

# Senate Amendment 3434

## Amendment Text

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1 1 Amend [Senate File 473](#), as passed by the Senate, as  
1 2 follows:  
1 3 #1. Page 7, by inserting after line 4, the  
1 4 following:  
1 5 "Sec. \_\_\_\_\_. Section 507B.4, subsection 10B,  
1 6 unnumbered paragraph 1, as enacted by 2001 Iowa Acts,  
1 7 [Senate File 500](#), section 7, is amended to read as  
1 8 follows:  
1 9 Failure of an insurer to pay interest at the rate  
1 10 of ten percent per annum on all health insurance  
1 11 claims that the insurer fails to timely accept and pay  
1 12 pursuant to section 507B.4A, subsection

~~1~~  
- ~~2~~, paragraph  
1 13

~~"e"~~  
- ~~"d"~~. Interest shall accrue commencing on the  
1 14 thirty-first day after receipt of all properly  
1 15 completed proof of loss forms.  
1 16 Sec. \_\_\_\_\_. Section [518.16](#), Code 2001, is amended to  
1 17 read as follows:  
1 18 518.16 QUALIFICATION OF AGENTS.  
1 19 A person shall not solicit any application for  
1 20 insurance for an association in this state without  
1 21 having procured from the commissioner of insurance a  
1 22 license authorizing the person to act as an

~~agent~~  
-  
1 23 insurance producer pursuant to chapter

~~522~~  
- ~~522B~~.  
1 24 "SUBCHAPTER 1  
1 25 SHORT TITLE AND DEFINITIONS  
1 26 Sec. \_\_\_\_\_. NEW SECTION. 523A.101 SHORT TITLE.  
1 27 This chapter may be cited as the "Iowa Cemetery and  
1 28 Funeral Merchandise and Funeral Services Act".  
1 29 Sec. \_\_\_\_\_. NEW SECTION. 523A.102 DEFINITIONS.  
1 30 For purposes of this chapter, unless the context  
1 31 otherwise requires:  
1 32 1. "Authorized to do business within this state"  
1 33 means a person licensed, registered, or subject to  
1 34 regulation by an agency of the state of Iowa or who  
1 35 has filed a consent to service of process with the  
1 36 commissioner for purposes of this chapter.  
1 37 2. "Beneficiary" means any natural person  
1 38 specified or included in a purchase agreement, upon  
1 39 whose future death cemetery merchandise, funeral  
1 40 merchandise, funeral services, or a combination  
1 41 thereof are to be provided under the purchase  
1 42 agreement.  
1 43 3. "Burial account" means an account established  
1 44 by a person with a financial institution for the  
1 45 purpose of funding the future purchase of cemetery



1 46 merchandise, funeral merchandise, or a combination  
1 47 thereof without any related trust agreement.

1 48 4. "Burial trust fund" means an irrevocable burial  
1 49 trust fund established by a person with a financial  
1 50 institution for the purpose of funding the future  
2 1 purchase of cemetery merchandise, funeral merchandise,  
2 2 funeral services, or a combination thereof upon the  
2 3 death of the person named in the burial trust fund's  
2 4 records or a related purchase agreement. "Burial  
2 5 trust fund" does not include or imply the existence of  
2 6 any oral or written purchase agreement for cemetery  
2 7 merchandise, funeral merchandise, funeral services, or  
2 8 a combination thereof between the person and a seller.

2 9 5. "Cemetery merchandise" means foundations, grave  
2 10 markers, tombstones, ornamental merchandise,  
2 11 memorials, and monuments sold under a purchase  
2 12 agreement that does not require installation within  
2 13 twelve months of the purchase.

2 14 6. "Commissioner" means the commissioner of  
2 15 insurance or the deputy administrator authorized in  
2 16 section 523A.801 to the extent the commissioner  
2 17 delegates functions to the deputy administrator.

2 18 7. "Common business enterprise" means a group of  
2 19 two or more business entities that share common  
2 20 ownership in excess of fifty percent.

2 21 8. "Credit sale" means a sale of goods, services,  
2 22 or an interest in land in which all of the following  
2 23 are applicable:

2 24 a. Credit is granted either under a seller credit  
2 25 card or by a seller who regularly engages as a seller  
2 26 in credit transactions of the same kind.

2 27 b. The buyer is a person other than an  
2 28 organization.

2 29 c. The goods, services, or interest in land are  
2 30 purchased primarily for a personal, family, or  
2 31 household purpose.

2 32 d. Either the debt is payable in installments or a  
2 33 finance charge is made.

2 34 e. For goods and services, the amount financed  
2 35 does not exceed twenty-five thousand dollars.

2 36 9. "Delivery" occurs when:

2 37 a. The cemetery merchandise, funeral merchandise,  
2 38 or the title document establishing an easement for  
2 39 burial rights is physically delivered to the purchaser  
2 40 or installed, except that burial of any item at the  
2 41 site of its ultimate use shall not constitute delivery  
2 42 for purposes of this chapter.

2 43 b. If authorized by a purchaser under a purchase  
2 44 agreement, cemetery merchandise has been permanently  
2 45 identified with the name of the purchaser or the  
2 46 beneficiary and delivered to a bonded warehouse or  
2 47 storage facility approved by the commissioner and both  
2 48 title to the merchandise and a warehouse receipt have  
2 49 been delivered to the purchaser or beneficiary and a  
2 50 copy of the warehouse receipt has been delivered to  
3 1 the establishment for retention in its files.

3 2 c. If authorized by a purchaser under a purchase  
3 3 agreement, a polystyrene or polypropylene outer burial  
3 4 container has been permanently identified with the  
3 5 name of the purchaser or the beneficiary and delivered  
3 6 to a bonded warehouse or storage facility approved by  
3 7 the commissioner and both title to the merchandise and  
3 8 a warehouse receipt have been delivered to the  
3 9 purchaser or beneficiary and a copy of the warehouse  
3 10 receipt has been delivered to the establishment for  
3 11 retention in its files.

3 12 10. "Doing business in this state" means issuing



3 13 or performing wholly or in part any term of a purchase  
3 14 agreement executed within the state of Iowa.

3 15 11. "Establishment" means each business  
3 16 establishment that advertises, sells, promotes, or  
3 17 offers cemetery merchandise, funeral merchandise,  
3 18 funeral services, or a combination thereof prior to  
3 19 the death of the person named or implied in a purchase  
3 20 agreement.

3 21 12. "Financial institution" means a state or  
3 22 federally insured bank, savings and loan association,  
3 23 credit union, trust department thereof, or a trust  
3 24 company authorized to do business within this state  
3 25 and which has been granted trust powers under the laws  
3 26 of this state or the United States, which holds funds  
3 27 under a trust agreement. "Financial institution" does  
3 28 not include:

3 29 a. A seller.

3 30 b. Anyone employed by or directly involved with  
3 31 the seller in the seller's cemetery merchandise,  
3 32 funeral merchandise, or funeral services business.

3 33 13. "Funeral merchandise" means personal property  
3 34 used for the final disposition of a dead human body,  
3 35 including but not limited to clothing, caskets,  
3 36 vaults, urns, and interment receptacles. "Funeral  
3 37 merchandise" does not include easements for burial  
3 38 rights in a completed space or cemetery merchandise.

3 39 14. "Funeral services" means services provided for  
3 40 the final disposition of a dead human body, including  
3 41 but not limited to services necessarily or customarily  
3 42 provided for a funeral, or for the interment,  
3 43 entombment, or cremation of a dead human body, or any  
3 44 combination thereof. "Funeral services" does not  
3 45 include perpetual care or maintenance.

3 46 15. "Inner burial container" means a container in  
3 47 which human remains are placed for burial or  
3 48 entombment. Where only one container is used for  
3 49 burial or entombment, "inner burial container"  
3 50 includes a container serving as a burial vault, urn  
4 1 vault, grave box, grave liner, or lawn crypt.

4 2 16. "Insolvent" means the inability to pay debts  
4 3 as they become due in the usual course of business.

4 4 17. "Interest or income" means unrealized net  
4 5 appreciation or loss in the fair value of cemetery  
4 6 merchandise, funeral merchandise, and funeral services  
4 7 trust assets for which a market value may be  
4 8 determined with reasonable certainty, plus the return  
4 9 in money or property derived from the use of trust  
4 10 principal or income, net of investment losses, taxes,  
4 11 and expenses incurred in the sale of trust assets, any  
4 12 cost of the operation of the trust, and any annual  
4 13 audit fee. "Interest or income" includes but is not  
4 14 limited to:

4 15 a. Rent of real or personal property, including  
4 16 sums received for cancellation or renewal of a lease  
4 17 and any royalties.

4 18 b. Interest on money lent, including sums received  
4 19 as consideration for prepayment of principal.

4 20 c. Cash dividends paid on corporate stock.

4 21 d. Interest paid on deposit funds or debt  
4 22 obligations.

4 23 e. Gain realized from the sale of trust assets.

4 24 18. "Next of kin" means the surviving spouse and  
4 25 heirs at law of the deceased.

4 26 19. "Nonguaranteed" means that the price of the  
4 27 merchandise and services selected has not been fixed  
4 28 or guaranteed and will be determined by existing  
4 29 prices at the time the merchandise and services are



4 30 delivered or provided.

4 31 20. "Outer burial container" means a container  
4 32 used for the burial of human remains that is used  
4 33 exclusively to surround or enclose an inner burial  
4 34 container and to support the earth above the  
4 35 container, commonly known as a burial vault, urn  
4 36 vault, grave box, or grave liner, but not including a  
4 37 lawn crypt.

4 38 21. "Parent company" means a corporation that has  
4 39 a controlling interest in an establishment.

4 40 22. "Person" means an individual, business,  
4 41 corporation, trust, firm, partnership, association, or  
4 42 any other legal entity.

4 43 23. "Personal representative" means a personal  
4 44 representative as defined in section 633.3.

4 45 24. "Provider" means a person that provides  
4 46 funeral services, funeral merchandise, or cemetery  
4 47 merchandise purchased in a purchase agreement.

4 48 25. "Purchase agreement" means an agreement to  
4 49 furnish cemetery merchandise, funeral merchandise,  
4 50 funeral services, or a combination thereof when  
5 1 performance or delivery may be more than one hundred  
5 2 twenty days following the initial payment on the  
5 3 account.

5 4 26. "Purchase price" means the negotiated price  
5 5 for the item of merchandise or service, if itemized in  
5 6 the purchase agreement, or the price of the item  
5 7 listed in the seller's general price list at the time  
5 8 the purchase agreement is signed.

5 9 27. "Purchaser" means a person who purchases  
5 10 cemetery merchandise, funeral merchandise, funeral  
5 11 services, or a combination thereof. The purchaser  
5 12 need not be a beneficiary of the agreement.

5 13 28. "Seller" means a person doing business within  
5 14 this state, including a person doing business within  
5 15 this state who sells insurance, who advertises, sells,  
5 16 promotes, or offers to furnish cemetery merchandise,  
5 17 funeral merchandise, funeral services, or a  
5 18 combination thereof when performance or delivery may  
5 19 be more than one hundred twenty days following the  
5 20 initial payment on the account whether the transaction  
5 21 is completed or offered in person, through the mail,  
5 22 over the telephone, by the internet, or through any  
5 23 other means of commerce. "Seller" includes any person  
5 24 performing any term of a purchase agreement executed  
5 25 within this state, and any person identified under a  
5 26 burial account as the provider of cemetery  
5 27 merchandise, funeral merchandise, funeral services, or  
5 28 a combination thereof.

5 29 29. "Total purchase price" means the aggregate  
5 30 amount the purchaser is obligated to pay for  
5 31 merchandise or services pursuant to the purchase  
5 32 agreement, excluding any taxes, administrative  
5 33 charges, or financing charges.

#### 5 34 SUBCHAPTER 2

#### 5 35 ESTABLISHMENT OF TRUSTS, DEPOSIT, INVESTMENT, 5 36 AND REPORTING REQUIREMENTS

5 37 Sec. \_\_\_\_\_. NEW SECTION. 523A.201 ESTABLISHMENT OF  
5 38 TRUST FUNDS.

5 39 Unless proceeding under section 523A.401, 523A.402,  
5 40 or 523A.403, a seller must establish a trust fund  
5 41 prior to advertising, selling, promoting, or offering  
5 42 cemetery merchandise, funeral merchandise, funeral  
5 43 services, or a combination thereof in this state as  
5 44 follows:

5 45 1. The trust fund must be established at a  
5 46 financial institution.



5 47 2. If a seller agrees to furnish cemetery  
5 48 merchandise, funeral merchandise, funeral services, or  
5 49 a combination thereof and performance or delivery may  
5 50 be more than one hundred twenty days following the  
6 1 initial payment on the account, a minimum of eighty  
6 2 percent of all payments made under the purchase  
6 3 agreement shall be placed and remain in trust until  
6 4 the person for whose benefit the funds were paid dies.  
6 5 3. If a purchase agreement for cemetery  
6 6 merchandise, funeral merchandise, funeral services, or  
6 7 a combination thereof provides that payments are to be  
6 8 made in installments, the seller shall deposit eighty  
6 9 percent of each payment in the trust fund until the  
6 10 full amount required to be placed in trust has been  
6 11 deposited. If the purchase agreement is financed with  
6 12 or sold to a financial institution, the purchase  
6 13 agreement shall be considered paid in full and the  
6 14 trust requirements shall be satisfied within fifteen  
6 15 days after the close of the month in which the seller  
6 16 receives funds from the financial institution.  
6 17 4. A seller shall not invade the trust principal  
6 18 for any purpose.  
6 19 5. A seller who lacks insurance coverage which  
6 20 protects against the loss of purchaser payments not  
6 21 placed in trust within the time period required by  
6 22 this section and section 523A.202 shall not commingle  
6 23 these payments with any other seller funds. A seller  
6 24 who lacks insurance coverage may use one or more of  
6 25 the following methods to dispose of these payments:  
6 26 a. Deposit purchaser funds into an escrow account  
6 27 until the required amount has been deposited into a  
6 28 trust account at a financial institution.  
6 29 b. Make a prior delivery or warehouse cemetery or  
6 30 funeral merchandise or a combination thereof as  
6 31 provided by this chapter.  
6 32 c. Make a prior filing of a surety bond in lieu of  
6 33 establishing a trust fund as required by this section.  
6 34 d. Make a simultaneous, same-day deposit of the  
6 35 purchaser's payments into the seller's bank account  
6 36 and the required amount into the seller's trust fund.  
6 37 6. Payments otherwise subject to this section are  
6 38 not exempt merely because they are held in  
6 39 certificates of deposit.  
6 40 7. Commingling of trust funds with other funds of  
6 41 the seller is prohibited.  
6 42 8. Interest or income earned on amounts deposited  
6 43 in trust shall remain in trust under the same terms  
6 44 and conditions as payments made under the purchase  
6 45 agreement, except that the seller may withdraw so much  
6 46 of the interest or income as represents the difference  
6 47 between the amount needed to adjust the trust funds  
6 48 for inflation as set by the commissioner based on the  
6 49 consumer price index and the interest or income earned  
6 50 during the preceding year not to exceed fifty percent  
7 1 of the total interest or income on a calendar-year  
7 2 basis. The early withdrawal of interest or income  
7 3 under this provision does not affect the purchaser's  
7 4 right to a credit of such interest or income in the  
7 5 event of a nonguaranteed price agreement,  
7 6 cancellation, or nonperformance by the seller.  
7 7 9. The commissioner may require amendments to a  
7 8 trust agreement not in accord with the provisions of  
7 9 this chapter.  
7 10 10. If a seller voluntarily or involuntarily  
7 11 ceases doing business and the seller's obligation to  
7 12 provide merchandise or services has not been assumed  
7 13 by another establishment holding a current



7 14 establishment permit, all trust funds, including  
7 15 accrued interest or income, shall be repaid to the  
7 16 purchaser within one hundred twenty days following the  
7 17 seller's cessation of business or, in the event of  
7 18 circumstances where a payment is not possible within  
7 19 one hundred twenty days, as soon as is reasonably  
7 20 practicable.

7 21 Sec. \_\_\_\_\_. NEW SECTION. 523A.202 TRUST FUND  
7 22 DEPOSIT REQUIREMENTS.

7 23 1. All funds held in trust pursuant to section  
7 24 523A.201 shall be deposited in a financial  
7 25 institution, within fifteen days after the close of  
7 26 the month a seller receives the funds. The financial  
7 27 institution shall hold the funds for the designated  
7 28 beneficiary until released.

7 29 2. All funds required to be deposited by the  
7 30 purchaser for a purpose described in section 523A.201  
7 31 shall be deposited consistent with one of the  
7 32 following methods:

7 33 a. The payments shall be deposited directly into  
7 34 an interest-bearing burial account in the purchaser's  
7 35 name.

7 36 b. The purchaser shall deposit payments directly  
7 37 into a separate trust account in the purchaser's name.  
7 38 The account may be made payable to the seller upon the  
7 39 death of the purchaser or the designated beneficiary,  
7 40 provided that, until death, the purchaser retains the  
7 41 exclusive power to hold, manage, pledge, and invest  
7 42 the trust account funds and may revoke the trust and  
7 43 withdraw the funds, in whole or in part, at any time  
7 44 during the term of the agreement.

7 45 c. The purchaser or the seller shall deposit  
7 46 payments directly into a separate trust account in the  
7 47 name of the purchaser, as trustee, for the named  
7 48 beneficiary, to be held, invested, and administered as  
7 49 a trust account for the benefit and protection of the  
7 50 beneficiary. The depositor shall notify the financial  
8 1 institution of the existence and terms of the trust,  
8 2 including at a minimum, the name of each party to the  
8 3 agreement, the name and address of the trustee, and  
8 4 the name and address of the beneficiary. The account  
8 5 may be made payable to the seller upon the  
8 6 beneficiary's death.

8 7 d. The payments shall be deposited in the name of  
8 8 the trustee, as trustee, under the terms of a master  
8 9 trust agreement and the trustee may invest, reinvest,  
8 10 exchange, retain, sell, and otherwise manage the trust  
8 11 fund for the benefit and protection of the named  
8 12 beneficiary.

8 13 3. The commissioner may by rule authorize other  
8 14 methods of deposit upon a finding that such methods  
8 15 provide equivalent safety of the principal and  
8 16 interest or income and the seller lacks access to the  
8 17 proceeds prior to performance.

8 18 4. This section does not prohibit moving trust  
8 19 funds from one financial institution to another.

8 20 Sec. \_\_\_\_\_. NEW SECTION. 523A.203 FINANCIAL  
8 21 INSTITUTION TRUSTEE QUALIFICATION AND INVESTMENT  
8 22 REQUIREMENTS.

8 23 1. A financial institution may serve as a trustee  
8 24 if granted those powers under the laws of this state  
8 25 or of the United States. A financial institution  
8 26 acting as a trustee of trust funds under this chapter  
8 27 shall invest the funds in accordance with applicable  
8 28 law.

8 29 2. A financial institution acting as a trustee of  
8 30 trust funds under this chapter has a fiduciary duty to



8 31 make reasonable investment decisions and to properly  
8 32 oversee and manage the funds entrusted to it. The  
8 33 trustee shall use the judgment and care under the  
8 34 circumstances then prevailing that persons of  
8 35 prudence, discretion, and intelligence exercise in the  
8 36 management of their own affairs, not in regard to  
8 37 speculation but in regard to the permanent disposition  
8 38 of their funds, considering the probable income as  
8 39 well as the probable safety of their capital. The  
8 40 commissioner may take enforcement action against a  
8 41 financial institution in its capacity as trustee for a  
8 42 breach of fiduciary duty proven under this chapter.

8 43 3. Moneys deposited under a master trust agreement  
8 44 may be commingled by the financial institution for  
8 45 investment purposes if each deposit includes a  
8 46 detailed listing of the amount deposited in trust for  
8 47 each beneficiary and maintenance of a separate  
8 48 accounting of each purchaser's principal, interest,  
8 49 and income.

8 50 4. Subject to a master trust agreement, the seller  
9 1 may appoint an independent investment adviser to  
9 2 advise the financial institution about investment of  
9 3 the trust funds.

9 4 5. Subject to agreement between the parties, the  
9 5 financial institution may receive a reasonable fee  
9 6 from the trust funds for services rendered as trustee.  
9 7 The trust shall pay the trust operation costs and any  
9 8 annual audit fees.

9 9 6. The seller or any officer, director, agent,  
9 10 employee, or affiliate of the seller shall not serve  
9 11 as trustee. A financial institution holding trust  
9 12 funds shall not do any of the following:

9 13 a. Be owned, under the control of, or affiliated  
9 14 with a seller.

9 15 b. Use any funds required to be held in trust  
9 16 under this chapter or chapter 566A to purchase an  
9 17 interest in any contract or agreement to which a  
9 18 seller is a party.

9 19 c. Otherwise invest, directly or indirectly, in a  
9 20 seller's business operations.

9 21 Sec. \_\_\_\_\_. NEW SECTION. 523A.204 ESTABLISHMENT  
9 22 ANNUAL REPORTING REQUIREMENTS.

9 23 1. An establishment shall file with the  
9 24 commissioner not later than March 1 of each year an  
9 25 annual report on a form prescribed by the commissioner  
9 26 containing all of the following:

9 27 a. The seller's name and address and the name and  
9 28 address of the establishment that will provide the  
9 29 cemetery merchandise, funeral merchandise, funeral  
9 30 services, or a combination thereof.

9 31 b. The balance of each trust account as of the end  
9 32 of the preceding calendar year, identified by  
9 33 purchaser or beneficiary name.

9 34 c. A report of any amounts withdrawn from the  
9 35 trust account including the reason for each  
9 36 withdrawal.

9 37 d. A detailed listing of the insurance funding  
9 38 outstanding at the end of the preceding calendar year,  
9 39 identified by the name of the purchaser or the  
9 40 beneficiary.

9 41 e. A complete inventory of the cemetery  
9 42 merchandise, funeral merchandise, or a combination  
9 43 thereof delivered in lieu of trust fund requirements  
9 44 under section 523A.401, including the following:

9 45 (1) The location of the merchandise.

9 46 (2) Merchandise serial numbers or warehouse  
9 47 receipt numbers identified by the name of the



9 48 purchaser or the beneficiary.  
9 49 (3) A verified statement of a certified public  
9 50 accountant on a form prescribed by the commissioner  
10 1 that all of the following have occurred:  
10 2 (a) A physical inventory of the cemetery  
10 3 merchandise or funeral merchandise has been conducted.  
10 4 (b) Each item of that merchandise is in the  
10 5 seller's possession at the specified location.  
10 6 f. The purchaser and beneficiary names, the amount  
10 7 of each purchase agreement made in the preceding year,  
10 8 and the date the purchase agreement was made.  
10 9 g. A summary of any purchase agreements converted  
10 10 from trust-funded benefits to insurance-funded or  
10 11 annuity benefits during the preceding year which shall  
10 12 include, as of the conversion date, the following  
10 13 information, as well as aggregated totals for each of  
10 14 the following categories of information, if  
10 15 appropriate:  
10 16 (1) Insured's name.  
10 17 (2) Insured's policy number.  
10 18 (3) Original prepaid purchase agreement amount.  
10 19 (4) Amount paid in.  
10 20 (5) Unpaid balance of the prepaid purchase  
10 21 agreement.  
10 22 (6) Unpaid balance of the purchase agreement.  
10 23 (7) Amount retained by the establishment.  
10 24 (8) Amount applied to the purchase of the  
10 25 insurance policy or annuity.  
10 26 (9) Initial cash surrender value and initial death  
10 27 benefit under the insurance policy.  
10 28 The establishment shall include a notarized  
10 29 statement attesting that the insurance policies or  
10 30 annuities have been issued and funded on behalf of the  
10 31 purchasers listed in the summary and that all notices  
10 32 required under this section have been given.  
10 33 h. A summary of any purchase agreements converted  
10 34 from trust-funded benefits to a surety bond during the  
10 35 preceding year which shall include, as of the  
10 36 conversion date, the following information, as well as  
10 37 aggregated totals for each of the following categories  
10 38 of information, if appropriate:  
10 39 (1) Name of the purchaser and beneficiary.  
10 40 (2) Original prepaid purchase agreement amount.  
10 41 (3) Amount paid in.  
10 42 (4) Unpaid balance of the prepaid purchase  
10 43 agreement.  
10 44 (5) Unpaid balance of the purchase agreement.  
10 45 (6) Amount retained by the establishment.  
10 46 (7) Amount applied to the purchase of the surety  
10 47 bond.  
10 48 (8) A description of the surety bond and the  
10 49 applicable amount of coverage.  
10 50 i. Any other information the commissioner deems  
11 1 necessary for the administration of this chapter.  
11 2 2. A person holding multiple establishment permits  
11 3 may elect to file only one annual report after noting  
11 4 all establishments on the report.  
11 5 3. An establishment shall make a good faith effort  
11 6 to complete the annual report. The establishment  
11 7 shall note on the annual report any information not  
11 8 reasonably available to the establishment as an  
11 9 exception or variance. Account balances within twelve  
11 10 months of the date of the filing of the annual report  
11 11 shall be accepted if the actual date of the account  
11 12 balances is noted.  
11 13 4. In lieu of the annual report form described in  
11 14 subsection 1, the commissioner may authorize an



11 15 establishment to file a short form annual report on a  
11 16 form prescribed by the commissioner. The short form  
11 17 annual report may incorporate by reference information  
11 18 readily available to the establishment. The  
11 19 commissioner may certify and decertify establishments  
11 20 authorized to file the short form based upon:

- 11 21 a. The establishment's recordkeeping system.
- 11 22 b. The number of purchase agreements which the  
11 23 establishment has sold that are subject to regulation  
11 24 under chapter 523A.
- 11 25 c. The availability and accessibility of  
11 26 information at the establishment for purchase  
11 27 agreements subject to regulation.
- 11 28 d. Whether the establishment places one hundred  
11 29 percent of funds received pursuant to its purchase  
11 30 agreements in trust.
- 11 31 e. The findings of the commissioner concerning  
11 32 audits and consumer complaints.

11 33 The commissioner shall retain the authority to  
11 34 require establishments permitted to file the short  
11 35 form annual report to provide all of the information  
11 36 required in the annual report form required by  
11 37 subsection 1 for audit purposes or otherwise.

11 38 5. An establishment filing an annual report shall  
11 39 pay a filing fee of ten dollars per purchase agreement  
11 40 sold during the year covered by the report. The fee  
11 41 does not apply to any of the following:

- 11 42 a. A purchase agreement where the beneficiary dies  
11 43 in the same year the agreement was sold.
- 11 44 b. Any modifications or additions, such as  
11 45 payments, for an existing purchase agreement sold in a  
11 46 previous year.
- 11 47 c. An additional agreement purchased and already  
11 48 reported to the commissioner by the purchaser.
- 11 49 d. A purchase agreement canceled or revoked in the  
11 50 same year it was sold.

12 1 All purchase agreement changes for which a filing  
12 2 fee is not required must be reported to the  
12 3 commissioner on the annual report for the year  
12 4 covered.

12 5 6. As part of the annual filing with the  
12 6 commissioner, an establishment shall file an  
12 7 authorization for the commissioner or a designee to  
12 8 investigate, audit, and verify all funds, accounts,  
12 9 safe deposit boxes, and other evidence of  
12 10 establishment trust funds held by or in a financial  
12 11 institution.

12 12 7. Forms may be obtained at cost from the  
12 13 commissioner upon request. The commissioner may  
12 14 accept annual reports submitted in an electronic  
12 15 format, including but not limited to computer  
12 16 diskettes.

12 17 8. Notwithstanding chapter 22, all records  
12 18 maintained by the commissioner under this section  
12 19 shall be confidential and shall not be made available  
12 20 for inspection or copying except upon approval of the  
12 21 commissioner or the attorney general.

12 22 Sec. \_\_\_\_\_. NEW SECTION. 523A.205 FINANCIAL  
12 23 INSTITUTION ANNUAL REPORTING REQUIREMENTS.

12 24 1. A financial institution shall file with the  
12 25 commissioner not later than March 1 of each year an  
12 26 annual report on a form prescribed by the commissioner  
12 27 showing all funds deposited by an establishment under  
12 28 a trust agreement during the previous year. Each  
12 29 report shall contain all information requested.

12 30 2. Forms may be obtained from the commissioner  
12 31 upon request. The commissioner may accept annual



12 32 reports submitted in an electronic format, including  
12 33 but not limited to computer diskettes.  
12 34 3. Notwithstanding chapter 22, all records  
12 35 maintained by the commissioner under this section  
12 36 shall be confidential and shall not be made available  
12 37 for inspection or copying except upon approval of the  
12 38 commissioner or the attorney general.

12 39 Sec. \_\_\_\_\_. NEW SECTION. 523A.206 AUDITS.

12 40 1. The commissioner may make audits of the  
12 41 establishment and of the records of a seller, at the  
12 42 times and in the scope the commissioner determines.  
12 43 The audits may be made without prior notice to the  
12 44 seller. The commissioner may copy all records the  
12 45 commissioner feels are necessary to conduct the audit.  
12 46 The commissioner may require an audit of a seller or  
12 47 other person by a certified public accountant to  
12 48 verify compliance with this chapter, implementing  
12 49 rules, or orders.

12 50 2. A seller or other person shall pay for the  
13 1 audit unless the commissioner waives this requirement.  
13 2 The cost of an audit involving multiple sellers or  
13 3 other persons shall be prorated among them upon any  
13 4 reasonable basis as determined by the commissioner.  
13 5 The accountant shall deliver the audit report to the  
13 6 commissioner and to the seller or other persons.  
13 7 3. The commissioner shall not make public the  
13 8 information obtained in the course of an audit, except  
13 9 when a duty under this chapter requires the  
13 10 commissioner to take action against a seller or to  
13 11 cooperate with another enforcement or regulatory  
13 12 agency, or except when the commissioner is called as a  
13 13 witness in a civil or criminal proceeding.

13 14 SUBCHAPTER 3

13 15 DISBURSEMENT OF REMAINING BURIAL ACCOUNT FUNDS,  
13 16 BURIAL TRUST FUNDS, AND INSURANCE OR ANNUITY PROCEEDS  
13 17 UNDER THE REQUIREMENTS OF SECTION 249A.5

13 18 Sec. \_\_\_\_\_. NEW SECTION. 523A.301 DEFINITION.

13 19 As used in sections 523A.302 and 523A.303,  
13 20 "director" means the director of human services.

13 21 Sec. \_\_\_\_\_. NEW SECTION. 523A.302 IDENTIFICATION  
13 22 OF MERCHANDISE AND SERVICE PROVIDER.

13 23 If a burial trust fund identifies, either in the  
13 24 trust fund records or in a related purchase agreement,  
13 25 the seller who will provide the cemetery merchandise,  
13 26 funeral merchandise, funeral services or a combination  
13 27 thereof, the trust fund records or the related  
13 28 purchase agreements must contain a statement signed by  
13 29 an authorized representative of the seller agreeing to  
13 30 furnish the cemetery merchandise, funeral merchandise,  
13 31 funeral services, or a combination thereof upon the  
13 32 death of the beneficiary. The burial trust fund shall  
13 33 not identify a specific seller as payee unless the  
13 34 trust fund records or the related purchase agreements,  
13 35 if any, contain the signature of an authorized  
13 36 representative of the seller and, if the agreement is  
13 37 for funeral services as defined in chapter 156, the  
13 38 name of a funeral director licensed to deliver those  
13 39 services. A person may enter into agreements  
13 40 authorizing the establishment of more than one burial  
13 41 trust fund and agreeing to furnish the applicable  
13 42 merchandise and services.

13 43 Sec. \_\_\_\_\_. NEW SECTION. 523A.303 DISBURSEMENT OF  
13 44 REMAINING FUNDS.

13 45 1. If funds remain in a nonguaranteed irrevocable  
13 46 burial trust fund or from the proceeds of an insurance  
13 47 policy or annuity made payable or assigned to the  
13 48 seller or a provider after the payment of funeral and



13 49 burial expenses in accordance with the conditions and  
13 50 terms of the purchase agreement for cemetery  
14 1 merchandise, funeral merchandise, or funeral services,  
14 2 the seller shall comply with all of the following:  
14 3     a. The seller shall provide written notice by mail  
14 4 to the director under subsection 2.  
14 5     b. At least sixty days after mailing notice to the  
14 6 director, the seller shall disburse any remaining  
14 7 funds from the burial trust fund as follows:  
14 8         (1) If within the sixty-day period the seller  
14 9 receives a claim from the personal representative of  
14 10 the deceased, any remaining funds shall be disbursed  
14 11 to the personal representative, notwithstanding any  
14 12 claim by the director.  
14 13         (2) If within the sixty-day period the seller has  
14 14 not received a claim from the personal representative  
14 15 of the deceased but receives a claim from the  
14 16 director, the seller shall disburse the remaining  
14 17 funds up to the amount of the claim to the director.  
14 18         (3) Any remaining funds not disposed of pursuant  
14 19 to subparagraphs (1) and (2) shall be disbursed to any  
14 20 person who is identified as the next of kin of the  
14 21 deceased in an affidavit submitted in accordance with  
14 22 subsection 5.  
14 23     2. The notice mailed to the director shall meet  
14 24 all of the following requirements and is subject to  
14 25 all of the following conditions:  
14 26         a. The notice shall be mailed with postage  
14 27 prepaid.  
14 28         b. If the notice is sent by regular mail, the  
14 29 sixty-day period for receipt of a response is deemed  
14 30 to commence three days following the date of mailing.  
14 31         c. If the notice is sent by certified mail, the  
14 32 sixty-day period for receipt of a response is deemed  
14 33 to commence on the date of mailing.  
14 34         d. The notice shall provide all of the following  
14 35 information:  
14 36             (1) Current name, address, and telephone number of  
14 37 the seller.  
14 38             (2) Full name of the deceased.  
14 39             (3) Date of the deceased's death.  
14 40             (4) Amount of funds remaining in the burial trust  
14 41 fund.  
14 42             (5) Statement that any claim by the director must  
14 43 be received by the seller within sixty days after the  
14 44 date of mailing of the notice.  
14 45         e. A notice in substantially the following form  
14 46 complies with this subsection:  
14 47             "TO: THE DIRECTOR OF HUMAN SERVICES  
14 48             FROM: (SELLER'S NAME, CURRENT ADDRESS, AND  
14 49 TELEPHONE NUMBER)  
14 50             YOU ARE HEREBY NOTIFIED THAT (NAME OF DECEASED),  
15 1 WHO HAD AN IRREVOCABLE BURIAL TRUST FUND, HAS DIED,  
15 2 THAT FINAL PAYMENT FOR CEMETERY MERCHANDISE, FUNERAL  
15 3 MERCHANDISE, AND FUNERAL SERVICES HAS BEEN MADE, AND  
15 4 THAT (REMAINING AMOUNT) REMAINS IN THE IRREVOCABLE  
15 5 BURIAL TRUST FUND.  
15 6             THE ABOVE-NAMED SELLER MUST RECEIVE A WRITTEN  
15 7 RESPONSE REGARDING ANY CLAIM BY THE DIRECTOR WITHIN  
15 8 SIXTY DAYS AFTER THE MAILING OF THIS NOTICE TO THE  
15 9 DIRECTOR.  
15 10             IF THE ABOVE-NAMED SELLER DOES NOT RECEIVE A  
15 11 WRITTEN RESPONSE REGARDING A CLAIM BY THE DIRECTOR  
15 12 WITHIN SIXTY DAYS AFTER THE MAILING OF THIS NOTICE,  
15 13 THE SELLER MAY DISPOSE OF THE REMAINING FUNDS IN  
15 14 ACCORDANCE WITH SECTION 523A.303, CODE OF IOWA."  
15 15     3. Upon receipt of the seller's written notice,



15 16 the director shall determine if a debt is due the  
15 17 department of human services pursuant to section  
15 18 249A.5. If the director determines that a debt is  
15 19 owing, the director shall provide a written response  
15 20 to the seller within sixty days after the mailing of  
15 21 the seller's notice. If the director does not respond  
15 22 with a claim within the sixty-day period, any claim  
15 23 made by the director shall not be enforceable against  
15 24 the seller, the trust, or a trustee.

15 25 4. A personal representative who wishes to make a  
15 26 claim shall send written notice of the claim to the  
15 27 seller. If the seller does not receive any claim from  
15 28 a personal representative within the sixty-day period  
15 29 provided for response by the director regarding a  
15 30 claim, the claim of the personal representative shall  
15 31 not be enforceable against the seller, the trust, or a  
15 32 trustee.

15 33 5. Any person other than a personal representative  
15 34 or the director claiming an interest in the remaining  
15 35 funds shall submit an affidavit claiming an interest  
15 36 which provides the following information:

15 37 a. Full name, current address, and telephone  
15 38 number of the claimant.

15 39 b. Claimant's relationship to the deceased.

15 40 c. Name of any surviving next of kin of the  
15 41 deceased, and the relationship of any named surviving  
15 42 next of kin.

15 43 d. That the claimant has no knowledge of the  
15 44 existence of a personal representative for the  
15 45 deceased's estate.

15 46 6. The seller may retain not more than fifty  
15 47 dollars of the remaining funds in the burial trust  
15 48 fund for the administrative expenses associated with  
15 49 the requirements of this section.

15 50 7. If the funds remaining in a burial trust fund  
16 1 are disbursed under the requirements of this section,  
16 2 the seller, the provider, the burial trust fund, and  
16 3 any trustee shall not be liable to the director, the  
16 4 estate of the deceased, any personal representative,  
16 5 or any other interested person for the remaining funds  
16 6 and any lien imposed by the director shall be  
16 7 unenforceable against the seller, the burial trust  
16 8 fund, or any trustee.

16 9 SUBCHAPTER 4

16 10 TRUSTING ALTERNATIVES

16 11 Sec. \_\_\_\_\_. NEW SECTION. 523A.401 PURCHASE  
16 12 AGREEMENTS FUNDED BY INSURANCE PROCEEDS.

16 13 1. A purchase agreement may be funded by insurance  
16 14 proceeds derived from a new or existing insurance  
16 15 policy issued by an insurance company authorized to do  
16 16 business and doing business within this state.

16 17 2. Such funding may be in lieu of the trusting  
16 18 requirements of this chapter when the purchaser  
16 19 assigns the proceeds of an existing insurance policy.

16 20 3. Such funding may be in lieu of the trusting  
16 21 requirements of this chapter when a new insurance  
16 22 policy is purchased to fund the purchase agreement,  
16 23 with a face amount equal to or greater than the  
16 24 current retail price of the cemetery merchandise,  
16 25 funeral merchandise, and funeral services to be  
16 26 delivered under the purchase agreement or, if less, a  
16 27 face amount equal to the total of all payments to be  
16 28 submitted by the purchaser pursuant to the purchase  
16 29 agreement.

16 30 4. The premiums of any new insurance policy shall  
16 31 be fully paid within thirty days after execution of  
16 32 the purchase agreement or, with respect to a purchase



16 33 agreement that provides for periodic payments, the  
16 34 premiums shall be paid directly by the purchaser to  
16 35 the insurance company issuing the policy.

16 36 5. Any new insurance policy shall satisfy the  
16 37 following conditions:

16 38 a. Except as necessary and appropriate to satisfy  
16 39 the requirements regarding burial trust funds under  
16 40 Title XIX of the federal Social Security Act, the  
16 41 policy shall not be owned by the establishment, the  
16 42 policy shall not be irrevocably assigned to the  
16 43 establishment, and the assignment of proceeds from the  
16 44 insurance policy to the establishment shall be limited  
16 45 to the establishment's interests as they appear in the  
16 46 purchase agreement, and conditioned on the  
16 47 establishment's delivery of cemetery merchandise,  
16 48 funeral merchandise, and funeral services pursuant to  
16 49 a purchase agreement.

16 50 b. The policy shall provide that any assignment of  
17 1 benefits is contingent upon the establishment's  
17 2 delivery of cemetery merchandise, funeral merchandise,  
17 3 and funeral services pursuant to a purchase agreement.

17 4 c. The policy shall have an increasing death  
17 5 benefit or similar feature that provides some means  
17 6 for increasing the funding as the cost of funeral and  
17 7 cemetery goods and services increases.

17 8 6. With the written consent of the purchaser, an  
17 9 existing prepaid purchase agreement with trust-funded  
17 10 benefits may be converted to a prepaid purchase  
17 11 agreement with insurance-funded benefits provided the  
17 12 establishment and the insurance benefits comply with  
17 13 the following provisions:

17 14 a. The transfer of the trust funds to the  
17 15 insurance company must be at least equal to the full  
17 16 sum required to be deposited as trust principal under  
17 17 the trust-funded prepaid purchase agreement plus all  
17 18 net earnings accumulated with respect thereto, as of  
17 19 the transfer date. Commissions, allowances, surrender  
17 20 charges or other forms of compensation or expense  
17 21 loads, premium expense, administrative charges or  
17 22 expenses, or policy fees shall not be deducted from  
17 23 the trust funds transferred pursuant to the  
17 24 conversion.

17 25 b. The face amount of any insurance policy issued  
17 26 on an individual must be no less than the amount of  
17 27 principal and interest transferred for that individual  
17 28 to the insurance company, and any supplemental  
17 29 insurance policy issued to cover the unfunded portion  
17 30 of the purchase agreement must have a face amount that  
17 31 is at least as great as the unfunded principal  
17 32 balance. The face amount of the insurance purchased  
17 33 shall not, under any circumstances, be less than the  
17 34 total of all payments made by the purchaser pursuant  
17 35 to the agreement plus all net earnings accumulated  
17 36 with respect thereto, as of the transfer date.

17 37 c. The insurance policy shall not allow for  
17 38 contesting coverage, limit death benefits in the case  
17 39 of suicide, refer to physical examination, or  
17 40 otherwise operate as an exclusion, limitation, or  
17 41 condition other than requiring submission of proof of  
17 42 death or surrender of policy at the time the prepaid  
17 43 purchase agreement is funded, matures, or is canceled,  
17 44 as the case may be.

17 45 d. The establishment shall maintain a copy of any  
17 46 prepaid trust-funded purchase agreement that was  
17 47 converted to a prepaid insurance-funded purchase  
17 48 agreement and retain the payment history records for  
17 49 each converted purchase agreement prior to conversion



17 50 until the cemetery merchandise, funeral merchandise,  
18 1 and funeral services have been delivered.

18 2 7. The seller of a purchase agreement subject to  
18 3 this chapter which is to be funded by insurance  
18 4 proceeds shall obtain all permits required to be  
18 5 obtained and comply with all reporting requirements  
18 6 under this chapter.

18 7 8. An insurance company issuing policies funding  
18 8 purchase agreements subject to this chapter shall file  
18 9 an annual report with the commissioner on a form  
18 10 prescribed by the commissioner. The report shall list  
18 11 the applicable insurance policies outstanding for each  
18 12 establishment. Computer printouts may be submitted so  
18 13 long as each legibly provides the same information  
18 14 required in the prescribed form.

18 15 Sec. \_\_\_\_ NEW SECTION. 523A.402 PURCHASE  
18 16 AGREEMENTS FUNDED BY ANNUITY PROCEEDS.

18 17 1. A purchase agreement may be funded by proceeds  
18 18 derived from a new or existing annuity issued by an  
18 19 insurance company authorized to do business and doing  
18 20 business within this state.

18 21 2. Such funding may be in lieu of the trust  
18 22 requirements of this chapter when the purchaser  
18 23 assigns the proceeds of an existing annuity.

18 24 3. Such funding may be in lieu of the trust  
18 25 requirements of this chapter when a new annuity is  
18 26 purchased to fund the purchase agreement, with a face  
18 27 amount equal to or greater than the current retail  
18 28 price of the cemetery merchandise, funeral  
18 29 merchandise, and funeral services to be delivered  
18 30 under the purchase agreement or, if less, a face  
18 31 amount equal to the total of all payments to be  
18 32 submitted by the purchaser pursuant to the purchase  
18 33 agreement.

18 34 4. The premiums of any new annuity shall be fully  
18 35 paid within thirty days after execution of the  
18 36 purchase agreement or, with respect to a purchase  
18 37 agreement that provides for periodic payments, the  
18 38 premiums shall be paid directly by the purchaser to  
18 39 the insurance company issuing the annuity.

18 40 5. The annuity shall satisfy the following  
18 41 conditions:

18 42 a. Except as necessary and appropriate to satisfy  
18 43 the requirements regarding burial trust funds under  
18 44 Title XIX of the federal Social Security Act, the  
18 45 annuity shall not be owned by the establishment or  
18 46 irrevocably assigned and any designation of the  
18 47 establishment as a beneficiary shall not be made  
18 48 irrevocable.

18 49 b. The annuity shall provide that any assignment  
18 50 of benefits is contingent upon the establishment's  
19 1 delivery of cemetery merchandise, funeral merchandise,  
19 2 and funeral services pursuant to a purchase agreement.

19 3 c. The annuity shall have an increasing death  
19 4 benefit or similar feature that provides some means  
19 5 for increasing the funding as the cost of cemetery  
19 6 merchandise, funeral merchandise, and funeral services  
19 7 increases.

19 8 6. With the written consent of the purchaser, an  
19 9 existing prepaid purchase agreement with trust-funded  
19 10 benefits may be converted to a prepaid purchase  
19 11 agreement with annuity-funded benefits provided the  
19 12 establishment and the annuity benefits comply with the  
19 13 following provisions:

19 14 a. The transfer of the trust funds to the  
19 15 insurance company must be at least equal to the full  
19 16 sum required to be deposited as trust principal under



19 17 the trust-funded prepaid purchase agreement plus all  
19 18 net earnings accumulated with respect thereto, as of  
19 19 the transfer date. Commissions, allowances, surrender  
19 20 charges or other forms of compensation or expense  
19 21 loads, premium expense, administrative charges or  
19 22 expenses, or fees shall not be deducted from the trust  
19 23 funds transferred pursuant to the conversion.

19 24 b. The face amount of any annuity issued on an  
19 25 individual must be no less than the amount of  
19 26 principal and interest transferred for that individual  
19 27 to the insurance company, and any supplemental annuity  
19 28 issued to cover the unfunded portion of the purchase  
19 29 agreement must have a face amount that is at least as  
19 30 great as the unfunded principal balance. The face  
19 31 amount of the annuity purchased shall not, under any  
19 32 circumstances, be less than the total of all payments  
19 33 made by the purchaser pursuant to the agreement plus  
19 34 all net earnings accumulated with respect thereto, as  
19 35 of the transfer date.

19 36 c. The annuity shall not allow for contesting  
19 37 coverage, limit death benefits in the case of suicide,  
19 38 refer to physical examination, or otherwise operate as  
19 39 an exclusion, limitation, or condition other than  
19 40 requiring submission of proof of death or surrender of  
19 41 the annuity at the time the prepaid purchase agreement  
19 42 is funded, matures, or is canceled, as the case may  
19 43 be.

19 44 d. The establishment shall maintain a copy of any  
19 45 prepaid trust-funded purchase agreement that was  
19 46 converted to a prepaid annuity-funded purchase  
19 47 agreement and retain the payment history records for  
19 48 each converted purchase agreement prior to conversion  
19 49 until the cemetery merchandise, funeral merchandise,  
19 50 and funeral services have been delivered.

20 1 7. The seller of a purchase agreement subject to  
20 2 this chapter which is to be funded by annuity proceeds  
20 3 shall obtain all permits required to be obtained and  
20 4 comply with all reporting requirements under this  
20 5 chapter.

20 6 8. An insurance company issuing annuities funding  
20 7 purchase agreements subject to this chapter shall file  
20 8 an annual report with the commissioner on a form  
20 9 prescribed by the commissioner. The report shall list  
20 10 the applicable annuities outstanding for each  
20 11 establishment. Computer printouts may be submitted so  
20 12 long as each legibly provides the same information  
20 13 required in the prescribed form.

20 14 Sec. \_\_\_\_ NEW SECTION. 523A.403 PURCHASE  
20 15 AGREEMENTS FUNDED BY CERTIFICATES OF DEPOSIT.

20 16 1. A purchase agreement may be funded by proceeds  
20 17 derived from a certificate of deposit in the name of  
20 18 the purchaser made payable to the seller upon the  
20 19 purchaser's death.

20 20 2. The seller of a purchase agreement subject to  
20 21 this chapter which is to be funded by a certificate of  
20 22 deposit shall obtain all permits required to be  
20 23 obtained and comply with all reporting requirements  
20 24 under this chapter, implementing rules, and orders.

20 25 Sec. \_\_\_\_ NEW SECTION. 523A.404 MERCHANDISE  
20 26 DELIVERED TO THE PURCHASER OR WAREHOUSED.

20 27 1. Trust requirements do not apply to payments for  
20 28 outer burial containers made of either polystyrene or  
20 29 polypropylene or cemetery merchandise delivered to the  
20 30 purchaser or stored in an independent third-party  
20 31 storage facility not owned or controlled by the seller  
20 32 when approved by the commissioner. The seller or the  
20 33 storage facility must demonstrate that they will do



20 34 all of the following:

20 35     a. Issue a receipt of ownership in the name of the  
20 36 purchaser and deliver it to the purchaser.

20 37     b. Insure the merchandise against loss.

20 38     c. Protect the merchandise against damage.

20 39     d. Transfer title to the purchaser.

20 40     e. Appropriately identify and describe the  
20 41 merchandise in a manner that it can be distinguished  
20 42 from other similar items.

20 43     f. Use a method of storage that allows for visual  
20 44 audits of the merchandise.

20 45     g. Have adequate, computerized, recordkeeping  
20 46 systems in place to identify, describe, and count each  
20 47 item in storage, including the ownership of each item,  
20 48 and provide an aggregate listing with numerical  
20 49 totals.

20 50     h. File a consent to be audited and inspected by  
21 1 the commissioner.

21 2     i. Provide reports to the commissioner, annually,  
21 3 by an independent certified public accountant, which  
21 4 shall include a physical count of merchandise held in  
21 5 storage and a review of information, including the  
21 6 seller's revenue and sales records, as necessary to  
21 7 verify the adequacy of the number of items held at the  
21 8 storage facility.

21 9     j. Satisfy the annual reporting requirements of  
21 10 section 523A.204.

21 11     2. Lawn crypts may be delivered in lieu of  
21 12 trusting. For this purpose, delivery means  
21 13 installation in a grave owned by the purchaser. The  
21 14 seller shall do all of the following:

21 15     a. Notify the administrator before the lawn crypts  
21 16 are installed.

21 17     b. Identify the intended location of the lawn  
21 18 crypts within the cemetery.

21 19     c. Provide documentation adequately demonstrating  
21 20 delivery has occurred. Adequate documentation  
21 21 includes but is not limited to photographs and third-  
21 22 party certifications.

21 23     3. Cemetery merchandise and funeral merchandise  
21 24 shall not be deemed delivered to the purchaser or  
21 25 warehoused if the merchandise is subject to a lien or  
21 26 security interest by any party other than the seller.

21 27     4. An establishment is prohibited from requiring  
21 28 delivery as a condition of the sale.

21 29     5. A seller shall provide services necessary for  
21 30 the installation or burial of outer burial containers  
21 31 sold by the seller. This subsection shall not require  
21 32 the seller to provide for the opening or closing of  
21 33 the interment or entombment space, unless the purchase  
21 34 agreement provides otherwise.

21 35     Sec. \_\_\_\_\_. NEW SECTION. 523A.405 BOND IN LIEU OF  
21 36 TRUST FUND.

21 37     1. In lieu of trust requirements, a seller may  
21 38 file with the commissioner a surety bond issued by a  
21 39 surety company authorized to do business and doing  
21 40 business within this state. The bond must be  
21 41 conditioned upon the seller's faithful performance of  
21 42 purchase agreements subject to this chapter. The  
21 43 surety's liability extends to each such agreement  
21 44 executed while the bond is in force and until  
21 45 performance or rescission of the purchase agreement. To  
21 46 the extent expressly agreed to in writing by the  
21 47 surety, the surety's liability extends to each such  
21 48 agreement subject to this chapter executed prior to  
21 49 the time the bond was in force and until performance  
21 50 or rescission of the agreement. A purchaser aggrieved



22 1 by a breach of a condition of the bond covering the  
22 2 purchaser's agreement may maintain an action against  
22 3 the bond. If, at the time of the breach, the  
22 4 purchaser is aware of the purchaser's rights under the  
22 5 bond and how to file a claim against the bond, the  
22 6 surety shall not be liable for any breach of condition  
22 7 unless the surety receives notice of a claim within  
22 8 sixty days following discovery of the acts, omissions,  
22 9 or conditions constituting the breach of condition,  
22 10 except as otherwise provided in this section. A  
22 11 surety bond shall not be canceled by a surety except  
22 12 upon a written notice of cancellation given by the  
22 13 surety to the commissioner by restricted certified  
22 14 mail, and not prior to the expiration of sixty days  
22 15 after receipt of the notice by the commissioner. The  
22 16 surety's liability shall extend to each purchase  
22 17 agreement subject to this chapter executed prior to  
22 18 cancellation of the surety bond until the seller has  
22 19 complied with section 3.

22 20 2. If a seller becomes insolvent or otherwise  
22 21 ceases to engage in business prior to or within sixty  
22 22 days after cancellation of a bond, the seller shall be  
22 23 deemed to have breached the bond conditions for  
22 24 outstanding agreements under this chapter as of the  
22 25 day prior to cancellation of the bond. The  
22 26 commissioner shall mail written notice by restricted  
22 27 certified mail to the purchaser under each outstanding  
22 28 purchase agreement of the seller that a claim against  
22 29 the bond must be filed with the surety company within  
22 30 sixty days after the mailing date of the notice. The  
22 31 surety shall cease to be liable for all purchase  
22 32 agreements except those for which claims are filed  
22 33 with the surety company within sixty days after the  
22 34 date the commissioner mails the notices.

22 35 3. If a surety bond is canceled by a surety under  
22 36 any conditions other than those specified in  
22 37 subsection 2, the seller shall comply with all of the  
22 38 following:

22 39 a. The seller shall comply with the trust  
22 40 requirements of section 523A.201 for all purchase  
22 41 agreements subject to this chapter executed on or  
22 42 after the effective date of cancellation of the surety  
22 43 bond. In the alternative, the seller may submit a  
22 44 substitute surety bond meeting the requirements of  
22 45 subsection 1, but the seller must comply with section  
22 46 523A.201 for any purchase agreements executed on or  
22 47 after the effective cancellation date of the earlier  
22 48 surety bond and prior to the effective date of the  
22 49 later surety bond.

22 50 b. Within sixty days after the effective  
23 1 cancellation date of the surety bond, the seller shall  
23 2 submit to the commissioner an undertaking by another  
23 3 surety company that a substitute surety bond meeting  
23 4 the requirements of subsection 1 is in effect and that  
23 5 the liability of the substitute surety bond extends to  
23 6 all outstanding purchase agreements of the seller that  
23 7 were executed but not performed or extinguished prior  
23 8 to the effective date of the substitute surety bond,  
23 9 or the seller shall submit to the commissioner a  
23 10 financial statement accompanied by an unqualified  
23 11 opinion based upon an audit performed by a certified  
23 12 public accountant licensed in this state certifying  
23 13 the total amount of outstanding liabilities of the  
23 14 seller on purchase agreements subject to this chapter  
23 15 and proof of deposit by the seller in trust under  
23 16 section 523A.201 of either the amount specified in  
23 17 section 523A.201, including interest as set by the



23 18 commissioner based on the interest which would have  
23 19 been earned had the funds been maintained in trust,  
23 20 with respect to all of those outstanding purchase  
23 21 agreements or, where applicable, that delivery of  
23 22 merchandise has been made in compliance with section  
23 23 523A.404. The surety may require such security as is  
23 24 necessary to comply with this section. Upon  
23 25 compliance by the seller with this paragraph, the  
23 26 surety company canceling the surety bond shall cease  
23 27 to be liable with respect to any outstanding purchase  
23 28 agreements of the seller except those purchase  
23 29 agreements with respect to which a breach of condition  
23 30 occurred prior to cancellation and for which timely  
23 31 claims were filed.

23 32 4. Section 523A.202, and, to the extent it is  
23 33 applicable, section 523A.206, apply to sellers whose  
23 34 purchase agreements are covered by a surety bond  
23 35 maintained under this section, and section 523A.202  
23 36 continues to apply to any purchase agreements of those  
23 37 sellers that are not covered by a surety bond  
23 38 maintained under this section.

23 39 5. Upon receiving a notice of cancellation of a  
23 40 surety bond, the commissioner shall notify the seller  
23 41 of the requirements of this chapter resulting from  
23 42 cancellation of the bond. The notice may be in the  
23 43 form of a copy of this section and sections 523A.201  
23 44 and 523A.202.

23 45 6. Upon receiving a notice of cancellation, unless  
23 46 the seller has complied with the requirements of this  
23 47 section, the attorney general shall seek an injunction  
23 48 to prohibit the seller from making further purchase  
23 49 agreements subject to this chapter. The attorney  
23 50 general shall commence an action to attach and levy  
24 1 execution upon property of the seller when the seller  
24 2 fails to perform a purchase agreement subject to this  
24 3 chapter, to the extent necessary to secure compliance  
24 4 with this chapter. The county attorney may bring  
24 5 criminal charges under subchapter 7.

24 6 7. The surety under this section shall not be  
24 7 owned, under the control of, or affiliated with the  
24 8 seller.

24 9 8. The amount of the surety bond shall equal  
24 10 eighty percent of the payments received pursuant to  
24 11 purchase agreements, or the applicable portion  
24 12 thereof, for cemetery merchandise, funeral  
24 13 merchandise, funeral services, or a combination  
24 14 thereof and the amount needed to adjust the amount of  
24 15 the surety bond for inflation as set by the  
24 16 commissioner based on the consumer price index. The  
24 17 seller shall review the amount of the surety bond no  
24 18 less than annually and shall increase the bond as  
24 19 necessary to reflect additional payments. The amount  
24 20 needed to adjust for inflation shall be added annually  
24 21 to the surety bond during the first quarter of the  
24 22 establishment's fiscal year.

24 23 9. With the consent of the purchaser, an existing  
24 24 prepaid purchase agreement with trust-funded benefits  
24 25 may be converted to a prepaid purchase agreement  
24 26 funded by a surety bond provided the establishment and  
24 27 the surety bond comply with the following provisions:

24 28 a. The amount of the trust funds transferred to  
24 29 the surety company must be at least equal to the full  
24 30 sum required to be deposited as trust principal under  
24 31 the trust-funded prepaid purchase agreement plus all  
24 32 net earnings accumulated with respect thereto, as of  
24 33 the transfer date. Commissions, allowances, surrender  
24 34 charges or other forms of compensation or expense



24 35 loads, premium expense, administrative charges or  
24 36 expenses, or fees shall not be deducted from the trust  
24 37 funds transferred pursuant to the conversion.

24 38 b. The face amount of the surety bond issued on an  
24 39 individual must be no less than the amount of  
24 40 principal and interest transferred for that individual  
24 41 to the surety company, and any supplemental surety  
24 42 bond issued to cover the unfunded portion of the  
24 43 purchase agreement must have a face amount that is at  
24 44 least as great as the unfunded principal balance. The  
24 45 face amount of the surety bond purchased shall not,  
24 46 under the circumstances, be less than the total of all  
24 47 payments made by the purchaser pursuant to the  
24 48 agreement plus all net earnings accumulated with  
24 49 respect thereto, as of the transfer date.

24 50 c. The establishment shall maintain a copy of any  
25 1 prepaid trust-funded agreement that was converted to a  
25 2 prepaid purchase agreement funded by a surety bond and  
25 3 retain the payment history records for each converted  
25 4 purchase agreement prior to conversion until the  
25 5 cemetery merchandise, funeral merchandise, and funeral  
25 6 services have been delivered.

25 7 SUBCHAPTER 5  
25 8 PERMIT REQUIREMENTS FOR SELLERS OF CEMETERY  
25 9 MERCHANDISE, FUNERAL MERCHANDISE, FUNERAL SERVICES,  
25 10 OR A COMBINATION THEREOF

25 11 Sec. \_\_\_\_\_. NEW SECTION. 523A.501 ESTABLISHMENT  
25 12 PERMITS.

25 13 1. A person shall not advertise, sell, promote, or  
25 14 offer to furnish cemetery merchandise, funeral  
25 15 merchandise, funeral services, or a combination  
25 16 thereof when performance or delivery may be more than  
25 17 one hundred twenty days following the initial payment  
25 18 on the account without an establishment permit. Each  
25 19 establishment must have an establishment permit.

25 20 2. An application for an establishment permit  
25 21 shall be filed on a form prescribed by the  
25 22 commissioner, be accompanied by a fifty dollar filing  
25 23 fee, and include a copy of each purchase agreement the  
25 24 person will use for sales of cemetery merchandise,  
25 25 funeral merchandise, funeral services, or a  
25 26 combination thereof.

25 27 3. The application shall contain:

25 28 a. The name and address of the establishment.

25 29 b. The name and address of any additional provider  
25 30 of cemetery merchandise, funeral merchandise, funeral  
25 31 services, or a combination thereof.

25 32 c. The name and address of each owner, officer, or  
25 33 other official of the establishment, including when  
25 34 relevant the chief executive officer and the members  
25 35 of the board of directors.

25 36 d. A description of any common business enterprise  
25 37 or parent company.

25 38 e. The types of cemetery merchandise, funeral  
25 39 merchandise, funeral services, or a combination  
25 40 thereof to be sold.

25 41 f. The types of trust or trust alternatives  
25 42 utilized by the establishment and a list of the  
25 43 financial institutions, storage facilities, surety  
25 44 companies, and insurance companies utilized by the  
25 45 establishment on a regular basis.

25 46 4. A permit holder shall inform the commissioner  
25 47 of changes in the information required to be provided  
25 48 by subsection 3 within thirty days of the change.

25 49 5. An establishment permit is not assignable or  
25 50 transferable. A permit holder selling all or part of  
26 1 an establishment shall cancel the permit and the



26 2 purchaser shall apply for a new permit in the  
26 3 purchaser's name within thirty days of the sale.  
26 4 6. The commissioner shall grant or deny a permit  
26 5 application within thirty days after receipt, but the  
26 6 commissioner's failure to act within that time period  
26 7 shall not be deemed approval of the application. If  
26 8 the commissioner does not grant the permit, the  
26 9 commissioner shall notify the person in writing of the  
26 10 reasons for the denial. The permit shall disclose on  
26 11 its face the permit holder's employer or the  
26 12 establishment on whose behalf the applicant will be  
26 13 making or attempting to make sales, the permit number,  
26 14 and the expiration date.

26 15 7. An initial permit is valid for two years from  
26 16 the date the application is filed. A permit may be  
26 17 renewed for two years by filing the form prescribed by  
26 18 the commissioner under subsection 2, accompanied by a  
26 19 ten dollar renewal fee. Submission of purchase  
26 20 agreements is not required for renewals unless the  
26 21 purchase agreements have been modified since the last  
26 22 filing.

26 23 8. The commissioner may by rule create or accept a  
26 24 multijurisdiction establishment permit. If the  
26 25 establishment permit is issued by another  
26 26 jurisdiction, the rules shall require the filing of an  
26 27 application or notice form and payment of the  
26 28 applicable filing fee of fifty dollars for an initial  
26 29 application and ten dollars for a renewal application.  
26 30 The application or notice form utilized and the  
26 31 effective dates and terms of the permit may vary from  
26 32 the provisions set forth in subsections 2, 3, and 7.

26 33 Sec. \_\_\_\_\_. NEW SECTION. 523A.502 SALES PERMITS.

26 34 1. A person shall not advertise, sell, promote, or  
26 35 offer to furnish cemetery merchandise, funeral  
26 36 merchandise, funeral services, or a combination  
26 37 thereof when performance or delivery may be more than  
26 38 one hundred twenty days following initial payment on  
26 39 the account without a sales permit. A permit holder  
26 40 must be an employee or agent of a person holding an  
26 41 establishment permit who can deliver the cemetery  
26 42 merchandise, funeral merchandise, funeral services, or  
26 43 a combination thereof being sold. A person must have  
26 44 a sales permit for each establishment at which the  
26 45 person works. However, a person may apply for a sales  
26 46 permit covering multiple establishments, if the  
26 47 establishments have common ownership. The  
26 48 establishment permit holder is liable for the acts of  
26 49 its employees and agents performed in advertising,  
26 50 selling, promoting, or offering to furnish, upon the  
27 1 future death of a person named or implied in a  
27 2 purchase agreement, cemetery merchandise, funeral  
27 3 merchandise, funeral services, or a combination  
27 4 thereof.

27 5 2. This chapter does not permit a person to  
27 6 practice mortuary science without a license. A person  
27 7 holding a current sales permit may advertise, sell,  
27 8 promote, or offer to furnish a funeral director's  
27 9 services as an employee or agent of a funeral  
27 10 establishment furnishing the funeral services under  
27 11 chapter 156.

27 12 3. An application for a sales permit shall be  
27 13 filed on a form prescribed by the commissioner and be  
27 14 accompanied by a five dollar filing fee.

27 15 4. The application shall contain:

- 27 16 a. The name and address of the person.
- 27 17 b. The name and address of the person's employer
- 27 18 and each establishment on whose behalf the person will



27 19 be advertising, selling, promoting, or offering to  
27 20 furnish cemetery merchandise, funeral merchandise,  
27 21 funeral services, or a combination thereof.  
27 22 c. The name and address of the provider who will  
27 23 provide the cemetery merchandise, funeral merchandise,  
27 24 funeral services, or a combination thereof if  
27 25 different from the person's employer.  
27 26 5. An initial permit expires one year from the  
27 27 date the application is filed. The permit may be  
27 28 renewed for four years by filing the form prescribed  
27 29 by the commissioner under subsection 3, accompanied by  
27 30 a twenty dollar filing fee.  
27 31 6. A permit holder shall inform the commissioner  
27 32 of changes in the information required to be provided  
27 33 by subsection 4 within thirty days of the change.  
27 34 7. A sales permit is not assignable or  
27 35 transferable. A permit holder selling all or part of  
27 36 a business shall cancel the permit and the purchaser  
27 37 shall apply for a new permit in the purchaser's name  
27 38 within thirty days of the sale.  
27 39 8. The commissioner shall grant or deny a permit  
27 40 application within thirty days after receipt, but the  
27 41 commissioner's failure to act within that time period  
27 42 shall not be deemed approval of the application. If  
27 43 the commissioner does not grant the permit, the  
27 44 commissioner shall notify the applicant in writing of  
27 45 the reasons for the denial.  
27 46 9. The commissioner may by rule create or accept a  
27 47 multijurisdiction sales permit. If the sales permit  
27 48 is issued by another jurisdiction, the rules shall  
27 49 require the filing of an application or notice form  
27 50 and payment of the applicable filing fee of five  
28 1 dollars for each year. The application or notice form  
28 2 utilized and the effective dates and terms of the  
28 3 permit may vary from the provisions set forth in  
28 4 subsections 3 and 5.  
28 5 Sec. \_\_\_\_\_. NEW SECTION. 523A.503 DENIAL,  
28 6 SUSPENSION, REVOCATION, AND SURRENDER OF PERMITS.  
28 7 1. The commissioner may, pursuant to chapter 17A,  
28 8 deny any permit application or immediately suspend or  
28 9 revoke any permit issued under this chapter for  
28 10 several reasons, including but not limited to:  
28 11 a. Committing a fraudulent act, engaging in a  
28 12 fraudulent practice, or violating any provision of  
28 13 this chapter or, any implementing rule or order issued  
28 14 under this chapter.  
28 15 b. Violating any other state or federal law  
28 16 applicable to the conduct of the applicant's or permit  
28 17 holder's business.  
28 18 c. Insolvency or financial condition.  
28 19 d. The permit holder, for the purpose of avoiding  
28 20 the trust requirement for funeral services, attributes  
28 21 amounts paid under the purchase agreement to cemetery  
28 22 merchandise or funeral merchandise that is delivered  
28 23 under section 523A.404 rather than to funeral services  
28 24 sold to the purchaser. The sale of funeral services  
28 25 at a lower price when the sale is made in conjunction  
28 26 with the sale of cemetery merchandise or funeral  
28 27 merchandise to be delivered under section 523A.404  
28 28 than the services are regularly and customarily sold  
28 29 for when not sold in conjunction with cemetery  
28 30 merchandise or funeral merchandise is evidence that  
28 31 the permit holder is acting with the purpose of  
28 32 avoiding the trust requirement for funeral services  
28 33 under section 523A.201.  
28 34 e. Engaging in a deceptive act or practice or  
28 35 deliberately misrepresenting or omitting a material



28 36 fact regarding the sale of cemetery merchandise,  
28 37 funeral merchandise, funeral services, or a  
28 38 combination thereof under this chapter.  
28 39 f. Conviction of a criminal offense involving  
28 40 dishonesty or a false statement.  
28 41 g. Inability to provide the cemetery merchandise,  
28 42 funeral merchandise, funeral services, or a  
28 43 combination thereof which the applicant or permit  
28 44 holder purports to sell.  
28 45 h. The applicant or permit holder sells the  
28 46 business without filing a prior notice of sale with  
28 47 the commissioner. The permit shall be revoked thirty  
28 48 days following such sale.  
28 49 i. Selling by a person who is not an employee or  
28 50 agent of the applicant or permit holder.  
29 1 2. The commissioner may, for good cause shown,  
29 2 suspend any permit for a period not exceeding thirty  
29 3 days, pending investigation.  
29 4 3. Except as provided in subsection 2, a permit  
29 5 shall not be revoked or suspended except after notice  
29 6 and hearing under chapter 17A.  
29 7 4. Any permit holder may surrender a permit by  
29 8 delivering to the commissioner written notice that the  
29 9 permit holder surrenders the permit, but the surrender  
29 10 shall not affect the permit holder's civil or criminal  
29 11 liability for acts committed before the surrender.  
29 12 5. Denial, revocation, suspension, or surrender of  
29 13 a permit does not impair or affect the obligation of  
29 14 any preexisting lawful agreement between the permit  
29 15 holder and any person.

#### 29 16 SUBCHAPTER 6

#### 29 17 PURCHASE AGREEMENT REQUIREMENTS

29 18 Sec. \_\_\_\_\_. NEW SECTION. 523A.601 DISCLOSURES.  
29 19 1. A purchase agreement for cemetery merchandise,  
29 20 funeral merchandise, funeral services, or a  
29 21 combination thereof shall be written in clear,  
29 22 understandable language, and shall be printed or typed  
29 23 in an easy-to-read font, size, and style, and shall:  
29 24 a. Identify the seller, the salesperson's permit  
29 25 and establishment name and permit number, the  
29 26 expiration date of the salesperson's permit, the  
29 27 purchaser, and the person for whom the cemetery  
29 28 merchandise, funeral merchandise, funeral services, or  
29 29 a combination thereof is purchased, if other than the  
29 30 purchaser.  
29 31 b. Specify the cemetery merchandise, funeral  
29 32 merchandise, funeral services, or a combination  
29 33 thereof, to be provided, and the cost of each  
29 34 merchandise item or service.  
29 35 c. State clearly the conditions upon which  
29 36 substitution will be allowed.  
29 37 d. State the total purchase price and the terms  
29 38 under which it is to be paid.  
29 39 e. State clearly whether the purchase agreement is  
29 40 a guaranteed price agreement or a nonguaranteed price  
29 41 agreement. A nonguaranteed price agreement shall  
29 42 contain in twelve point bold-faced type an explanation  
29 43 of the consequences of such agreement in substantially  
29 44 the following language:  
29 45 THE PRICES OF MERCHANDISE AND SERVICES UNDER THIS  
29 46 AGREEMENT ARE SUBJECT TO CHANGE IN THE FUTURE. ANY  
29 47 FUNDS PAID UNDER THIS AGREEMENT ARE ONLY A DEPOSIT TO  
29 48 BE APPLIED, TOGETHER WITH ACCRUED INCOME, TOWARD THE  
29 49 FINAL COSTS OF THE MERCHANDISE OR SERVICES AGREED  
29 50 UPON. ADDITIONAL CHARGES MAY BE INCURRED WHEN  
30 1 ADDITIONAL MERCHANDISE OR SERVICES OR BOTH ARE  
30 2 PROVIDED OR WHEN PRICES HAVE INCREASED MORE THAN



30 3 ACCRUED INCOME.

30 4 f. State that the purchase of the cemetery  
30 5 merchandise, funeral merchandise, and funeral services  
30 6 is revocable and specify the damages for cancellation,  
30 7 if any.

30 8 g. State clearly who has the authority to cancel,  
30 9 amend, or revoke the purchase agreement to purchase  
30 10 cemetery merchandise, funeral merchandise, and funeral  
30 11 services.

30 12 h. State clearly that the purchaser is entitled to  
30 13 rescind the purchase agreement under terms and  
30 14 conditions specified by section 523A.602.

30 15 i. Include an explanation of regulatory oversight  
30 16 by the insurance division in twelve point bold-faced  
30 17 type, in substantially the following language:

30 18 THIS AGREEMENT IS SUBJECT TO RULES ADMINISTERED BY  
30 19 THE IOWA INSURANCE DIVISION. YOU MAY CALL THE  
30 20 INSURANCE DIVISION AT (\_\_\_\_) \_\_\_\_\_. WRITTEN  
30 21 INQUIRIES OR COMPLAINTS SHOULD BE MAILED TO THE IOWA  
30 22 SECURITIES BUREAU, (STREET ADDRESS), (CITY), IOWA (ZIP  
30 23 CODE).

30 24 2. A purchase agreement that is funded by a trust  
30 25 shall also:

30 26 a. State the percentage of money to be placed in  
30 27 trust.

30 28 b. Explain the disposition of the income generated  
30 29 from investments and include a statement of the  
30 30 purchaser's responsibility for income taxes owed on  
30 31 the income if applicable.

30 32 c. State that if, after all payments are made  
30 33 under the conditions and terms of the purchase  
30 34 agreement for cemetery merchandise, funeral  
30 35 merchandise, funeral services, or a combination  
30 36 thereof, any funds remain in the nonguaranteed  
30 37 irrevocable burial trust fund, the seller shall  
30 38 disburse the remaining funds according to law.

30 39 d. State clearly the terms of the funeral and  
30 40 burial trust agreement and whether it is revocable or  
30 41 irrevocable.

30 42 e. State clearly that the purchaser is entitled to  
30 43 transfer the trust funding, insurance funding, or  
30 44 other trust assets or select another establishment to  
30 45 receive the trust funding, insurance funding, or any  
30 46 other trust assets.

30 47 f. State clearly who has the authority to amend or  
30 48 revoke the trust agreement, if revocable, and who has  
30 49 the authority to appoint successor trustees if the  
30 50 purchase agreement is canceled.

31 1 3. The commissioner may adopt rules establishing  
31 2 disclosure and format requirements to promote consumer  
31 3 understanding of the merchandise and services  
31 4 purchased and the available funding mechanisms for a  
31 5 purchase agreement under this chapter.

31 6 4. A purchase agreement shall be signed by the  
31 7 purchaser, the seller, and if the agreement is for  
31 8 funeral services as defined in chapter 156, a person  
31 9 licensed to deliver funeral services.

31 10 5. The seller shall disclose the following  
31 11 information prior to accepting the initial payment  
31 12 under a purchase agreement:

31 13 a. The specific method or methods (trust deposits,  
31 14 certificates of deposit, life insurance or an annuity,  
31 15 a surety bond, or warehousing) that will be used to  
31 16 fund the purchase agreement.

31 17 b. The relationship between the soliciting agent  
31 18 or agents, the provider of the cemetery merchandise,  
31 19 funeral merchandise, or funeral services, or



31 20 combination thereof, the commissioner, and any other  
31 21 person.

31 22 c. The relationship of the life insurance policy  
31 23 or other trust assets to the funding of the purchase  
31 24 agreement and the nature and existence of any  
31 25 guarantees regarding the purchase agreement.

31 26 d. The impact on the purchase agreement of the  
31 27 following:

31 28 (1) Changes in the funding, including but not  
31 29 limited to changes in the assignment, beneficiary  
31 30 designation, trustee, or use of proceeds.

31 31 (2) Any penalties to be incurred by the purchaser  
31 32 as a result of the failure to make any additional  
31 33 payments required.

31 34 (3) Penalties to be incurred upon cancellation.

31 35 e. A list of cemetery merchandise, funeral  
31 36 merchandise, and funeral services which are agreed  
31 37 upon under the purchase agreement and all relevant  
31 38 information concerning the price of the cemetery  
31 39 merchandise, funeral merchandise, funeral services, or  
31 40 a combination thereof, including a statement that the  
31 41 purchase price is either guaranteed at the time of  
31 42 purchase or to be determined at the time of need.

31 43 f. All relevant information concerning what occurs  
31 44 and whether any entitlements or obligations arise if  
31 45 there is a difference between the funding and the  
31 46 amount actually needed to fund the purchase agreement.

31 47 g. Any penalties or restrictions including but not  
31 48 limited to geographic restrictions or the inability of  
31 49 the provider to perform, upon delivery of cemetery  
31 50 merchandise, funeral merchandise, or funeral services,  
32 1 or the purchase agreement guarantee.

32 2 h. If the funding is being transferred from  
32 3 another establishment, any material facts related to  
32 4 the revocation of the prior purchase agreement and the  
32 5 transfer of the existing trust funds.

32 6 Sec. \_\_\_\_\_. NEW SECTION. 523A.602 CONSUMER  
32 7 RECISION, CANCELLATION, AND REFUND RIGHTS, AND  
32 8 PURCHASE AGREEMENT COMPLIANCE WITH OTHER LAWS.

32 9 1. A seller shall furnish the purchaser with a  
32 10 completed copy of a purchase agreement pertaining to  
32 11 the sale at the time the purchase agreement is signed.  
32 12 The seller shall comply with the following terms:

32 13 a. The same language shall be used in both the  
32 14 oral sales representation and the written purchase  
32 15 agreement.

32 16 b. The seller shall give notice in the purchase  
32 17 agreement of the purchaser's right to rescind after  
32 18 signing the purchase agreement. The recision period  
32 19 must be but may be greater than three business days  
32 20 after the date of the purchase agreement. The notice  
32 21 must:

32 22 (1) Be located close to the signature line.

32 23 (2) Be printed in twelve point bold-faced type.

32 24 (3) State that "YOU, THE PURCHASER, HAVE THE RIGHT  
32 25 TO RESCIND THIS AGREEMENT AT ANY TIME PRIOR TO  
32 26 MIDNIGHT OF THE (INSERT RELEVANT NUMBER, NOT LESS THAN  
32 27 THREE) BUSINESS DAYS AFTER THE DATE OF THIS  
32 28 AGREEMENT."

32 29 c. All moneys shall be refunded without penalty  
32 30 within ten days after recision.

32 31 2. CANCELLATION REFUND.

32 32 a. A purchase agreement must include a statement  
32 33 that the purchaser has the right to cancel the  
32 34 agreement for the purchase of cemetery merchandise,  
32 35 funeral merchandise, and funeral services upon written  
32 36 demand and designate or appoint a trustee to hold,



32 37 manage, invest, and distribute the trust assets.  
32 38 b. If a purchase agreement is canceled, a  
32 39 purchaser requests a transfer of the trust assets upon  
32 40 cancellation of a purchase agreement, or another  
32 41 establishment provides merchandise or services  
32 42 designated in a purchase agreement, the seller shall  
32 43 refund or transfer within thirty days of receiving a  
32 44 written demand no less than the purchase price of the  
32 45 applicable cemetery merchandise, funeral merchandise,  
32 46 and funeral services adjusted for inflation, using the  
32 47 consumer price index amounts announced by the  
32 48 commissioner annually, less any cancellation penalty  
32 49 set forth in the purchase agreement. The amount of  
32 50 the cancellation penalty shall not exceed ten percent  
33 1 of the purchase price of the applicable cemetery  
33 2 merchandise, funeral merchandise, and funeral  
33 3 services. The seller may also deduct the value of the  
33 4 cemetery merchandise, funeral merchandise, and funeral  
33 5 services already received by, delivered to, or  
33 6 warehoused for the purchaser.  
33 7 c. A purchase agreement must include a statement  
33 8 that the purchaser is entitled to a refund of the  
33 9 purchase price of the applicable funeral merchandise  
33 10 adjusted for inflation, using the consumer price index  
33 11 amounts announced by the commissioner annually for any  
33 12 item of funeral merchandise that cannot be delivered  
33 13 to the location specified in the purchase agreement  
33 14 within forty-eight hours of notice of the individual's  
33 15 death, unless the delay is caused by weather  
33 16 conditions or a natural disaster. The seller must  
33 17 return such refund to the purchaser within thirty days  
33 18 of receiving the written demand.  
33 19 3. This section does not prohibit a purchaser who  
33 20 is or may become eligible for benefits under Title XIX  
33 21 of the federal Social Security Act from making a  
33 22 guaranteed price purchase agreement irrevocable to the  
33 23 extent that federal law or regulations require that  
33 24 such an agreement be irrevocable for purposes of a  
33 25 purchaser's eligibility for benefits under Title XIX  
33 26 of the federal Social Security Act, as permitted under  
33 27 federal law. The seller of credit sale agreements  
33 28 shall comply with the requirements of chapter 537, the  
33 29 Iowa consumer credit code, and is subject to the  
33 30 remedies and penalties provided in that chapter for  
33 31 noncompliance.

#### 33 32 SUBCHAPTER 7

#### 33 33 FRAUDULENT PRACTICES

33 34 Sec. \_\_\_\_\_. NEW SECTION. 523A.701 MISLEADING  
33 35 FILINGS.

33 36 It is unlawful for a person to make or cause to be  
33 37 made, in any document filed with the commissioner, or  
33 38 in any proceeding under this chapter, any statement of  
33 39 material fact which is, at the time and in the light  
33 40 of the circumstances under which it is made, false or  
33 41 misleading, or, in connection with such statement, to  
33 42 omit to state a material fact necessary in order to  
33 43 make the statements made, in the light of the  
33 44 circumstances under which they are made, not  
33 45 misleading.

33 46 Sec. \_\_\_\_\_. NEW SECTION. 523A.702  
33 47 MISREPRESENTATIONS OF GOVERNMENT APPROVAL.

33 48 It is unlawful for a seller under this chapter to  
33 49 represent or imply in any manner that the seller has  
33 50 been sponsored, recommended, or approved, or that the  
34 1 seller's abilities or qualifications have in any  
34 2 respect been passed upon by the commissioner.

34 3 Sec. \_\_\_\_\_. NEW SECTION. 523A.703 FRAUDULENT



34 4 PRACTICES.

34 5 A person who commits any of the following acts  
34 6 commits a fraudulent practice and is punishable as  
34 7 provided in chapter 714:

34 8 1. Knowingly fails to comply with any requirement  
34 9 of this chapter.

34 10 2. Knowingly makes, causes to be made, or  
34 11 subscribes to a false statement or representation in a  
34 12 report or other document required under this chapter,  
34 13 implementing rules, or orders, or renders such a  
34 14 report or document misleading through the deliberate  
34 15 omission of information properly belonging in the  
34 16 report or document.

34 17 3. Conspires to defraud in connection with the  
34 18 sale of cemetery merchandise, funeral merchandise,  
34 19 funeral services, or a combination thereof under this  
34 20 chapter.

34 21 4. Fails to deposit funds under sections 523A.201  
34 22 and 523A.202 or withdraws any funds in a manner  
34 23 inconsistent with this chapter.

34 24 5. Knowingly sells or offers cemetery merchandise,  
34 25 funeral merchandise, funeral services, or a  
34 26 combination thereof without an establishment permit.

34 27 6. Deliberately misrepresents or omits a material  
34 28 fact relative to the sale of cemetery merchandise,  
34 29 funeral merchandise, funeral services, or a  
34 30 combination thereof under this chapter. When selling  
34 31 cemetery merchandise or funeral merchandise, a seller  
34 32 shall not exclude the funeral services necessary for  
34 33 the delivery, use, or installation of the cemetery  
34 34 merchandise or funeral merchandise at the time of the  
34 35 funeral or burial unless the purchase agreement  
34 36 expressly provides otherwise.

34 37 SUBCHAPTER 8

34 38 ADMINISTRATION AND ENFORCEMENT

34 39 Sec. \_\_\_\_\_. NEW SECTION. 523A.801 ADMINISTRATION.

34 40 1. This chapter shall be administered by the  
34 41 commissioner. The deputy administrator appointed  
34 42 pursuant to section 502.601 shall be the principal  
34 43 operations officer responsible to the commissioner for  
34 44 the routine administration of this chapter and  
34 45 management of the administrative staff. In the  
34 46 absence of the commissioner, whether because of  
34 47 vacancy in the office due to absence, physical  
34 48 disability, or other cause, the deputy administrator  
34 49 shall, for the time being, have and exercise the  
34 50 authority conferred upon the commissioner. The  
35 1 commissioner may by order from time to time delegate  
35 2 to the deputy administrator any or all of the  
35 3 functions assigned to the commissioner in this  
35 4 chapter. The deputy administrator shall employ  
35 5 officers, attorneys, accountants, and other employees  
35 6 as needed for administering this chapter.

35 7 2. It is unlawful for the commissioner or any  
35 8 administrative staff to use for personal benefit any  
35 9 information which is filed with or obtained by the  
35 10 commissioner and which is not made public. This  
35 11 chapter does not authorize the commissioner or any  
35 12 such staff member to disclose any such information  
35 13 except among themselves or to other cemetery and  
35 14 funeral administrators, regulatory authorities, or  
35 15 governmental agencies, or when necessary and  
35 16 appropriate in a proceeding or investigation under  
35 17 this chapter or as required by chapter 22. This  
35 18 chapter neither creates nor derogates any privileges  
35 19 that exist at common law or otherwise when documentary  
35 20 or other evidence is sought under a subpoena directed



35 21 to the commissioner or any administrative staff.

35 22 Sec. \_\_\_\_\_. NEW SECTION. 523A.802 SCOPE.

35 23 1. This chapter applies to any advertisement,  
35 24 sale, promotion, or offer made by a person to furnish,  
35 25 upon the future death of a person named or implied in  
35 26 a purchase agreement, cemetery merchandise, funeral  
35 27 merchandise, funeral services, or a combination  
35 28 thereof. Burial accounts and insurance policies are  
35 29 included if the account records or related documents  
35 30 identify the establishment that will provide the  
35 31 cemetery merchandise, funeral merchandise, funeral  
35 32 services, or a combination thereof.

35 33 2. This chapter applies when a purchase agreement  
35 34 is executed within this state or an advertisement,  
35 35 promotion, or offer to furnish is made or accepted  
35 36 within this state. An offer to furnish is made within  
35 37 this state, whether or not either party is then  
35 38 present in this state, when the offer originates from  
35 39 this state or is directed by the offeror to this state  
35 40 and received by the offeree in this state through the  
35 41 mail, over the telephone, by the internet, or through  
35 42 any other means of commerce.

35 43 3. If a foreign person does not have a registered  
35 44 agent or agents in the state of Iowa, doing business  
35 45 within this state shall constitute the person's  
35 46 appointment of the secretary of state of the state of  
35 47 Iowa to be its true and lawful attorney upon whom may  
35 48 be served all lawful process of original notice in  
35 49 actions or proceedings arising or growing out of any  
35 50 contract or tort.

36 1 Sec. \_\_\_\_\_. NEW SECTION. 523A.803 INVESTIGATIONS  
36 2 AND SUBPOENAS.

36 3 1. The commissioner may, for the purpose of  
36 4 discovering violations of this chapter, implementing  
36 5 rules, or orders issued under this chapter:

36 6 a. Make such public or private investigations  
36 7 within or outside of this state as the commissioner  
36 8 deems necessary to determine whether any person has  
36 9 violated or is about to violate this chapter,  
36 10 implementing rules, or orders issued under this  
36 11 chapter, or to aid in enforcement of this chapter or  
36 12 in the prescribing of rules and forms under this  
36 13 chapter.

36 14 b. Require or permit any person to file a  
36 15 statement in writing, under oath or otherwise as the  
36 16 commissioner or attorney general determines, as to all  
36 17 the facts and circumstances concerning the matter to  
36 18 be investigated.

36 19 c. Notwithstanding chapter 22, keep confidential  
36 20 the information obtained in the course of an  
36 21 investigation. However, if the commissioner  
36 22 determines that it is necessary or appropriate in the  
36 23 public interest or for the protection of the public,  
36 24 the commissioner may share information with other  
36 25 administrators, regulatory authorities, or  
36 26 governmental agencies, or may publish information  
36 27 concerning a violation of this chapter, implementing  
36 28 rules, or orders issued under this chapter.

36 29 d. Investigate the establishment and examine the  
36 30 books, accounts, papers, correspondence, memoranda,  
36 31 purchase agreements, files, or other documents or  
36 32 records used by every applicant and permit holder  
36 33 under this chapter.

36 34 e. Administer oaths and affirmations, subpoena  
36 35 witnesses, compel their attendance, take evidence, and  
36 36 require the production of any books, accounts, papers,  
36 37 correspondence, memoranda, purchase agreements, files,



36 38 or other documents or records which the commissioner  
36 39 deems relevant or material to any investigation or  
36 40 proceeding under this chapter and implementing rules,  
36 41 all of which may be enforced under chapter 17A.

36 42 f. Apply to the district court for an order  
36 43 requiring a person's appearance before the  
36 44 commissioner or attorney general, or a designee of  
36 45 either or both, in cases where the person has refused  
36 46 to obey a subpoena issued by the commissioner or  
36 47 attorney general. The person may also be required to  
36 48 produce documentary evidence germane to the subject of  
36 49 the investigation. Failure to obey a court order  
36 50 under this subsection constitutes contempt of court.

37 1 2. The commissioner may issue and bring an action  
37 2 in district court to enforce subpoenas within this  
37 3 state at the request of an agency or administrator of  
37 4 another state, if the activity constituting an alleged  
37 5 violation for which the information is sought would be  
37 6 a violation of this chapter had the activity occurred  
37 7 in this state.

37 8 Sec. \_\_\_\_\_. NEW SECTION. 523A.804 MEDIATION.

37 9 The commissioner may order an establishment to  
37 10 participate in mediation in any dispute regarding a  
37 11 purchase agreement. Mediation performed under this  
37 12 section shall be conducted by a mediator appointed by  
37 13 the commissioner and shall comply with the provisions  
37 14 of chapter 679C.

37 15 Mediation of these disputes shall include  
37 16 attendance at a mediation session with the mediator  
37 17 and the parties to the dispute, listening to the  
37 18 mediator's explanation of the mediation process,  
37 19 presentation of one party's view of the dispute, and  
37 20 listening to the response of the other party.  
37 21 Participation in mediation does not require that the  
37 22 parties reach a mediation agreement.

37 23 Parties to the mediation shall have the right to  
37 24 advice and presence of counsel at all times. The  
37 25 parties to the mediation shall present any mediation  
37 26 agreement reached through the mediation to the  
37 27 commissioner. If a mediation agreement is not  
37 28 reached, the mediator shall file a report with the  
37 29 commissioner. The costs of the mediation shall be  
37 30 approved by the commissioner and shall be borne by the  
37 31 insurance division's regulatory fund.

37 32 Sec. \_\_\_\_\_. NEW SECTION. 523A.805 CEASE AND DESIST  
37 33 ORDERS INJUNCTIONS.

37 34 If it appears to the commissioner that a person has  
37 35 engaged or is about to engage in an act or practice  
37 36 constituting a violation of this chapter, implementing  
37 37 rules, or orders issued under this chapter, the  
37 38 commissioner or the attorney general may do either or  
37 39 both of the following:

37 40 1. Issue a summary order directed at the person  
37 41 requiring the person to cease and desist from engaging  
37 42 in such act or practice. A person may request a  
37 43 hearing within thirty days of issuance of the summary  
37 44 order. If a hearing is not timely requested, the  
37 45 summary order shall become final by operation of law.  
37 46 The order shall remain effective from the date of  
37 47 issuance until the date the order becomes final by  
37 48 operation of law or is overturned by a presiding  
37 49 officer following a request for hearing. Section  
37 50 17A.18A is inapplicable to summary cease and desist  
38 1 orders issued under this section.

38 2 2. Bring an action in the district court in any  
38 3 county of the state for an injunction to restrain a  
38 4 person subject to this chapter and any agents,



38 5 employees, or associates of the person from engaging  
38 6 in conduct or practices deemed contrary to the public  
38 7 interest. In any proceeding for an injunction, the  
38 8 commissioner or attorney general may apply to the  
38 9 court for a subpoena to require the appearance of a  
38 10 defendant and the defendant's agents and for any  
38 11 books, accounts, papers, correspondence, memoranda,  
38 12 purchase agreements, files, or other documents or  
38 13 records germane to the hearing upon the petition for  
38 14 an injunction. Upon a proper showing, a permanent or  
38 15 temporary injunction, restraining order, or writ of  
38 16 mandamus shall be granted and a receiver may be  
38 17 appointed for the defendant or the defendant's assets.  
38 18 The commissioner or attorney general shall not be  
38 19 required to post a bond.

38 20 Sec. \_\_\_\_ NEW SECTION. 523A.806 COURT ACTION FOR  
38 21 FAILURE TO COOPERATE.

38 22 If a person fails or refuses to file any statement  
38 23 or report or to produce any books, accounts, papers,  
38 24 correspondence, memoranda, purchase agreements, files,  
38 25 or other documents or records, or to obey any subpoena  
38 26 issued by the commissioner, the commissioner may refer  
38 27 the matter to the attorney general, who may apply to a  
38 28 district court to enforce compliance. The court may  
38 29 order any or all of the following:

38 30 1. Injunctive relief, restricting or prohibiting  
38 31 the offer or sale of cemetery merchandise, funeral  
38 32 merchandise, funeral services, or a combination  
38 33 thereof.

38 34 2. Revocation or suspension of any permit issued  
38 35 under this chapter.

38 36 3. Production of documents or records including  
38 37 but not limited to books, accounts, papers,  
38 38 correspondence, memoranda, purchase agreements, files,  
38 39 or other documents or records.

38 40 4. Such other relief as may be required.

38 41 Such an order shall be effective until the person  
38 42 files the statement or report or produces the  
38 43 documents requested, or obeys the subpoena.

38 44 Sec. \_\_\_\_ NEW SECTION. 523A.807 PROSECUTION FOR  
38 45 VIOLATIONS OF LAW.

38 46 1. A violation of this chapter or rules adopted or  
38 47 orders issued under this chapter is a violation of  
38 48 section 714.16, subsection 2, paragraph "a". The  
38 49 remedies and penalties provided by section 714.16,  
38 50 including but not limited to injunctive relief and  
39 1 penalties, apply to violations of this chapter.

39 2 2. If the commissioner believes that grounds exist  
39 3 for the criminal prosecution of persons subject to  
39 4 this chapter for violations of this chapter or any  
39 5 other law of this state, the commissioner may forward  
39 6 to the attorney general or the county attorney the  
39 7 grounds for the belief, including all evidence in the  
39 8 commissioner's possession, so that the attorney  
39 9 general or the county attorney may proceed with the  
39 10 matter as deemed appropriate.

39 11 Sec. \_\_\_\_ NEW SECTION. 523A.808 COOPERATION WITH  
39 12 OTHER AGENCIES.

39 13 1. To encourage uniform interpretation and  
39 14 administration of this chapter and effective  
39 15 regulation of the sale of cemetery merchandise,  
39 16 funeral merchandise, and funeral services, the  
39 17 commissioner may cooperate with any governmental law  
39 18 enforcement or regulatory agency.

39 19 2. This cooperation includes but is not limited  
39 20 to:

39 21 a. Making a joint examination or investigation.



39 22 b. Holding a joint administrative hearing.  
39 23 c. Filing and prosecuting a joint civil or  
39 24 administrative proceeding.  
39 25 d. Sharing and exchanging personnel.  
39 26 e. Sharing and exchanging relevant information and  
39 27 documents.  
39 28 f. Formulating, in accordance with chapter 17A,  
39 29 rules or proposed rules on matters such as statements  
39 30 of policy, regulatory standards, guidelines, and  
39 31 interpretive opinions.  
39 32 Sec. \_\_\_\_\_. NEW SECTION. 523A.809 RULES, FORMS,  
39 33 AND ORDERS.  
39 34 1. Under chapter 17A, the commissioner may from  
39 35 time to time make, amend, and rescind such rules,  
39 36 forms, and orders as are necessary or appropriate for  
39 37 the protection of purchasers and the public and to  
39 38 administer the provisions of this chapter, its  
39 39 implementing rules, and orders issued under this  
39 40 chapter.  
39 41 2. A rule, form, or order shall not be made,  
39 42 amended, or rescinded unless the commissioner finds  
39 43 that the action is necessary or appropriate in the  
39 44 public interest or for the protection of purchasers  
39 45 and consistent with the purposes fairly intended by  
39 46 the policies and provisions of this chapter, its  
39 47 implementing rules, and orders issued under this  
39 48 chapter.  
39 49 3. A provision of this chapter imposing any  
39 50 liability does not apply to any act done or omitted in  
40 1 good faith in conformity with any rules, form, or  
40 2 order of the commissioner, notwithstanding that the  
40 3 rule, form, or order may later be amended or rescinded  
40 4 or be determined by judicial or other authority to be  
40 5 invalid for any reason.  
40 6 Sec. \_\_\_\_\_. NEW SECTION. 523A.810 DATE OF FILING  
40 7 AND INTERPRETIVE OPINIONS.  
40 8 1. A document is filed when it is received by the  
40 9 commissioner.  
40 10 2. Requests for interpretive opinions may be  
40 11 granted in the commissioner's discretion.  
40 12 Sec. \_\_\_\_\_. NEW SECTION. 523A.811 RECEIVERSHIPS.  
40 13 1. The commissioner shall notify the attorney  
40 14 general of the potential need for establishment of a  
40 15 receivership if the commissioner finds that a seller  
40 16 subject to this chapter meets one or more of the  
40 17 following conditions:  
40 18 a. Is insolvent.  
40 19 b. Has utilized trust funds for personal or  
40 20 business purposes in a manner inconsistent with this  
40 21 chapter.  
40 22 c. The amount of funds currently held in trust for  
40 23 cemetery merchandise, funeral merchandise, and funeral  
40 24 services is less than eighty percent of all payments  
40 25 made under the purchase agreements referred to in  
40 26 section 523A.201.  
40 27 d. Has refused to pay any just claim or demand  
40 28 based on a purchase agreement referred to in section  
40 29 523A.201.  
40 30 e. The commissioner finds upon investigation that  
40 31 a seller is unable to pay any claim or demand based on  
40 32 a purchase agreement which has been legally determined  
40 33 to be just and outstanding.  
40 34 2. The commissioner or attorney general may apply  
40 35 to the district court in any county of the state for  
40 36 the establishment of a receivership. Upon proof of  
40 37 any of the grounds for a receivership described in  
40 38 this section, the court may grant a receivership.



40 39 Sec. \_\_\_\_\_. NEW SECTION. 523A.812 INSURANCE  
40 40 DIVISION'S REGULATORY FUND.  
40 41 The insurance division may authorize the creation  
40 42 of a special revenue fund in the state treasury, to be  
40 43 known as the insurance division regulatory fund. The  
40 44 commissioner shall allocate annually from the fees  
40 45 paid pursuant to section 523A.204, two dollars for  
40 46 each purchase agreement reported on an establishment  
40 47 permit holder's annual report for deposit to the  
40 48 regulatory fund. The remainder of the fees collected  
40 49 pursuant to section 523A.204 shall be deposited into  
40 50 the general fund of the state. The moneys in the  
41 1 regulatory fund shall be retained in the fund. The  
41 2 moneys are appropriated and, subject to authorization  
41 3 by the commissioner, may be used to pay auditors,  
41 4 audit expenses, investigative expenses, the expenses  
41 5 of mediation ordered by the commissioner, consumer  
41 6 education expenses, the expenses of a toll-free  
41 7 telephone line to receive consumer complaints, and the  
41 8 expenses of receiverships established under section  
41 9 523A.811. An annual allocation to the regulatory fund  
41 10 shall not be imposed if the current balance of the  
41 11 fund exceeds two hundred thousand dollars.

41 12 Sec. \_\_\_\_\_. NEW SECTION. 523A.813 LICENSE  
41 13 REVOCATION RECOMMENDATION BY COMMISSIONER TO BOARD  
41 14 OF MORTUARY SCIENCE EXAMINERS.

41 15 Upon a determination by the commissioner that  
41 16 grounds exist for an administrative license revocation  
41 17 or suspension action by the board of mortuary science  
41 18 examiners under chapter 156, the commissioner may  
41 19 forward to the board the grounds for the  
41 20 determination, including all evidence in the  
41 21 possession of the commissioner, so that the board may  
41 22 proceed with the matter as deemed appropriate.

41 23 SUBCHAPTER 9  
41 24 LIQUIDATION PROCEDURES

41 25 Sec. \_\_\_\_\_. NEW SECTION. 523A.901 LIQUIDATION.

41 26 1. GROUNDS FOR LIQUIDATION. The commissioner may  
41 27 petition the district court for an order directing the  
41 28 commissioner to liquidate an establishment on either  
41 29 of the following grounds:

41 30 a. The establishment did not deposit funds  
41 31 pursuant to section 523A.201 or withdrew funds in a  
41 32 manner inconsistent with this chapter and is  
41 33 insolvent.

41 34 b. The establishment did not deposit funds  
41 35 pursuant to section 523A.201 or withdrew funds in a  
41 36 manner inconsistent with this chapter and the  
41 37 condition of the establishment is such that further  
41 38 transaction of business would be hazardous,  
41 39 financially or otherwise, to purchasers or the public.

41 40 2. LIQUIDATION ORDER.

41 41 a. An order to liquidate the business of an  
41 42 establishment shall appoint the commissioner as  
41 43 liquidator and shall direct the liquidator to  
41 44 immediately take possession of the assets of the  
41 45 establishment and to administer them under the general  
41 46 supervision of the court. The liquidator is vested  
41 47 with the title to the property, contracts, and rights  
41 48 of action and the books and records of the  
41 49 establishment ordered liquidated, wherever located, as  
42 1 of the entry of the final order of liquidation. The  
42 2 filing or recording of the order with the clerk of  
42 3 court and the recorder of deeds of the county in which  
42 4 its principal office or place of business is located,  
42 5 or, in the case of real estate with the recorder of  
42 6 deeds of the county where the property is located, is



42 6 notice as a deed, bill of sale, or other evidence of  
42 7 title duly filed or recorded with the recorder of  
42 8 deeds.

42 9 b. Upon issuance of an order, the rights and  
42 10 liabilities of an establishment and of the  
42 11 establishment's creditors, purchasers, owners, and  
42 12 other persons interested in the establishment's estate  
42 13 shall become fixed as of the date of the entry of the  
42 14 order of liquidation, except as provided in subsection  
42 15 14.

42 16 c. At the time of petitioning for an order of  
42 17 liquidation, or at any time after the time of  
42 18 petitioning, the commissioner, after making  
42 19 appropriate findings of an establishment's insolvency,  
42 20 may petition the court for a declaration of  
42 21 insolvency. After providing notice and hearing as it  
42 22 deems proper, the court may make the declaration.

42 23 d. An order issued under this section shall  
42 24 require accounting to the court by the liquidator.  
42 25 Accountings, at a minimum, must include all funds  
42 26 received or disbursed by the liquidator during the  
42 27 current period. An accounting shall be filed within  
42 28 one year of the liquidation order and at such other  
42 29 times as the court may require.

42 30 e. Within five days after the initiation of an  
42 31 appeal of an order of liquidation, which order has not  
42 32 been stayed, the commissioner shall present for the  
42 33 court's approval a plan for the continued performance  
42 34 of the establishment's obligations during the pendency  
42 35 of an appeal. The plan shall provide for the  
42 36 continued performance of purchase agreements in the  
42 37 normal course of events, notwithstanding the grounds  
42 38 alleged in support of the order of liquidation  
42 39 including the ground of insolvency. If the defendant  
42 40 establishment's financial condition, in the judgment  
42 41 of the commissioner, will not support the full  
42 42 performance of all obligations during the appeal  
42 43 pendency period, the plan may prefer the claims of  
42 44 certain purchasers and claimants over creditors and  
42 45 interested parties as well as other purchasers and  
42 46 claimants, as the commissioner finds to be fair and  
42 47 equitable considering the relative circumstances of  
42 48 such purchasers and claimants. The court shall  
42 49 examine the plan submitted by the commissioner and if  
42 50 it finds the plan to be in the best interests of the  
43 1 parties, the court shall approve the plan. An action  
43 2 shall not lie against the commissioner or any of the  
43 3 commissioner's deputies, agents, clerks, assistants,  
43 4 or attorneys by any party based on preference in an  
43 5 appeal pendency plan approved by the court.

### 43 6 3. POWERS OF LIQUIDATOR.

43 7 a. The liquidator may do any of the following:

43 8 (1) Appoint a special deputy to act for the  
43 9 liquidator under this chapter, and determine the  
43 10 special deputy's reasonable compensation. The special  
43 11 deputy shall have all the powers of the liquidator  
43 12 granted by this section. The special deputy shall  
43 13 serve at the pleasure of the liquidator.

43 14 (2) Hire employees and agents, legal counsel,  
43 15 accountants, appraisers, consultants, and other  
43 16 personnel as the commissioner may deem necessary to  
43 17 assist in the liquidation.

43 18 (3) With the approval of the court, fix reasonable  
43 19 compensation of employees and agents, legal counsel,  
43 20 accountants, appraisers, and consultants.

43 21 (4) Pay reasonable compensation to persons  
43 22 appointed and defray from the funds or assets of the



43 23 establishment all expenses of taking possession of,  
43 24 conserving, conducting, liquidating, disposing of, or  
43 25 otherwise dealing with the business and property of  
43 26 the establishment. If the property of the  
43 27 establishment does not contain sufficient cash or  
43 28 liquid assets to defray the costs incurred, the  
43 29 commissioner may advance the costs so incurred out of  
43 30 the insurance division regulatory fund. Amounts so  
43 31 advanced for expenses of administration shall be  
43 32 repaid to the insurance division regulatory fund for  
43 33 the use of the division out of the first available  
43 34 moneys of the establishment.

43 35 (5) Hold hearings, subpoena witnesses, and compel  
43 36 their attendance, administer oaths, examine a person  
43 37 under oath, and compel a person to subscribe to the  
43 38 person's testimony after it has been correctly reduced  
43 39 to writing, and in connection to the proceedings  
43 40 require the production of books, accounts, papers,  
43 41 correspondence, memoranda, purchase agreements, files,  
43 42 or other documents or records which the liquidator  
43 43 deems relevant to the inquiry.

43 44 (6) Collect debts and moneys due and claims  
43 45 belonging to the establishment, wherever located.  
43 46 Pursuant to this subparagraph, the liquidator may do  
43 47 any of the following:

43 48 (a) Institute timely action in other jurisdictions  
43 49 to forestall garnishment and attachment proceedings  
43 50 against debts.

44 1 (b) Perform acts as are necessary or expedient to  
44 2 collect, conserve, or protect its assets or property,  
44 3 including the power to sell, compound, compromise, or  
44 4 assign debts for purposes of collection upon terms and  
44 5 conditions as the liquidator deems best.

44 6 (c) Pursue any creditor's remedies available to  
44 7 enforce claims.

44 8 (7) Conduct public and private sales of the  
44 9 property of the establishment.

44 10 (8) Use assets of the establishment under a  
44 11 liquidation order to transfer obligations of purchase  
44 12 agreements to a solvent establishment, if the transfer  
44 13 can be accomplished without prejudice to the  
44 14 applicable priorities under subsection 18.

44 15 (9) Acquire, hypothecate, encumber, lease,  
44 16 improve, sell, transfer, abandon, or otherwise dispose  
44 17 of or deal with property of the establishment at its  
44 18 market value or upon terms and conditions as are fair  
44 19 and reasonable. The liquidator shall also have power  
44 20 to execute, acknowledge, and deliver deeds,  
44 21 assignments, releases, and other instruments necessary  
44 22 to effectuate a sale of property or other transaction  
44 23 in connection with the liquidation.

44 24 (10) Borrow money on the security of the  
44 25 establishment's assets or without security and execute  
44 26 and deliver documents necessary to that transaction  
44 27 for the purpose of facilitating the liquidation.  
44 28 Money borrowed pursuant to this subparagraph shall be  
44 29 repaid as an administrative expense and shall have  
44 30 priority over any other class 1 claims under the  
44 31 priority of distribution established in subsection 18.

44 32 (11) Enter into contracts as necessary to carry  
44 33 out the order to liquidate and affirm or disavow  
44 34 contracts to which the establishment is a party.

44 35 (12) Continue to prosecute and to institute in the  
44 36 name of the establishment or in the liquidator's own  
44 37 name any and all suits and other legal proceedings, in  
44 38 this state or elsewhere, and to abandon the  
44 39 prosecution of claims the liquidator deems



44 40 unprofitable to pursue further.

44 41 (13) Prosecute an action on behalf of the

44 42 creditors, purchasers, or owners against an officer of

44 43 the establishment or any other person.

44 44 (14) Remove records and property of the

44 45 establishment to the offices of the commissioner or to

44 46 other places as may be convenient for the purposes of

44 47 efficient and orderly execution of the liquidation.

44 48 (15) Deposit in one or more banks in this state

44 49 sums as are required for meeting current

44 50 administration expenses and distributions.

45 1 (16) Unless the court orders otherwise, invest

45 2 funds not currently needed.

45 3 (17) File necessary documents for recording in the

45 4 office of the recorder of deeds or record office in

45 5 this state or elsewhere where property of the

45 6 establishment is located.

45 7 (18) Assert defenses available to the

45 8 establishment against third persons including statutes

45 9 of limitations, statutes of fraud, and the defense of

45 10 usury. A waiver of a defense by the establishment

45 11 after a petition in liquidation has been filed shall

45 12 not bind the liquidator.

45 13 (19) Exercise and enforce the rights, remedies,

45 14 and powers of a creditor, purchaser, or owner,

45 15 including the power to avoid transfer or lien that may

45 16 be given by the general law and that is not included

45 17 within subsections 7 through 9.

45 18 (20) Intervene in a proceeding wherever instituted

45 19 that might lead to the appointment of a receiver or

45 20 trustee, and act as the receiver or trustee whenever

45 21 the appointment is offered.

45 22 (21) Exercise powers now held or later conferred

45 23 upon receivers by the laws of this state which are not

45 24 inconsistent with this chapter.

45 25 b. This subsection does not limit the liquidator

45 26 or exclude the liquidator from exercising a power not

45 27 listed in paragraph "a" that may be necessary or

45 28 appropriate to accomplish the purposes of this

45 29 chapter.

45 30 4. NOTICE TO CREDITORS AND OTHERS.

45 31 a. Unless the court otherwise directs, the

45 32 liquidator shall give notice of the liquidation order

45 33 as soon as possible by doing both of the following:

45 34 (1) Mailing notice, by first-class mail, to all

45 35 persons known or reasonably expected to have claims

45 36 against the establishment, including purchasers, at

45 37 their last known address as indicated by the records

45 38 of the establishment.

45 39 (2) Publication of notice in a newspaper of

45 40 general circulation in the county in which the

45 41 establishment has its principal place of business and

45 42 in other locations as the liquidator deems

45 43 appropriate.

45 44 b. Notice to potential claimants under paragraph

45 45 "a" shall require claimants to file with the

45 46 liquidator their claims together with proper proofs of

45 47 the claim under subsection 13 on or before a date the

45 48 liquidator shall specify in the notice. Claimants

45 49 shall keep the liquidator informed of their changes of

45 50 address, if any.

46 1 c. If notice is given pursuant to this subsection,

46 2 the distribution of assets of the establishment under

46 3 this chapter shall be conclusive with respect to

46 4 claimants, whether or not a claimant actually received

46 5 notice.

46 6 5. ACTIONS BY AND AGAINST LIQUIDATOR.



46 7 a. After issuance of an order appointing a  
46 8 liquidator of an establishment, an action at law or  
46 9 equity shall not be brought against the establishment  
46 10 within this state or elsewhere, and existing actions  
46 11 shall not be maintained or further presented after  
46 12 issuance of the order. Whenever in the liquidator's  
46 13 judgment, protection of the estate of the  
46 14 establishment necessitates intervention in an action  
46 15 against the establishment that is pending outside this  
46 16 state, the liquidator may intervene in the action.  
46 17 The liquidator may defend, at the expense of the  
46 18 estate of the establishment, an action in which the  
46 19 liquidator intervenes under this section.

46 20 b. Within two years or such additional time as  
46 21 applicable law may permit, the liquidator, after the  
46 22 issuance of an order for liquidation, may institute an  
46 23 action or proceeding on behalf of the estate of the  
46 24 establishment upon any cause of action against which  
46 25 the period of limitation fixed by applicable law has  
46 26 not expired at the time of the filing of the petition  
46 27 upon which the order is entered. If a period of  
46 28 limitation is fixed by agreement for instituting a  
46 29 suit or proceeding upon a claim, or for filing a  
46 30 claim, proof of claim, proof of loss, demand, notice,  
46 31 or the like, or if in a proceeding, judicial or  
46 32 otherwise, a period of limitation is fixed in the  
46 33 proceeding or pursuant to applicable law for taking an  
46 34 action, filing a claim or pleading, or doing an act,  
46 35 and if the period has not expired at the date of the  
46 36 filing of the petition, the liquidator may, for the  
46 37 benefit of the estate, take any action or do any act,  
46 38 required of or permitted to the establishment, within  
46 39 a period of one hundred eighty days subsequent to the  
46 40 entry of an order for liquidation, or within a further  
46 41 period as is shown to the satisfaction of the court  
46 42 not to be unfairly prejudicial to the other party.

46 43 c. A statute of limitations or defense of laches  
46 44 shall not run with respect to an action against an  
46 45 establishment between the filing of a petition for  
46 46 liquidation against the establishment and the denial  
46 47 of the petition. An action against the establishment  
46 48 that might have been commenced when the petition was  
46 49 filed may be commenced for at least sixty days after  
46 50 the petition is denied.

#### 47 1 6. COLLECTION AND LIST OF ASSETS.

47 2 a. As soon as practicable after the liquidation  
47 3 order but not later than one hundred twenty days after  
47 4 such order, the liquidator shall prepare in duplicate  
47 5 a list of the establishment's assets. The list shall  
47 6 be amended or supplemented as the liquidator may  
47 7 determine. One copy shall be filed in the office of  
47 8 the clerk of court, and one copy shall be retained for  
47 9 the liquidator's files. Amendments and supplements  
47 10 shall be similarly filed.

47 11 b. The liquidator shall reduce the assets to a  
47 12 degree of liquidity that is consistent with the  
47 13 effective execution of the liquidation.

47 14 c. A submission of a proposal to the court for  
47 15 distribution of assets in accordance with subsection  
47 16 11 fulfills the requirements of paragraph "a".

#### 47 17 7. FRAUDULENT TRANSFERS PRIOR TO PETITION.

47 18 a. A transfer made and an obligation incurred by  
47 19 an establishment within one year prior to the filing  
47 20 of a successful petition for liquidation under this  
47 21 chapter is fraudulent as to then existing and future  
47 22 creditors if made or incurred without fair  
47 23 consideration, or with actual intent to hinder, delay,



47 24 or defraud either existing or future creditors. A  
47 25 fraudulent transfer made or an obligation incurred by  
47 26 an establishment ordered to be liquidated under this  
47 27 chapter may be avoided by the liquidator, except as to  
47 28 a person who in good faith is a purchaser, lienor, or  
47 29 obligee for a present fair equivalent value. A  
47 30 purchaser, lienor, or obligee, who in good faith has  
47 31 given a consideration less than present fair  
47 32 equivalent value for such transfer, lien, or  
47 33 obligation, may retain the property, lien, or  
47 34 obligation as security for repayment. The court may,  
47 35 on due notice, order any such transfer, lien, or  
47 36 obligation to be preserved for the benefit of the  
47 37 estate, and in that event, the receiver shall succeed  
47 38 to and may enforce the rights of the purchaser,  
47 39 lienor, or obligee.

47 40 b. (1) A transfer of property other than real  
47 41 property is made when it becomes perfected so that a  
47 42 subsequent lien obtainable by legal or equitable  
47 43 proceedings on a simple contract could not become  
47 44 superior to the rights of the transferee under  
47 45 subsection 9, paragraph "c".

47 46 (2) A transfer of real property is made when it  
47 47 becomes perfected so that a subsequent bona fide  
47 48 purchaser from the establishment could not obtain  
47 49 rights superior to the rights of the transferee.

47 50 (3) A transfer which creates an equitable lien is  
48 1 not perfected if there are available means by which a  
48 2 legal lien could be perfected.

48 3 (4) A transfer not perfected prior to the filing  
48 4 of a petition for liquidation is deemed to be made  
48 5 immediately before the filing of the successful  
48 6 petition.

48 7 (5) This subsection applies whether or not there  
48 8 are or were creditors who might have obtained a lien  
48 9 or persons who might have become bona fide purchasers.

#### 48 10 8. FRAUDULENT TRANSFER AFTER PETITION.

48 11 a. After a petition for liquidation has been  
48 12 filed, a transfer of real property of the  
48 13 establishment made to a person acting in good faith is  
48 14 valid against the liquidator if made for a present  
48 15 fair equivalent value. If the transfer is not made  
48 16 for a present fair equivalent value, then the transfer  
48 17 is valid to the extent of the present consideration  
48 18 actually paid for which amount the transferee shall  
48 19 have a lien on the property transferred. The  
48 20 commencement of a proceeding in liquidation is  
48 21 constructive notice upon the recording of a copy of  
48 22 the petition for or order of liquidation with the  
48 23 recording or deeds in the county where any real  
48 24 property in question is located. The exercise by a  
48 25 court of the United States or a state or jurisdiction  
48 26 to authorize a judicial sale of real property of the  
48 27 establishment within a county in a state shall not be  
48 28 impaired by the pendency of a proceeding unless the  
48 29 copy is recorded in the county prior to the  
48 30 consummation of the judicial sale.

48 31 b. After a petition for liquidation has been filed  
48 32 and before either the liquidator takes possession of  
48 33 the property of the establishment or an order of  
48 34 liquidation is granted:

48 35 (1) A transfer of the property, other than real  
48 36 property, of the establishment made to a person acting  
48 37 in good faith is valid against the liquidator if made  
48 38 for a present fair equivalent value. If the transfer  
48 39 was not made for a present fair equivalent value, then  
48 40 the transfer is valid to the extent of the present



48 41 consideration actually paid for which amount the  
48 42 transferee shall have a lien on the property  
48 43 transferred.

48 44 (2) If acting in good faith, a person indebted to  
48 45 the establishment or holding property of the  
48 46 establishment may pay the debt or deliver the  
48 47 property, or any part of the property, to the  
48 48 establishment or upon the establishment's order as if  
48 49 the petition were not pending.

48 50 (3) A person having actual knowledge of the  
49 1 pending liquidation is not acting in good faith.

49 2 (4) A person asserting the validity of a transfer  
49 3 under this subsection has the burden of proof. Except  
49 4 as provided in this subsection, a transfer by or on  
49 5 behalf of the establishment after the date of the  
49 6 petition for liquidation by any person other than the  
49 7 liquidator is not valid against the liquidator.

49 8 c. A person receiving any property from the  
49 9 establishment or any benefit of the property of the  
49 10 establishment which is a fraudulent transfer under  
49 11 paragraph "a" is personally liable for the property or  
49 12 benefit and shall account to the liquidator.

49 13 d. This chapter does not impair the negotiability  
49 14 of currency or negotiable instruments.

49 15 9. VOIDABLE PREFERENCES AND LIENS.

49 16 a. (1) A preference is a transfer of the property  
49 17 of an establishment to or for the benefit of a  
49 18 creditor for an antecedent debt made or suffered by  
49 19 the establishment within one year before the filing of  
49 20 a successful petition for liquidation under this  
49 21 chapter, the effect of which transfer may be to enable  
49 22 the creditor to obtain a greater percentage of this  
49 23 debt than another creditor of the same class would  
49 24 receive. If a liquidation order is entered while the  
49 25 establishment is already subject to a receivership,  
49 26 then the transfers are preferences if made or suffered  
49 27 within one year before the filing of the successful  
49 28 petition for the receivership, or within two years  
49 29 before the filing of the successful petition for  
49 30 liquidation, whichever time is shorter.

49 31 (2) A preference may be avoided by the liquidator  
49 32 if any of the following exist:

49 33 (a) The establishment was insolvent at the time of  
49 34 the transfer.

49 35 (b) The transfer was made within four months  
49 36 before the filing of the petition.

49 37 (c) At the time the transfer was made, the  
49 38 creditor receiving it or to be benefited by the  
49 39 transfer or the creditor's agent acting with reference  
49 40 to the transfer had reasonable cause to believe that  
49 41 the establishment was insolvent or was about to become  
49 42 insolvent.

49 43 (d) The creditor receiving the transfer was an  
49 44 officer, or an employee, attorney, or other person who  
49 45 was in fact in a position of comparable influence in  
49 46 the establishment to an officer whether or not the  
49 47 person held the position of an officer, owner, or  
49 48 other person, firm, corporation, association, or  
49 49 aggregation of persons with whom the establishment did  
49 50 not deal at arm's length.

50 1 (3) Where the preference is voidable, the  
50 2 liquidator may recover the property. If the property  
50 3 has been converted, the liquidator may recover its  
50 4 value from a person who has received or converted the  
50 5 property. However, if a bona fide purchaser or lienor  
50 6 has given less than the present fair equivalent value,  
50 7 the purchaser or lienor shall have a lien upon the



50 8 property to the extent of the consideration actually  
50 9 given. Where a preference by way of lien or security  
50 10 interest is voidable, the court may on due notice  
50 11 order the lien or security interest to be preserved  
50 12 for the benefit of the estate, in which event the lien  
50 13 or title shall pass to the liquidator.

50 14 b. (1) A transfer of property other than real  
50 15 property is made when it becomes perfected so that a  
50 16 subsequent lien obtainable by legal or equitable  
50 17 proceedings on a simple contract could not become  
50 18 superior to the rights of the transferee.

50 19 (2) A transfer of real property is made when it  
50 20 becomes perfected so that a subsequent bona fide  
50 21 purchaser from the establishment could not obtain  
50 22 rights superior to the rights of the transferee.

50 23 (3) A transfer which creates an equitable lien is  
50 24 not perfected if there are available means by which a  
50 25 legal lien could be created.

50 26 (4) A transfer not perfected prior to the filing  
50 27 of a petition for liquidation is deemed to be made  
50 28 immediately before the filing of the successful  
50 29 petition.

50 30 (5) This subsection applies whether or not there  
50 31 are or were creditors who might have obtained liens or  
50 32 persons who might have become bona fide purchasers.

50 33 c. (1) A lien obtainable by legal or equitable  
50 34 proceedings upon a simple contract is one arising in  
50 35 the ordinary course of the proceedings upon the entry  
50 36 or docketing of a judgment or decree, or upon  
50 37 attachment, garnishment, execution, or like process,  
50 38 whether before, upon, or after judgment or decree and  
50 39 whether before or upon levy. It does not include  
50 40 liens which under applicable law are given a special  
50 41 priority over other liens which are prior in time.

50 42 (2) A lien obtainable by legal or equitable  
50 43 proceedings may become superior to the rights of a  
50 44 transferee, or a purchaser may obtain rights superior  
50 45 to the rights of a transferee within the meaning of  
50 46 paragraph "b", if such consequences follow only from  
50 47 the lien or purchase itself, or from the lien or  
50 48 purchase followed by a step wholly within the control  
50 49 of the respective lienholder or purchaser, with or  
50 50 without the aid of ministerial action by public  
51 1 officials. However, a lien could not become superior  
51 2 and a purchase could not create superior rights for  
51 3 the purpose of paragraph "b" through an act subsequent  
51 4 to the obtaining of a lien or subsequent to a purchase  
51 5 which requires the agreement or concurrence of any  
51 6 third party or which requires further judicial action  
51 7 or ruling.

51 8 d. A transfer of property for or on account of a  
51 9 new and contemporaneous consideration, which is under  
51 10 paragraph "b" made or suffered after the transfer  
51 11 because of delay in perfecting it, does not become a  
51 12 transfer for or on account of an antecedent debt if  
51 13 any acts required by the applicable law to be  
51 14 performed in order to perfect the transfer as against  
51 15 liens or a bona fide purchaser's rights are performed  
51 16 within twenty-one days or any period expressly allowed  
51 17 by the law, whichever is less. A transfer to secure a  
51 18 future loan, if a loan is actually made, or a transfer  
51 19 which becomes security for a future loan, shall have  
51 20 the same effect as a transfer for or on account of a  
51 21 new and contemporaneous consideration.

51 22 e. If a lien which is voidable under paragraph  
51 23 "a", subparagraph (2), has been dissolved by the  
51 24 furnishing of a bond or other obligation, the surety



51 25 of which has been indemnified directly or indirectly  
51 26 by the transfer or the creation of a lien upon  
51 27 property of an establishment before the filing of a  
51 28 petition under this chapter which results in the  
51 29 liquidation order, the indemnifying transfer or lien  
51 30 is also voidable.

51 31 f. The property affected by a lien voidable under  
51 32 paragraphs "a" and "e" is discharged from the lien.  
51 33 The property and any of the indemnifying property  
51 34 transferred to or for the benefit of a surety shall  
51 35 pass to the liquidator. However, the court may on due  
51 36 notice order a lien to be preserved for the benefit of  
51 37 the estate and the court may direct that the  
51 38 conveyance be executed to evidence the title of the  
51 39 liquidator.

51 40 g. The court shall have summary jurisdiction of a  
51 41 proceeding by a liquidator to hear and determine the  
51 42 rights of the parties under this section. Reasonable  
51 43 notice of hearing in the proceeding shall be given to  
51 44 all parties in interest, including the obligee of a  
51 45 releasing bond or other like obligation. Where an  
51 46 order is entered for the recovery of indemnifying  
51 47 property in kind or for the avoidance of an  
51 48 indemnifying lien, upon application of any party in  
51 49 interest, the court shall in the same proceeding  
51 50 ascertain the value of the property or lien. If the  
52 1 value is less than the amount for which the property  
52 2 is indemnified or less than the amount of the lien,  
52 3 the transferee or lienholder may elect to retain the  
52 4 property or lien upon payment of its value, as  
52 5 ascertained by the court, to the liquidator within the  
52 6 time as fixed by the court.

52 7 h. The liability of a surety under a releasing  
52 8 bond or other like obligation is discharged to the  
52 9 extent of the value of the indemnifying property  
52 10 recovered or the indemnifying lien nullified and  
52 11 avoided by the liquidator. Where the property is  
52 12 retained under paragraph "g", the liability of the  
52 13 surety is discharged to the extent of the amount paid  
52 14 to the liquidator.

52 15 i. If a creditor has been preferred for property  
52 16 which becomes a part of the establishment's estate,  
52 17 and afterward in good faith gives the establishment  
52 18 further credit without security of any kind, the  
52 19 amount of the new credit remaining unpaid at the time  
52 20 of the petition may be set off against the preference  
52 21 which would otherwise be recoverable from the  
52 22 creditor.

52 23 j. If within four months before the filing of a  
52 24 successful petition for liquidation under this  
52 25 chapter, or at any time in contemplation of a  
52 26 proceeding to liquidate, an establishment, directly or  
52 27 indirectly, pays money or transfers property to an  
52 28 attorney for services rendered or to be rendered, the  
52 29 transaction may be examined by the court on its own  
52 30 motion or shall be examined by the court on petition  
52 31 of the liquidator. The payment or transfer shall be  
52 32 held valid only to the extent of a reasonable amount  
52 33 to be determined by the court. The excess may be  
52 34 recovered by the liquidator for the benefit of the  
52 35 estate. However, where the attorney is in a position  
52 36 of influence in the establishment or an affiliate,  
52 37 payment of any money or the transfer of any property  
52 38 to the attorney for services rendered or to be  
52 39 rendered shall be governed by the provisions of  
52 40 paragraph "a", subparagraph (2), subparagraph  
52 41 subdivision (d).



52 42 k. (1) An officer, manager, employee,  
52 43 shareholder, subscriber, attorney, or other person  
52 44 acting on behalf of the establishment who knowingly  
52 45 participates in giving any preference when the person  
52 46 has reasonable cause to believe the establishment is  
52 47 or is about to become insolvent at the time of the  
52 48 preference is personally liable to the liquidator for  
52 49 the amount of the preference. There is an inference  
52 50 that reasonable cause exists if the transfer was made  
53 1 within four months before the date of filing of this  
53 2 successful petition for liquidation.

53 3 (2) A person receiving property from the  
53 4 establishment or the benefit of the property of the  
53 5 establishment as a preference voidable under paragraph  
53 6 "a" is personally liable for the property and shall  
53 7 account to the liquidator.

53 8 (3) This subsection shall not prejudice any other  
53 9 claim by the liquidator against any person.

53 10 10. CLAIMS OF HOLDER OF VOID OR VOIDABLE RIGHTS.

53 11 a. A claim of a creditor who has received or  
53 12 acquired a preference, lien, conveyance, transfer,  
53 13 assignment, or encumbrance, voidable under this  
53 14 chapter, shall not be allowed unless the creditor  
53 15 surrenders the preference, lien, conveyance, transfer,  
53 16 assignment, or encumbrance. If the avoidance is  
53 17 effected by a proceeding in which a final judgment has  
53 18 been entered, the claim shall not be allowed unless  
53 19 the money is paid or the property is delivered to the  
53 20 liquidator within thirty days from the date of the  
53 21 entering of the final judgment. However, the court  
53 22 having jurisdiction over the liquidation may allow  
53 23 further time if there is an appeal or other  
53 24 continuation of the proceeding.

53 25 b. A claim allowable under paragraph "a" by reason  
53 26 of a voluntary or involuntary avoidance, preference,  
53 27 lien, conveyance, transfer, assignment, or encumbrance  
53 28 may be filed as an excused late filing under  
53 29 subsection 12, if filed within thirty days from the  
53 30 date of the avoidance or within the further time  
53 31 allowed by the court under paragraph "a".

53 32 11. LIQUIDATOR'S PROPOSAL TO DISTRIBUTE ASSETS.

53 33 a. From time to time as assets become available,  
53 34 the liquidator shall make application to the court for  
53 35 approval of a proposal to disburse assets out of  
53 36 marshaled assets.

53 37 b. The proposal shall at least include provisions  
53 38 for all of the following:

53 39 (1) Reserving amounts for the payment of all the  
53 40 following:

53 41 (a) Expenses of administration.  
53 42 (b) To the extent of the value of the security  
53 43 held, the payment of claims of secured creditors.  
53 44 (c) Claims falling within the priorities  
53 45 established in subsection 18, paragraphs "a" and "b".

53 46 (2) Disbursement of the assets marshaled to date  
53 47 and subsequent disbursement of assets as they become  
53 48 available.

53 49 c. Action on the application may be taken by the  
53 50 court provided that the liquidator's proposal complies  
54 1 with paragraph "b".

54 2 12. FILING OF CLAIMS.

54 3 a. Proof of all claims shall be filed with the  
54 4 liquidator in the form required by subsection 13 on or  
54 5 before the last day for filing specified in the notice  
54 6 required under subsection 4.

54 7 b. The liquidator may permit a claimant making a  
54 8 late filing to share in distributions, whether past or



54 9 future, as if the claimant were not late, to the  
54 10 extent that the payment will not prejudice the orderly  
54 11 administration of the liquidation under any of the  
54 12 following circumstances:

54 13 (1) The existence of the claim was not known to  
54 14 the claimant and the claimant filed the claim as  
54 15 promptly as reasonably possible after learning of it.

54 16 (2) A transfer to a creditor was avoided under  
54 17 subsections 7 through 9, or was voluntarily  
54 18 surrendered under subsection 10, and the filing  
54 19 satisfies the conditions of subsection 10.

54 20 (3) The valuation under subsection 17 of security  
54 21 held by a secured creditor shows a deficiency, which  
54 22 is filed within thirty days after the valuation.

54 23 c. The liquidator may consider any claim filed  
54 24 late and permit the claimant to receive distributions  
54 25 which are subsequently declared on any claims of the  
54 26 same or lower priority if the payment does not  
54 27 prejudice the orderly administration of the  
54 28 liquidation. The late-filing claimant shall receive  
54 29 at each distribution the same percentage of the amount  
54 30 allowed on the claim as is then being paid to  
54 31 claimants of any lower priority. This shall continue  
54 32 until the claim has been paid in full.

54 33 13. PROOF OF CLAIM.

54 34 a. Proof of claim shall consist of a statement  
54 35 signed by the claimant that includes all of the  
54 36 following that are applicable:

54 37 (1) The particulars of the claim, including the  
54 38 consideration given for it.

54 39 (2) The identity and amount of the security on the  
54 40 claim.

54 41 (3) The payments, if any, made on the debt.

54 42 (4) A statement that the sum claimed is justly  
54 43 owing and that there is no setoff, counterclaim, or  
54 44 defense to the claim.

54 45 (5) Any right of priority of payment or other  
54 46 specific right asserted by the claimant.

54 47 (6) A copy of the written instrument which is the  
54 48 foundation of the claim.

54 49 (7) The name and address of the claimant and the  
54 50 attorney who represents the claimant, if any.

55 1 b. A claim need not be considered or allowed if it  
55 2 does not contain all the information identified in  
55 3 paragraph "a" which is applicable. The liquidator may  
55 4 require that a prescribed form be used and may require  
55 5 that other information and documents be included.

55 6 c. At any time the liquidator may request the  
55 7 claimant to present information or evidence  
55 8 supplementary to that required under paragraph "a",  
55 9 and may take testimony under oath, require production  
55 10 of affidavits or depositions, or otherwise obtain  
55 11 additional information or evidence.

55 12 d. A judgment or order against an establishment  
55 13 entered after the date of filing of a successful  
55 14 petition for liquidation, or a judgment or order  
55 15 against the establishment entered at any time by  
55 16 default or by collusion need not be considered as  
55 17 evidence of liability or of the amount of damages. A  
55 18 judgment or order against an establishment before the  
55 19 filing of the petition need not be considered as  
55 20 evidence of liability or of the amount of damages.

55 21 14. SPECIAL CLAIMS.

55 22 a. A claim may be allowed even if contingent, if  
55 23 it is filed pursuant to subsection 12. The claim may  
55 24 be allowed and the claimant may participate in all  
55 25 distributions declared after it is filed to the extent



55 26 that it does not prejudice the orderly administration  
55 27 of the liquidation.

55 28 b. Claims that are due except for the passage of  
55 29 time shall be treated as absolute claims are treated.  
55 30 However, the claims may be discounted at the legal  
55 31 rate of interest.

55 32 c. Claims made under employment contracts by  
55 33 directors, principal officers, or persons in fact  
55 34 performing similar functions or having similar powers  
55 35 are limited to payment for services rendered prior to  
55 36 the issuance of an order of liquidation under  
55 37 subsection 2.

55 38 15. DISPUTED CLAIMS.

55 39 a. If a claim is denied in whole or in part by the  
55 40 liquidator, written notice of the determination shall  
55 41 be given to the claimant or the claimant's attorney by  
55 42 first-class mail at the address shown in the proof of  
55 43 claim. Within sixty days from the mailing of the  
55 44 notice, the claimant may file objections with the  
55 45 liquidator. Unless a filing is made, the claimant  
55 46 shall not further object to the determination.

55 47 b. If objections are filed with the liquidator and  
55 48 the liquidator does not alter the denial of the claim  
55 49 as a result of the objections, the liquidator shall  
55 50 ask the court for a hearing as soon as practicable and  
56 1 give notice of the hearing by first-class mail to the  
56 2 claimant or the claimant's attorney and to any other  
56 3 persons directly affected. The notice shall be given  
56 4 not less than ten nor more than thirty days before the  
56 5 date of hearing. The matter shall be heard by the  
56 6 court or by a court-appointed referee. The referee  
56 7 shall submit findings of fact along with a  
56 8 recommendation.

56 9 16. CLAIMS OF OTHER PERSON. If a creditor, whose  
56 10 claim against an establishment is secured in whole or  
56 11 in part by the undertaking of another person, fails to  
56 12 prove and file that claim, then the other person may  
56 13 do so in the creditor's name and shall be subrogated  
56 14 to the rights of the creditor, whether the claim has  
56 15 been filed by the creditor or by the other person in  
56 16 the creditor's name to the extent that the other  
56 17 person discharges the undertaking. However, in the  
56 18 absence of an agreement with the creditor to the  
56 19 contrary, the other person is not entitled to any  
56 20 distribution until the amount paid to the creditor on  
56 21 the undertaking plus the distributions paid on the  
56 22 claim from the establishment's estate to the creditor  
56 23 equal the amount of the entire claim of the creditor.  
56 24 An excess received by the creditor shall be held by  
56 25 the creditor in trust for the other person.

56 26 17. SECURED CREDITOR'S CLAIMS.

56 27 a. The value of the security held by a secured  
56 28 creditor shall be determined in one of the following  
56 29 ways, as the court may direct:

56 30 (1) By converting the security into money  
56 31 according to the terms of the agreement pursuant to  
56 32 which the security was delivered to the creditors.

56 33 (2) By agreement, arbitration, compromise, or  
56 34 litigation between the creditor and the liquidator.

56 35 b. The determination shall be under the  
56 36 supervision and control of the court with due regard  
56 37 for the recommendation of the liquidator. The amount  
56 38 so determined shall be credited upon the secured  
56 39 claim. A deficiency shall be treated as an unsecured  
56 40 claim. If the claimant surrenders the security to the  
56 41 liquidator, the entire claim shall be allowed as if  
56 42 unsecured.



56 43 18. PRIORITY OF DISTRIBUTION. The priority of  
56 44 distribution of claims from the establishment's estate  
56 45 shall be in accordance with the order in which each  
56 46 class of claims is set forth. Claims in each class  
56 47 shall be paid in full or adequate funds retained for  
56 48 the payment before the members of the next class  
56 49 receive any payment. Subclasses shall not be  
56 50 established within a class. The order of distribution  
57 1 of claims is as follows:

57 2 a. CLASS 1. The costs and expenses of  
57 3 administration, including but not limited to the  
57 4 following:

57 5 (1) Actual and necessary costs of preserving or  
57 6 recovering the assets of the establishment.

57 7 (2) Compensation for all authorized services  
57 8 rendered in the liquidation.

57 9 (3) Necessary filing fees.

57 10 (4) Fees and mileage payable to witnesses.

57 11 (5) Authorized reasonable attorney fees and other  
57 12 professional services rendered in the liquidation.

57 13 b. CLASS 2. Reasonable compensation to employees  
57 14 for services performed to the extent that they do not  
57 15 exceed two months of monetary compensation and  
57 16 represent payment for services performed within one  
57 17 year before the filing of the petition for  
57 18 liquidation. Officers and directors are not entitled  
57 19 to the benefit of this priority. The priority is in  
57 20 lieu of other similar priority which may be authorized  
57 21 by law as to wages or compensation of employees.

57 22 c. CLASS 3. Claims under purchase agreements.

57 23 d. CLASS 4. Claims of general creditors.

57 24 e. CLASS 5. Claims of the federal or of any state  
57 25 or local government. Claims, including those of a  
57 26 governmental body for a penalty or forfeiture, are  
57 27 allowed in this class only to the extent of the  
57 28 pecuniary loss sustained from the act, transaction, or  
57 29 proceeding out of which the penalty or forfeiture  
57 30 arose, with reasonable and actual costs incurred. The  
57 31 remainder of such claims shall be postponed to the  
57 32 class of claims under paragraph "g".

57 33 f. CLASS 6. Claims filed late or any other claims  
57 34 other than claims under paragraph "g".

57 35 g. CLASS 7. The claims of shareholders or other  
57 36 owners.

57 37 19. LIQUIDATOR'S RECOMMENDATIONS TO THE COURT.

57 38 a. The liquidator shall review claims duly filed  
57 39 in the liquidation and shall make further  
57 40 investigation as necessary. The liquidator may  
57 41 compound, compromise, or in any other manner negotiate  
57 42 the amount for which claims will be recommended to the  
57 43 court except where the liquidator is required by law  
57 44 to accept claims as settled by a person or  
57 45 organization. Unresolved disputes shall be determined  
57 46 under subsection 15. As soon as practicable, the  
57 47 liquidator shall present to the court a report of the  
57 48 claims against the establishment with the liquidator's  
57 49 recommendations. The report shall include the name  
57 50 and address of each claimant and the amount of the  
58 1 claim finally recommended.

58 2 b. The court may approve, disapprove, or modify  
58 3 the report on claims by the liquidator. Reports not  
58 4 modified by the court within sixty days following  
58 5 submission by the liquidator shall be treated by the  
58 6 liquidator as allowed claims, subject to later  
58 7 modification or to rulings made by the court pursuant  
58 8 to subsection 15. A claim under a policy of insurance  
58 9 shall not be allowed for an amount in excess of the



58 10 applicable policy limits.

58 11 20. DISTRIBUTION OF ASSETS. Under the direction  
58 12 of the court, the liquidator shall pay distributions  
58 13 in a manner that will ensure the proper recognition of  
58 14 priorities and a reasonable balance between the  
58 15 expeditious completion of the liquidation and the  
58 16 protection of unliquidated and undetermined claims,  
58 17 including third-party claims. Distribution of assets  
58 18 in kind may be made at valuations set by agreement  
58 19 between the liquidator and the creditor and approved  
58 20 by the court.

58 21 21. UNCLAIMED AND WITHHELD FUNDS.

58 22 a. Unclaimed funds subject to distribution  
58 23 remaining in the liquidator's hands when the  
58 24 liquidator is ready to apply to the court for  
58 25 discharge, including the amount distributable to a  
58 26 creditor, owner, or other person who is unknown or  
58 27 cannot be found, shall be deposited with the treasurer  
58 28 of the state, and shall be paid without interest,  
58 29 except as provided in subsection 18, to the person  
58 30 entitled or to the person's legal representative upon  
58 31 proof satisfactory to the treasurer of state of the  
58 32 right to the funds. Any amount on deposit not claimed  
58 33 within six years from the discharge of the liquidator  
58 34 is deemed to have been abandoned and shall become the  
58 35 property of the state without formal escheat  
58 36 proceedings and be transferred to the insurance  
58 37 division regulatory fund.

58 38 b. Funds withheld under subsection 14 and not  
58 39 distributed shall upon discharge of the liquidator be  
58 40 deposited with the treasurer of state and paid  
58 41 pursuant to subsection 18. Sums remaining which under  
58 42 subsection 18 would revert to the undistributed assets  
58 43 of the establishment shall be transferred to the  
58 44 insurance division regulatory fund and become the  
58 45 property of the state as provided under paragraph "a",  
58 46 unless the commissioner in the commissioner's  
58 47 discretion petitions the court to reopen the  
58 48 liquidation pursuant to subsection 23.

58 49 c. Notwithstanding any other provision of this  
58 50 chapter, funds as identified in paragraph "a", with  
59 1 the approval of the court, shall be made available to  
59 2 the commissioner for use in the detection and  
59 3 prevention of future insolvencies. The commissioner  
59 4 shall hold these funds in the insurance division  
59 5 regulatory fund and shall pay without interest, except  
59 6 as provided in subsection 18, to the person entitled  
59 7 to the funds or to the person's legal representative  
59 8 upon proof satisfactory to the commissioner of the  
59 9 person's right to the funds. The funds shall be held  
59 10 by the commissioner for a period of two years at which  
59 11 time the rights and duties to the unclaimed funds  
59 12 shall vest in the commissioner.

59 13 22. TERMINATION OF PROCEEDINGS.

59 14 a. When all assets justifying the expense of  
59 15 collection and distribution have been collected and  
59 16 distributed under this chapter, the liquidator shall  
59 17 apply to the court for discharge. The court may grant  
59 18 the discharge and make any other orders, including an  
59 19 order to transfer remaining funds that are  
59 20 uneconomical to distribute, as appropriate.

59 21 b. Any other person may apply to the court at any  
59 22 time for an order under paragraph "a". If the  
59 23 application is denied, the applicant shall pay the  
59 24 costs and expenses of the liquidator in resisting the  
59 25 application, including a reasonable attorney fee.

59 26 23. REOPENING LIQUIDATION. At any time after the



59 27 liquidation proceeding has been terminated and the  
59 28 liquidator discharged, the commissioner or other  
59 29 interested party may petition the court to reopen the  
59 30 proceedings for good cause including the discovery of  
59 31 additional assets. The court shall order the  
59 32 proceeding reopened if it is satisfied that there is  
59 33 justification for the reopening.

59 34 24. DISPOSITION OF RECORDS DURING AND AFTER  
59 35 TERMINATION OF LIQUIDATION. If it appears to the  
59 36 commissioner that the records of an establishment in  
59 37 the process of liquidation or completely liquidated  
59 38 are no longer useful, the commissioner may recommend  
59 39 to the court and the court shall direct what records  
59 40 shall be retained for future reference and what  
59 41 records shall be destroyed.

59 42 25. EXTERNAL AUDIT OF LIQUIDATOR'S BOOKS. The  
59 43 court may order audits to be made of the books of the  
59 44 commissioner relating to a liquidation established  
59 45 under this chapter, and a report of each audit shall  
59 46 be filed with the commissioner and with the court.  
59 47 The books, records, and other documents of the  
59 48 liquidation shall be made available to the auditor at  
59 49 any time without notice. The expense of an audit  
59 50 shall be considered a cost of administration of the  
60 1 liquidation.

60 2 Sec. \_\_\_\_\_. Section [537A.10](#), subsection 1, paragraph  
60 3 c, subparagraph (3), Code 2001, is amended to read as  
60 4 follows:

60 5 (3) "Franchise" also does not include any contract  
60 6 under which a petroleum retailer or petroleum  
60 7 distributor is authorized or permitted to occupy  
60 8 leased marketing premises, which premises are to be  
60 9 employed in connection with the sale, consignment, or  
60 10 distribution of motor fuel under a trademark which is  
60 11 owned or controlled by a refiner which is regulated by  
60 12 the federal Petroleum Marketing Practices Act, 15  
60 13 U.S.C. } 2801 et seq. The term "refiner" means any  
60 14 person engaged in the refining of crude oil to produce  
60 15 motor fuel, and includes any affiliate of such person.  
60 16 "Franchise" also does not include a contract entered  
60 17 into by any person regulated under chapter 123, 322,  
60 18 322A, 322B, 322C, 322D, 322F,

—522

— 522B, or 543B, or a

60 19 contract establishing a franchise relationship with  
60 20 respect to the sale of construction equipment, lawn or  
60 21 garden equipment, or real estate.

60 22 Sec. \_\_\_\_\_. 2001 Iowa Acts, [Senate File 500](#), section  
60 23 39, is amended to read as follows:

60 24 SEC. 39. EFFECTIVE DATE. Sections 4, 5, 7 through  
60 25 11, 13 through 22, 34, and 38 of this Act take effect  
60 26 January 1, 2002.

60 27 Sec. \_\_\_\_\_. Chapters 523A and 523E, Code 2001, are  
60 28 repealed."

60 29 #\_\_\_\_. Title page, line 1, by inserting after the  
60 30 word "Act" the following: "concerning regulated  
60 31 industries under the jurisdiction of the commissioner  
60 32 of insurance relating to various issues relating to  
60 33 insurance,".

60 34 #3. Title page, line 7, by inserting after the  
60 35 word "requirements" the following: ", and relating to  
60 36 cemetery and funeral merchandise and funeral services,  
60 37 establishing permit and purchase agreement  
60 38 requirements, establishing and appropriating fees, and  
60 39 providing administration, enforcement, and liquidation  
60 40 procedures, and penalties".



60 41 #4. By renumbering as necessary.

60 42 [SF 473H](#)

[60](#) 43 av/es/25