

FILED FEB 20 1992

SENATE FILE 2179  
BY COMMITTEE ON COMMERCE  
*4/15/92 (p. 415)*  
(SUCCESSOR TO SSB 2153)

Passed Senate, Date 2/27/92 (p. 500) Passed House, Date 3/27/92 (p. 888)  
Vote: Ayes 48 Nays 0 Vote: Ayes 95 Nays 0

*Proposed Senate 4/6/92 (p. 1222)*  
Approved April 14, 1992 (p. 1404)  
Ayes 47, Nays 0

A BILL FOR

1 An Act relating to entities and subject matter under the  
2 regulatory authority of the regulated industries unit of the  
3 division of insurance, including residential service  
4 contracts, continuing care retirement communities, perpetual  
5 care cemeteries, funeral services and merchandise, and  
6 cemetery merchandise, and providing an effective date.

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

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9

SENATE FILE 2179

H-5363

- 1 Amend Senate File 2179 as follows:
- 2 1. Page 7, line 16, by inserting after the word
- 3 "requirement" the following: "with respect to bronze
- 4 merchandise".

H-5363 FILED MARCH 18, 1992

By HOLVECK of Polk

*Adopted 3/27 (p. 888)*

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SF 2179

1 Section 1. Section 523A.20, Code Supplement 1991, is  
2 amended to read as follows:

3 523A.20 INSURANCE DIVISION'S REGULATORY FUND.

4 The insurance division may authorize the creation of a  
5 special revenue fund in the state treasury, to be known as the  
6 insurance division regulatory fund. Commencing July 1, 1990,  
7 and annually thereafter, the commissioner shall allocate from  
8 the fees paid pursuant to section 523A.2, one dollar for each  
9 agreement reported on an establishment permit holder's annual  
10 report for deposit to the regulatory fund. The remainder of  
11 the fees collected pursuant to section 523A.2 shall be  
12 deposited into the general fund of the state. However, if the  
13 balance of the regulatory fund on that July 1 exceeds two  
14 hundred thousand dollars, the allocation to the regulatory  
15 fund shall not be made and the total sum of the fees paid  
16 pursuant to section 523A.2 shall be deposited in the general  
17 fund of the state. In addition, on May 1 of 1994 and 1995,  
18 the commissioner, to the extent necessary to fund audits,  
19 investigations, and receiverships, shall assess establishment  
20 permit holders five dollars for each agreement reported on the  
21 establishment permit holder's annual report of sales executed  
22 during the preceding year, which shall be deposited in the  
23 insurance division regulatory fund. The moneys in the  
24 regulatory fund shall be retained in the fund. The moneys are  
25 appropriated and, subject to authorization by the  
26 commissioner, may be used to pay auditors, audit expenses,  
27 investigative expenses, and the expenses of receiverships  
28 established pursuant to section 523A.19. An annual assessment  
29 shall not be imposed if the current balance of the fund  
30 exceeds two hundred thousand dollars.

31 Sec. 2. Section 523C.3, subsection 2, paragraph b, Code  
32 1991, is amended to read as follows:

33 b. A surety bond, a copy of the receipt from the treasurer  
34 of state that a cash deposit has been made, or a copy of a  
35 custodial agreement as provided in section 523C.5.

1     Sec. 3. Section 523C.5, Code 1991, is amended to read as  
2 follows:

3     523C.5 REQUIRED BOND, CASH DEPOSIT, OR CUSTODIAL ACCOUNT.

4     1. To assure the faithful performance of obligations under  
5 residential service contracts issued and outstanding in this  
6 state, a service company shall, prior to the issuance or  
7 renewal of a license, file with the commissioner a surety bond  
8 in the amount of one hundred thousand dollars, which has been  
9 issued by an authorized surety company and approved by the  
10 commissioner as to issuer, form, and contents or establish a  
11 custodial account in the amount of one hundred thousand  
12 dollars at an authorized depository. The bond or custodial  
13 account shall not be canceled or be subject to cancellation  
14 unless thirty days' advance notice in writing is filed with  
15 the commissioner. Notwithstanding chapter 17A, if a bond or  
16 custodial account is canceled for any reason and a new bond or  
17 notice that a new custodial account has been established in  
18 the required amount is not received by the commissioner on or  
19 before the effective date of cancellation, the license of the  
20 service company is automatically revoked as of the date the  
21 bond or custodial account ceases to be in effect. A service  
22 company whose license is revoked under this section may file  
23 an application for a new license pursuant to section 523C.3.

24     The bond or custodial account posted by a service company  
25 pursuant to this section shall be for the benefit of, and  
26 subject to recovery thereon by any residential service  
27 contract holder sustaining actionable injury due to the  
28 failure of the service company to faithfully perform its  
29 obligations under a residential service contract because of  
30 insolvency of the service company.

31     If a service company ceases to do business in this state  
32 and furnishes to the commissioner satisfactory proof that it  
33 has discharged all obligations to contract holders, the surety  
34 bond or custodial account shall be released.

35     The commissioner may by rule designate institutions

1 authorized to act as a depository under this section and  
2 establish requirements for custodians, custodial agreements,  
3 custodial accounts, or the method of valuing noncash assets  
4 held in a custodial account which the commissioner believes  
5 necessary to protect the holders of residential service  
6 contracts issued and outstanding in this state.

7 2. In lieu of the bond or custodial account required by  
8 this section, the service company may deposit with the  
9 treasurer of state a cash deposit in the same amount. The  
10 treasurer of state shall not refund a deposit until sixty days  
11 after the service company has ceased doing business in this  
12 state, a bond has been filed with the commissioner which  
13 complies with this section, or a custodial account is  
14 established which complies with this section.

15 Sec. 4. Section 523C.6, unnumbered paragraph 2, Code 1991,  
16 is amended to read as follows:

17 For purposes of this chapter, "net worth" means the excess  
18 of all assets over all liabilities including required  
19 reserves, ~~but excluding assets held in a custodial account~~  
20 ~~under section 523E-5;~~ computed in accordance with generally  
21 accepted accounting principles. At least twenty thousand  
22 dollars of net worth shall consist of paid-in capital.

23 Sec. 5. Section 523C.8, Code 1991, is amended by striking  
24 the section and inserting in lieu thereof the following:

25 523C.8 REBATES AND COMMISSIONS.

26 A service company shall not pay a commission to any person  
27 as an inducement or compensation for the issuance, purchase,  
28 or acquisition of a residential service contract. However,  
29 this section does not prohibit payment of an override  
30 commission or marketing fee to an employee or commission sales  
31 agent who is the marketing representative of the service  
32 company or its parent company, subsidiary, or affiliate on the  
33 sale or marketing of a residential service contract, provided  
34 the employee or commission sales agent is not a real estate  
35 licensee sharing in or entitled to share in, or affiliated

1 with, a real estate commission generated by the underlying  
2 real property transaction. This section also does not  
3 prohibit bona fide payments or reimbursements for inspection  
4 fees, if an inspection of the property to be the subject of a  
5 residential service contract is required by a service company  
6 and if the inspection fee is reasonably related to the  
7 services performed.

8 Sec. 6. Section 523C.11, Code 1991, is amended to read as  
9 follows:

10 523C.11 RESERVE ACCOUNT.

11 1. A service company shall maintain in an independent  
12 depository a reserve account containing-cash-or-marketable  
13 securities consisting of unencumbered assets in an amount  
14 equal to fifty percent of aggregate annual fees collected on  
15 residential service contracts issued and outstanding in this  
16 state, if any, less actual expenditures for services rendered  
17 under those contracts. The assets shall be held in the form  
18 of cash or marketable securities.

19 2. The depository shall make its records concerning the  
20 service company reserve accounts available to the commissioner  
21 or a designee for inspection on the premises of the depository  
22 and, upon request, shall produce documents and records which  
23 the commissioner determines are necessary to verify the value  
24 and safety of the assets of the reserve account.

25 3. ~~The service company shall submit with each license~~  
26 ~~renewal application an affidavit by an authorized officer of~~  
27 ~~the depository attesting to the balance in the reserve account~~  
28 ~~and that the reserve account is being maintained in accordance~~  
29 ~~with this chapter.~~

30 4. The commissioner may by rule designate institutions  
31 authorized to act as a depository under this section and may  
32 establish requirements for reserve accounts, reserve account  
33 agreements, or the method of valuing marketable securities  
34 which the commissioner believes necessary to protect the  
35 holders of residential service contracts issued and

1 outstanding in this state.

2 4. For purposes of this section, aggregate annual fees  
3 does not include the annual fees collected on residential  
4 service contracts for which the service company has purchased  
5 contractual liability insurance which demonstrates to the  
6 satisfaction of the commissioner that one hundred percent of  
7 the service company's claim exposure related to such service  
8 contracts is covered by the insurance. The contractual  
9 liability insurance must be obtained from an insurer  
10 authorized to do business in this state and shall contain the  
11 following provisions:

12 a. If the service company is unable to fulfill its  
13 obligations under its contracts issued in this state for any  
14 reason, including insolvency, bankruptcy, or dissolution, the  
15 contractual liability insurer will pay losses and unearned  
16 premiums under such plans directly to the persons making  
17 claims under the contracts.

18 b. The insurer issuing the policy shall assume full  
19 responsibility for the administration of claims in the event  
20 of the inability of the association to do so.

21 c. The insurer shall not cancel or refuse to renew the  
22 policy unless sixty days' written notice has been given to the  
23 commissioner by the insurer before the date of the  
24 cancellation or nonrenewal.

25 Sec. 7. Section 523C.13, unnumbered paragraph 1, Code  
26 1991, is amended to read as follows:

27 The commissioner shall adopt rules which regulate  
28 residential service contracts to prohibit misrepresentation,  
29 false advertising, defamation, boycotts, coercion,  
30 intimidation, false statements and entries and unfair  
31 discrimination or practices. If the commissioner finds that a  
32 person has violated the rules adopted under this section, the  
33 commissioner ~~shall issue an order to that person to cease and~~  
34 ~~desist and~~ may order any or all of the following:

35 Sec. 8. NEW SECTION. 523C.18 VIOLATIONS.

1 A person who willfully violates section 523C.5 is, upon  
2 conviction, guilty of a class "D" felony.

3 Sec. 9. NEW SECTION. 523C.19 CEASE AND DESIST ORDERS.

4 If an investigation provides reasonable evidence that a  
5 person violated any provision of this chapter or any rule  
6 adopted pursuant to this chapter, the commissioner may issue  
7 an order directed at the person to cease and desist from  
8 engaging in the act or practice resulting in the violation.

9 Sec. 10. Section 523D.3, subsection 2, Code Supplement  
10 1991, is amended to read as follows:

11 2. The provider shall file with the insurance division of  
12 insurance, annually within five months following the end of  
13 the provider's fiscal year, an annual disclosure statement  
14 which shall contain the information required by this chapter  
15 for the initial disclosure statement. The annual disclosure  
16 statement shall also be accompanied by a narrative describing:

17 a. Any material differences between the pro forma income  
18 statement cash flow projection filed pursuant to this chapter  
19 as part of the most recent annual disclosure statement and the  
20 actual results of operations during the fiscal year, if the  
21 material differences substantially affect the financial safety  
22 or soundness of the community.

23 ~~b. Any material differences between the pro forma balance~~  
24 ~~sheet and the actual results of operations during the fiscal~~  
25 ~~year.~~

26 ~~The annual disclosure statement shall also contain a A~~  
27 ~~revised pro forma income statement~~ cash flow projection for  
28 the next fiscal year.

29 Sec. 11. Section 523D.5, subsection 1, paragraph f, Code  
30 Supplement 1991, is amended to read as follows:

31 f. If the new facility or proposed expansion offers a  
32 promise to provide nursing or health care services to  
33 residents in the future pursuant to contracts effective for  
34 the life of the resident or a period in excess of one year in  
35 consideration for an entrance fee, an actuarial forecast in a

1 form satisfactory to the commissioner, which identifies the  
2 qualifications of the actuary or actuaries preparing the  
3 forecast.

4 Sec. 12. Section 523E.1, subsection 4, unnumbered  
5 paragraph 2, Code 1991, is amended to read as follows:

6 This section does not apply to payments for merchandise  
7 delivered to the purchaser. Delivery includes storage in a  
8 warehouse under the control of the seller or any other  
9 warehouse or storage facility approved by the commissioner  
10 when a receipt of ownership in the name of the purchaser is  
11 delivered to the purchaser, the merchandise is insured against  
12 loss, the merchandise is protected against damage, title has  
13 been transferred to the purchaser, the merchandise is  
14 appropriately identified and described in a manner that it can  
15 be distinguished from other similar items of merchandise  
16 unless this identification requirement is waived by the  
17 commissioner by rule, the method of storage allows for visual  
18 audits of the merchandise, and the annual reporting  
19 requirements of section 523E.2, subsection 1, are satisfied.

20 Sec. 13. Section 523E.20, Code Supplement 1991, is amended  
21 to read as follows:

22 523E.20 INSURANCE DIVISION'S REGULATORY FUND.

23 The insurance division may authorize the creation of a  
24 special revenue fund in the state treasury, to be known as the  
25 insurance division regulatory fund. Commencing July 1, 1990,  
26 and annually thereafter, the commissioner shall allocate from  
27 the fees paid pursuant to section 523E.2, one dollar for each  
28 agreement reported on an establishment permit holder's annual  
29 report for deposit to the regulatory fund. The remainder of  
30 the fees collected pursuant to section 523E.2 shall be  
31 deposited into the general fund of the state. In addition, on  
32 May 1 of 1994 and 1995, the commissioner, to the extent  
33 necessary to fund audits, investigations, and receiverships,  
34 shall assess establishment permit holders five dollars for  
35 each agreement reported on the establishment permit holder's

1 annual report of sales executed during the preceding year,  
2 which shall be deposited in the insurance division regulatory  
3 fund. However, if the balance of the regulatory fund on that  
4 July 1 exceeds two hundred thousand dollars, the allocation to  
5 the regulatory fund shall not be made and the total sum of the  
6 fees paid pursuant to section 523E.2 shall be deposited in the  
7 general fund of the state. The moneys in the regulatory fund  
8 shall be retained in the fund. The moneys are appropriated  
9 and, subject to authorization by the commissioner, may be used  
10 to pay auditors, audit expenses, investigative expenses, and  
11 the expenses of receiverships established pursuant to section  
12 523E.19. An annual assessment shall not be imposed if the  
13 current balance of the fund exceeds two hundred thousand  
14 dollars.

15 Sec. 14. Section 566A.7, Code 1991, is amended to read as  
16 follows:

17 566A.7 COMMISSION OR BONUS UNLAWFUL.

18 It shall be unlawful for any organization subject to the  
19 provisions of this chapter to pay or offer to pay to, or for  
20 any person, firm or corporation to receive directly or  
21 indirectly a commission or bonus or rebate or other thing of  
22 value, for or in connection with the sale of any interment  
23 space, lot or part thereof, in any cemetery described in  
24 section 566A.1 of this chapter. The provisions of this  
25 section shall not apply to a person regularly employed and  
26 supervised by such organization or to a person, firm,  
27 corporation, or other entity licensed under chapter 523A or  
28 523E that contracts with the cemetery to sell interment spaces  
29 or lots. The conduct of any person, firm, corporation, or  
30 other entity described in this section is the direct  
31 responsibility of the cemetery.

32 Sec. 15. Section 14 of this Act, being deemed of immediate  
33 importance, is effective upon enactment.

34 EXPLANATION

35 This bill amends provisions related to the regulatory

1 authority of the regulated industries unit in the insurance  
2 division of the department of commerce. Changes are made in  
3 the residential service contracts Act (chapter 523C),  
4 reporting requirements related to continuing care retirement  
5 facilities (chapter 523D), sales commission restrictions  
6 related to the sale of interment space (chapter 566A), and  
7 permissible uses of funds deposited in the insurance  
8 division's regulatory fund.

9 Sections 523A.20 and 523E.20 are amended to permit funds  
10 deposited in the insurance division's regulatory fund to be  
11 used to pay for audit expenses and authorize two annual  
12 assessments of five dollars per agreement related to the sale  
13 of funeral services and merchandise to fund audits and  
14 investigations of holders of establishment permits.

15 Sections 523C.3 and 523C.5 are amended to permit a service  
16 company to make a cash deposit with the treasurer of state in  
17 lieu of the bond or custodial account required to assure  
18 performance of the obligations under the residential service  
19 contracts. Section 523C.6 is amended to provide that a  
20 service company may include assets held by the company in a  
21 reserve account for purposes of determining the company's net  
22 worth. Section 523C.8 is amended to provide that a service  
23 company is prohibited from paying a commission resulting from  
24 the issuance, purchase, or acquisition of a residential  
25 service contract. However, the bill provides that a  
26 commission may be paid to an employee or commission sales-  
27 person who is the marketing agent of the service company or  
28 its parent company, subsidiary, or affiliate, as long as that  
29 person does not share or is not entitled to share in any real  
30 estate commission resulting from the underlying property  
31 transaction. Section 523C.11 is amended to permit a service  
32 company to maintain a policy of liability insurance sufficient  
33 to cover 100 percent of the claims exposure of the service  
34 company under its service contracts in lieu of the amount  
35 which the company would be required to maintain in the reserve

1 account related to those contracts. New sections 523C.18 and  
2 523C.19 are established and section 523C.13 is amended to  
3 provide that a willful violation of the bond, cash deposit, or  
4 custodial account requirements contained in section 523C.5 is  
5 a class "D" felony, and that the commissioner may issue a  
6 cease and desist order for a violation of any provision of  
7 chapter 523C.

8 Section 523D.3 is amended to provide that continuing care  
9 facilities must include a cash flow projection for their next  
10 fiscal year with the annual disclosure statement. The  
11 requirement that a narrative describing material differences  
12 between the income statement and balance sheet filed pursuant  
13 to chapter 523D and the actual operating results be filed is  
14 eliminated.

15 Section 566A.7 is amended to provide that a cemetery may  
16 pay commissions to nonemployees who hold permits pursuant to  
17 chapter 523A or 523E. This section is effective upon  
18 enactment.

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HOUSE AMENDMENT TO  
SENATE FILE 2179

S-5429

1 Amend Senate File 2179 as follows:  
2 1. Page 7, line 16, by inserting after the word  
3 "requirement" the following: "with respect to bronze  
4 merchandise".

RECEIVED FROM THE HOUSE

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S-5429 FILED MARCH 27, 1992  
*Senate Concurred 4/6 (p. 1223)*

SENATE FILE 2179  
FISCAL NOTE

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A fiscal note for Senate File 2179 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

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Senate File 2179 makes changes to the regulatory authority of the regulated industries unit in the Insurance Division of the Department of Commerce. Changes are made in authority relating to residential service contracts, reporting requirements related to continuing care retirement facilities, sales commission restrictions related to the sale of interment space, and permissible uses of funds deposited in the Insurance Division's Regulatory Fund.

Fiscal Impact: This bill will have no effect on State revenues or expenditures in FY 1993. The bill is estimated to increase revenues to the Insurance Regulatory Fund by \$40,000 to \$50,000 in FY 1994 and FY 1995.

Source: Department of Commerce - Insurance Division

(LSB 5198sv, MAS)

FILED MARCH 18, 1992

BY DENNIS PROUTY, FISCAL DIRECTOR

DOYLE, CH.

JENSEN

PALMER 8/12/92

SLIFE

VARN

SSB 2153

Commerce - Now -

SENATE/HOUSE FILE 2179  
BY (PROPOSED DEPARTMENT OF  
COMMERCE/INSURANCE DIVISION  
BILL)

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

**A BILL FOR**

1 An Act relating to entities and subject matter under the  
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3 division of insurance, including residential service  
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14 hundred thousand dollars, the allocation to the regulatory  
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17 fund of the state. In addition, on May 1 of 1994 and 1995,  
18 the commissioner, to the extent necessary to fund audits,  
19 investigations, and receiverships, shall assess establishment  
20 permit holders five dollars for each agreement reported on the  
21 establishment permit holder's annual report of sales executed  
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1     Sec. 3. Section 523C.5, Code 1991, is amended to read as  
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9 issued by an authorized surety company and approved by the  
10 commissioner as to issuer, form, and contents or establish a  
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15 the commissioner. Notwithstanding chapter 17A, if a bond or  
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18 the required amount is not received by the commissioner on or  
19 before the effective date of cancellation, the license of the  
20 service company is automatically revoked as of the date the  
21 bond or custodial account ceases to be in effect. A service  
22 company whose license is revoked under this section may file  
23 an application for a new license pursuant to section 523C.3.

24     The bond or custodial account posted by a service company  
25 pursuant to this section shall be for the benefit of, and  
26 subject to recovery thereon by any residential service  
27 contract holder sustaining actionable injury due to the  
28 failure of the service company to faithfully perform its  
29 obligations under a residential service contract because of  
30 insolvency of the service company.

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32 and furnishes to the commissioner satisfactory proof that it  
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4 held in a custodial account which the commissioner believes  
5 necessary to protect the holders of residential service  
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7 2. In lieu of the bond or custodial account required by  
8 this section, the service company may deposit with the  
9 treasurer of state a cash deposit in the same amount. The  
10 treasurer of state shall not refund a deposit until sixty days  
11 after the service company has ceased doing business in this  
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14 established which complies with this section.

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31 agent who is the marketing representative of the service  
32 company or its parent company, subsidiary, or affiliate on the  
33 sale or marketing of a residential service contract, provided  
34 the employee or commission sales agent is not a real estate  
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1 with, a real estate commission generated by the underlying  
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4 fees, if an inspection of the property to be the subject to a  
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6 and if the inspection fee is reasonably related to the  
7 services performed.

8 Sec. 6. Section 523C.11, Code 1991, is amended to read as  
9 follows:

10 523C.11 RESERVE ACCOUNT.

11 1. A service company shall maintain in an independent  
12 depository a reserve account ~~containing-cash-or-marketable~~  
13 ~~securities~~ consisting of unencumbered assets in an amount  
14 equal to fifty percent of aggregate annual fees collected on  
15 residential service contracts issued and outstanding in this  
16 state, if any, less actual expenditures for services rendered  
17 under those contracts. The assets shall be held in the form  
18 of cash or marketable securities.

19 2. The depository shall make its records concerning the  
20 service company reserve accounts available to the commissioner  
21 or a designee for inspection on the premises of the depository  
22 and, upon request, shall produce documents and records which  
23 the commissioner determines are necessary to verify the value  
24 and safety of the assets of the reserve account.

25 ~~3. The-service-company-shall-submit-with-each-license~~  
26 ~~renewal-application-an-affidavit-by-an-authorized-officer-of~~  
27 ~~the-depository-attesting-to-the-balance-in-the-reserve-account~~  
28 ~~and-that-the-reserve-account-is-being-maintained-in-accordance~~  
29 ~~with-this-chapter.~~

30 4. The commissioner may by rule designate institutions  
31 authorized to act as a depository under this section and may  
32 establish requirements for reserve accounts, reserve account  
33 agreements, or the method of valuing marketable securities  
34 which the commissioner believes necessary to protect the  
35 holders of residential service contracts issued and

1 outstanding in this state.

2 4. For purposes of this section, aggregate annual fees  
3 does not include the annual fees collected on residential  
4 service contracts for which the service company has purchased  
5 contractual liability insurance which demonstrates to the  
6 satisfaction of the commissioner that one hundred percent of  
7 the service company's claim exposure related to such service  
8 contracts is covered by the insurance. The contractual  
9 liability insurance must be obtained from an insurer  
10 authorized to do business in this state and shall contain the  
11 following provisions:

12 a. If the service company is unable to fulfill its  
13 obligations under its contracts issued in this state for any  
14 reason, including insolvency, bankruptcy, or dissolution, the  
15 contractual liability insurer will pay losses and unearned  
16 premiums under such plans directly to the persons making  
17 claims under the contracts.

18 b. The insurer issuing the policy shall assume full  
19 responsibility for the administration of claims in the event  
20 of the inability of the association to do so.

21 c. The insurer shall not cancel or refuse to renew the  
22 policy unless sixty days' written notice has been given to the  
23 commissioner by the insurer before the date of the  
24 cancellation or nonrenewal.

25 Sec. 7. Section 523C.13, unnumbered paragraph 1, Code  
26 1991, is amended to read as follows:

27 The commissioner shall adopt rules which regulate  
28 residential service contracts to prohibit misrepresentation,  
29 false advertising, defamation, boycotts, coercion,  
30 intimidation, false statements and entries and unfair  
31 discrimination or practices. If the commissioner finds that a  
32 person has violated the rules adopted under this section, the  
33 commissioner ~~shall issue an order to that person to cease and~~  
34 ~~desist and~~ may order any or all of the following:

35 Sec. 8. NEW SECTION. 523C.18 VIOLATIONS.

1 A person who willfully violates section 523C.5 is, upon  
2 conviction, guilty of a class "D" felony.

3 Sec. 9. NEW SECTION. 523C.19 CEASE AND DESIST ORDERS.

4 If an investigation provides reasonable evidence that a  
5 person violated any provision of this chapter or any rule  
6 adopted pursuant to this chapter, the commissioner may issue  
7 an order directed at the person to cease and desist from  
8 engaging in the act or practice resulting in the violation.

9 Sec. 10. Section 523D.3, subsection 2, Code Supplement  
10 1991, is amended to read as follows:

11 2. The provider shall file with the insurance division of  
12 insurance, annually within five months following the end of  
13 the provider's fiscal year, an annual disclosure statement  
14 which shall contain the information required by this chapter  
15 for the initial disclosure statement. The annual disclosure  
16 statement shall also be accompanied by a narrative describing:

17 a. Any material differences between the pro forma income  
18 statement cash flow projection filed pursuant to this chapter  
19 as part of the most recent annual disclosure statement and the  
20 actual results of operations during the fiscal year, if the  
21 material differences substantially affect the financial safety  
22 or soundness of the community.

23 ~~b. Any material differences between the pro forma balance~~  
24 ~~sheet and the actual results of operations during the fiscal~~  
25 ~~year.~~

26 ~~The annual disclosure statement shall also contain a~~ A  
27 revised pro forma income statement cash flow projection for  
28 the next fiscal year.

29 Sec. 11. Section 523D.5, subsection 1, paragraph f, Code  
30 Supplement 1991, is amended to read as follows:

31 f. If the new facility or proposed expansion offers a  
32 promise to provide nursing or health care services to  
33 residents in the future pursuant to contracts effective for  
34 the life of the resident or a period in excess of one year in  
35 consideration for an entrance fee, an actuarial forecast in a

1 form satisfactory to the commissioner, which identifies the  
2 qualifications of the actuary or actuaries preparing the  
3 forecast.

4 Sec. 12. Section 523E.1, subsection 4, unnumbered  
5 paragraph 2, Code 1991, is amended to read as follows:

6 This section does not apply to payments for merchandise  
7 delivered to the purchaser. Delivery includes storage in a  
8 warehouse under the control of the seller or any other  
9 warehouse or storage facility approved by the commissioner  
10 when a receipt of ownership in the name of the purchaser is  
11 delivered to the purchaser, the merchandise is insured against  
12 loss, the merchandise is protected against damage, title has  
13 been transferred to the purchaser, the merchandise is  
14 appropriately identified and described in a manner that it can  
15 be distinguished from other similar items of merchandise  
16 unless this identification requirement is waived by the  
17 commissioner by rule, the method of storage allows for visual  
18 audits of the merchandise, and the annual reporting  
19 requirements of section 523E.2, subsection 1, are satisfied.

20 Sec. 13. Section 523E.20, Code Supplement 1991, is amended  
21 to read as follows:

22 523E.20 INSURANCE DIVISION'S REGULATORY FUND.

23 The insurance division may authorize the creation of a  
24 special revenue fund in the state treasury, to be known as the  
25 insurance division regulatory fund. Commencing July 1, 1990,  
26 and annually thereafter, the commissioner shall allocate from  
27 the fees paid pursuant to section 523E.2, one dollar for each  
28 agreement reported on an establishment permit holder's annual  
29 report for deposit to the regulatory fund. The remainder of  
30 the fees collected pursuant to section 523E.2 shall be  
31 deposited into the general fund of the state. In addition, on  
32 May 1 of 1994 and 1995, the commissioner, to the extent  
33 necessary to fund audits, investigations, and receiverships,  
34 shall assess establishment permit holders five dollars for  
35 each agreement reported on the establishment permit holder's

1 annual report of sales executed during the preceding year,  
2 which shall be deposited in the insurance division regulatory  
3 fund. However, if the balance of the regulatory fund on that  
4 July 1 exceeds two hundred thousand dollars, the allocation to  
5 the regulatory fund shall not be made and the total sum of the  
6 fees paid pursuant to section 523E.2 shall be deposited in the  
7 general fund of the state. The moneys in the regulatory fund  
8 shall be retained in the fund. The moneys are appropriated  
9 and, subject to authorization by the commissioner, may be used  
10 to pay auditors, audit expenses, investigative expenses, and  
11 the expenses of receiverships established pursuant to section  
12 523E.19. An annual assessment shall not be imposed if the  
13 current balance of the fund exceeds two hundred thousand  
14 dollars.

15 Sec. 14. Section 566A.7, Code 1991, is amended to read as  
16 follows:

17 566A.7 COMMISSION OR BONUS UNLAWFUL.

18 It shall be unlawful for any organization subject to the  
19 provisions of this chapter to pay or offer to pay to, or for  
20 any person, firm or corporation to receive directly or  
21 indirectly a commission or bonus or rebate or other thing of  
22 value, for or in connection with the sale of any interment  
23 space, lot or part thereof, in any cemetery described in  
24 section 566A.1 of this chapter. The provisions of this  
25 section shall not apply to a person regularly employed and  
26 supervised by such organization or to a person, firm,  
27 corporation, or other entity licensed under chapter 523A or  
28 523E that contracts with the cemetery to sell interment spaces  
29 or lots. The conduct of any person, firm, corporation, or  
30 other entity described in this section is the direct  
31 responsibility of the cemetery.

32 Sec. 15. Section 14 of this Act, being deemed of immediate  
33 importance, is effective upon enactment.

34 EXPLANATION

35 This bill amends provisions related to the regulatory

1 authority of the regulated industries unit in the insurance  
2 division of the department of commerce. Changes are made in  
3 the residential service contracts Act (chapter 523C),  
4 reporting requirements related to continuing care retirement  
5 facilities (chapter 523D), sales commission restrictions  
6 related to the sale of interment space (chapter 566A), and  
7 permissible uses of funds deposited in the insurance  
8 division's regulatory fund.

9 Sections 523A.20 and 523E.20 are amended to permit funds  
10 deposited in the insurance division's regulatory fund to be  
11 used to pay for audit expenses and authorize two annual  
12 assessments of five dollars per agreement related to the sale  
13 of funeral services and merchandise to fund audits and  
14 investigations of holders of establishment permits.

15 Sections 523C.3 and 523C.5 are amended to permit a service  
16 company to make a cash deposit with the treasurer of state in  
17 lieu of the bond or custodial account required to assure  
18 performance of the obligations under the residential service  
19 contracts. Section 523C.6 is amended to provide that a  
20 service company may include assets held by the company in a  
21 reserve account for purposes of determining the company's net  
22 worth. Section 523C.8 is amended to provide that a service  
23 company is prohibited from paying a commission resulting from  
24 the issuance, purchase, or acquisition of a residential  
25 service contract. However, the bill provides that a  
26 commission may be paid to an employee or commission sales-  
27 person who is the marketing agent of the service company or  
28 its parent company, subsidiary, or affiliate, as long as that  
29 person does not share or is not entitled to share in any real  
30 estate commission resulting from the underlying property  
31 transaction. Section 523C.11 is amended to permit a service  
32 company to maintain a policy of liability insurance sufficient  
33 to cover 100 percent of the claims exposure of the service  
34 company under its service contracts in lieu of the amount  
35 which the company would be required to maintain in the reserve

1 account related to those contracts. New sections 523C.18 and  
2 523C.19 are established and section 523C.13 is amended to  
3 provide that a willful violation of the bond, cash deposit, or  
4 custodial account requirements contained in section 523C.5 is  
5 a class "D" felony, and that the commissioner may issue a  
6 cease and desist order for a violation of any provision of  
7 chapter 523C.

8 Section 523D.3 is amended to provide that continuing care  
9 facilities must include a cash flow projection for their next  
10 fiscal year with the annual disclosure statement. The  
11 requirement that a narrative describing material differences  
12 between the income statement and balance sheet filed pursuant  
13 to chapter 523D and the actual operating results be filed is  
14 eliminated.

15 Section 566A.7 is amended to provide that a cemetery may  
16 pay commissions to nonemployees who hold permits pursuant to  
17 chapter 523A or 523E. This section is effective upon  
18 enactment.

19 BACKGROUND STATEMENT

20 SUBMITTED BY THE AGENCY

21 This bill is intended to provide greater regulatory  
22 flexibility while maintaining consumer protection, enhance  
23 enforcement powers and fund investigative and audit expenses,  
24 clarify questions of interpretation, and provide greater  
25 assurance of statutory compliance.

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SENATE FILE 2179

AN ACT

RELATING TO ENTITIES AND SUBJECT MATTER UNDER THE REGULATORY AUTHORITY OF THE REGULATED INDUSTRIES UNIT OF THE DIVISION OF INSURANCE, INCLUDING RESIDENTIAL SERVICE CONTRACTS, CONTINUING CARE RETIREMENT COMMUNITIES, PERPETUAL CARE CEMETERIES, FUNERAL SERVICES AND MERCHANDISE, AND CEMETERY MERCHANDISE, AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 523A.20, Code Supplement 1991, is amended to read as follows:

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 general fund of the state. However, 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 general fund of the state. In addition, on May 1 of 1994 and 1995, the commissioner, to the extent necessary to fund audits, investigations, and receiverships, shall assess establishment permit holders five dollars for each agreement reported on the establishment permit holder's annual report of sales executed during the preceding year, which shall be deposited in the insurance division regulatory fund. The moneys in the

regulatory fund shall be retained in the fund. The moneys are appropriated and, subject to authorization by the commissioner, may be used to pay auditors, audit expenses, investigative expenses, 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. 2. Section 523C.3, subsection 2, paragraph b, Code 1991, is amended to read as follows:

b. A surety bond, a copy of the receipt from the treasurer of state that a cash deposit has been made, or a copy of a custodial agreement as provided in section 523C.5.

Sec. 3. Section 523C.5, Code 1991, is amended to read as follows:

523C.5 REQUIRED BOND, CASH DEPOSIT, OR CUSTODIAL ACCOUNT.

1. To assure the faithful performance of obligations under residential service contracts issued and outstanding in this state, a service company shall, prior to the issuance or renewal of a license, file with the commissioner a surety bond in the amount of one hundred thousand dollars, which has been issued by an authorized surety company and approved by the commissioner as to issuer, form, and contents or establish a custodial account in the amount of one hundred thousand dollars at an authorized depository. The bond or custodial account shall not be canceled or be subject to cancellation unless thirty days' advance notice in writing is filed with the commissioner. Notwithstanding chapter 17A, if a bond or custodial account is canceled for any reason and a new bond or notice that a new custodial account has been established in the required amount is not received by the commissioner on or before the effective date of cancellation, the license of the service company is automatically revoked as of the date the bond or custodial account ceases to be in effect. A service company whose license is revoked under this section may file an application for a new license pursuant to section 523C.3.

The bond or custodial account posted by a service company pursuant to this section shall be for the benefit of, and subject to recovery thereon by any residential service contract holder sustaining actionable injury due to the failure of the service company to faithfully perform its obligations under a residential service contract because of insolvency of the service company.

If a service company ceases to do business in this state and furnishes to the commissioner satisfactory proof that it has discharged all obligations to contract holders, the surety bond or custodial account shall be released.

The commissioner may by rule designate institutions authorized to act as a depository under this section and establish requirements for custodians, custodial agreements, custodial accounts, or the method of valuing noncash assets held in a custodial account which the commissioner believes necessary to protect the holders of residential service contracts issued and outstanding in this state.

2. In lieu of the bond or custodial account required by this section, the service company may deposit with the treasurer of state a cash deposit in the same amount. The treasurer of state shall not refund a deposit until sixty days after the service company has ceased doing business in this state, a bond has been filed with the commissioner which complies with this section, or a custodial account is established which complies with this section.

Sec. 4. Section 523C.6, unnumbered paragraph 2, Code 1991, is amended to read as follows:

For purposes of this chapter, "net worth" means the excess of all assets over all liabilities including required reserves, ~~but excluding assets held in a custodial account under section 523E-5;~~ computed in accordance with generally accepted accounting principles. At least twenty thousand dollars of net worth shall consist of paid-in capital.

Sec. 5. Section 523C.8, Code 1991, is amended by striking the section and inserting in lieu thereof the following:  
523C.8 REBATES AND COMMISSIONS.

A service company shall not pay a commission to any person as an inducement or compensation for the issuance, purchase, or acquisition of a residential service contract. However, this section does not prohibit payment of an override commission or marketing fee to an employee or commission sales agent who is the marketing representative of the service company or its parent company, subsidiary, or affiliate on the sale or marketing of a residential service contract, provided the employee or commission sales agent is not a real estate licensee sharing in or entitled to share in, or affiliated with, a real estate commission generated by the underlying real property transaction. This section also does not prohibit bona fide payments or reimbursements for inspection fees, if an inspection of the property to be the subject of a residential service contract is required by a service company and if the inspection fee is reasonably related to the services performed.

Sec. 6. Section 523C.11, Code 1991, is amended to read as follows:

523C.11 RESERVE ACCOUNT.

1. A service company shall maintain in an independent depository a reserve account containing ~~cash or marketable securities consisting of unencumbered assets~~ in an amount equal to fifty percent of aggregate annual fees collected on residential service contracts issued and outstanding in this state, if any, less actual expenditures for services rendered under those contracts. The assets shall be held in the form of cash or marketable securities.

2. The depository shall make its records concerning the service company reserve accounts available to the commissioner or a designee for inspection on the premises of the depository and, upon request, shall produce documents and records which

the commissioner determines are necessary to verify the value and safety of the assets of the reserve account.

~~3. The service company shall submit with each license renewal application an affidavit by an authorized officer of the depository attesting to the balance in the reserve account and that the reserve account is being maintained in accordance with this chapter.~~

4. The commissioner may by rule designate institutions authorized to act as a depository under this section and may establish requirements for reserve accounts, reserve account agreements, or the method of valuing marketable securities which the commissioner believes necessary to protect the holders of residential service contracts issued and outstanding in this state.

4. For purposes of this section, aggregate annual fees does not include the annual fees collected on residential service contracts for which the service company has purchased contractual liability insurance which demonstrates to the satisfaction of the commissioner that one hundred percent of the service company's claim exposure related to such service contracts is covered by the insurance. The contractual liability insurance must be obtained from an insurer authorized to do business in this state and shall contain the following provisions:

a. If the service company is unable to fulfill its obligations under its contracts issued in this state for any reason, including insolvency, bankruptcy, or dissolution, the contractual liability insurer will pay losses and unearned premiums under such plans directly to the persons making claims under the contracts.

b. The insurer issuing the policy shall assume full responsibility for the administration of claims in the event of the inability of the association to do so.

c. The insurer shall not cancel or refuse to renew the policy unless sixty days' written notice has been given to the

commissioner by the insurer before the date of the cancellation or nonrenewal.

Sec. 7. Section 523C.13, unnumbered paragraph 1, Code 1991, is amended to read as follows:

The commissioner shall adopt rules which regulate residential service contracts to prohibit misrepresentation, false advertising, defamation, boycotts, coercion, intimidation, false statements and entries and unfair discrimination or practices. If the commissioner finds that a person has violated the rules adopted under this section, the commissioner ~~shall issue an order to that person to cease and desist and~~ may order any or all of the following:

Sec. 8. NEW SECTION. 523C.18 VIOLATIONS.

A person who willfully violates section 523C.5 is, upon conviction, guilty of a class "D" felony.

Sec. 9. NEW SECTION. 523C.19 CEASE AND DESIST ORDERS.

If an investigation provides reasonable evidence that a person violated any provision of this chapter or any rule adopted pursuant to this chapter, the commissioner may issue an order directed at the person to cease and desist from engaging in the act or practice resulting in the violation.

Sec. 10. Section 523D.3, subsection 2, Code Supplement 1991, is amended to read as follows:

2. The provider shall file with the insurance division of insurance, annually within five months following the end of the provider's fiscal year, an annual disclosure statement which shall contain the information required by this chapter for the initial disclosure statement. The annual disclosure statement shall also be accompanied by a narrative describing:

a. Any material differences between the pro forma income statement cash flow projection filed pursuant to this chapter as part of the most recent annual disclosure statement and the actual results of operations during the fiscal year, if the material differences substantially affect the financial safety or soundness of the community.

~~b. Any material differences between the pro forma balance sheet and the actual results of operations during the fiscal year.~~

~~The annual disclosure statement shall also contain a A revised pro forma income statement cash flow projection for the next fiscal year.~~

Sec. 11. Section 523D.5, subsection 1, paragraph f, Code Supplement 1991, is amended to read as follows:

f. If the new facility or proposed expansion offers a promise to provide nursing or health care services to residents in the future pursuant to contracts effective for the life of the resident or a period in excess of one year in consideration for an entrance fee, an actuarial forecast in a form satisfactory to the commissioner, which identifies the qualifications of the actuary or actuaries preparing the forecast.

Sec. 12. Section 523E.1, subsection 4, unnumbered paragraph 2, Code 1991, is amended to read as follows:

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 unless this identification requirement with respect to bronze merchandise is waived by the commissioner by rule, 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. 13. Section 523E.20, Code Supplement 1991, is amended to read as follows:

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 general fund of the state. In addition, on May 1 of 1994 and 1995, the commissioner, to the extent necessary to fund audits, investigations, and receiverships, shall assess establishment permit holders five dollars for each agreement reported on the establishment permit holder's annual report of sales executed during the preceding year, which shall be deposited in the insurance division regulatory fund. However, 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 general fund of the state. The moneys in the regulatory fund shall be retained in the fund. The moneys are appropriated and, subject to authorization by the commissioner, may be used to pay auditors, audit expenses, investigative expenses, 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. 14. Section 566A.7, Code 1991, is amended to read as follows:

566A.7 COMMISSION OR BONUS UNLAWFUL.

It shall be unlawful for any organization subject to the provisions of this chapter to pay or offer to pay to, or for any person, firm or corporation to receive directly or indirectly a commission or bonus or rebate or other thing of value, for or in connection with the sale of any interest

space, lot or part thereof, in any cemetery described in section 566A.1 of this chapter. The provisions of this section shall not apply to a person regularly employed and supervised by such organization or to a person, firm, corporation, or other entity licensed under chapter 523A or 523E that contracts with the cemetery to sell interment spaces or lots. The conduct of any person, firm, corporation, or other entity described in this section is the direct responsibility of the cemetery.

Sec. 15. Section 14 of this Act, being deemed of immediate importance, is effective upon enactment.

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MICHAEL E. GRONSTAL  
President of the Senate

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ROBERT C. ARNOULD  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2179, Seventy-fourth General Assembly.

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JOHN F. DWYER  
Secretary of the Senate

Approved April 14, 1992

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TERRY E. BRANSTAD  
Governor

**SF 2179**