

medically relevant test as defined in section 232.73. ~~The parent, guardian, or custodian may select the laboratory which processes the test from among the laboratories approved pursuant to section 232.73. A positive test result shall not be used for the criminal prosecution of a parent, guardian, or custodian for the presence of an illegal drug.~~

Sec. 6. NEW SECTION. 232.107 PARENT VISITATION.

If a child is removed from the child's home in accordance with an order entered under this division based upon evidence indicating the presence of an illegal drug in the child's body, unless the court finds that substantial evidence exists to believe that reasonable visitation or supervised visitation would cause an imminent risk to the child's life or health, the order shall allow the child's parent reasonable visitation or supervised visitation with the child.

Sec. 7. ADMINISTRATIVE RULES VOID. Administrative rules adopted by the Iowa department of public health pursuant to section 232.73, unnumbered paragraph 2, Code Supplement 1995, are void on the effective date of this Act.

Sec. 8. PARENTAL SUBSTANCE ABUSE STUDY. The director of public health shall utilize the commission on substance abuse to study the effects of fetal alcohol syndrome on children and the issues associated with removal of a child from the child's home based upon substance abuse by the child's parent. The process used to perform the study shall include statewide hearings and consultation with the maternal and child health division of the Iowa department of public health, the council on chemically exposed infants and children, the departments of human services and education, and juvenile court judges and other juvenile court officials. The director shall present the findings of the study to the legislative council and to any legislative interim committee which reviews substance abuse issues and shall submit a written report to the general assembly on or before January 2, 1997.

Sec. 9. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved April 15, 1996

CHAPTER 1093
BURIAL TRUST FUNDS
S.F. 2101

AN ACT relating to the disbursement of the remaining funds in a nonguaranteed irrevocable burial trust fund following satisfaction of payment in accordance with an agreement for funeral merchandise and funeral services.

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

Section 1. Section 523A.8, subsection 1, paragraph k, Code Supplement 1995, is amended to read as follows:

k. State that if, after all payments are made in accordance with the conditions and terms of the agreement for funeral merchandise or funeral services, any funds ~~remaining~~ remain in ~~an~~ the nonguaranteed irrevocable burial trust fund ~~from which the costs of funeral merchandise and funeral services are paid shall be returned to the estate of the deceased individual for purposes of probate pursuant to chapter 633 or if the estate is not~~

~~subject to probate and if the deceased was a recipient of medical assistance and a debt is due the department of human services pursuant to section 249A.5, the remaining funds shall be available for payment of the debt, the seller shall disburse the remaining funds to a personal representative of the deceased as defined in section 633.3, or to the deceased's surviving next-of-kin, or to the director of human services, in accordance with section 523A.8A.~~

Sec. 2. **NEW SECTION.** 523A.8A DISBURSEMENT OF REMAINING FUNDS IN NONGUARANTEED IRREVOCABLE BURIAL TRUST FUND.

1. As used in this section:

- a. "Burial trust fund" means a nonguaranteed irrevocable burial trust fund.
- b. "Director" means the director of human services.
- c. "Next-of-kin" means the surviving spouse and heirs at law of the deceased.
- d. "Personal representative" means personal representative as defined in section 633.3.

2. If funds remain in a nonguaranteed irrevocable burial trust fund after all payments are made in accordance with the conditions and terms of the agreement for 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 in accordance with subsection 3.

b. Following a period of at least sixty days after the mailing of the 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 6.

3. 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) The current name, address, and telephone number of the seller.
- (2) The full name of the deceased.
- (3) The date of the deceased's death.
- (4) The amount of the funds remaining in the burial trust fund.

(5) A statement that any claim by the director shall be received by the seller within sixty days of 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 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 of 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 of the mailing of this notice, the seller may dispose of the remaining funds in accordance with section 523A.8A, Code of Iowa."

4. 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 of 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.

5. 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.

6. Any person other than a personal representative or the director claiming an interest in the remaining funds shall submit all of the following in an affidavit claiming an interest:

- a. The full name, current address, and telephone number of the claimant.
- b. The claimant's relationship to the deceased.
- c. The 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.

7. 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.

8. If the funds remaining in a burial trust fund are disbursed in accordance with the requirements of this section, the seller, 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.

Sec. 3. Section 523E.8, subsection 1, paragraph k, Code Supplement 1995, is amended to read as follows:

k. State that if, after all payments are made in accordance with the conditions and terms of the agreement for cemetery merchandise, any funds remaining remain in an the nonguaranteed irrevocable burial trust fund from which cemetery merchandise costs are paid shall be returned to the estate of the deceased individual for purposes of probate pursuant to chapter 633 or if the estate is not subject to probate and if the deceased was a recipient of medical assistance and a debt is due the department of human services pursuant to section 249A.5, the remaining funds shall be available for payment of the debt, the seller shall disburse the remaining funds to a personal representative of the deceased as defined in section 633.3, or to the deceased's surviving next-of-kin, or to the director of human services, in accordance with section 523A.8A.

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