

INSURANCE DIVISION[191]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 523A.809, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 100, “General Provisions,” Chapter 101, “Trust Deposits and Trust Funds,” Chapter 102, “Warehoused Merchandise,” Chapter 103, “Licensing of Preneed Sellers and Sales Agents,” Chapter 104, “Continuing Education for Sales Agents,” and Chapter 105, “Standards of Conduct and Prohibited Practices,” and to rescind Chapter 106, “Disciplinary Procedures,” Iowa Administrative Code.

The chapters implement and administer Iowa Code chapter 523A, which regulates the sale of cemetery merchandise, funeral merchandise, and funeral services. These amendments are proposed to update cross references and other information and to add a new rule 191—103.9(523A) to allow for suspension of a sales agent license for failure to pay state debt, pursuant to Iowa Code chapter 272D. Chapter 106 will be rescinded, and the provisions will be incorporated into Chapter 105. The Division intends that persons operating as preneed sellers and sales agents in Iowa must be in compliance with these amendments beginning June 3, 2015.

Any interested person may make written suggestions or comments on these proposed amendments on or before March 24, 2015. Such written materials should be directed to Dennis Britson, Iowa Securities and Regulated Industries Bureau, Iowa Insurance Division, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa 50319; fax (515)281-3059; e-mail dennis.britson@iid.iowa.gov.

Also, there will be a public hearing on March 24, 2015, at 2 p.m. at the offices of the Iowa Insurance Division, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Division and advise of specific needs.

These amendments are intended to implement Iowa Code chapter 523A.

The following amendments are proposed.

ITEM 1. Amend rule 191—100.1(523A) as follows:

191—100.1(523A) Purpose. This chapter and 191—Chapters 101 through ~~406~~ 105 are promulgated to implement and administer the provisions of Iowa Code chapter 523A, ~~2007 Iowa Acts, Senate File 559 [2007 Iowa Code Supplement chapter 523A], and 2008 Iowa Acts, Senate File 2349 and House File 2555~~, which regulate the sale of cemetery merchandise, funeral merchandise, funeral services and any combination of those items. The provisions of this chapter also apply to 191—Chapters 101 through ~~406~~ 105.

ITEM 2. Amend rule 191—100.2(523A), introductory paragraph, as follows:

191—100.2(523A) Definitions. For purposes of 191—Chapters 100 through ~~406~~ 105, the definitions in Iowa Code chapter 523A, ~~2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555~~, are incorporated by reference. In addition, the following definitions shall apply:

ITEM 3. Amend the following definitions in rule **191—100.2(523A)**:

“*Commissioner’s Web site*” means the Web site of the Iowa insurance division, www.iid.state.ia.us www.iid.iowa.gov.

“Continuing education” means planned, organized learning acts designed to maintain, improve, or expand a licensee’s knowledge and skills to maintain and improve compliance with 191—Chapters 100 through ~~406 105~~ and Iowa Code chapter 523A, ~~2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555~~; and to maintain and improve the safety and welfare of the public.

ITEM 4. Amend rule 191—100.3(523A) as follows:

191—100.3(523A) Contact and correspondence.

100.3(1) Contact information. All mailed complaints, inquiries and correspondence shall be sent to Securities and Regulated Industries Bureau, Iowa Insurance Division, ~~340 Maple Street, Des Moines, Iowa 50319-0066~~ 601 Locust, Two Ruan Center, Fourth Floor, Des Moines, Iowa 50309-3738. Telephone inquiries may be made at (877)955-1212. E-mail correspondence may be made through the commissioner’s Web site: ~~www.iid.state.ia.us.~~

100.3(2) Complaints, inquiries and correspondence. The commissioner may receive and process any complaint made regarding cemetery merchandise, funeral merchandise, funeral services or any combination of those items, or regarding a sales agent or a preneed seller that alleges certain acts or practices which may constitute one or more violations of the provisions of 191—Chapters 100 to ~~406 105~~ or of Iowa Code chapter 523A, ~~2007 Iowa Acts, Senate File 559, or 2008 Iowa Acts, Senate File 2349 and House File 2555.~~ Where appropriate, the commissioner may refer complaints, in whole or in part, to other agencies. Any member of the public or the industry, or any federal, state, or local official, may make and file a complaint with the commissioner. Complaints ~~may be~~ received from sources outside the state of Iowa ~~and shall be processed by the commissioner~~ in the same manner as those originating in Iowa. If required by the commissioner, complaints shall be made on forms prescribed and provided by the commissioner.

100.3(3) No change.

ITEM 5. Amend subrule 100.4(1) as follows:

100.4(1) Manner of payment. Fees required by 191—Chapters 100 through ~~406 105~~ may be paid by check, credit card, or electronically, if available, or as directed by the commissioner.

ITEM 6. Amend **191—Chapter 100**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 523A, ~~2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555.~~

ITEM 7. Amend rule 191—101.1(523A) as follows:

191—101.1(523A) Trust income withdrawals. ~~Trust~~ To the extent permitted by Iowa Code section 523A.201(8) and the provisions of this chapter, trust income may be withdrawn on purchase agreements executed on or after July 1, 2007, 1987 as set forth in this chapter, by any preneed seller that is a limited liability corporation that was formed in 2002 for the purpose of purchasing a cemetery from a foreign entity reorganizing under bankruptcy, if the corporation is comprised of six establishments all located within the same county.

ITEM 8. Amend subrule 101.7(1), introductory paragraph, as follows:

101.7(1) Pursuant to Iowa Code ~~Supplement~~ sections 523A.201(8) and 523A.602(2)“b”(1), the commissioner sets the following inflation adjustment factors for the years listed for the purposes of calculating the amount of interest or income earned on amounts deposited in trust that must remain trust funds as an adjustment for inflation or to adjust the purchase price of merchandise and services in order to calculate the amount of a cancellation refund.

ITEM 9. Amend subrule 101.7(2) as follows:

101.7(2) ~~The inflation adjustment factors for~~ For years 2008 and later will be set by the commissioner and posted on the commissioner’s Web site, the approved inflation factor adjustment shall be the consumer price index for all urban consumers (CPI-U) issued by the U.S. Department of Labor’s Bureau of Labor Statistics.

ITEM 10. Amend rule 191—101.8(523A) as follows:

191—101.8(523A) Cancellation refunds. The requirement set forth in Iowa Code Supplement section 523A.602(2) “b”(1) applies to any purchase agreement executed on or after July 1, 2001.

ITEM 11. Amend **191—Chapter 101**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 523A, ~~2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555.~~

ITEM 12. Amend subrule 102.1(2) as follows:

102.1(2) Approval of storage facilities by commissioner. If a preneed seller receives approval in writing from the commissioner, the trust requirements of Iowa Code Supplement sections 523A.201 and 523A.202 do not apply; either to payments for outer burial containers made of either polystyrene or polypropylene or to cemetery merchandise delivered to the purchaser or stored in an independent third-party storage facility not owned or controlled by the preneed seller.

ITEM 13. Amend **191—Chapter 102**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 523A, ~~2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555.~~

ITEM 14. Amend rule 191—103.1(523A) as follows:

191—103.1(523A) Requirement for a preneed seller license or a sales agent license.

103.1(1) No person may sell or offer to sell cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, in Iowa if the sale of the merchandise or services is subject to Iowa Code chapter 523A, ~~2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555,~~ unless the person holds an active license.

103.1(2) No person may agree to perform any term of an agreement, whether or not pursuant to a written purchase agreement, to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, in Iowa if the sale of the merchandise or services is subject to Iowa Code chapter 523A, ~~2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555,~~ unless the person holds an active license.

103.1(3) At the time a purchase agreement is entered into, a person may not accept any payment or funding, including the assignment of ownership of or proceeds from an insurance policy or annuity, related to the purchase of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, in Iowa if the sale of the merchandise or services is subject to Iowa Code chapter 523A, ~~2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555,~~ unless the person holds an active license. This rule does not prevent payments to an unlicensed person upon the person’s delivery of cemetery merchandise, funeral merchandise or funeral services after the death of a beneficiary, including the payment of the proceeds of an insurance policy or annuity at the time of death of the insured listed on the insurance policy or annuity.

ITEM 15. Amend rule 191—103.2(523A) as follows:

191—103.2(523A) Application and licensing of preneed seller or sales agent.

103.2(1) Preneed seller application. A person that desires to be licensed as a preneed seller must satisfy the following requirements:

a. and b. No change.

c. Submit a signed waiver allowing the commissioner to request and obtain criminal history data information, pursuant to Iowa Code Supplement section 523A.501(3) ~~as amended by 2008 Iowa Acts, Senate File 2349, section 5, and House File 2555, section 47,~~ for each owner and manager of the applicant, including, but not limited to, for each sole proprietor, partner, director, officer, managing partner, member, or shareholder with 10 percent or more of the stock who has the ability to control or direct control of trust funds under Iowa Code chapter 523A, as determined by the commissioner;

d. Provide a financial history, if requested by the commissioner, pursuant to Iowa Code Supplement section 523A.501(4) ~~as amended by 2008 Iowa Acts, Senate File 2349, section 6, and~~

~~House File 2555, section 48~~, for each owner and manager of the applicant, including, but not limited to, for each sole proprietor, partner, director, officer, managing partner, member, or shareholder with 10 percent or more of the stock;

e. to g. No change.

103.2(2) *Sales agent application.* An individual ~~that~~ who desires to be licensed as a sales agent pursuant to Iowa Code Supplement section 523A.502 ~~as amended by 2008 Iowa Acts, Senate File 2349, section 7, and House File 2555, sections 49 and 50~~, must satisfy the following requirements:

a. to c. No change.

d. Submit a signed waiver allowing the commissioner to request and obtain criminal history data information, pursuant to Iowa Code Supplement section 523A.501(3) ~~as amended by 2008 Iowa Acts, Senate File 2349, section 5, and House File 2555, section 47~~;

e. and f. No change.

103.2(3) No change.

103.2(4) *Approval or denial of applications.*

a. No change.

b. The commissioner may require any documents reasonably necessary to verify the information contained in the application or to verify that the individual making application has the character and competency required to receive a license. The commissioner also may request fingerprints and reimbursement of costs for investigating a criminal history, pursuant to Iowa Code Supplement section 523A.501(3) ~~as amended by 2008 Iowa Acts, Senate File 2349, section 5, and House File 2555, section 47~~.

c. The commissioner shall conduct the criminal history data request and other investigations pursuant to Iowa Code Supplement section 523A.502(4) ~~as amended by 2008 Iowa Acts, House File 2555, section 49~~. The commissioner's investigation of criminal history data and financial history shall be limited to persons who have the ability to control or direct control of trust funds under Iowa Code chapter 523A, as determined by the commissioner.

d. In order to determine whether to approve or deny an application for license, the commissioner shall review all information that is submitted with the application, submitted at the commissioner's request, obtained through criminal history investigation, and obtained through the financial history review, pursuant to Iowa Code Supplement sections 523A.501(3) and 523A.502(4) ~~as amended by 2008 Iowa Acts, House File 2555, sections 47 and 49, respectively~~.

e. and f. No change.

ITEM 16. Amend subrules 103.4(3) and 103.4(5) as follows:

103.4(3) *Renewal application form.* An application to renew a preneed seller's license or a sales agent's license shall be submitted on a form required by the commissioner, as directed on the commissioner's Web site, and a renewal applicant shall comply with all instructions on the commissioner's Web site. In addition:

a. and b. No change.

103.4(5) *Failure to file annual statement.* A sales agent license shall not be renewed if the sales agent did not comply with the requirement to file an annual report, as set forth in 191—paragraph ~~406.2(3)“a”~~ 105.12(3)“a” and Iowa Code Supplement section 523A.502A.

ITEM 17. Amend subrules 103.6(4) and 103.6(6) as follows:

103.6(4) An order of reinstatement or reissuance shall be based upon a written decision which incorporates findings of fact and conclusions of law. An order granting an application for reinstatement or reissuance may impose such terms and conditions as the commissioner deems desirable, which may include one or more of the types of disciplinary sanctions provided by 191—Chapter ~~406, 105~~ or Iowa Code chapter 523A, ~~2007 Iowa Acts, Senate File 559, or 2008 Iowa Acts, Senate File 2349 and House File 2555~~. The order shall be a public record, available to the public, and may be disseminated in accordance with Iowa Code chapter 22.

103.6(6) A license may be voluntarily forfeited in lieu of compliance with an order of the commissioner with the written consent of the commissioner. The forfeiture becomes effective when

and upon such conditions as required by order of the commissioner, which may include one or more of the types of disciplinary sanctions provided by 191—Chapter ~~106~~, 105 or Iowa Code chapter 523A; ~~2007 Iowa Acts, Senate File 559, or 2008 Iowa Acts, Senate File 2349 and House File 2555.~~

ITEM 18. Adopt the following new rule 191—103.9(523A):

191—103.9(523A) Suspension for failure to pay state debt.

103.9(1) The commissioner shall deny the issuance or renewal of a sales agent license upon receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue according to the procedures in Iowa Code chapter 272D. In addition to the procedures set forth in Iowa Code chapter 272D, this rule shall apply.

103.9(2) Upon receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue according to the procedures set forth in Iowa Code chapter 272D, the commissioner shall issue a notice to the sales agent that the sales agent's pending application for licensure, pending request for renewal, or current sales agent license will be suspended 60 days after the date of the notice. Notice shall be sent to the sales agent's last-known address by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the applicant or licensed sales agent may accept service personally or through authorized counsel.

103.9(3) The notice shall contain the following items:

- a. A statement that the commissioner intends to suspend the sales agent's application, request for renewal or current sales agent license in 60 days;
- b. A statement that the sales agent must contact the centralized collection unit of the department of revenue to schedule a conference or to otherwise obtain a withdrawal of the certificate of noncompliance;
- c. A statement that the sales agent's application, request for renewal or current sales agent license will be suspended or denied if the commissioner does not receive a withdrawal of the certificate of noncompliance from the centralized collection unit of the department of revenue within 60 days of the issuance of notice under this rule; or, if the current sales agent license is on suspension, a statement that the sales agent's current sales agent license will be revoked;
- d. A statement that the sales agent does not have a right to a hearing before the commissioner, but that the sales agent may file an application for a hearing in district court pursuant Iowa Code section 272D.9;
- e. A statement that the filing of an application with the district court will stay the proceedings of the commissioner; and
- f. A copy of the certificate of noncompliance.

103.9(4) Sales agents shall keep the commissioner informed of all court actions and all actions taken by the centralized collection unit of the department of revenue, and sales agents shall provide to the commissioner, within seven days of filing or issuance, copies of all applications filed with the district court pursuant to all court orders entered in such actions and copies of all withdrawals of certificates of noncompliance by the centralized collection unit of the department of revenue.

103.9(5) The effective date of revocation or suspension of a sales agent license shall be 60 days following service of the notice upon the applicant or sales agent.

103.9(6) In the event an applicant or licensed sales agent timely files a district court action following service of a notice by the commissioner, the commissioner's suspension proceedings will be stayed until the commissioner is notified by the district court of the resolution of the application. Upon receipt of a court order lifting the stay, or otherwise directing the commissioner to proceed, the commissioner shall continue with the intended action described in the notice. For purposes of determining the effective date of the denial of the issuance or renewal of a sales agent license, the commissioner shall count the number of days before the action was filed and the number of days after the court disposed of the action.

103.9(7) If the commissioner does not receive a withdrawal of the certificate of noncompliance from the centralized collection unit of the department of revenue or a notice from a clerk of court that an application for hearing has been filed, the commissioner shall suspend the sales agent's application, request for renewal or current sales agent license 60 days after the notice is issued.

103.9(8) Upon receipt of a withdrawal of the certificate of noncompliance from the centralized collection unit of the department of revenue, suspension proceedings shall halt, and the named sales agent shall be notified that the proceedings have been halted. If the sales agent's license has already been suspended, the license shall be reinstated if the sales agent is otherwise in compliance with this chapter. All fees required for license renewal or license reinstatement must be paid by the sales agent, and all continuing education requirements must be met before a sales agent license will be renewed or reinstated after a license suspension or revocation pursuant to Iowa Code chapter 272D.

103.9(9) The commissioner shall notify the sales agent in writing through regular first-class mail, or such other means as the commissioner deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a sales agent license, and shall similarly notify the sales agent when the sales agent license is reinstated following the commissioner's receipt of a withdrawal of the certificate of noncompliance.

103.9(10) Notwithstanding any statutory confidentiality provision, the commissioner may share information with the centralized collection unit of the department of revenue for the sole purpose of identifying sales agents subject to enforcement under Iowa Code chapter 272D.

ITEM 19. Amend **191—Chapter 103**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 523A, ~~2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555.~~

ITEM 20. Amend rule 191—104.1(523A) as follows:

191—104.1(523A) Continuing education requirements. For each license term, each licensed sales agent shall be required to complete a minimum of eight credits of continuing education approved by the commissioner. At least two credits, to be known as the ethics and legal requirements continuing education requirement, must cover subjects relating to business ethics, the legal requirements of Iowa Code chapter 523A, 191—Chapters 100 through 105, and other relevant federal and state laws and rules, such as the Federal Trade Commission Funeral Rule (16 CFR Part 453).

ITEM 21. Amend **191—Chapter 104**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 523A, ~~2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555.~~

ITEM 22. Amend **191—Chapter 105**, title, as follows:

**STANDARDS OF CONDUCT AND₂ PROHIBITED PRACTICES₂
AND DISCIPLINARY PROCEDURES**

ITEM 23. Amend subrule 105.3(2) as follows:

105.3(2) Deposit records to be kept by preneed sellers. If purchase payments made to a preneed seller are commingled and deposited with funds not related to a purchase agreement subject to Iowa Code chapter 523A, ~~2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555,~~ or if deposits involve more than one purchase agreement, the preneed seller shall retain a detailed summary of each deposit. This information shall be maintained and shall be available for inspection by the commissioner for a minimum of four years after the deposit.

ITEM 24. Amend rule 191—105.4(523A) as follows:

191—105.4(523A) Annual reports.

105.4(1) Annual reports by preneed sellers. A licensed preneed seller shall file a completed annual report form with the commissioner on or before April 1 each year. The form and instructions may be obtained through the commissioner's Web site. The report shall include a list of contracts sold during the year covered by the report, including the date of each contract, the total purchase price, the name of the purchaser, the name of the beneficiary and, for each contract sold after July 1, 2007, the number assigned to the contract. Along with submitting the report, the preneed seller shall submit a filing fee, as set forth in Iowa Code Supplement section 523A.204.

105.4(2) Annual reports by sales agents. A licensed sales agent shall file a completed annual report form with the commissioner on or before April 1 each year, pursuant to Iowa Code Supplement section 523A.502A. The form and instructions may be obtained through the commissioner's Web site. The report shall include the following:

a. and b. No change.

105.4(3) Failure to file timely. If a preneed seller or sales agent fails to file an annual report as required by this subrule on or before the date the annual report is due, the penalties of 191—subrule ~~106.2(3)~~ 105.12(3) shall apply. Additional sanctions pursuant to rule ~~191—~~105.6(523A) and 191—Chapter ~~106~~ 105 also may be imposed.

ITEM 25. Amend rule 191—105.5(523A) as follows:

191—105.5(523A) Fidelity bond or insurance. A preneed seller shall obtain and maintain a fidelity bond or similar insurance in an amount not less than \$50,000 to protect against the loss of purchaser payments not placed in trust, as required by Iowa Code Supplement section 523A.201(5) unless the preneed seller only uses the trusting alternatives set forth in Iowa Code Supplement section sections 523A.401 as amended by 2008 Iowa Acts, House File 2555, section 44; Iowa Code Supplement section 523A.402 as amended by 2008 Iowa Acts, House File 2555, section 45; Iowa Code section 523A.403; Iowa Code Supplement section 523A.404; and Iowa Code Supplement section to 523A.405 as amended by 2008 Iowa Acts, Senate File 2349, section 4, and House File 2555, section 46; or unless the preneed seller deposits 100 percent of each payment into a trust fund. This requirement may be satisfied by a cash deposit held and administered in trust for the benefit and protection of purchasers and beneficiaries in this state, pursuant to a trust agreement filed with and acceptable to the commissioner.

ITEM 26. Amend rule 191—105.6(523A) as follows:

191—105.6(523A) Grounds for discipline. The commissioner may impose sanctions as set forth in 191—Chapter ~~106~~ 105 if the commissioner finds that a licensee or that an owner, partner, member, director, shareholder or manager of a licensed business entity has violated or failed to comply with Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, 2008 Iowa Acts, Senate File 2349 and House File 2555, or any associated rules or implementing orders, including but not limited to the following acts or practices:

105.6(1) and 105.6(2) No change.

105.6(3) Fraudulent or deceptive practices. Engaging in any act or practice that violates Iowa Code section 523A.701, or 523A.702, or Iowa Code Supplement section 523A.703, whether or not actual harm or injury occurs, including but not limited to:

a. to c. No change.

105.6(4) Insolvency or financial condition. Being or becoming insolvent or of unsound financial condition, the determination of which shall be based on but not limited to the following factors:

a. to f. No change.

g. Any other act, practice or omission that provides a reasonable basis to question the ability of the licensee or license applicant to comply with the requirements of Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555, and related regulations.

105.6(5) Unethical, harmful or detrimental conduct. Engaging in any act or practice which may be harmful or detrimental to the public, whether or not actual harm or injury occurs, while engaged in activities regulated by Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555, or materially related to such activity, including but not limited to:

a. to d. No change.

105.6(6) Failure to maintain records. Failure to maintain records as required by Iowa Code chapter 523A and 2007 Iowa Acts, Senate File 559, or any associated rules or orders.

105.6(7) Failure to cooperate with an examination or investigation. Failure to submit to an examination, failure to comply with a reasonable written request of an examiner, or failure to cooperate

with an investigation conducted by the commissioner as required by Iowa Code chapter 523A, ~~2007 Iowa Acts, Senate File 559, 2008 Iowa Acts, Senate File 2349 and House File 2555~~, or any associated rules or orders.

105.6(8) to 105.6(10) No change.

105.6(11) *Improper sale or transfer of purchase agreements.* Selling or transferring purchase agreements as part of the sale of a business or the assets of a business, if an audit expressing the auditor's opinion of the adequacy of funding related to the purchase agreements to be sold or transferred has not been performed by a certified public accountant and filed with the commissioner, as required by Iowa Code Supplement section 523A.207.

105.6(12) *Sales prohibited by order.* The applicant or licensee has been named in an order issued pursuant to Iowa Code Supplement section 523A.807(3) ~~as amended by 2008 Iowa Acts, House File 2555, section 52.~~

105.6(13) to 105.6(15) No change.

105.6(16) *Failure to maintain fidelity bond or similar insurance.* A preneed seller's failure to maintain a fidelity bond or similar insurance as required by rule 191—105.5(523A) and Iowa Code Supplement section 523A.201(5).

105.6(17) *Responsibility for sales activities of others.* A preneed seller's consent or acquiescence to violation of 191—Chapters 100 through 106, 105 or Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, or 2008 Iowa Acts, Senate File 2349 and House File 2555, by any person acting on the preneed seller's behalf.

ITEM 27. Amend subrule 105.7(1) as follows:

105.7(1) *License required.* No person shall advertise, sell, promote, or offer to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof when performance or delivery may be more than 100 days following the initial payment of the account unless the person either:

a. Holds an active preneed seller license issued by the commissioner pursuant to Iowa Code Supplement section 523A.501 ~~as amended by 2008 Iowa Acts, Senate File 2349, sections 5 and 6, and House File 2555, section 48~~; or

b. Holds an active sales agent license issued by the commissioner pursuant to Iowa Code Supplement section 523A.502 ~~as amended by 2008 Iowa Acts, Senate File 2349, section 7, and House File 2555, sections 49 and 50~~, and the person is an appointed sales agent of a person holding a preneed seller license issued by the commissioner pursuant to Iowa Code Supplement section 523A.501 ~~as amended by 2008 Iowa Acts, Senate File 2349, sections 5 and 6, and House File 2555, section 48.~~

ITEM 28. Reserve rules **191—105.8 to 191—105.10.**

ITEM 29. Adopt the following new rules 191—105.11(523A) to 191—105.13(17A,523A):

191—105.11(523A) Investigations. The commissioner is authorized by Iowa Code sections 17A.13(1) and 523A.803 to conduct such investigations as the commissioner deems necessary to determine whether any person has violated or is about to violate Iowa Code chapter 523A. The commissioner is authorized to issue and enforce subpoenas to compel testimony and to compel the production of books and records, as more fully described in Iowa Code section 523A.803. Upon the commissioner's determination that probable cause exists to commence a disciplinary proceeding, the procedures contained in 191—Chapter 3 shall apply.

191—105.12(17A,523A) Penalties. Persons violating Iowa Code chapter 523A or rules adopted or orders issued pursuant thereto may be subject to one or more of the following penalties.

105.12(1) *Criminal penalties.* A person who willfully violates Iowa Code section 523A.501(1), concerning the requirement for a preneed seller license, or Iowa Code section 523A.502(1), concerning the requirement for a sales agent license, is guilty of a Class D felony. Licensed and unlicensed persons who violate other provisions of Iowa Code chapter 523A and rules adopted or orders issued pursuant thereto including, but not limited to, a failure to properly place trust funds into trust, pursuant to Iowa

Code section 523A.201, 523A.202, 523A.404 or 523A.405, are subject to prosecution for crimes including, but not limited to, fraudulent practice under Iowa Code section 523A.703, theft under Iowa Code chapter 714, or ongoing criminal conduct under Iowa Code chapter 706A. 191—Chapters 100 through 105 do not limit the power of the state to punish any person for any conduct which constitutes a crime under any other statute.

105.12(2) *Consumer fraud Act.* A violation by a licensed or unlicensed person of Iowa Code chapter 523A or 191—Chapters 100 through 105, or an order issued pursuant to those chapters, is a violation of the Iowa consumer fraud Act, Iowa Code sections 714.16 and 714.16A.

105.12(3) *Administrative sanctions.*

a. Pursuant to Iowa Code sections 523A.204(4) and 523A.502A, the failure of a licensee to timely file an annual report shall result in an administrative penalty of \$500. The license is suspended on the date the annual report was due until the overdue report is filed and the administrative penalty paid. The licensee is not authorized to solicit or execute any purchase agreement under Iowa Code chapter 523A until the license has been reinstated.

b. If the commissioner issues or renews a license and subsequently determines that payment for the license or renewal was returned by a bank without payment to the commissioner, or that the credit card company does not approve or cancels or refuses amounts charged to the credit card, the license shall be immediately suspended until the payments are made and any fees or penalties charged by the commissioner are paid, at which time the license may be reinstated at the request of the applicant.

c. If the commissioner issues or renews a sales agent license and subsequently determines that the sales agent is not appointed by a preneed seller, the license shall be immediately suspended until the sales agent obtains such an appointment and provides satisfactory evidence to the commissioner of the appointment, at which time the license may be reinstated at the request of the sales agent.

d. The commissioner may impose the following disciplinary sanctions, alone or in combination, against a licensee or as a condition of licensure of an applicant for an initial or renewal license:

- (1) Issue a warning letter or a letter of reprimand.
- (2) Require additional education or training.
- (3) Order mediation pursuant to Iowa Code section 523A.804.
- (4) Issue a cease and desist order pursuant to Iowa Code section 523A.805 or 523A.807.
- (5) Require certain specified procedures or methods of operation.
- (6) Order the payment of consumer restitution.
- (7) Place a license on probationary status with or without the imposition of reasonable conditions to control or monitor conduct, such as periodic reports.
- (8) Refuse to issue or renew a license.
- (9) Suspend a license for an indefinite or specific period of time.
- (10) Revoke a license.
- (11) Accept the voluntary surrender of a license.
- (12) Impose costs associated with the commissioner's investigation and enforcement activities.
- (13) Impose civil penalties pursuant to Iowa Code section 523A.807.
- (14) Impose any other sanction allowed by law, as the commissioner deems appropriate.

e. A person with an inactive, expired, or suspended license is subject to disciplinary action, injunctive action, criminal sanctions and any other available legal remedies in the event of any violation of Iowa Code chapter 523A, or any rules adopted or orders issued pursuant thereto.

f. In addition, or as an alternative to the administrative process described in this chapter, the commissioner may take action as described in Iowa Code chapter 523A, including but not limited to seeking an injunction in district court, referring the matter for criminal prosecution, entering into a consent agreement, issuing an informal cautionary letter, referring the matter to the attorney general, or referring the matter to a licensing entity with regulatory authority and jurisdiction over the unlicensed person, such as the mortuary science board established under Iowa Code chapter 156.

g. The following factors may be considered by the commissioner in determining the nature and severity of the disciplinary sanction to be imposed:

- (1) The facts of the particular violation, such as the circumstances leading to the violation, the severity of the violation, and the clarity of the issues, laws and rules involved;
- (2) Evidence that the violation is not an isolated event and is part of a widespread practice;
- (3) Evidence that the acts or practices were willful and intentional;
- (4) The economic benefits gained by the licensee or applicant as a result of the violation;
- (5) Evidence that the violation occurred while the licensee was on probation or had an inactive or suspended license;
- (6) The number of prior warning letters or reprimand letters;
- (7) The number of complaints;
- (8) The number of prior violations, especially evidence of repetitive violations of a like kind;
- (9) The seriousness of prior complaints or violations;
- (10) The length of time since the violation occurred;
- (11) Whether the violation involved an element of deception;
- (12) Whether the actions violated a prior order of the commissioner, court order, cease and desist agreement, consent order, or similar document;
- (13) Whether the person acted in bad faith;
- (14) The extent to which the licensee or applicant cooperated with the commissioner;
- (15) Evidence of reform or remedial action;
- (16) The amount of restitution paid or to be paid;
- (17) The risk of harm created by the acts or practices involved in the violation;
- (18) The public interest in ensuring competency and a high standard of ethical and professional conduct by licensees;
- (19) The public interest in protecting consumers and preventing the acts or practices involved in the violation;
- (20) Whether the penalty will act as a substantial deterrent and reduce the likelihood of future violations; and
- (21) Any other extenuating facts or other countervailing considerations.

191—105.13(17A,523A) Administrative procedures.

105.13(1) Notice of sanctions. If the commissioner finds cause to impose a sanction against a person pursuant to Iowa Code chapter 523A or subrule 105.12(3), the commissioner shall provide notice to the person. Delivery of the notice shall be accomplished in the manner set out in 191—paragraphs 3.5(1) “a” and “b.” The notice shall include the following:

- a. A statement of the legal authority and jurisdiction under which the order would be issued;
- b. Reference to the particular sections of the statutes and rules involved;
- c. A short, plain statement of the alleged unlawful practices;
- d. The dollar amount of the proposed civil penalty and the nature of the intended order to require compliance with Iowa Code chapter 523A, including any required restitution;
- e. Notice of the unlicensed person’s right to a hearing and the time frame in which hearing must be requested; and
- f. The address to which written request for hearing must be made.

105.13(2) Requesting a hearing regarding sanctions imposed. If the commissioner imposes any administrative sanctions against a person pursuant to Iowa Code chapter 523A or subrule 105.12(3), the person may request a hearing pursuant to 191—Chapter 3 within 30 days of receipt of the notice. Applicable procedures of this chapter, of 191—Chapter 3, and of Iowa Code chapter 17A shall apply. A failure to timely request a hearing shall constitute a failure to exhaust administrative remedies. A request for hearing must be in writing and is deemed made on the date of the nonmetered United States Postal Service postmark or the date of personal delivery to the commissioner’s office.

105.13(3) If a request for hearing is not timely made, the commissioner may issue an order imposing the administrative penalty and requiring compliance with Iowa Code chapter 523A, as described in the notice. The order may be served in the same manner as the notice of intent to impose administrative penalty, and may additionally be provided in a manner reasonably calculated to provide actual notice.

105.13(4) If a request for hearing is timely made, the commissioner shall issue a notice of hearing, following the procedures applicable to a contested case in 191—Chapter 3. Hearings are open to the public.

105.13(5) A person may waive the right to hearing and all attendant rights and enter into a consent order imposing an administrative penalty and requiring compliance with Iowa Code chapter 523A at any stage of the proceeding upon mutual consent of the commissioner.

105.13(6) The notice of intent to issue an order and the order are public records available for inspection and copying in accordance with Iowa Code chapter 22.

105.13(7) A person aggrieved by the commissioner's issuance of an administrative order, including an order imposing a civil penalty, may seek judicial review in accordance with Iowa Code section 17A.19.

ITEM 30. Amend **191—Chapter 105**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~chapter~~ chapters 17A, 22, and 523A, ~~2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555.~~

ITEM 31. Rescind and reserve **191—Chapter 106**.