receive evidence, and require the production of documents and records in connection with an investigation or proceeding being conducted pursuant to this chapter.

3. Apply to the district court for issuance of 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.

**Sec. 22. NEW SECTION. 523E.12 SUSPENSION OR REVOCATION OF PERMITS.**

1. The commissioner may, pursuant to chapter 17A, suspend or revoke any permit issued pursuant to this chapter if the commissioner finds any of the following:

a. The permit holder has violated any provisions of this chapter or any rule adopted under this chapter or any other state or federal law applicable to the conduct of the permit holder's business.

b. Any fact or condition exists which, if it had existed at the time of the original application for the permit, would have warranted the commissioner refusing originally to issue the permit.

c. The permit holder is found upon investigation to be insolvent, in which case the permit shall be revoked immediately.

d. The permit holder, for the purpose of avoiding a trusting requirement under section 523A.1 or 523E.1, attributes amounts paid pursuant to the agreement to funeral merchandise or cemetery merchandise that is delivered under section 523A.1 or to cemetery merchandise 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 funeral merchandise or cemetery merchandise to be delivered pursuant to section 523A.1 than the services are regularly and customarily sold for when not sold in conjunction with funeral merchandise or cemetery merchandise is evidence that the permit holder is acting with the purpose of avoiding a trusting requirement under section 523A.1 or 523E.1.

e. The permit holder is found upon investigation to have engaged in a deceptive act or practice or has deliberately misrepresented or omitted a material fact relative to the sale of funeral services, funeral merchandise, or cemetery merchandise under this chapter.

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

Except as provided in the preceding paragraph, a permit shall not be revoked or suspended except after notice and hearing in accordance with chapter 17A.

3. 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.

4. Revocation, suspension, or surrender of a permit does not impair or affect the obligation of any preexisting lawful contract between the permit holder and any person.

**Sec. 23. NEW SECTION. 523E.13 PROSECUTION FOR VIOLATIONS OF LAW.**

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

**Sec. 24. NEW SECTION. 523E.14 INJUNCTIONS.**

The attorney general may apply to 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 attorney general may apply to the court for the issuance of a subpoena to require the appearance of a defendant and the defendant's agents and any documents, books, and records germane to the hearing upon the petition for an injunction. Upon proof of any of the offenses described in the petition for injunction the court may grant the injunction.

Sec. 25. NEW SECTION. 523E.15 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, 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 under this chapter.
4. Fails to deposit funds in compliance with section 523E.1, or withdraws funds in a manner inconsistent with this chapter.
5. Knowingly sells or offers cemetery merchandise without an establishment permit.
6. Deliberately misrepresents or omits a material fact relative to the sale of cemetery merchandise under this chapter.

Sec. 26. NEW SECTION. 523E.16 RULES.

The commissioner may adopt rules necessary to administer this chapter, in accordance with chapter 17A.

Sec. 27. NEW SECTION. 523E.17 CEASE AND DESIST ORDERS.

If an audit or investigation provides reasonable evidence that a seller has violated any provisions of this chapter or any rule adopted under this chapter, the commissioner may issue an order directed at the seller to cease and desist from engaging in such act or practice.

Sec. 28. NEW SECTION. 523E.18 VIOLATIONS AND PENALTIES.

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

Sec. 29. NEW SECTION. 523E.19 RECEIVERSHIPS.

1. The commissioner shall notify the attorney general if the commissioner finds that any seller engaged in the business 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 and the amount of funds currently held in trust is less than fifty percent of all payments made under the agreements referred to in section 523E.1.
- c. Has refused to pay any just claim or demand based on an agreement referred to in section 523E.1.
- d. The commissioner finds upon investigation that a seller is unable to pay any just claim or demand based on such agreements which have been legally determined to be just and outstanding.

2. The attorney general may apply to the district court in any county of the state for a receivership. Upon proof of any of the grounds for a receivership described in this section, the court may grant a receivership.

Sec. 30. NEW SECTION. 523E.20 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. Commencing July 1, 1990, and annually thereafter, the commissioner shall allocate from the fees paid pursuant to section 523E.2, one dollar for each 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 523E.2 shall be deposited into the insurance revolving fund; provided, however, that if the balance of the regulatory fund on that July 1 exceeds two hundred thousand dollars, the

allocation to the regulatory fund shall not be made and the total sum of the fees paid pursuant to section 523E.2 shall be deposited in the insurance revolving fund. The moneys in the regulatory fund shall be retained in the fund together with any interest or earnings that are earned on the balance. The moneys are appropriated and, subject to authorization by the commissioner, may be used to pay investigative expenses and the expenses of receiverships established pursuant to section 523E.19. An annual assessment shall not be imposed if the current balance of the fund exceeds two hundred thousand dollars.

**Sec. 31. NEW SECTION. 566A.12 RECORDS.**

A cemetery subject to any trust requirement under this chapter shall file a copy of its report to the district court with the consumer protection division of the department of justice within seven days of filing the report with the district court, but in any event, not later than March 1 of each year. The cemetery shall maintain accurate records of all receipts, expenditures, interest or earnings, and disbursements relating to funds held in trust.

**Sec. 32. NEW SECTION. 566A.13 VIOLATIONS AND PENALTIES.**

A violation of this chapter or rules adopted by the attorney general pursuant to this chapter is a violation of section 714.16, subsection 2, paragraph "a". The remedies and penalties provided by section 714.16, including but not limited to, provisions relating to injunctive relief and penalties, apply to a violation of this chapter.

**Sec. 33. CODIFICATION.**

The Code editor shall entitle new chapter 523E, as enacted in this Act, as "Sales of Cemetery Merchandise". Sections 523E.3 and 523E.4 shall be reserved.

Approved April 27, 1990

---

## CHAPTER 1214

### MINIMUM PLUMBING FACILITIES

*S.F. 2011*

**AN ACT** providing for a minimum number of toilets for women and men in public buildings and private buildings intended for use by the general public.

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

**Section 1. NEW SECTION. 104B.1 MINIMUM TOILET FACILITY STANDARD.**

1. Places of assembly for public use including but not limited to theaters, auditoriums, and convention halls, constructed on or after January 1, 1991, shall conform to the standards for minimum plumbing facilities as provided in the uniform plumbing code.

2. Restaurants, pubs, and lounges constructed on or after January 1, 1991, shall conform to the standards for minimum plumbing facilities as provided in the uniform plumbing code.

3. All toilets installed pursuant to this section shall be water efficient toilets which use three gallons or less of water per flush.

4. The state building code commissioner, with the approval of the state building code advisory council established pursuant to section 103A.14, shall adopt rules to enforce this chapter. Any ruling of the building code commissioner made pursuant to this chapter is subject to administrative review and appeal as provided in chapter 17A.

Approved April 30, 1990