

FILED MAR 17 1980

SENATE FILE 2349

By COMMITTEE ON STATE GOVERNMENT
(FORMER SSB 2218)

Approved 2/13 (p 444)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act establishing the jurisdiction, duties, practices
2 and procedures of the state board of mortuary examiners
3 for purposes of enforcement by the state board of
4 mortuary examiners of chapter five hundred twenty-
5 three A (523A) of the Code, relating to pre-need sales
6 of goods or services used in the final disposition of
7 dead human bodies, and providing penalties.

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

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SF 2349

1 Section 1. Chapter one hundred fifty-six (156), Code 1979,
2 is amended by adding sections two (2) through seven (7) of
3 this Act as a new division of that chapter.

4 Sec. 2. NEW SECTION. DEFINITIONS. As used in this divi-
5 sion, unless the context otherwise requires:

6 1. "Seller" means a person who is required under chapter
7 five hundred twenty-three A (523A) of the Code to maintain
8 trust accounts.

9 2. "Division" means sections two (2) through seven (7)
10 of this Act.

11 Sec. 3. NEW SECTION. RULES.

12 1. The board shall adopt rules relating to chapter five
13 hundred twenty-three A (523A) of the Code as necessary to
14 enable the board to perform its duties under this division.

15 2. The board shall adopt rules prescribing procedures,
16 requirements and accounting methods and practices to be
17 followed by sellers in establishing and maintaining trust
18 accounts and pertinent records under chapter five hundred
19 twenty-three A (523A) of the Code.

20 Sec. 4. NEW SECTION. AUDITS AND EXAMINATIONS.

21 1. The board shall provide by rule for the audit or
22 examination by the board of books of account and other re-
23 cords to be maintained under chapter five hundred twenty-three
24 A (523A) of the Code. A seller shall comply with these rules
25 and shall make all books of account and other pertinent records
26 available to the board or to a representative of the board.

27 2. The board may provide by rule that an audit conducted
28 by a certified public accountant be submitted by a seller
29 to the board in lieu of an audit or examination conducted
30 by the board.

31 Sec. 5. NEW SECTION. ANNUAL CERTIFICATION.

32 1. Every seller shall submit to the board once each year
33 a written statement which is signed by the seller and
34 notarized, and which contains the following information:

35 a. Identification of each financial institution in which

1 trust funds are maintained under chapter five hundred twenty-
2 three A (523A) of the Code.

3 b. Authorization for the board or its representative to
4 investigate, audit and verify all funds, accounts, safe de-
5 posit boxes or other forms in which trust funds are held by
6 or in a financial institution identified under paragraph a
7 of this subsection.

8 c. Other information required by rules of the board.

9 d. A declaration that the information contained in the
10 statement is truthful, accurate and complete.

11 2. The board shall provide by rule for the form, content
12 and date of filing of the statement to be submitted under
13 subsection one (1) of this section.

14 3. A person who knowingly submits false information in
15 a statement submitted under subsection one (1) of this section
16 commits a serious misdemeanor.

17 Sec. 6. NEW SECTION. REMEDIAL ORDERS.

18 1. Upon notice and opportunity for hearing, the board
19 may issue a remedial order against a person who is in violation
20 of the requirements of chapter five hundred twenty-three A
21 (523A) of the Code, or the requirements of this division.
22 The respondent shall comply with the remedial order within
23 such reasonable period of time as may be stated by the board
24 in the order. The use of this authority by the board is
25 discretionary, and is not required as a condition precedent
26 to any other criminal or civil proceeding.

27 2. A hearing under this section shall be conducted as
28 a contested case under chapter seventeen A (17A) of the Code.
29 Notice must be served upon the respondent by personal service
30 as in civil actions, notwithstanding contrary provisions of
31 section seventeen A point twelve (17A.12), subsection one
32 (1) of the Code.

33 Sec. 7. NEW SECTION. JUDICIAL ASSISTANCE.

34 1. The board may commence an action in the district court
35 to obtain such remedial orders as may be necessary to stop

1 or prevent violations of this division or chapter five hundred
2 twenty-three A (523A) of the Code.

3 2. The board may commence an action in the district court
4 to compel compliance with the requirements of this division,
5 including rules promulgated under this division, or to compel
6 compliance with a remedial order issued by the board under
7 section six (6) of this Act.

8 Sec. 8. Section five hundred twenty-three A point one
9 (523A.1), Code 1979, is amended to read as follows:

10 523A.1 TRUST FUND ESTABLISHED. Whenever an agreement
11 is made by any person, ~~firm or corporation for the final~~
12 ~~disposition of a dead human body wherein~~ in a pre-need sale
13 for the delivery of personal property to be used under a
14 prearranged funeral plan in connection with the final
15 disposition of a dead human body or the furnishing of
16 professional services of a funeral director or embalmer ~~in~~
17 ~~connection therewith, is not immediately required~~, eighty
18 percent of all payments made under the agreement, including
19 interest thereon, shall be and remain trust funds until
20 occurrence of the death of the person for whose benefit the
21 funds were paid, unless ~~said~~ the funds are sooner released
22 to the person making such payment by mutual consent of the
23 parties.

24 Sec. 9. Section five hundred twenty-three A point two
25 (523A.2), Code 1979, is amended to read as follows:

26 523A.2 DEPOSIT OF FUNDS. All such trust funds under
27 section five hundred twenty-three A point one (523A.1) of
28 the Code shall be deposited in a bank or trust company
29 authorized to transact business in this state within thirty
30 days after the receipt thereof and shall be held in a separate
31 trust account or in one common trust fund under a trust
32 agreement in the name of the depositor in trust for the
33 designated beneficiary until ~~said~~ the trust fund is released
34 under either of the conditions provided in section 523A.1.
35 The person required by section five hundred twenty-three A

1 point one (523A.1) of the Code to maintain trust funds shall
2 maintain accurate books and records relating to sales contracts
3 and trust funds and accounts, and shall comply with sections
4 two (2) through seven (7) of this Act and rules promulgated
5 by the board of mortuary science examiners under sections
6 two (2) through seven (7) of this Act.

7 Sec. 10. Section five hundred twenty-three A point four
8 (523A.4), Code 1979, is amended to read as follows:

9 523A.4 PENALTY. Any ~~person, firm or corporation, or any~~
10 ~~seller, agent, or representative thereof, who shall violate~~
11 ~~any of the provisions of~~ who violates sections 523A.1 and or
12 523A.2, ~~or who shall aid and abet in such violation, shall~~
13 ~~be deemed guilty of~~ commits an aggravated misdemeanor.

14 Sec. 11. This Act takes effect January first following
15 its enactment. However, the board of mortuary science
16 examiners may promulgate rules pursuant to chapter seventeen
17 A (17A) of the Code prior to the effective date of this Act
18 to take effect on the effective date of this Act.

19 EXPLANATION

20 This bill provides that the state board of mortuary science
21 examiners shall enforce the provisions of chapter 523A of
22 the Code, relating to the sale of prearranged funeral and
23 burial plans.

24 Sections 2 through 7 of the bill establish rules and pro-
25 cedures for the maintenance and auditing of records of per-
26 sons who engage in pre-need sales of personal property or
27 services used in the final disposition of dead human bodies.
28 A criminal penalty is established for submitting fraudulent
29 financial statements to the board, and authority is given
30 to the board to obtain judicial orders to compel compliance.

31 Sections 8 and 9 amend chapter 523A to reflect the new
32 requirements. Section 8 also redefines the types of contracts
33 for which trust funds are required. Section 10 amends the
34 criminal penalty section of chapter 523A to delete obsolete
35 terms and phrases.

1 The bill would take effect January first following enact-
2 ment. However, administrative rules could be adopted prior
3 to that date to take effect on the effective date of the Act.

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SENATE FILE 2349
FISCAL NOTE

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REQUESTED BY SENATOR NYSTROM, FEBRUARY 7, 1980

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In compliance with a written request there is hereby submitted a
Fiscal Note for Senate File 2349 pursuant to Joint Rule 16.

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S.F. 2349 establishes the jurisdiction, duties, practices, and procedures of
enforcement by the state board of mortuary examiners relating to pre-need
sales of goods or services used in the final disposition of dead bodies.
The proposed legislation establishes rules and procedures for the maintenance
and auditing of records of persons who engage in pre-need sales.

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The department of health estimates that this legislation would create a need
for additional board meetings and a need for investigative or auditing
services.

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The cost of the proposed legislation appears to be minimal and would be recovered
entirely through increased licensing fee charges to funeral directors. The costs
are estimated to be \$5,500 in FY '81 and \$8,000 in FY '82.

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SOURCE: DEPARTMENT OF HEALTH

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FILED:
MARCH 20, 1980

BY GERRY RANKIN, DIRECTOR
LEGISLATIVE FISCAL BUREAU

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LSB 3944S 68

lb/rh/8

S-5633

1 Amend the amendment S-5577 to Senate File 2349
2 as follows:

3 1. Page 4, by inserting after line 2 the follow-
4 ing:

5 "Sec. 13. NEW SECTION. SCOPE. This chapter applies
6 only to persons licensed under chapter one hundred
7 fifty-six (156) of the Code.

8 Sec. 14. Sections fifteen (15) through twenty
9 (20) of this Act are enacted as a new chapter of the
10 Code.

11 Sec. 15. NEW SECTION. SALES OF PERSONAL PROPERTY
12 TO BE USED AT DEATH.

13 1. When an agreement is made by a person, other
14 than a person licensed under chapter one hundred
15 fifty-six (156) of the Code, to deliver personal
16 property which is customarily used in the final
17 disposition or memorialization of a dead human body
18 and the personal property is to be delivered at an
19 uncertain future date, the seller shall establish
20 and maintain records and accounts as required by this
21 chapter until the death of the person for whom the
22 personal property is to be used or until delivery
23 is made, whichever occurs earlier. The seller must
24 clearly disclose in writing that the contract is for
25 the sale of personal property and that funeral service
26 is not included.

27 2. For purposes of this chapter, delivery is
28 deemed to have been made when the personal property
29 to be delivered under the contract is in a bonded
30 warehouse and is identifiable as the property of the
31 buyer or is released to the buyer.

32 As used in this chapter the term "personal property"
33 includes, but is not limited to, a vault, memorial,
34 vase, urn, or any combination of those, intended for
35 or used in the burial, memorialization or interment
36 of a dead human body. The term does not include
37 cemetery lots, graves, mausoleum crypts, turf top
38 crypts, niches or columbaria.

39 3. This chapter does not apply to wholesale
40 transactions.

41 Sec. 16. NEW SECTION. TRUST REQUIRED--PROVISIONS
42 OF TRUST.

43 1. A seller who is subject to section fifteen
44 (15) of this Act shall, within thirty days following
45 receipt from the buyer of full payment under the
46 contract, deposit in trust an amount equal to at least
47 one hundred ten percent of the ascribed cost of the
48 personal property to be delivered under the contract,
49 as determined in the manner provided in subsection
50 three (3) of this section; provided that if the price

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1 to be paid by the buyer is payable in installments
2 over a term which exceeds thirty-six months or if
3 the contract is payable in more than three installments
4 and any scheduled payment is more than twice as large
5 as the average of earlier scheduled payments, then
6 the seller shall, within thirty days following the
7 end of each of the seller's fiscal years, deposit
8 in trust an amount which is of the same relation to
9 one hundred ten percent of the ascribed cost as the
10 sum of the payments made during the fiscal year is
11 to the contract price. Trust funds shall be deposited
12 with a financial institution authorized to transact
13 business in this state, and shall be held in a trust
14 account in the name of the depositor in trust for
15 the designated beneficiary.

16 2. When a trust account has been established under
17 subsection one (1) of this section, the seller annually
18 shall make an additional deposit to compensate for
19 any annual increase in the ascribed cost of personal
20 property remaining to be delivered under the contract.
21 The deposit shall be made not later than thirty days
22 after the end of the seller's fiscal year, and shall
23 be included in the annual report of the seller required
24 by section seventeen (17) of this Act. Immediately
25 after the end of the seller's fiscal year the seller
26 shall recalculate ascribed cost for the contract in
27 the manner provided in subsection three (3) of this
28 section. The amount of the deposit shall be equal
29 to the excess, if any, of the ascribed cost of the
30 personal property remaining to be delivered according
31 to the contract, as recalculated for the fiscal year
32 just commenced, over the net balance of the trust
33 account; provided that if the buyer has not made full
34 payment, the deposit shall be equal to an amount which
35 is of the same relation to such excess as the sum
36 of payments made under the contract is to the contract
37 price.

38 3. For purposes of this section, "ascribed cost"
39 means the wholesale price which the seller would have
40 been required to pay to obtain the personal property
41 to be delivered under the contract in an arm's-length
42 wholesale transaction during the previous fiscal year.
43 Wholesale price means the average wholesale price
44 during the fiscal year in the relevant market.

45 4. Funds held in trust with respect to a contract
46 may be disbursed upon the death of the person for
47 whom the personal property is to be used, or upon
48 delivery of the personal property, or at any time
49 upon the mutual consent of the parties.

50 5. In lieu of a separate trust account for each

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1 contract, the seller may establish a common trust
2 fund for all or a portion of the contracts for which
3 trust accounts are required.

4 Sec. 17. NEW SECTION. RECORDS AND REPORTING
5 REQUIREMENTS.

6 1. A seller whose contracts are subject to this
7 chapter shall keep accurate records of the total
8 amount of payments received under each contract, the
9 institutions in which trust funds are maintained,
10 the total amounts deposited in trust and the amount
11 deposited with respect to each contract, a
12 reconciliation of the total trust balance with the
13 individual balances, the earnings of trust funds,
14 and the disbursements from trust funds. These records
15 shall be subject to examination at any time by the
16 auditor of state or by his or her designee. The
17 seller also shall file with the auditor of state,
18 not later than forty-five days after the end of the
19 fiscal year of the seller, an annual report on forms
20 supplied by the seller which shall include the name
21 and business address of the seller, the dates of the
22 fiscal year of the seller, the name and address of
23 the trustee, the name and address of each depository,
24 the balance of funds held in trust for each contract
25 as of the end of the fiscal year and a reconciliation
26 of these balances with the total amount of trust funds
27 on deposit with each depository as of the end of the
28 fiscal year, the current rate of interest or earnings
29 being earned by the trust account, the total obligation
30 of the seller for which the trusts are established
31 at the seller's current cost, and other information
32 required by the auditor of state.

33 2. The annual report supplied by the seller under
34 subsection one (1) of this section shall include the
35 following statement:

36 "This report is required by law to be submitted
37 to the auditor of state. Any person who willfully
38 submits false or fraudulent information in this report
39 commits an aggravated misdemeanor."

40 3. The attorney general or his or her
41 representative may commence an equitable action in
42 the district court of the county in which the seller
43 engages in the business governed by this chapter to
44 obtain equitable remedies as necessary to compel
45 compliance with the provisions of this section. The
46 district court may grant equitable relief as
47 appropriate.

48 Sec. 18. NEW SECTION. FRAUDULENT REPORT--PENALTY.
49 A person who is required to submit an annual report
50 to the auditor of state under section seventeen (17),

1 subsection one (1), of this Act, and who knowingly
2 submits false information in the report, commits an
3 aggravated misdemeanor.

4 Sec. 19. NEW SECTION. FRAUDULENT SALES--PENALTY.

5 A person who represents the sale of personal property
6 as a prearranged funeral commits an aggravated
7 misdemeanor.

8 Sec. 20. NEW SECTION. EXCEPTION. This chapter

9 does not apply to a contract which is subject to the
10 provisions of sections one (1) through thirteen (13)
11 of this Act."

12 2. Page 4, line 17, by inserting after the period
13 the words "Sections fifteen (15) through twenty (20)
14 of this Act do not apply to a contract executed prior
15 to the effective date of this Act. A person who was
16 subject to chapter five hundred twenty-three A (523A)
17 of the Code prior to the effective date of this Act,
18 and who becomes subject to sections fifteen (15)
19 through twenty (20) of this Act on the effective date
20 of this Act shall maintain trust funds which were
21 established under chapter five hundred twenty-three
22 A (523A) of the Code as it existed prior to the
23 effective date of this act according to the provisions
24 of chapter five hundred twenty-three A (523A) of the
25 Code as it existed prior to the effective date of
26 this Act until released according to the provisions
27 of that prior law."

28 3. By renumbering sections.

S-5633 FILED
APRIL 2, 1980

BY JOE BROWN

SENATE FILE 2349

S-5629

1 Amend the Schwengels et al. amendment S-5577 to
2 Senate File 2349 as follows:

3 1. Page 2, line 40, by inserting after the word
4 "seller" the words "licensed under chapter one hundred
5 fifty-six (156),".

6 2. Page 2, by inserting after line 39 the following:

7 "A seller who is subject to chapter five hundred
8 sixty-six A (566A), within thirty days following re-
9 ceipt from the buyer of the purchase price under this
10 agreement, shall deposit an amount equal to at least
11 one hundred fifty percent of the average whole-
12 sale cost of the personal property to be delivered under
13 the agreement. If partial payment is made the seller
14 shall deposit in trust a proportionate share representing
15 one hundred fifty percent of the wholesale cost
16 of the personal property. These funds shall remain in
17 trust until occurrence of the death of the person for
18 whose benefit the funds were paid unless the funds are
19 sooner released by mutual consent of the parties to
20 the agreement."

S-5629 FILED
APRIL 2, 1980

BY ROBERT M. CARR

S-5577

1 Amend Senate File 2349 as follows:

2 1. By striking everything after the enacting
3 clause and inserting in lieu thereof the following:
4 "Section 1. This Act is enacted as a new chapter
5 one hundred thirty-five F (135F) of the Code.

6 Sec. 2. NEW SECTION. DEFINITIONS. As used in
7 this chapter, unless the context otherwise requires:

8 1. "Seller" means any person, firm, corporation
9 or other entity engaged in the pre-need sale of
10 personal property, including but not limited to a
11 casket, vault, or any other burial receptacle, used
12 in conjunction with the final disposition of a dead
13 human body, or in the pre-need sale of services of
14 a funeral director in connection with the final
15 disposition of a dead human body.

16 2. "Commissioner" means the state commissioner
17 of public health.

18 Sec. 3. NEW SECTION. RULES.

19 1. The commissioner shall adopt rules as necessary
20 to administer and enforce the provisions of this
21 chapter.

22 2. The commissioner shall adopt rules prescribing
23 procedures, requirements and accounting methods and
24 practices to be followed by sellers in establishing
25 and maintaining trust accounts and pertinent records.

26 Sec. 4. NEW SECTION. AUDITS AND EXAMINATIONS.

27 1. The commissioner shall provide by rule for
28 the audit or examination of books of account and other
29 records to be maintained under this chapter. A seller
30 shall comply with these rules and shall make all books
31 of account and other pertinent records available to
32 the commissioner for examination.

33 2. The commissioner may provide by rule that an
34 audit conducted by a certified public accountant be
35 submitted by a seller in lieu of an audit or
36 examination conducted by the commissioner.

37 Sec. 5. NEW SECTION. ANNUAL CERTIFICATION--
38 PENALTY.

39 1. Every seller shall submit to the commissioner
40 once each year a written statement which is signed
41 by the seller and notarized, and which contains the
42 following information:

43 a. Identification of each financial institution
44 in which trust funds are maintained.

45 b. Authorization for the commissioner to
46 investigate, audit and verify all funds, accounts,
47 safe deposit boxes or other forms in which trust funds
48 are held by or in a financial institution identified
49 under paragraph a of this subsection.

50 c. Other information required by rules of the

1 commissioner.

2 d. A declaration that the information contained
3 in the statement is truthful, accurate and complete.

4 2. The commissioner shall provide by rule for
5 the form, content and date of filing of the statement
6 to be submitted under subsection one (1) of this
7 section.

8 3. A person who knowingly submits false information
9 in a statement submitted under subsection one (1)
10 of this section commits a serious misdemeanor.

11 Sec. 6. NEW SECTION. REMEDIAL ORDERS.

12 1. Upon notice and opportunity for hearing, the
13 commissioner may issue a remedial order against a
14 person who is in violation of the requirements of
15 this chapter. The respondent shall comply with the
16 remedial order within such reasonable period of time
17 as may be stated by the commissioner in the order.
18 The use of this authority by the commissioner is
19 discretionary, and is not required as a condition
20 precedent to any other criminal or civil proceeding.

21 2. A hearing under this section shall be conducted
22 as a contested case under chapter seventeen A (17A)
23 of the Code. Notice must be served upon the respondent
24 by personal service as in civil actions,
25 notwithstanding contrary provisions of section
26 seventeen A point twelve (17A.12), subsection one
27 (1) of the Code.

28 Sec. 7. NEW SECTION. JUDICIAL ASSISTANCE.

29 1. The commissioner may commence an action in
30 the district court to obtain such remedial orders
31 as may be necessary to stop or prevent violations
32 of this chapter.

33 2. The commissioner may commence an action in
34 the district court to compel compliance with the
35 requirements of this chapter, including rules
36 promulgated under this chapter, or to compel compliance
37 with a remedial order issued by the commissioner under
38 section six (6) of this Act.

39 Sec. 8. NEW SECTION. TRUST FUND ESTABLISHED.

40 Whenever an agreement is made by any seller in a pre-
41 need sale for the sale of personal property to be
42 used in connection with the final disposition of a
43 dead human body or for the furnishing of professional
44 services of a funeral director, eighty percent of
45 all payments made under the agreement, including
46 interest thereon, shall be and remain trust funds
47 until occurrence of the death of the person for whose
48 benefit the funds were paid, unless the funds are
49 sooner released to the person making such payment.

50 Sec. 9. NEW SECTION. DEPOSIT OF FUNDS. All trust

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1 funds under section eight (8) of this Act shall be
2 deposited in a bank or trust company authorized to
3 transact business in this state within thirty days
4 after the receipt thereof and shall be held in a
5 separate trust account or in one common trust fund
6 under a trust agreement in the name of the depositor
7 in trust for the designated beneficiary until the
8 trust fund is released under either of the conditions
9 provided in section eight (8) of this Act.

10 Sec. 10. NEW SECTION. TRUST EXEMPTION.

11 1. The commissioner may adopt rules pursuant to
12 chapter seventeen A (17A) of the Code exempting
13 qualified sellers from those provisions of this chapter
14 which require a seller to deposit funds in trust.
15 A seller is not exempt from those provisions unless
16 the seller applies to the commissioner pursuant to
17 rules so adopted and is issued a certificate of ex-
18 emption by the commissioner.

19 2. Rules adopted by the commissioner shall contain
20 financial responsibility requirements to be satisfied
21 by an applicant for exemption which, in the opinion
22 of the commissioner, are sufficient to provide
23 protection for buyers which is at least equal to the
24 trust requirements of this chapter.

25 3. Upon not less than five days notice and
26 opportunity for hearing pursuant to the notice, the
27 commissioner may upon reasonable grounds revoke a
28 certificate of exemption. Failure by a seller to
29 deliver personal property or services as required
30 by the contract constitutes reasonable grounds for
31 revocation of a certificate of exemption. A seller
32 whose certificate of exemption has been revoked shall
33 satisfy the trust requirements of this chapter within
34 ten days after the date the revocation takes effect,
35 either by depositing money in trust equal to the
36 required trust amount, or by submitting to the
37 commissioner a corporate surety bond which is issued
38 by a surety company licensed to do business in this
39 state and which contains a penal sum equal to the
40 required trust amount. If the seller fails to satisfy
41 the trust requirements as provided in this subsection
42 within this ten-day period, the commissioner shall
43 apply to the district court for Polk county for
44 appointment of a receiver.

45 Sec. 11. NEW SECTION. FRAUDULENT SALES--PENALTY.
46 A person who represents the sale of personal property
47 as a prearranged funeral commits an aggravated
48 misdemeanor.

49 Sec. 12. NEW SECTION. VIOLATION--PENALTY. Any
50 seller, agent or representative who fails to deposit

S-5577- PAGE 4

1 funds in a trust account as required by this chapter
2 commits an aggravated misdemeanor.

3 Sec. 13. Chapter five hundred twenty-three A
4 (523A), Code 1979, is repealed. It is the intent
5 of the general assembly that the repeal of chapter
6 five hundred twenty-three A (523A) of the Code and
7 the enactment of sections eight (8), nine (9) and
8 twelve (12) of this Act shall be deemed a continua-
9 tion of the law as contained in chapter five hundred
10 twenty-three A (523A) of the Code, except to the
11 extent amended by sections eight (8), nine (9) and
12 twelve (12) of this Act.

13 Sec. 14. This Act takes effect January first
14 following enactment. However, the commissioner of
15 public health may adopt rules pursuant to this Act
16 prior to the effective date of this Act to take effect
17 on the effective date of this Act."

18 2. Amend the title by striking lines 1 through
19 7 and inserting in lieu thereof the words "An Act
20 relating to pre-need sales of goods or services used
21 in the final disposition of dead human bodies, and
22 providing for the regulation of sellers by the
23 commissioner of health, and providing penalties."

S-5577 FILED
MARCH 31, 1980

BY FORREST V. SCHWENGELS
STEPHEN W. BIENIUS
LOWELL JUNKINS

SENATE FILE 2349

S-5615

1 Amend the Schwengels et al. amendment S-5577 to
2 Senate File 2349 as follows:

3 1. Page 3, lines 47 and 48, by striking the words
4 "an aggravated misdemeanor" and inserting in lieu thereof
5 the words "a fraudulent practice".

6 2. Page 4, line 2, by striking the words "an aggravated
7 misdemeanor" and inserting in lieu thereof the words
8 "a fraudulent practice".

S-5615 FILED
APRIL 1, 1980

BY LUCAS J. DeKOSTER
DICK RAMSEY
C. JOSEPH COLEMAN

SENATE FILE 2349

S-5616

1 Amend the Schwengels et al. amendment S-5577 to Senate
2 File 2349 as follows:

3 1. Page 1, line 9, by inserting after the word
4 "entity" the words "licensed under chapter one hundred
5 fifty-six (156) of the Code".

S-5616 FILED
APRIL 1, 1980

BY C. JOSEPH COLEMAN

S-5539

1 Amend Senate File 2349 as follows:

2 1. By striking page 1, line 1, through page 4,
3 line 13 and inserting in lieu thereof the following:

4 "Section 1. This Act is enacted as a new chapter
5 one hundred thirty-five F (135F) of the Code.

6 Sec. 2. NEW SECTION. DEFINITIONS. As used in
7 this chapter, unless the context otherwise requires:

8 1. "Seller" means any person, firm, corporation
9 or other entity engaged in the pre-need sale of
10 personal property, including but not limited to a
11 casket, vault, crypt, or any other burial receptacle,
12 used in conjunction with the final disposition of
13 a dead human body, or in the pre-need sale of services
14 of a funeral director in connection with the final
15 disposition of a dead human body.

16 2. "Commissioner" means the state commissioner
17 of public health.

18 Sec. 3. NEW SECTION. RULES.

19 1. The commissioner shall adopt rules as necessary
20 to administer and enforce the provisions of this
21 chapter.

22 2. The commissioner shall adopt rules prescribing
23 procedures, requirements and accounting methods and
24 practices to be followed by sellers in establishing
25 and maintaining trust accounts and pertinent records.

26 Sec. 4. NEW SECTION. AUDITS AND EXAMINATIONS.

27 1. The commissioner shall provide by rule for
28 the audit or examination of books of account and other
29 records to be maintained under this chapter. A seller
30 shall comply with these rules and shall make all books
31 of account and other pertinent records available to
32 the commissioner for examination.

33 2. The commissioner may provide by rule that an
34 audit conducted by a certified public accountant be
35 submitted by a seller in lieu of an audit or
36 examination conducted by the commissioner.

37 Sec. 5. NEW SECTION. ANNUAL CERTIFICATION--
38 PENALTY.

39 1. Every seller shall submit to the commissioner
40 once each year a written statement which is signed
41 by the seller and notarized, and which contains the
42 following information:

43 a. Identification of each financial institution
44 in which trust funds are maintained.

45 b. Authorization for the commissioner to
46 investigate, audit and verify all funds, accounts,
47 safe deposit boxes or other forms in which trust funds
48 are held by or in a financial institution identified
49 under paragraph a of this subsection.

50 c. Other information required by rules of the

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1 commissioner.

2 d. A declaration that the information contained
3 in the statement is truthful, accurate and complete.

4 2. The commissioner shall provide by rule for
5 the form, content and date of filing of the statement
6 to be submitted under subsection one (1) of this
7 section.

8 3. A person who knowingly submits false information
9 in a statement submitted under subsection one (1)
10 of this section commits a serious misdemeanor.

11 Sec. 6. NEW SECTION. REMEDIAL ORDERS.

12 1. Upon notice and opportunity for hearing, the
13 commissioner may issue a remedial order against a
14 person who is in violation of the requirements of
15 this chapter. The respondent shall comply with the
16 remedial order within such reasonable period of time
17 as may be stated by the commissioner in the order.
18 The use of this authority by the commissioner is
19 discretionary, and is not required as a condition
20 precedent to any other criminal or civil proceeding.

21 2. A hearing under this section shall be conducted
22 as a contested case under chapter seventeen A (17A)
23 of the Code. Notice must be served upon the respondent
24 by personal service as in civil actions,
25 notwithstanding contrary provisions of section
26 seventeen A point twelve (17A.12), subsection one
27 (1) of the Code.

28 Sec. 7. NEW SECTION. JUDICIAL ASSISTANCE.

29 1. The commissioner may commence an action in
30 the district court to obtain such remedial orders
31 as may be necessary to stop or prevent violations
32 of this chapter.

33 2. The commissioner may commence an action in
34 the district court to compel compliance with the
35 requirements of this chapter, including rules
36 promulgated under this chapter, or to compel compliance
37 with a remedial order issued by the commissioner under
38 section six (6) of this Act.

39 Sec. 8. NEW SECTION. TRUST FUND ESTABLISHED.

40 Whenever an agreement is made by any seller in a pre-
41 need sale for the sale of personal property to be
42 used in connection with the final disposition of a
43 dead human body or the furnishing of professional
44 services of a funeral director, eighty percent of
45 all payments made under the agreement, including
46 interest thereon, shall be and remain trust funds
47 until occurrence of the death of the person for whose
48 benefit the funds were paid, unless the funds are
49 sooner released to the person making such payment.

50 Sec. 9. NEW SECTION. DEPOSIT OF FUNDS. All trust

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Page 3

1 funds under section eight (8) of this Act shall be
2 deposited in a bank or trust company authorized to
3 transact business in this state within thirty days
4 after the receipt thereof and shall be held in a
5 separate trust account or in one common trust fund
6 under a trust agreement in the name of the depositor
7 in trust for the designated beneficiary until the
8 trust fund is released under either of the conditions
9 provided in section five hundred twenty-three A point
10 one (523A.1) of the Code.

11 Sec. 10. NEW SECTION. VIOLATION--PENALTY. Any
12 seller, agent or representative who fails to deposit
13 funds in a trust account as required by this chapter
14 commits an aggravated misdemeanor."

15 2. Page 4, by striking lines 14 through 17 and
16 inserting in lieu thereof the following:

17 "Sec. _____. Chapter five hundred twenty-three A
18 (523A), Code 1979, is repealed. It is the intent
19 of the general assembly that the repeal of chapter
20 five hundred twenty-three A (523A) of the Code and
21 the enactment of sections eight (8), nine (9) and
22 ten (10) of this Act shall be deemed a continuation
23 of the law as contained in chapter five hundred twenty-
24 three A (523A) of the Code, except to the extent
25 amended by sections eight (8), nine (9) and ten (10)
26 of this Act.

27 Sec. _____. This Act takes effect January first
28 following enactment. However, the commissioner of
29 public health may adopt rules pursuant to this Act
30 prior to the effective date of this Act".

31 3. By renumbering sections.

32 4. Amend the title, by striking lines 2 through
33 5 and inserting in lieu thereof the words "and
34 procedures of the commissioner of health for purposes
35 of the administration and enforcement of laws relating
36 to pre-need sales".

S-5539 FILED
MARCH 26, 1980

BY FORREST V. SCHWENGELS
STEPHEN W. BISENIUS
LOWELL JUNKINS

SENATE FILE 2349

S-5538

- 1 Amend the amendment S-5493 to Senate File 2349
2 as follows:
3 1. Page 1, by striking lines 2 through 41.
4 2. Page 1, by striking lines 42 through 45 and
5 inserting in lieu thereof the following:
6 "____. Page 4, by inserting after line 13 the
7 following:
8 "Sec. 11. NEW SECTION. ALTERNATE TRUST PROVISIONS-
9 -CERTAIN SELLERS.
10 1. A seller, other than a person licensed under
11 chapter one hundred fifty-six (156) of the Code,
12 shall, within thirty days following".
13 3. Page 2, lines 24 and 25, by striking the words
14 and figure "included in the annual report of the
15 seller required by section fifteen (15)" and inserting
16 in lieu thereof the words and figure "reported in
17 the annual certification required by section five
18 (5)".
19 4. By striking page 3, line 5 through page 4,
20 line 4.
21 5. Page 4, by striking lines 9 through 16.
22 6. Page 4, by striking lines 17 through 19 and
23 inserting in lieu thereof the following:
24 "____. Page 4, line 18, by inserting after the
25 period the words and figure "Section eleven (11) of
26 this Act does not apply to a contract executed".
27 7. Page 4, lines 23 and 24, by striking the words
28 and figures "sections thirteen (13) through eighteen
29 (18)" and inserting in lieu thereof the words and
30 figure "section eleven (11)".
31 8. By renumbering as necessary.

S-5538 FILED
MARCH 26, 1980

BY FORREST V. SCHWENGELS

SENATE FILE 2349

S-5537

1 Amend amendment S-5493 to Senate File 2349 as
2 follows:

3 1. By striking page 1, line 42 through page 3,
4 line 4, and inserting in lieu thereof the following:

5 "Sec. ____ . NEW SECTION. TRUST EXEMPTION.

6 1. The commissioner may adopt rules pursuant to
7 chapter seventeen A (17A) of the Code exempting
8 qualified sellers from those provisions of this chapter
9 which require a seller to deposit funds in trust.
10 A seller is not exempt from those provisions unless
11 the person applies to the commissioner pursuant to
12 rules so adopted and is issued a certificate of ex-
13 emption by the commissioner.

14 2. Rules adopted by the commissioner shall contain
15 financial responsibility requirements to be satisfied
16 by an applicant for exemption which, in the opinion
17 of the commissioner, are sufficient to provide
18 protection for buyers which is at least equal to the
19 trust requirements of this chapter.

20 3. Upon not less than five days notice and
21 opportunity for hearing pursuant to the notice, the
22 commissioner may upon reasonable grounds revoke a
23 certificate of exemption. Failure by a seller to
24 deliver personal property or services as required
25 by the contract constitutes reasonable grounds for
26 revocation of a certificate of exemption. A seller
27 whose certificate of exemption has been revoked shall
28 satisfy the trust requirements of this chapter within
29 ten days after the date the revocation takes effect,
30 either by depositing money in trust equal to the
31 required trust amount, or by submitting to the
32 commissioner a corporate surety bond which is issued
33 by a surety company licensed to do business in this
34 state and which contains a penal sum equal to the
35 required trust amount. If the seller fails to satisfy
36 the trust requirements as provided in this subsection
37 within this ten-day period, the commissioner shall
38 apply to the district court for Polk county for
39 appointment of a receiver."

S-5537 FILED
MARCH 26, 1980

BY STEPHEN W. BISENIUS
LOWELL L. JUNKINS
FORREST V. SCHWENGELS

SENATE FILE 2349

S-5536

1 Amend amendment S-5493 to Senate File 2349 as
2 follows:

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

4 "Sec. ____ . NEW SECTION.

5 1. A seller whose contracts are subject to this
6 chapter shall disclose to each buyer in writing at
7 least once each year that trust funds are required
8 by law to be maintained with respect to each contract;
9 that the seller's accounts and records are subject
10 to examination by the state department of health;
11 and that the buyer, or the buyer's attorney, or a
12 member of the buyer's immediate family, or another
13 person designated by the buyer, is entitled to inspect
14 the seller's copy of the annual certification submitted
15 by the seller to the commissioner under this chapter,
16 and to be given information respecting the status
17 of trust funds required with respect to the buyer's
18 contract. The commissioner shall adopt rules
19 specifying the form and the time and manner of making
20 the disclosure required under this subsection.

21 2. The seller shall maintain at the principal
22 business office a copy of each annual certification
23 submitted to the commissioner under this chapter,
24 and shall make these copies and information respecting
25 the status of trust funds relating to a contract
26 available upon request to the buyer under a contract,
27 or to the buyer's attorney, or a member of the buyer's
28 immediate family, or another person designated by
29 the buyer."

S-5536 FILED
MARCH 26, 1980

BY PATRICK DELUHERY

SENATE FILE 2349

S-5535

1 Amend amendment S-5493 to Senate File 2349 as
2 follows:

3 1. Page 1, lines 45 and 46, by striking the words
4 "within thirty days following receipt from the buyer
5 of full payment" and inserting in lieu thereof the
6 words "upon receipt of payment".

7 2. Page 2, by striking lines 3 through 12 and
8 inserting in lieu thereof the words "the seller shall,
9 upon receipt of each payment, deposit in trust an
10 amount which is of the same relation to one hundred
11 ten percent of the ascribed cost as the amount of
12 the payment is to the contract price. Trust funds
13 shall be deposited".

S-5535 FILED
MARCH 26, 1980

BY PATRICK J. DELUHERY

SENATE FILE 2349

S-5493

1 Amend Senate File 2349 as follows:

2 1. Page 3, by inserting after line 23 the follow-
3 ing:

4 "This section applies only to persons licensed
5 under chapter one hundred fifty-six (156) of the
6 Code."

7 2. Page 4, by inserting after line 13 the follow-
8 ing:

9 "Sec. 12. Sections thirteen (13) through eighteen
10 (18) of this Act are enacted as a new chapter five
11 hundred twenty-three B (523B) of the Code.

12 Sec. 13. NEW SECTION. SALES OF PERSONAL PROPERTY
13 TO BE USED AT DEATH.

14 1. When an agreement is made by a person, other
15 than a person licensed under chapter one hundred
16 fifty-six (156) of the Code, to deliver personal
17 property which is customarily used in the final
18 disposition or memorialization of a dead human body
19 and the personal property is to be delivered at an
20 uncertain future date, the seller shall establish
21 and maintain records and accounts as required by this
22 chapter until the death of the person for whom the
23 personal property is to be used or until delivery
24 is made, whichever occurs earlier. The seller must
25 clearly disclose in writing that the contract is for
26 the sale of personal property and that funeral service
27 is not included.

28 2. For purposes of this chapter, delivery is
29 deemed to have been made when the personal property
30 to be delivered under the contract is in a bonded
31 warehouse and is identifiable as the property of the
32 buyer or is released to the buyer.

33 As used in this chapter the term "personal property"
34 includes, but is not limited to, a vault, memorial,
35 vase, urn, or any combination of those, intended for
36 or used in the burial, memorialization or interment
37 of a dead human body. The term does not include
38 cemetery lots, graves, mausoleum crypts, turf top
39 crypts, niches or columbaria.

40 3. This chapter does not apply to wholesale
41 transactions.

42 Sec. 14. NEW SECTION. TRUST REQUIRED--PROVISIONS
43 OF TRUST.

44 1. A seller who is subject to section thirteen
45 (13) of this Act shall, within thirty days following
46 receipt from the buyer of full payment under the
47 contract, deposit in trust an amount equal to at least
48 one hundred ten percent of the ascribed cost of the
49 personal property to be delivered under the contract,
50 as determined in the manner provided in subsection

1 three (3) of this section; provided that if the price
2 to be paid by the buyer is payable in installments
3 over a term which exceeds thirty-six months or if
4 the contract is payable in more than three installments
5 and any scheduled payment is more than twice as large
6 as the average of earlier scheduled payments, then
7 the seller shall, within thirty days following the
8 end of each of the seller's fiscal years, deposit
9 in trust an amount which is of the same relation to
10 one hundred ten percent of the ascribed cost as the
11 sum of the payments made during the fiscal year is
12 to the contract price. Trust funds shall be deposited
13 with a financial institution authorized to transact
14 business in this state, and shall be held in a trust
15 account in the name of the depositor in trust for
16 the designated beneficiary.

17 2. When a trust account has been established under
18 subsection one (1) of this section, the seller annually
19 shall make an additional deposit to compensate for
20 any annual increase in the ascribed cost of personal
21 property remaining to be delivered under the contract.
22 The deposit shall be made not later than thirty days
23 after the end of the seller's fiscal year, and shall
24 be included in the annual report of the seller required
25 by section fifteen (15) of this Act. Immediately
26 after the end of the seller's fiscal year the seller
27 shall recalculate ascribed cost for the contract in
28 the manner provided in subsection three (3) of this
29 section. The amount of the deposit shall be equal
30 to the excess, if any, of the ascribed cost of the
31 personal property remaining to be delivered according
32 to the contract, as recalculated for the fiscal year
33 just commenced, over the net balance of the trust
34 account; provided that if the buyer has not made full
35 payment, the deposit shall be equal to an amount which
36 is of the same relation to such excess as the sum
37 of payments made under the contract is to the contract
38 price.

39 3. For purposes of this section, "ascribed cost"
40 means the wholesale price which the seller would have
41 been required to pay to obtain the personal property
42 to be delivered under the contract in an arm's-length
43 wholesale transaction during the previous fiscal year.
44 Wholesale price means the average wholesale price
45 during the fiscal year in the relevant market.

46 4. Funds held in trust with respect to a contract
47 may be disbursed upon the death of the person for
48 whom the personal property is to be used, or upon
49 delivery of the personal property, or at any time
50 upon the mutual consent of the parties.

1 5. In lieu of a separate trust account for each
2 contract, the seller may establish a common trust
3 fund for all or a portion of the contracts for which
4 trust accounts are required.

5 Sec. 15. NEW SECTION. RECORDS AND REPORTING
6 REQUIREMENTS.

7 1. A seller whose contracts are subject to this
8 chapter shall keep accurate records of the total
9 amount of payments received under each contract, the
10 institutions in which trust funds are maintained,
11 the total amounts deposited in trust and the amount
12 deposited with respect to each contract, a
13 reconciliation of the total trust balance with the
14 individual balances, the earnings of trust funds,
15 and the disbursements from trust funds. These records
16 shall be subject to examination at any time by the
17 auditor of state or by his or her designee. The
18 seller also shall file with the auditor of state,
19 not later than forty-five days after the end of the
20 fiscal year of the seller, an annual report on forms
21 supplied by the seller which shall include the name
22 and business address of the seller, the dates of the
23 fiscal year of the seller, the name and address of
24 the trustee, the name and address of each depository,
25 the balance of funds held in trust for each contract
26 as of the end of the fiscal year and a reconciliation
27 of these balances with the total amount of trust funds
28 on deposit with each depository as of the end of the
29 fiscal year, the current rate of interest or earnings
30 being earned by the trust account, the total obligation
31 of the seller for which the trusts are established
32 at the seller's current cost, and other information
33 required by the auditor of state.

34 2. The annual report supplied by the seller under
35 subsection one (1) of this section shall include the
36 following statement:

37 "This report is required by law to be submitted
38 to the auditor of state. Any person who willfully
39 submits false or fraudulent information in this report
40 commits an aggravated misdemeanor."

41 3. The attorney general or his or her
42 representative may commence an equitable action in
43 the district court of the county in which the seller
44 engages in the business governed by this chapter to
45 obtain equitable remedies as necessary to compel
46 compliance with the provisions of this section. The
47 district court may grant equitable relief as
48 appropriate.

49 Sec. 16. NEW SECTION. FRAUDULENT REPORT--PENALTY.
50 A person who is required to submit an annual report

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1 to the auditor of state under section fifteen (15),
2 subsection one (1), of this Act, and who knowingly
3 submits false information in the report, commits an
4 aggravated misdemeanor.

5 Sec. 17. NEW SECTION. FRAUDULENT SALES--PENALTY.
6 A person who represents the sale of personal property
7 as a prearranged funeral commits an aggravated
8 misdemeanor.

9 Sec. 18. NEW SECTION. EXCEPTION. This chapter
10 does not apply to a contract which is subject to the
11 provisions of chapter five hundred twenty-three A
12 (523A) of the Code."

13 3. Page 4, lines 16 and 17, by striking the words
14 "chapter seventeen A (17A) of the Code" and inserting
15 in lieu thereof the words "sections two (2) through
16 seven (7) of this Act".

17 4. Page 4, line 18, by inserting after the period
18 the words "Sections thirteen (13) through seventeen
19 (17) of this Act do not apply to a contract executed
20 prior to the effective date of this Act. A person
21 who was subject to chapter five hundred twenty-three
22 A (523A) of the Code prior to the effective date of
23 this Act, and who becomes subject to sections thirteen
24 (13) through eighteen (18) of this Act on the effective
25 date of this Act shall maintain trust funds which
26 were established under chapter five hundred twenty-
27 three A (523A) of the Code as it existed prior to
28 the effective date of this act according to the
29 provisions of chapter five hundred twenty-three A
30 (523A) of the Code as it existed prior to the effective
31 date of this Act until released according to the
32 provisions of that prior law."

33 5. By renumbering sections.

S-5493 FILED
MARCH 21, 1980

BY ELIZABETH MILLER
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TOM SLATER
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SENATE FILE 2349

S-5497

1 Amend the Schwengels amendment S-5483 to Senate
2 File 2349 as follows:
3 1. Page 1, line 5, by inserting after the word
4 "entity" the words "licensed under chapter one hundred
5 fifty-six (156) of the Code".

S-5497 FILED
MARCH 21, 1980

BY C. JOSEPH COLEMAN

*Law 3/25 (3 10 55)
Motion to reconsider 2/28*

SENATE FILE 2349

--S-5483

1 Amend Senate File 2349 as follows:

2 1. Page 1, by striking lines 6 through 8 and
3 inserting in lieu thereof the following:

4 "1. "Seller" means any person, firm, corporation
5 or other entity engaged in the pre-need sale of
6 personal property, including but not limited to a
7 casket, vault, crypt, or any other burial receptacle,
8 used in conjunction with the final disposition of
9 a dead human body, or in the pre-need sale of services
10 of a funeral director in connection with the final
11 disposition of a dead human body."

12 2. Page 3, line 11, by striking the word "person"
13 and inserting in lieu thereof the words "person
14 seller".

15 3. Page 3, line 13, by striking the word "delivery"
16 and inserting in lieu thereof the words "delivery
17 sale".

18 4. Page 3, line 16, by striking the words "or
19 embalmer" and inserting in lieu thereof the words
20 "or-embalmer".

21 5. Page 3, lines 22 and 23, by striking the words
22 "by mutual consent of the parties" and inserting in
23 lieu thereof the words "~~by-mutual-consent-of-the~~
24 parties".

S 483 FILED
MARCH 20, 1980

BY FORREST V. SCHWENGELS

*Adopted 3/25 (S 10 58)
Motion to Reconsider 3/25 (Revised 4)*
