

REPRINTED

FILED JAN 30 1996

SENATE FILE 2101
BY COMMITTEE ON HUMAN RESOURCES

(SUCCESSOR TO SSB 2043)

Passed Senate, ^(P. 603) Date 3/5/96 Passed House, ^(P. 1313) Date 4/2/96
Vote: Ayes 48 Nays 0 Vote: Ayes 96 Nays 0
Approved April 15, 1996

A BILL FOR

1 An Act relating to the disbursement of the remaining funds in a
2 nonguaranteed irrevocable burial trust fund following
3 satisfaction of payment in accordance with an agreement for
4 funeral merchandise and funeral services.

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

SENATE FILE 2101

S-5044

1 Amend Senate File 2101 as follows:
2 1. Page 1, by inserting after line 24 the
3 following:
4 "____. "Next-of-kin" means the surviving spouse and
5 heirs at law of the deceased."
6 2. By striking page 1, line 34, through page 2,
7 line 13, and inserting the following:
8 "b. Following a period of at least sixty days
9 after the mailing of the notice to the director, the
10 seller shall disburse any remaining funds from the
11 burial trust fund as follows:
12 (1) If within the sixty-day period the seller
13 receives a claim from the personal representative of
14 the deceased, any remaining funds shall be disbursed
15 to the personal representative, notwithstanding any
16 claim by the director.
17 (2) If within the sixty-day period the seller has
18 not received a claim from the personal representative
19 of the deceased but receives a claim from the
20 director, the seller shall disburse the remaining
21 funds up to the amount of the claim to the director.
22 (3) Any remaining funds not disposed of pursuant
23 to subparagraphs (1) and (2) shall be disbursed to any
24 person who is identified as the next-of-kin of the
25 deceased in an affidavit submitted in accordance with
26 subsection 6."

S.F. 2101

By ELAINE SZYMONIAK

Adopted 3/5/96 (P. 602)
S-5044 FILED FEBRUARY 6, 1996

DET 1997

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

3 k. State that if, after all payments are made in
4 accordance with the conditions and terms of the agreement for
5 funeral merchandise or funeral services, any funds remaining
6 remain in an the nonguaranteed irrevocable burial trust fund
7 ~~from which the costs of funeral merchandise and funeral~~
8 ~~services are paid shall be returned to the estate of the~~
9 ~~deceased individual for purposes of probate pursuant to~~
10 ~~chapter 633 or if the estate is not subject to probate and if~~
11 ~~the deceased was a recipient of medical assistance and a debt~~
12 ~~is due the department of human services pursuant to section~~
13 ~~249A.57, the remaining funds shall be available for payment of~~
14 the debt, the seller shall disburse the remaining funds to a
15 personal representative of the deceased as defined in section
16 633.3, or to the deceased's surviving next-of-kin, or to the
17 director of human services, in accordance with section
18 523A.8A.

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

- 21 1. As used in this section:
- 22 a. "Burial trust fund" means a nonguaranteed irrevocable
 - 23 burial trust fund.
 - 24 b. "Director" means the director of human services.
 - 25 c. "Personal representative" means personal representative
 - 26 as defined in section 633.3.

27 2. If funds remain in a nonguaranteed irrevocable burial
28 trust fund after all payments are made in accordance with the
29 conditions and terms of the agreement for funeral merchandise
30 or funeral services, the seller shall comply with all of the
31 following:

- 32 a. The seller shall provide written notice by mail to the
- 33 director in accordance with subsection 3.
- 34 b. Following a period of at least sixty days after the
- 35 mailing of the notice to the director, if the director has not

1 responded to the seller regarding a claim to the remaining
2 funds, the seller shall disburse any remaining funds from the
3 burial trust fund as follows:

4 (1) If within the sixty-day period the seller receives a
5 claim from the personal representative of the deceased, any
6 remaining funds shall be disbursed to the personal
7 representative.

8 (2) If within the sixty-day period the seller has not
9 received a response regarding a claim by the director and has
10 not received a claim from the personal representative, any
11 remaining funds shall be disbursed to any person who is
12 identified as the next-of-kin of the deceased, if the person
13 has filed an affidavit in accordance with subsection 5.

14 3. The notice mailed to the director shall meet all of the
15 following requirements and is subject to all of the following
16 conditions:

17 a. The notice shall be mailed with postage prepaid.

18 b. If the notice is sent by regular mail, the sixty-day
19 period for receipt of a response is deemed to commence three
20 days following the date of mailing.

21 c. If the notice is sent by certified mail, the sixty-day
22 period for receipt of a response is deemed to commence on the
23 date of mailing.

24 d. The notice shall provide all of the following
25 information:

26 (1) The current name, address, and telephone number of the
27 seller.

28 (2) The full name of the deceased.

29 (3) The date of the deceased's death.

30 (4) The amount of the funds remaining in the burial trust
31 fund.

32 (5) A statement that any claim by the director shall be
33 received by the seller within sixty days of the date of
34 mailing of the notice.

35 e. A notice in substantially the following form complies

1 with this subsection:

2 "To: The Director of Human Services

3 From: (Seller's Name, Current Address, and Telephone
4 Number)

5 You are hereby notified that (name of deceased), who had an
6 irrevocable burial trust fund, has died, that final payment
7 for funeral merchandise and funeral services has been made,
8 and that (remaining amount) remains in the irrevocable burial
9 trust fund.

10 The above-named seller must receive a written response
11 regarding any claim by the director within sixty days of the
12 mailing of this notice to the director.

13 If the above-named seller does not receive a written
14 response regarding a claim by the director within sixty days
15 of the mailing of this notice, the seller may dispose of the
16 remaining funds in accordance with section 523A.8A, Code of
17 Iowa."

18 4. Upon receipt of the seller's written notice, the
19 director shall determine if a debt is due the department of
20 human services pursuant to section 249A.5. If the director
21 determines that a debt is owing, the director shall provide a
22 written response to the seller within sixty days of the
23 mailing of the seller's notice. If the director does not
24 respond with a claim within the sixty-day period, any claim
25 made by the director shall not be enforceable against the
26 seller, the trust, or a trustee.

27 5. A personal representative who wishes to make a claim
28 shall send written notice of the claim to the seller. If the
29 seller does not receive any claim from a personal
30 representative within the sixty-day period provided for
31 response by the director regarding a claim, the claim of the
32 personal representative shall not be enforceable against the
33 seller, the trust, or a trustee.

34 6. Any person other than a personal representative or the
35 director claiming an interest in the remaining funds shall

1 submit all of the following in an affidavit claiming an
2 interest:

3 a. The full name, current address, and telephone number of
4 the claimant.

5 b. The claimant's relationship to the deceased.

6 c. The name of any surviving next-of-kin of the deceased,
7 and the relationship of any named surviving next-of-kin.

8 d. That the claimant has no knowledge of the existence of
9 a personal representative for the deceased's estate.

10 7. The seller may retain not more than fifty dollars of
11 the remaining funds in the burial trust fund for the
12 administrative expenses associated with the requirements of
13 this section.

14 8. If the funds remaining in a burial trust fund are
15 disbursed in accordance with the requirements of this section,
16 the seller, the burial trust fund, and any trustee shall not
17 be liable to the director, the estate of the deceased, any
18 personal representative, or any other interested person for
19 the remaining funds and any lien imposed by the director shall
20 be unenforceable against the seller, the burial trust fund, or
21 any trustee.

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

24 k. State that if, after all payments are made in
25 accordance with the conditions and terms of the agreement for
26 cemetery merchandise, any funds remaining remain in an the
27 nonguaranteed irrevocable burial trust fund from-which
28 cemetery-merchandise-costs-are-paid-shall-be-returned-to-the
29 estate-of-the-deceased-individual-for-purposes-of-probate
30 pursuant-to-chapter-633-or-if-the-estate-is-not-subject-to
31 probate-and-if-the-deceased-was-a-recipient-of-medical
32 assistance-and-a-debt-is-due-the-department-of-human-services
33 pursuant-to-section-249A.57,-the-remaining-funds-shall-be
34 available-for-payment-of-the-debt, the seller shall disburse
35 the remaining funds to a personal representative of the

1 deceased as defined in section 633.3, or to the deceased's
2 surviving next-of-kin, or to the director of human services,
3 in accordance with section 523A.8A.

4 EXPLANATION

5 This bill relates to the disbursement of funds remaining in
6 a nonguaranteed irrevocable burial trust fund. Under current
7 law, following final payment of any funeral merchandise and
8 funeral services required under a funeral merchandise and
9 funeral services agreement, if the estate of the deceased is
10 not subject to probate, and if the deceased was a recipient of
11 medical assistance, the department of human services is
12 entitled to any remaining funds for payment of any medical
13 assistance debt due the department. Due to the confidential
14 nature of medical assistance records, however, the department
15 is unable to notify a seller of funeral merchandise and
16 services of the existence of the debt. The bill provides a
17 procedure for a seller of funeral merchandise and services to
18 notify the director of human services of any funds remaining
19 in a burial trust fund and also provides for the disbursement
20 of the remaining funds to either a personal representative or
21 the next-of-kin of the deceased, if the director does not
22 respond with a claim within 60 days of the mailing of the
23 notice.

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

3 k. State that if, after all payments are made in
4 accordance with the conditions and terms of the agreement for
5 funeral merchandise or funeral services, any funds remaining
6 remain in an the nonguaranteed irrevocable burial trust fund
7 ~~from which the costs of funeral merchandise and funeral~~
8 ~~services are paid shall be returned to the estate of the~~
9 ~~deceased individual for purposes of probate pursuant to~~
10 ~~chapter 633 or if the estate is not subject to probate and if~~
11 ~~the deceased was a recipient of medical assistance and a debt~~
12 ~~is due the department of human services pursuant to section~~
13 ~~249A.57 the remaining funds shall be available for payment of~~
14 ~~the debt,~~ the seller shall disburse the remaining funds to a
15 personal representative of the deceased as defined in section
16 633.3, or to the deceased's surviving next-of-kin, or to the
17 director of human services, in accordance with section
18 523A.8A.

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

21 1. As used in this section:

22 a. "Burial trust fund" means a nonguaranteed irrevocable
23 burial trust fund.

24 b. "Director" means the director of human services.

25 c. "Next-of-kin" means the surviving spouse and heirs at
26 law of the deceased.

27 d. "Personal representative" means personal representative
28 as defined in section 633.3.

29 2. If funds remain in a nonguaranteed irrevocable burial
30 trust fund after all payments are made in accordance with the
31 conditions and terms of the agreement for funeral merchandise
32 or funeral services, the seller shall comply with all of the
33 following:

34 a. The seller shall provide written notice by mail to the
35 director in accordance with subsection 3.

1 b. Following a period of at least sixty days after the
2 mailing of the notice to the director, the seller shall
3 disburse any remaining funds from the burial trust fund as
4 follows:

5 (1) If within the sixty-day period the seller receives a
6 claim from the personal representative of the deceased, any
7 remaining funds shall be disbursed to the personal
8 representative, notwithstanding any claim by the director.

9 (2) If within the sixty-day period the seller has not
10 received a claim from the personal representative of the
11 deceased but receives a claim from the director, the seller
12 shall disburse the remaining funds up to the amount of the
13 claim to the director.

14 (3) Any remaining funds not disposed of pursuant to
15 subparagraphs (1) and (2) shall be disbursed to any person who
16 is identified as the next-of-kin of the deceased in an
17 affidavit submitted in accordance with subsection 6.

18 3. The notice mailed to the director shall meet all of the
19 following requirements and is subject to all of the following
20 conditions:

21 a. The notice shall be mailed with postage prepaid.

22 b. If the notice is sent by regular mail, the sixty-day
23 period for receipt of a response is deemed to commence three
24 days following the date of mailing.

25 c. If the notice is sent by certified mail, the sixty-day
26 period for receipt of a response is deemed to commence on the
27 date of mailing.

28 d. The notice shall provide all of the following
29 information:

30 (1) The current name, address, and telephone number of the
31 seller.

32 (2) The full name of the deceased.

33 (3) The date of the deceased's death.

34 (4) The amount of the funds remaining in the burial trust
35 fund.

1 (5) A statement that any claim by the director shall be
2 received by the seller within sixty days of the date of
3 mailing of the notice.

4 e. A notice in substantially the following form complies
5 with this subsection:

6 "To: The Director of Human Services

7 From: (Seller's Name, Current Address, and Telephone
8 Number)

9 You are hereby notified that (name of deceased), who had an
10 irrevocable burial trust fund, has died, that final payment
11 for funeral merchandise and funeral services has been made,
12 and that (remaining amount) remains in the irrevocable burial
13 trust fund.

14 The above-named seller must receive a written response
15 regarding any claim by the director within sixty days of the
16 mailing of this notice to the director.

17 If the above-named seller does not receive a written
18 response regarding a claim by the director within sixty days
19 of the mailing of this notice, the seller may dispose of the
20 remaining funds in accordance with section 523A.8A, Code of
21 Iowa."

22 4. Upon receipt of the seller's written notice, the
23 director shall determine if a debt is due the department of
24 human services pursuant to section 249A.5. If the director
25 determines that a debt is owing, the director shall provide a
26 written response to the seller within sixty days of the
27 mailing of the seller's notice. If the director does not
28 respond with a claim within the sixty-day period, any claim
29 made by the director shall not be enforceable against the
30 seller, the trust, or a trustee.

31 5. A personal representative who wishes to make a claim
32 shall send written notice of the claim to the seller. If the
33 seller does not receive any claim from a personal
34 representative within the sixty-day period provided for
35 response by the director regarding a claim, the claim of the

1 personal representative shall not be enforceable against the
2 seller, the trust, or a trustee.

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

7 a. The full name, current address, and telephone number of
8 the claimant.

9 b. The claimant's relationship to the deceased.

10 c. The name of any surviving next-of-kin of the deceased,
11 and the relationship of any named surviving next-of-kin.

12 d. That the claimant has no knowledge of the existence of
13 a personal representative for the deceased's estate.

14 7. The seller may retain not more than fifty dollars of
15 the remaining funds in the burial trust fund for the
16 administrative expenses associated with the requirements of
17 this section.

18 8. If the funds remaining in a burial trust fund are
19 disbursed in accordance with the requirements of this section,
20 the seller, the burial trust fund, and any trustee shall not
21 be liable to the director, the estate of the deceased, any
22 personal representative, or any other interested person for
23 the remaining funds and any lien imposed by the director shall
24 be unenforceable against the seller, the burial trust fund, or
25 any trustee.

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

28 k. State that if, after all payments are made in
29 accordance with the conditions and terms of the agreement for
30 cemetery merchandise, any funds remaining remain in an the
31 nonguaranteed irrevocable burial trust fund from-which
32 cemetery-merchandise-costs-are-paid-shall-be-returned-to-the
33 estate-of-the-deceased-individual-for-purposes-of-probate
34 pursuant-to-chapter-633-or-if-the-estate-is-not-subject-to
35 probate-and-if-the-deceased-was-a-recipient-of-medical

1 assistance-and-a-debt-is-due-the-department-of-human-services
2 pursuant-to-section-249A.5,--the-remaining-funds-shall-be
3 available-for-payment-of-the-debt, the seller shall disburse
4 the remaining funds to a personal representative of the
5 deceased as defined in section 633.3, or to the deceased's
6 surviving next-of-kin, or to the director of human services,
7 in accordance with section 523A.8A.

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Vilsack
Bartz
Szymoniak

Succeeded By
SF/HF 2101

SSB-2043
Human Resources

SENATE FILE _____
BY (PROPOSED COMMITTEE ON HUMAN
RESOURCES BILL BY CHAIR-
PERSON SZYMONIAK)

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

A BILL FOR

1 An Act relating to the disbursement of the remaining funds in a
2 nonguaranteed irrevocable burial trust fund following
3 satisfaction of payment in accordance with an agreement for
4 funeral merchandise and funeral services.

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

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

3 k. State that if, after all payments are made in
4 accordance with the conditions and terms of the agreement for
5 funeral merchandise or funeral services, any funds remaining
6 remain in an the nonguaranteed irrevocable burial trust fund
7 from which the costs of funeral merchandise and funeral
8 services are paid shall be returned to the estate of the
9 deceased individual for purposes of probate pursuant to
10 chapter 633 or if the estate is not subject to probate and if
11 the deceased was a recipient of medical assistance and a debt
12 is due the department of human services pursuant to section
13 249A-57 the remaining funds shall be available for payment of
14 the debt, the seller shall disburse the remaining funds to a
15 personal representative of the deceased as defined in section
16 633.3, or to the deceased's surviving next-of-kin, or to the
17 director of human services, in accordance with section
18 523A.8A.

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

21 1. As used in this section:

22 a. "Burial trust fund" means a nonguaranteed irrevocable
23 burial trust fund.

24 b. "Director" means the director of human services.

25 c. "Personal representative" means personal representative
26 as defined in section 633.3.

27 2. If funds remain in a nonguaranteed irrevocable burial
28 trust fund after all payments are made in accordance with the
29 conditions and terms of the agreement for funeral merchandise
30 or funeral services, the seller shall comply with all of the
31 following:

32 a. The seller shall provide written notice by mail to the
33 director in accordance with subsection 3.

34 b. Following a period of at least sixty days after the
35 mailing of the notice to the director, if the director has not

1 responded to the seller regarding a claim to the remaining
2 funds, the seller shall disburse any remaining funds from the
3 burial trust fund as follows:

4 (1) If within the sixty-day period the seller receives a
5 claim from the personal representative of the deceased, any
6 remaining funds shall be disbursed to the personal
7 representative.

8 (2) If within the sixty-day period the seller has not
9 received a response regarding a claim by the director and has
10 not received a claim from the personal representative, any
11 remaining funds shall be disbursed to any person who is
12 identified as the next-of-kin of the deceased, if the person
13 has filed an affidavit in accordance with subsection 5.

14 3. The notice mailed to the director shall meet all of the
15 following requirements and is subject to all of the following
16 conditions:

17 a. The notice shall be mailed with postage prepaid.

18 b. If the notice is sent by regular mail, the sixty-day
19 period for receipt of a response is deemed to commence three
20 days following the date of mailing.

21 c. If the notice is sent by certified mail, the sixty-day
22 period for receipt of a response is deemed to commence on the
23 date of mailing.

24 d. The notice shall provide all of the following
25 information:

26 (1) The current name, address, and telephone number of the
27 seller.

28 (2) The full name of the deceased.

29 (3) The date of the deceased's death.

30 (4) The amount of the funds remaining in the burial trust
31 fund.

32 (5) A statement that any claim by the director shall be
33 received by the seller within sixty days of the date of
34 mailing of the notice.

35 e. A notice in substantially the following form complies

S.F. _____ H.F. _____

1 with this subsection:

2 "To: The Director of Human Services

3 From: (Seller's Name, Current Address, and Telephone
4 Number)

5 You are hereby notified that (name of deceased), who had an
6 irrevocable burial trust fund, has died, that final payment
7 for funeral merchandise and funeral services has been made,
8 and that (remaining amount) remains in the irrevocable burial
9 trust fund.

10 The above-named seller must receive a written response
11 regarding any claim by the director within sixty days of the
12 mailing of this notice to the director.

13 If the above-named seller does not receive a written
14 response regarding a claim by the director within sixty days
15 of the mailing of this notice, the seller may dispose of the
16 remaining funds in accordance with section 523A.8A, Code of
17 Iowa."

18 4. Upon receipt of the seller's written notice, the
19 director shall determine if a debt is due the department of
20 human services pursuant to section 249A.5. If the director
21 determines that a debt is owing, the director shall provide a
22 written response to the seller within sixty days of the
23 mailing of the seller's notice. If the director does not
24 respond with a claim within the sixty-day period, any claim
25 made by the director shall not be enforceable against the
26 seller, the trust, or a trustee.

27 5. A personal representative who wishes to make a claim
28 shall send written notice of the claim to the seller. If the
29 seller does not receive any claim from a personal
30 representative within the sixty-day period provided for
31 response by the director regarding a claim, the claim of the
32 personal representative shall not be enforceable against the
33 seller, the trust, or a trustee.

34 6. Any person other than a personal representative or the
35 director claiming an interest in the remaining funds shall

1 submit all of the following in an affidavit claiming an
2 interest:

3 a. The full name, current address, and telephone number of
4 the claimant.

5 b. The claimant's relationship to the deceased.

6 c. The name of any surviving next-of-kin of the deceased,
7 and the relationship of any named surviving next-of-kin.

8 d. That the claimant has no knowledge of the existence of
9 a personal representative for the deceased's estate.

10 7. The seller may retain not more than fifty dollars of
11 the remaining funds in the burial trust fund for the
12 administrative expenses associated with the requirements of
13 this section.

14 8. If the funds remaining in a burial trust fund are
15 disbursed in accordance with the requirements of this section,
16 the seller, the burial trust fund, and any trustee shall not
17 be liable to the director, the estate of the deceased, any
18 personal representative, or any other interested person for
19 the remaining funds and any lien imposed by the director shall
20 be unenforceable against the seller, the burial trust fund, or
21 any trustee.

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

24 k. State that if, after all payments are made in
25 accordance with the conditions and terms of the agreement for
26 cemetery merchandise, any funds remaining remain in an the
27 nonguaranteed irrevocable burial trust fund from-which
28 ~~cemetery-merchandise-costs-are-paid-shall-be-returned-to-the~~
29 ~~estate-of-the-deceased-individual-for-purposes-of-probate~~
30 ~~pursuant-to-chapter-633-or-if-the-estate-is-not-subject-to~~
31 ~~probate-and-if-the-deceased-was-a-recipient-of-medical~~
32 ~~assistance-and-a-debt-is-due-the-department-of-human-services~~
33 ~~pursuant-to-section-249A.57-the-remaining-funds-shall-be~~
34 available-for-payment-of-the-debt, the seller shall disburse
35 the remaining funds to a personal representative of the

1 deceased as defined in section 633.3, or to the deceased's
2 surviving next-of-kin, or to the director of human services,
3 in accordance with section 523A.8A.

4 EXPLANATION

5 This bill relates to the disbursement of funds remaining in
6 a nonguaranteed irrevocable burial trust fund. Under current
7 law, following final payment of any funeral merchandise and
8 funeral services required under a funeral merchandise and
9 funeral services agreement, if the estate of the deceased is
10 not subject to probate, and if the deceased was a recipient of
11 medical assistance, the department of human services is
12 entitled to any remaining funds for payment of any medical
13 assistance debt due the department. Due to the confidential
14 nature of medical assistance records, however, the department
15 is unable to notify a seller of funeral merchandise and
16 services of the existence of the debt. The bill provides a
17 procedure for a seller of funeral merchandise and services to
18 notify the director of human services of any funds remaining
19 in a burial trust fund and also provides for the disbursement
20 of the remaining funds to either a personal representative or
21 the next-of-kin of the deceased, if the director does not
22 respond with a claim within 60 days of the mailing of the
23 notice.

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SENATE FILE 2101

AN ACT

RELATING TO THE DISBURSEMENT OF THE REMAINING FUNDS IN A NONGUARANTEED IRREVOCABLE BURIAL TRUST FUND FOLLOWING SATISFACTION OF PAYMENT IN ACCORDANCE WITH AN AGREEMENT FOR FUNERAL MERCHANDISE AND FUNERAL SERVICES.

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

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

k. State that if, after all payments are made in accordance with the conditions and terms of the agreement for funeral merchandise or funeral services, any funds remaining remain in an nonguaranteed irrevocable burial trust fund ~~from which the costs of funeral merchandise and funeral services are paid shall be returned to the estate of the deceased individual for purposes of probate pursuant to chapter 633 or if the estate is not subject to probate and if the deceased was a recipient of medical assistance and a debt is due the department of human services pursuant to section 249A-57 the remaining funds shall be available for payment of the debt, the seller shall disburse the remaining funds to a personal representative of the deceased as defined in section 633.3, or to the deceased's surviving next-of-kin, or to the director of human services, in accordance with section 523A.8A.~~

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

1. As used in this section:
 - a. "Burial trust fund" means a nonguaranteed irrevocable burial trust fund.
 - b. "Director" means the director of human services.
 - c. "Next-of-kin" means the surviving spouse and heirs at law of the deceased.

d. "Personal representative" means personal representative as defined in section 633.3.

2. If funds remain in a nonguaranteed irrevocable burial trust fund after all payments are made in accordance with the conditions and terms of the agreement for funeral merchandise or funeral services, the seller shall comply with all of the following:

a. The seller shall provide written notice by mail to the director in accordance with subsection 3.

b. Following a period of at least sixty days after the mailing of the notice to the director, the seller shall disburse any remaining funds from the burial trust fund as follows:

(1) If within the sixty-day period the seller receives a claim from the personal representative of the deceased, any remaining funds shall be disbursed to the personal representative, notwithstanding any claim by the director.

(2) If within the sixty-day period the seller has not received a claim from the personal representative of the deceased but receives a claim from the director, the seller shall disburse the remaining funds up to the amount of the claim to the director.

(3) Any remaining funds not disposed of pursuant to subparagraphs (1) and (2) shall be disbursed to any person who is identified as the next-of-kin of the deceased in an affidavit submitted in accordance with subsection 6.

3. The notice mailed to the director shall meet all of the following requirements and is subject to all of the following conditions:

a. The notice shall be mailed with postage prepaid.

b. If the notice is sent by regular mail, the sixty-day period for receipt of a response is deemed to commence three days following the date of mailing.

c. If the notice is sent by certified mail, the sixty-day period for receipt of a response is deemed to commence on the date of mailing.

d. The notice shall provide all of the following information:

- (1) The current name, address, and telephone number of the seller.
- (2) The full name of the deceased.
- (3) The date of the deceased's death.
- (4) The amount of the funds remaining in the burial trust fund.
- (5) A statement that any claim by the director shall be received by the seller within sixty days of the date of mailing of the notice.

e. A notice in substantially the following form complies with this subsection:

"To: The Director of Human Services

From: (Seller's Name, Current Address, and Telephone Number)

You are hereby notified that (name of deceased), who had an irrevocable burial trust fund, has died, that final payment for funeral merchandise and funeral services has been made, and that (remaining amount) remains in the irrevocable burial trust fund.

The above-named seller must receive a written response regarding any claim by the director within sixty days of the mailing of this notice to the director.

If the above-named seller does not receive a written response regarding a claim by the director within sixty days of the mailing of this notice, the seller may dispose of the remaining funds in accordance with section 523A.8A, Code of Iowa."

4. Upon receipt of the seller's written notice, the director shall determine if a debt is due the department of human services pursuant to section 249A.5. If the director determines that a debt is owing, the director shall provide a written response to the seller within sixty days of the mailing of the seller's notice. If the director does not respond with a claim within the sixty-day period, any claim made by the director shall not be enforceable against the seller, the trust, or a trustee.

5. A personal representative who wishes to make a claim shall send written notice of the claim to the seller. If the seller does not receive any claim from a personal representative within the sixty-day period provided for response by the director regarding a claim, the claim of the personal representative shall not be enforceable against the seller, the trust, or a trustee.

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

- a. The full name, current address, and telephone number of the claimant.
- b. The claimant's relationship to the deceased.
- c. The name of any surviving next-of-kin of the deceased, and the relationship of any named surviving next-of-kin.
- d. That the claimant has no knowledge of the existence of a personal representative for the deceased's estate.

7. The seller may retain not more than fifty dollars of the remaining funds in the burial trust fund for the administrative expenses associated with the requirements of this section.

8. If the funds remaining in a burial trust fund are disbursed in accordance with the requirements of this section, the seller, the burial trust fund, and any trustee shall not be liable to the director, the estate of the deceased, any personal representative, or any other interested person for the remaining funds and any lien imposed by the director shall be unenforceable against the seller, the burial trust fund, or any trustee.

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

k. State that if, after all payments are made in accordance with the conditions and terms of the agreement for cemetery merchandise, any funds remaining remain in an the nonguaranteed irrevocable burial trust fund from which cemetery-merchandise-costs-are-paid-shall-be-returned-to-the

~~estate-of-the-deceased-individual-for-purposes-of-probate
pursuant-to-chapter-633-or-if-the-estate-is-not-subject-to
probate-and-if-the-deceased-was-a-recipient-of-medical
assistance-and-a-debt-is-due-the-department-of-human-services
pursuant-to-section-249A.5,-the-remaining-funds-shall-be
available-for-payment-of-the-debt, the seller shall disburse
the remaining funds to a personal representative of the
deceased as defined in section 633.3, or to the deceased's
surviving next-of-kin, or to the director of human services,
in accordance with section 523A.8A.~~

LEONARD L. BOSWELL
President of the Senate

RON J. CORBETT
Speaker of the House

I hereby certify that this bill originated in the Senate and
is known as Senate File 2101, Seventy-sixth General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved April 15, 1996

TERRY E. BRANSTAD
Governor

SF 2101