



CHESTER J. CULVER
GOVERNOR

OFFICE OF THE GOVERNOR

PATTY JUDGE
LT. GOVERNOR

May 24, 2007

The Honorable Michael Mauro
Secretary of State
State Capitol Building
LOCAL

Dear Mr. Secretary:

I hereby transmit:

Senate File 559, an Act relating to cemetery and funeral merchandise, funeral services, and cemeteries and providing fees and penalties.

The above Senate File is hereby approved this date.

Sincerely,

A handwritten signature in black ink, appearing to read "Chester J. Culver".

Chester J. Culver
Governor

CJC:bdj

cc: Secretary of the Senate
Chief Clerk of the House





SENATE FILE 559

AN ACT
RELATING TO CEMETERY AND FUNERAL MERCHANDISE, FUNERAL SERVICES,
AND CEMETERIES AND PROVIDING FEES AND PENALTIES.

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

DIVISION I

CEMETERY AND FUNERAL MERCHANDISE,
FUNERAL SERVICES, AND CEMETERIES -- REGULATION

Section 1. Section 22.7, Code 2007, is amended by adding the following new subsection:

NEW SUBSECTION. 58. Information filed with the commissioner of insurance pursuant to sections 523A.204 and 523A.502A.

Sec. 2. Section 523A.102, subsection 6, Code 2007, is amended to read as follows:

6. "Commissioner" means the commissioner of insurance or the ~~deputy-administrator-authorized-in-section-523A-801-to-the extent-the-commissioner-delegates-functions-to-the-deputy administrator~~ commissioner's designee.

Sec. 3. Section 523A.102, subsection 11, Code 2007, is amended by striking the subsection.

Sec. 4. Section 523A.102, Code 2007, is amended by adding the following new subsection:

NEW SUBSECTION. 26A. "Sales agent" means a person, including an employee, who is authorized by a seller to sell cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, on behalf of the seller.

Sec. 5. Section 523A.102, subsection 27, Code 2007, is amended to read as follows:

27. "Seller" or "preneed seller" means a person doing business within this state, including a person doing business within this state who sells insurance, who advertises, sells,

promotes, or offers to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof when performance or delivery may be more than one hundred twenty days following the initial payment on the account whether the transaction is completed or offered in person, through the mail, over the telephone, by the internet, or through any other means of commerce. "Seller" or "preneed seller" includes any person performing any term of a purchase agreement executed within this state, and any person identified under a burial account as the provider of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof.

Sec. 6. Section 523A.201, subsection 3, Code 2007, is amended to read as follows:

3. If a purchase agreement for cemetery merchandise, funeral merchandise, funeral services, or a combination thereof provides that payments are to be made in installments, the seller shall deposit eighty percent of each payment in the trust fund until the full amount required to be placed in trust has been deposited. If the purchase agreement is financed with or sold to a financial institution, the purchase agreement shall be considered paid in full and the trust requirements shall be satisfied within fifteen days after the ~~close-of-the-month-in-which-the~~ seller receives funds from the financial institution.

Sec. 7. Section 523A.201, subsection 5, Code 2007, is amended by striking the subsection and inserting in lieu thereof the following:

5. Unless a seller deposits all of each payment in a trust fund that meets the requirements of this section and section 523A.202, the seller shall have a fidelity bond or similar insurance in an amount of not less than fifty thousand dollars to protect against the loss of purchaser payments not placed in trust within the time period required by this section and section 523A.202. The commissioner may require a greater amount as the commissioner determines is necessary. If the seller changes ownership, the fidelity bond or similar insurance shall continue in force for at least one year after the transfer of ownership.

Sec. 8. Section 523A.201, subsections 8 and 10, Code 2007, are amended to read as follows:

8. Interest or income earned on amounts deposited in trust shall remain in trust under the same terms and conditions as payments made under the purchase agreement, except that ~~the seller~~ a limited liability corporation that was formed in 2002 for the purpose of purchasing a cemetery from a foreign entity reorganizing under bankruptcy and such corporation is comprised of six establishments all located within the same county may withdraw so much of the interest or income as represents the difference between the amount needed to adjust the trust funds for inflation as set by the commissioner based on the consumer price index and the interest or income earned during the preceding year not to exceed fifty percent of the total interest or income on a calendar-year basis. The early withdrawal of interest or income under this provision does not affect the purchaser's right to a credit of such interest or income in the event of a nonguaranteed price agreement, cancellation, or nonperformance by ~~the-seller~~ such limited liability corporation.

10. If a seller voluntarily or involuntarily ceases doing business and the seller's obligation to provide merchandise or services has not been assumed by another ~~establishment seller~~ holding a current ~~establishment-permit~~ preneed seller's license, all trust funds, including accrued interest or income, shall be repaid to the purchaser within ~~one-hundred twenty thirty~~ days following the seller's cessation of business ~~or, in the event of circumstances where a payment is not possible within one hundred twenty days, as soon as is reasonably practicable.~~ A seller may petition the commissioner, upon a showing of good cause, for a longer period of time for repayment. A seller shall notify the commissioner at least thirty days prior to ceasing business.

Sec. 9. Section 523A.202, subsection 4, Code 2007, is amended to read as follows:

4. This section does not prohibit moving trust funds from one financial institution to another if the commissioner is notified of the change within thirty days of the transfer of the trust funds.

Sec. 10. Section 523A.203, Code 2007, is amended by adding the following new subsection:

NEW SUBSECTION. 7. Unless proceeding under section 523A.403, investment and management decisions for all trust

funds shall be made in accordance with the provisions of section 633A.4302.

Sec. 11. Section 523A.204, Code 2007, is amended by striking the section and inserting in lieu thereof the following:

523A.204 PRENEED SELLER ANNUAL REPORTING REQUIREMENTS.

1. A preneed seller shall file with the commissioner not later than April 1 of each year an annual report on a form prescribed by the commissioner.

2. A preneed seller filing an annual report shall pay a filing fee of ten dollars per purchase agreement sold during the year covered by the report. Duplicate fees are not required for the same purchase agreement. If a purchase agreement has multiple sellers, the fee shall be paid by the preneed seller actually providing the merchandise and services.

3. All records maintained by the commissioner under this section shall be confidential pursuant to section 22.7, subsection 58, and shall not be made available for inspection or copying except upon the approval of the commissioner or the attorney general.

4. The commissioner shall levy an administrative penalty in the amount of five hundred dollars against a preneed seller that fails to file the annual report when due, payable to the state for deposit in the general fund of the state.

5. A preneed seller that fails to file the annual report when due shall immediately cease soliciting or executing purchase agreements until the annual report is filed and any administrative penalty assessed has been paid.

Sec. 12. Section 523A.206, Code 2007, is amended by striking the section and inserting in lieu thereof the following:

523A.206 EXAMINATIONS -- AUTHORITY AND SCOPE.

1. The commissioner may conduct an examination under this chapter of any seller as often as the commissioner deems appropriate. If a seller has a trust arrangement, the commissioner shall conduct an examination of such seller doing business in this state not less than once every three years unless the seller has provided to the commissioner, on an annual basis, a certified copy of an audit conducted by an independent certified public accountant verifying compliance

with this chapter. The commissioner may require an audit of a seller, or other person by a certified public accountant to verify compliance with the requirements of this chapter, including rules adopted and orders issued pursuant to this chapter.

2. A seller shall reimburse the division for the expense of conducting the examination, including an audit conducted by a certified public accountant, unless the commissioner waives this requirement, or the seller has previously provided to the commissioner a certified copy of an audit conducted by an independent certified public accountant verifying compliance with this chapter for each year in question and the examination conducted by the commissioner does not disclose that the seller has not complied with this chapter for the years in question. The expense of an examination involving multiple sellers or other persons shall be prorated among them upon any reasonable basis as determined by the commissioner.

3. For purposes of completing an examination under this chapter, the commissioner may examine or investigate any person, or the business of any person, if the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the seller.

4. Upon determining that an examination should be conducted, the commissioner may appoint one or more examiners to perform the examination and instruct those examiners as to the scope of the examination.

5. A seller, or other person from whom information is sought, and its officers, directors, employees, and agents shall provide to the examiners appointed under subsection 4, timely, convenient, and free access at their offices, at all reasonable hours, to all books, records, accounts, papers, documents, and all electronic or other recordings related to the property, assets, business, and affairs of the seller being examined and shall facilitate the examination as much as possible.

a. The refusal of a seller, by its officers, directors, employees, or agents, to submit to an examination or to comply with a reasonable written request of an examiner shall constitute grounds for the suspension, revocation, or nonrenewal of any license held by the seller to engage in business subject to the commissioner's jurisdiction.

b. If a seller declines or refuses to submit to an examination as provided in this chapter, the commissioner shall immediately suspend, revoke, or nonrenew any license held by the seller or business to engage in business subject to the commissioner's jurisdiction, and shall report the commissioner's action to the attorney general, who shall immediately apply to the district court for the appointment of a receiver to administer the final affairs of the seller.

6. The commissioner shall not make information obtained in the course of an examination public, except when a duty under this chapter requires the commissioner to take action against a seller or to cooperate with another law enforcement agency, or when the commissioner is called as a witness in a civil or criminal proceeding.

7. This section shall not be construed to limit the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory actions pursuant to this chapter. Findings of fact and conclusions made pursuant to an examination are deemed to be prima facie evidence in any legal or regulatory action.

Sec. 13. NEW SECTION. 523A.207 AUDITS BY CERTIFIED PUBLIC ACCOUNTANTS.

A purchase agreement shall not be sold or transferred, as part of the sale of a business or the assets of a business, until an audit has been performed by a certified public accountant and filed with the commissioner that expresses the auditor's opinion of the adequacy of funding related to the purchase agreements to be sold or transferred.

Sec. 14. Section 523A.404, subsection 1, unnumbered paragraph 1, Code 2007, is amended to read as follows:

Trust requirements do not apply to payments made pursuant to a purchase agreement executed prior to July 1, 2007, for outer burial containers made of either polystyrene or polypropylene or cemetery merchandise delivered to the purchaser or stored in an independent third-party storage facility not owned or controlled by the seller when approved by the commissioner. The seller or the storage facility must demonstrate that they will do all of the following:

Sec. 15. Section 523A.404, subsection 1, paragraphs f and h, Code 2007, are amended to read as follows:

f. Use a method of storage that allows for visual audits examinations of the merchandise.

h. File a consent to be audited examined and inspected by the commissioner.

Sec. 16. Section 523A.501, Code 2007, is amended to read as follows:

523A.501 ESTABLISHMENT---PERMITS PRENEED SELLERS -- LICENSES.

1. A person shall not advertise, sell, promote, or offer to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof when performance or delivery may be more than one hundred twenty days following the initial payment on the account without an-establishment permit a preneed seller's license. ~~Each-establishment-must have-an-establishment-permit.~~

2. An application for ~~an-establishment-permit~~ a preneed seller's license shall be filed on a form prescribed by the commissioner, and be accompanied by a fifty dollar filing fee, ~~and-include-a-copy-of-each-purchase-agreement-the-person-will use-for-sales-of-cemetery-merchandise, funeral-merchandise, funeral-services, or-a-combination-thereof.~~

~~3--The-application-shall-contain:~~

~~a--The-name-and-address-of-the-establishment.~~

~~b--The-name-and-address-of-any-additional-provider-of cemetery-merchandise, funeral-merchandise, funeral-services, or-a-combination-thereof.~~

~~c--The-name-and-address-of-each-owner, officer, or-other official-of-the-establishment, including-when-relevant-the chief-executive-officer-and-the-members-of-the-board-of directors.~~

~~d--A-description-of-any-common-business-enterprise-or parent-company.~~

~~e--The-types-of-cemetery-merchandise, funeral-merchandise, funeral-services, or-a-combination-thereof-to-be-sold.~~

~~f--The-types-of-trust-or-trust-alternatives-utilized-by the-establishment-and-a-list-of-the-financial-institutions, storage-facilities, surety-companies, and-insurance-companies utilized-by-the-establishment-on-a-regular-basis.~~

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

3. a. The commissioner shall request and obtain, notwithstanding section 692.2, subsection 5, criminal history data for any applicant for an initial license issued pursuant to this section, any applicant for reinstatement of a license issued pursuant to this section, or any licensee who is being monitored as a result of a commission order or agreement resolving an administrative disciplinary action, for the purpose of evaluating the applicant's or licensee's eligibility for licensure or suitability for continued practice as a preneed seller. The commissioner shall adopt rules pursuant to chapter 17A to implement this section. The commissioner shall inform the applicant or licensee of the criminal history requirement and obtain a signed waiver from the applicant or licensee prior to submitting a criminal history data request.

b. A request for criminal history data shall be submitted to the department of public safety, division of criminal investigation, pursuant to section 692.2, subsection 1. The commissioner may also require such applicants or licensees to provide a full set of fingerprints, in a form and manner prescribed by the commission. Such fingerprints may be submitted to the federal bureau of investigation through the state criminal history repository for a national criminal history check. The commissioner may authorize alternate methods or sources for obtaining criminal history record information. The commissioner may, in addition to any other fees, charge and collect such amounts as may be incurred by the commissioner, the department of public safety, or the federal bureau of investigation in obtaining criminal history information. Amounts collected shall be considered repayment receipts as defined in section 8.2.

c. Criminal history information relating to an applicant or licensee obtained by the commissioner pursuant to this section is confidential. The commissioner may, however, use such information in a license denial proceeding.

4. The commissioner shall request and obtain a financial history for any applicant for an initial license issued pursuant to this section, any applicant for reinstatement of a license issued pursuant to this section, or any licensee who is being monitored as a result of a commission order or agreement resolving an administrative disciplinary action, for

the purpose of evaluating the applicant's or licensee's eligibility for licensure or suitability for continued practice as a preneed seller. "Financial history" means the record of a person's current loans, the date of a person's loans, the amount of the loans, the person's payment record on the loans, current liens against the person's property, and the person's most recent financial statement setting forth the assets, liabilities, and the net worth of the person.

5. ~~An-establishment-permit~~ A preneed seller's license is not assignable or transferable. A ~~permit-holder~~ licensee selling all or part of ~~an-establishment~~ a business entity that has a preneed seller's license shall cancel the ~~permit license~~, and the purchaser shall apply for a new ~~permit license~~ in the purchaser's name within thirty days of the sale.

6. If no denial order is in effect and no proceeding is pending under section 523A.503, the application becomes effective at noon of the thirtieth day after a completed application or an amendment completing the application is filed, unless waived by the applicant. The commissioner may specify an earlier effective date. Automatic effectiveness under this subsection shall not be deemed approval of the application. If the commissioner does not grant the ~~permit license~~, the commissioner shall notify the person in writing of the reasons for the denial.

7. ~~An-initial-permit-is-valid-for-two-years-from-the-date-the-application-is-filed.~~ A ~~permit-may~~ preneed seller's license shall be renewed ~~for-two~~ every four years by filing the form prescribed by the commissioner under subsection 2, accompanied by a ~~ten-dollar~~ renewal fee in an amount set by the commissioner by rule. ~~Submission-of-purchase-agreements-is-not-required-for-renewals-unless-the-purchase-agreements-have-been-modified-since-the-last-filing.~~

8. The commissioner may by rule create or accept a multijurisdiction ~~establishment-permit~~ preneed seller's license. If the ~~establishment-permit~~ preneed seller's license is issued by another jurisdiction, the rules shall require the filing of an application or notice form and payment of the applicable filing fee of fifty dollars for an ~~initial~~ application ~~and-ten-dollars-for-a-renewal-application~~. The application or notice form utilized and the effective dates

and terms of the permit license may vary from the provisions set forth in subsections 27-37 and 7 this section.

Sec. 17. Section 523A.502, Code 2007, is amended to read as follows:

523A.502 SALES PERMITS AGENTS -- LICENSES.

1. A person shall not advertise, sell, promote, or offer to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof when performance or delivery may be more than one hundred twenty days following initial payment on the account without unless the person has a sales permit--A permit holder must be an employee or license and is a sales agent of a person holding an establishment permit who can deliver the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof being sold a preneed seller's license. A person must have a sales permit for each establishment at which the person works. However, a person may apply for a sales permit covering multiple establishments, if the establishments have common ownership. The establishment permit holder preneed seller licensee is liable for the acts of its employees and sales agents performed in advertising, selling, promoting, or offering to furnish, upon the future death of a person named or implied in a purchase agreement, cemetery merchandise, funeral merchandise, funeral services, or a combination thereof.

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

3. An application for a sales permit license shall be filed on a form prescribed by the commissioner and be accompanied by a five-dollar filing fee in an amount set by the commissioner by rule.

~~4. The application shall contain:~~

~~a. The name and address of the person;~~

~~b. The name and address of the person's employer and each establishment on whose behalf the person will be advertising, selling, promoting, or offering to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof.~~

~~c. The name and address of the provider who will provide the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof if different from the person's employer.~~

4. a. The commissioner shall request and obtain, notwithstanding section 692.2, subsection 5, criminal history data for any applicant for an initial license issued pursuant to this section, any applicant for reinstatement of a license issued pursuant to this section, or any licensee who is being monitored as a result of a commission order or agreement resolving an administrative disciplinary action, for the purpose of evaluating the applicant's or licensee's eligibility for licensure or suitability for continued practice as a sales agent. The commissioner shall adopt rules pursuant to chapter 17A to implement this section. The commissioner shall inform the applicant or licensee of the criminal history requirement and obtain a signed waiver from the applicant or licensee prior to submitting a criminal history data request.

b. A request for criminal history data shall be submitted to the department of public safety, division of criminal investigation, pursuant to section 692.2, subsection 1. The commissioner may also require such applicants or licensees, to provide a full set of fingerprints, in a form and manner prescribed by the commission. Such fingerprints may be submitted to the federal bureau of investigation through the state criminal history repository for a national criminal history check. The commissioner may authorize alternate methods or sources for obtaining criminal history record information. The commissioner may, in addition to any other fees, charge and collect such amounts as may be incurred by the commissioner, the department of public safety, or the federal bureau of investigation in obtaining criminal history information. Amounts collected shall be considered repayment receipts as defined in section 8.2.

c. Criminal history information relating to an applicant or licensee obtained by the commissioner pursuant to this section is confidential. The commissioner may, however, use such information in a license denial proceeding.

5. ~~An initial permit expires one year from the date the application is filed. The permit may sales license shall be~~

renewed ~~for~~ every four years by filing the form prescribed by the commissioner under subsection 3, accompanied by a ~~twenty dollar-filing~~ renewal fee in an amount set by the commissioner by rule.

~~6.~~ 6. A sales agent licensed pursuant to this section shall satisfactorily fulfill continuing education requirements for the license as prescribed by the commissioner by rule.

~~6-~~ 7. A ~~permit-holder~~ sales licensee shall inform the commissioner of changes in the information required to be provided ~~by-subsection-4~~ in the application within thirty days of the change.

~~7-~~ 8. A sales permit license is not assignable or transferable. ~~An-establishment-selling-all-or-part-of-its business-to-a-purchaser-shall-cancel-the-establishment's-sales permit.---The-purchaser-shall-apply-for-a-new-sales-permit-in the-purchaser's-name-within-thirty-days-of-the-sale.~~

~~8-~~ 9. If no denial order is in effect and no proceeding is pending under section 523A.503, the application becomes effective at noon of the thirtieth day after a completed application or an amendment completing the application is filed, unless waived by the applicant. The commissioner may specify an earlier effective date. Automatic effectiveness under this subsection shall not be deemed approval of the application. If the commissioner does not grant the permit license, the commissioner shall notify the applicant in writing of the reasons for the denial.

~~9-~~ 10. The commissioner may by rule create or accept a multijurisdiction sales permit license. If the sales permit license is issued by another jurisdiction, the rules shall require the filing of an application or notice form and payment of the applicable filing fee ~~of-five-dollars-for-each year.~~ The application or notice form utilized and the effective dates and terms of the permit license may vary from the provisions set forth in subsections 3 and 5.

Sec. 18. NEW SECTION. 523A.502A SALES AGENT ANNUAL REPORTING REQUIREMENTS.

1. A sales agent shall file with the commissioner not later than April 1 of each year an annual report on a form prescribed by the commissioner describing each purchase agreement sold by the sales agent during the year.

2. All records maintained by the commissioner under this section shall be confidential pursuant to section 22.7, subsection 58, and shall not be made available for inspection or copying except upon the approval of the commissioner or the attorney general.

3. The commissioner shall levy an administrative penalty in the amount of five hundred dollars against a sales agent who fails to file an annual report when due, payable to the state for deposit in the general fund.

4. A sales agent who fails to file the annual report when due shall immediately cease soliciting or executing purchase agreements until the annual report is filed and any administrative penalty assessed has been paid.

Sec. 19. Section 523A.503, Code 2007, is amended to read as follows:

523A.503 DENIAL, SUSPENSION, REVOCATION, AND SURRENDER OF PERMITS LICENSES.

1. The commissioner may, pursuant to chapter 17A, deny any ~~permit~~ license application, or immediately suspend, revoke, or otherwise impose disciplinary action related to any ~~permit license~~ issued under ~~this-chapter~~ section 523A.501 or 523A.502 for several reasons, including but not limited to:

a. Committing a fraudulent act, engaging in a fraudulent practice, or violating any provision of this chapter or any implementing rule or order issued under this chapter.

b. Violating any other state or federal law applicable to the conduct of the applicant's or ~~permit-holder's~~ licensee's business.

c. Insolvency or financial condition.

d. The ~~permit-holder~~ licensee, for the purpose of avoiding the trust requirement for funeral services, attributes amounts paid under the purchase agreement to cemetery merchandise or funeral merchandise that is delivered under section 523A.404 rather than to funeral services sold to the purchaser. The sale of funeral services at a lower price when the sale is made in conjunction with the sale of cemetery merchandise or funeral merchandise to be delivered under section 523A.404 than the services are regularly and customarily sold for when not sold in conjunction with cemetery merchandise or funeral merchandise is evidence that the ~~permit-holder~~ licensee is acting with the purpose of avoiding the trust requirement for funeral services under section 523A.201.

e. Engaging in a deceptive act or practice or deliberately misrepresenting or omitting a material fact regarding the sale of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof under this chapter.

f. Conviction of a criminal offense involving dishonesty or a false statement including but not limited to fraud, theft, misappropriation of funds, falsification of documents, deceptive acts or practices, or other related offenses.

g. Inability to provide the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof which the applicant or ~~permit-holder~~ licensee purports to sell.

h. The applicant or ~~permit-holder~~ licensee sells the business without filing a prior notice of sale with the commissioner. The ~~permit~~ license shall be revoked thirty days following such sale.

i. Selling by a person who is not ~~an-employee-or-agent-of the-applicant-or-permit-holder~~ a licensed sales agent.

j. The applicant or licensee is named in an order issued pursuant to section 523A.807, subsection 3, paragraph "b".

2. The commissioner may, for good cause shown, suspend any ~~permit~~ license for a period not exceeding thirty days, pending investigation.

3. Except as provided in subsection 2, a ~~permit~~ license shall not be revoked, suspended, or otherwise be the subject of disciplinary action except after notice and hearing under chapter 17A.

4. Any ~~permit-holder~~ licensee may surrender a ~~permit~~ license by delivering to the commissioner written notice that the ~~permit-holder~~ licensee surrenders the ~~permit~~ license, but the surrender shall not affect the ~~permit-holder's~~ licensee's civil or criminal liability for acts committed before the surrender.

5. Denial, revocation, suspension, or surrender of a ~~permit~~ license does not impair or affect the obligation of any preexisting lawful agreement between the ~~permit-holder~~ licensee and any person.

~~6.---The-commissioner-may-impose-a-civil-penalty-in-an amount-not-exceeding-ten-thousand-dollars-per-violation against-any-person-violating-this-chapter.---Each-day-of-a continuing-violation-constitutes-a-separate-offense.~~

Sec. 20. NEW SECTION. 523A.504 APPOINTMENT OF SALES AGENTS.

1. A person shall not sell or offer to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof when performance or delivery may be more than one hundred twenty days following initial payment on the account except through a sales agent who holds a sales license issued pursuant to section 523A.502. If a person holding a preneed seller's license appoints a sales agent to act on behalf of the preneed seller, the person shall file a notice of such appointment with the commissioner within thirty days of the appointment, in a format approved by the commissioner, and annually thereafter.

2. A preneed seller shall pay an annual fee of five dollars for each sales agent appointed by the preneed seller, which fee shall be submitted with the annual report.

Sec. 21. Section 523A.601, subsection 1, paragraph a, Code 2007, is amended to read as follows:

a. Identify the ~~seller~~ preneed seller by name and license number, the ~~salesperson's-permit-and-establishment~~ sales agent by name and permit license number, ~~the-expiration-date-of-the-salesperson's-permit~~, the purchaser, and the person for whom the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof is purchased, if other than the purchaser.

Sec. 22. Section 523A.601, Code 2007, is amended by adding the following new subsection:

NEW SUBSECTION. 6. a. A purchase agreement that is funded by a trust shall include a conspicuous statement in language substantially similar to the following language:

"For your prearranged funeral agreement, we will deposit not less than eighty percent of your payments in trust at (name of financial institution), (street address), (city), (state) (zip code) within fifteen days following receipt of the funds. For your protection, you have the right to contact the financial institution directly to confirm that the deposit of these funds occurred as required by law. If you are unable to confirm the deposit of these funds in trust, you may contact the Iowa insurance division for assistance by calling the insurance division at (telephone number) or by mail at (street address), (city), Iowa (zip code)."

b. A purchase agreement that is funded with an insurance policy or an annuity shall include a conspicuous statement in language substantially similar to the following language:

"An (insurance policy or annuity) will be purchased from (name of issuer of the policy or annuity), (street address), (city), (state) (zip code). You should receive confirmation of the purchase of an insurance policy or certificate, or an annuity within sixty days of making payment. Delivery of the actual insurance policy or certificate or annuity shall also constitute confirmation. For your protection, you have the right to confirm that the insurance policy or annuity is issued as required by law. If you do not receive confirmation that an insurance policy or certificate or an annuity has been purchased or receive the insurance policy or certificate or the annuity, you should report this fact to the Iowa insurance division, by calling the insurance division at (telephone number). Written reports should be mailed to the Iowa insurance division at (street address), (city), Iowa (zip code)."

c. A purchase agreement that is funded with a surety bond shall include a conspicuous statement in language substantially similar to the following language:

"Coverage under a surety bond in the amount of \$(amount) will be purchased from (name of issuer of surety bond), (street address), (city), (state) (zip code) to fund your purchase. If you pay pursuant to your purchase agreement with a single payment, you should receive confirmation of the purchase of a surety bond within sixty days of making the payment. If you pay pursuant to your purchase agreement with multiple, periodic payments, you should receive confirmation of the purchase of a surety bond within sixty days of making the first payment and within sixty days of making the last payment pursuant to the agreement. For your protection, you have the right to confirm that the surety bond is issued as required by law. If you do not receive confirmation of coverage under a surety bond within sixty days of making the first payment and within sixty days of making the last payment, you should report this fact to the Iowa insurance division, by calling the insurance division at (telephone number). Written reports should be mailed to the Iowa insurance division at (street address), (city), Iowa (zip code)."

Sec. 23. NEW SECTION. 523A.603 SECURITY AND NOTICE REQUIREMENTS.

1. If a purchase agreement is funded with an insurance policy or an annuity, the purchaser shall receive a notice thereof from the insurance company within sixty days of making payment. The notice shall include the name and address of the insurance company, the policy number of the insurance policy that secures the agreement, the name of the insured under the insurance policy or annuity, and the amount of the accumulated death benefit. Delivery of the insurance policy or certificate or annuity shall satisfy this notice requirement.

2. If a purchase agreement is funded by a surety bond, the purchaser shall receive a notice from the surety company that evidences coverage under the bond, the name of the purchaser or beneficiary, and the amount of coverage. If the purchase agreement is paid with a single payment, the purchaser shall receive notice of the surety bond within sixty days of making the payment. If the purchase agreement is being paid with multiple, periodic payments, the purchaser shall receive notice of the surety bond within sixty days of making the last payment. Compliance with this notice requirement does not require a seller to purchase individual surety bonds for each purchaser and beneficiary. A seller may file a single bond with the commissioner.

Sec. 24. NEW SECTION. 523A.604 PURCHASE AGREEMENTS -- NUMBERING.

Purchase agreements for cemetery merchandise, funeral merchandise, funeral services, or a combination thereof shall be sequentially numbered by each seller in compliance with procedures specified by the commissioner by rules adopted under chapter 17A.

Sec. 25. Section 523A.703, Code 2007, is amended to read as follows:

523A.703 FRAUDULENT PRACTICES.

A Except as otherwise provided in section 523A.704, a person who willfully commits any of the following acts commits a fraudulent practice and is punishable as provided in chapter 714:

1. ~~Knowingly-fails~~ Fails to comply with any requirement of this chapter, or any rule adopted or order issued under this chapter.

2. ~~Knowingly-makes~~ Makes, causes to be made, or subscribes to a false statement or representation in a report or other document required under this chapter, implementing rules, or orders, or renders such a report or document misleading through the deliberate omission of information properly belonging in the report or document.

3. ~~Conspires-to-defraud-in~~ In connection with the sale of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof ~~under-this-chapter,~~ directly or indirectly makes an untrue statement of a material fact or omits to state a material fact that is necessary to make the statements made, in light of the circumstances under which they were made, not misleading.

4. ~~Fails-to-deposit-funds-under-sections-523A.201-and 523A.202-or-withdraws-any-funds-in-a-manner-inconsistent-with this-chapter.~~ Unless the purchase agreement expressly provides otherwise, excludes in the sale of cemetery merchandise, funeral merchandise, or a combination thereof, funeral services that are necessary for the delivery, use, or installation of the cemetery merchandise or funeral merchandise at the time of the burial or funeral.

5. ~~Knowingly-sells-or-offers-cemetery-merchandise, funeral merchandise, funeral-services, or-a-combination-thereof without-an-establishment-permit.~~

6. ~~Deliberately-misrepresents-or-omits-a-material-fact relative-to-the-sale-of-cemetery-merchandise, funeral merchandise, funeral-services, or-a-combination-thereof-under this-chapter.--When-selling-cemetery-merchandise-or-funeral merchandise, a-seller-shall-not-exclude-the-funeral-services necessary-for-the-delivery, use, or-installation-of-the cemetery-merchandise-or-funeral-merchandise-at-the-time-of-the funeral-or-burial-unless-the-purchase-agreement-expressly provides-otherwise.~~

Sec. 26. NEW SECTION. 523A.704 VIOLATIONS.

A person who willfully violates section 523A.501, subsection 1, or section 523A.502, subsection 1, is guilty of a class "D" felony.

Sec. 27. Section 523A.801, subsection 1, Code 2007, is amended to read as follows:

1. This chapter shall be administered by the commissioner. ~~The-deputy-administrator-appointed-pursuant-to-section-502.601~~

~~shall be the principal operations officer responsible to the commissioner for the routine administration of this chapter and management of the administrative staff.--In the absence of the commissioner, whether because of vacancy in the office due to absence, physical disability, or other cause, the deputy administrator shall, for the time being, have and exercise the authority conferred upon the commissioner. The commissioner may by order from time to time delegate to the deputy administrator any or all of the functions assigned to the commissioner in this chapter.--The deputy administrator shall~~ employ officers, attorneys, accountants, and other employees as needed for administering this chapter.

Sec. 28. Section 523A.801, Code 2007, is amended by adding the following new subsection:

NEW SUBSECTION. 3. The commissioner shall submit an annual report to the legislative oversight committee by October 1 of each year reporting on the administration of this chapter. The report shall set forth any recommendations for changes in the law that the commissioner deems necessary or desirable to prevent abuses or evasions of this chapter or rules implementing this chapter or to rectify undesirable conditions in connection with the administration of this chapter or rules implementing this chapter.

Sec. 29. Section 523A.807, Code 2007, is amended by adding the following new subsections:

NEW SUBSECTION. 3. If the commissioner finds that a person has violated section 523A.201, 523A.202, 523A.401, 523A.402, 523A.403, 523A.404, 523A.405, 523A.501, or 523A.502 or any rule adopted pursuant thereto, the commissioner may order any or all of the following:

a. Payment of a civil penalty of not more than one thousand dollars for each violation, but not exceeding an aggregate of ten thousand dollars during any six-month period, except that if the commissioner finds that the person knew or reasonably should have known that the person was in violation of such provisions or rules adopted thereto, the penalty shall be not more than five thousand dollars for each violation, but not exceeding an aggregate of fifty thousand dollars during any six-month period. The commissioner shall assess the penalty on the employer of an individual and not on the individual, if the commissioner finds that the violations

committed by the individual were directed, encouraged, condoned, ignored, or ratified by the individual's employer.

b. Issuance of an order prohibiting the person committing a violation from selling funeral merchandise, cemetery merchandise, funeral services, or a combination thereof, and from managing, operating, or otherwise exercising control over any business entity that is subject to regulation under this chapter or chapter 523I. A person who has been named in such an order may contest the order by filing a request for a contested case proceeding as provided in chapter 17A and in accordance with rules adopted by the commissioner. The commissioner may, pursuant to chapter 17A, deny any application filed under section 523A.501 or 523A.502 if the applicant, or an officer, director, or owner of the applicant is named in a final order issued pursuant to this subsection.

NEW SUBSECTION. 4. The commissioner shall post on the website of the division of insurance of the department of commerce a list of all persons licensed under chapter 523A and an index of orders issued by the commissioner pertaining to such persons.

Sec. 30. Section 523A.811, subsection 1, Code 2007, is amended by adding the following new paragraph:

NEW PARAGRAPH. f. A receivership has been established for a cemetery subject to chapter 523I that is owned or operated by a seller who is subject to this chapter.

Sec. 31. Section 523A.811, Code 2007, is amended by adding the following new subsection:

NEW SUBSECTION. 3. If a seller who is subject to this chapter owns or operates a cemetery subject to chapter 523I, for which a receivership has been established, the receivership provisions of section 523I.212 shall apply to any receivership established under this section.

Sec. 32. Section 523A.812, Code 2007, is amended to read as follows:

523A.812 INSURANCE DIVISION REGULATORY FUND.

The insurance division may authorize the creation of a special revenue fund in the state treasury, to be known as the insurance division regulatory fund. The commissioner shall allocate annually from the fees paid pursuant to section 523A.204, two dollars for each purchase agreement reported on ~~an-establishment-permit-holder's~~ a preneed seller's annual

report filed pursuant to section 523A.204 for deposit to the regulatory fund. The remainder of the fees collected pursuant to section 523A.204 shall be deposited into the general fund of the state. The commissioner shall also allocate annually the audit examination fees paid pursuant to section 523A.814 and any examination expense reimbursement for deposit to the regulatory fund. The moneys in the regulatory fund shall be retained in the fund. The moneys are appropriated and, subject to authorization by the commissioner, may be used to pay ~~auditors,~~ audit examiners, examination expenses, investigative expenses, the expenses of mediation ordered by the commissioner, consumer education expenses, the expenses of a toll-free telephone line to receive consumer complaints, and the expenses of receiverships established under section 523A.811. If the commissioner determines that funding is not otherwise available to reimburse the expenses of a person who receives title to a cemetery subject to chapter 523I, pursuant to such a receivership, the commissioner shall use moneys in the regulatory fund as necessary to preserve, protect, restore, and maintain the physical integrity of that cemetery and to satisfy claims or demands for cemetery merchandise, funeral merchandise, and funeral services based on purchase agreements which the commissioner determines are just and outstanding. An annual allocation to the regulatory fund shall not be imposed if the current balance of the fund exceeds ~~two~~ five hundred thousand dollars.

Sec. 33. Section 523A.814, Code 2007, is amended to read as follows:

523A.814 ~~AUDIT~~ EXAMINATION FEE.

In addition to the filing fee paid pursuant to section 523A.204, subsection 5 2, an-establishment a seller filing an annual report shall pay an audit examination fee in the amount of five dollars for each purchase agreement subject to a filing fee that is sold between July 1, 2005, and December 31, 2007, and in the amount of ten dollars for each purchase agreement subject to a filing fee that is sold after December 31, 2007.

Sec. 34. Section 523I.102, subsections 3 and 8, Code 2007, are amended to read as follows:

3. "Capital gains" means appreciation in the value of trust assets for which a market value may be determined with

reasonable certainty after deduction of investment losses, taxes, expenses incurred in the sale of trust assets, any costs of the operation of the trust, examination expenses, and any ~~annual~~ audit fees expenses.

8. "Commissioner" means the commissioner of insurance or the ~~deputy-administrator-authorized-in-section-523A.801-to-the extent-the-commissioner-delegates-functions-to-the-deputy administrator~~ commissioner's designee authorized in section 523A.801.

Sec. 35. Section 523I.102, subsection 17, unnumbered paragraph 1, Code 2007, is amended to read as follows:

"Income" means the return in money or property derived from the use of trust principal after deduction of investment losses, taxes, and expenses incurred in the sale of trust assets, any cost of the operation of the trust, examination expenses or fees, and any ~~annual~~ audit fees expenses.

"Income" includes but is not limited to:

Sec. 36. Section 523I.201, subsection 1, Code 2007, is amended to read as follows:

1. This chapter shall be administered by the commissioner. ~~The-deputy-administrator-appointed-pursuant-to-section-502.601 shall-be-the-principal-operations-officer-responsible-to-the commissioner-for-the-routine-administration-of-this-chapter and-management-of-the-administrative-staff.---In-the-absence-of the-commissioner, whether-because-of-vacancy-in-the-office-due to-absence, physical-disability, or-other-cause, the-deputy administrator-shall, for-the-time-being, have-and-exercise-the authority-conferred-upon-the-commissioner. The commissioner may-by-order-from-time-to-time-delegate-to-the-deputy administrator-any-or-all-of-the-functions-assigned-to-the commissioner-in-this-chapter.---The-deputy-administrator shall employ officers, attorneys, accountants, and other employees as needed for administering this chapter.~~

Sec. 37. Section 523I.201, Code 2007, is amended by adding the following new subsection:

NEW SUBSECTION. 3. The commissioner shall submit an annual report to the legislative oversight committee by October 1 of each year reporting on the administration of this chapter. The report shall set forth any recommendations for changes in the law that the commissioner deems necessary or desirable to prevent abuses or evasions of this chapter or

rules implementing this chapter or to rectify undesirable conditions in connection with the administration of this chapter or rules implementing this chapter.

Sec. 38. Section 523I.212, subsection 1, Code 2007, is amended by adding the following new paragraph:

NEW PARAGRAPH. d. A receivership has been established for a seller subject to chapter 523A who owns or operates a cemetery that is subject to this chapter.

Sec. 39. Section 523I.212, subsection 2, Code 2007, is amended to read as follows:

2. The commissioner or attorney general may apply to the district court in any county of the state for the establishment of a receivership. Upon proof that any of the conditions described in this section have occurred, the court may grant a receivership. The commissioner may request that the insurance division be named as a receiver or that the court appoint a third party as a receiver. If the division is appointed as a receiver, the division shall not be subject to the requirements concerning an oath and surety bond contained in section 680.3.

Sec. 40. Section 523I.212, Code 2007, is amended by adding the following new subsections:

NEW SUBSECTION. 3. In addition to the powers granted to receivers under chapter 680, a receiver appointed under this section shall be granted all powers necessary to locate and to temporarily preserve and protect perpetual care trust funds, consumer and business assets, interment records, records of consumer purchases of interment rights, and records of consumer purchases of funeral services and funeral or cemetery merchandise as defined in chapter 523A. The receiver shall also be granted such powers as are necessary in the course of the receivership to temporarily preserve and protect a cemetery or burial site and to temporarily restore or sustain cemetery operations, including interments, as operating funds or trust funds become available.

NEW SUBSECTION. 4. The commissioner may petition the court to terminate a receivership at any time and to enter such orders as are necessary to transfer the duty to preserve and protect the physical integrity of the cemetery or burial site, the interment records, and other records documenting consumer purchases of interment rights to the applicable

governmental subdivision, as provided in section 523I.316, subsection 3. The court shall grant the petition if following the first one hundred twenty days of the receivership such duty to preserve and protect cannot be reasonably assumed by a private entity, association, or by other means.

Sec. 41. Section 523I.213, Code 2007, is amended to read as follows:

523I.213 INSURANCE DIVISION'S ENFORCEMENT FUND.

A special revenue fund in the state treasury, to be known as the insurance division's enforcement fund, is created under the authority of the commissioner. The commissioner shall allocate annually from the ~~audit~~ examination fees paid pursuant to section 523I.808, an amount not exceeding fifty thousand dollars, for deposit to the insurance division's enforcement fund. The moneys in the enforcement fund shall be retained in the fund. The moneys are appropriated and, subject to authorization by the commissioner, shall be used to pay ~~auditors,~~ audit examiners, examination expenses, investigative expenses, the expenses of consumer education, compliance, and education programs for filers and other regulated persons, and educational or compliance program materials, the expenses of a toll-free telephone line for consumer complaints, and the expenses of receiverships of perpetual care cemeteries established under section 523I.212.

Sec. 42. NEW SECTION. 523I.213A EXAMINATIONS --
AUTHORITY AND SCOPE.

1. The commissioner or the commissioner's designee may conduct an examination under this chapter of any cemetery as often as the commissioner deems appropriate. If a cemetery has a trust arrangement, the commissioner shall conduct an examination not less than once every three years.

2. A cemetery shall reimburse the division for the expense of conducting the examination unless the commissioner waives this requirement or the seller has previously provided to the commissioner a certified copy of an audit conducted by an independent certified public accountant verifying compliance with this chapter for each year in question and the examination conducted by the commissioner does not disclose that the seller has not complied with this chapter for the years in question. The expense of an examination involving multiple cemeteries or other persons shall be prorated among

them upon any reasonable basis as determined by the commissioner.

3. For purposes of completing an examination pursuant to this chapter, the commissioner may examine or investigate any person, or the business of any person, if the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the cemetery.

4. Upon determining that an examination should be conducted, the commissioner or the commissioner's designee may appoint one or more examiners to perform the examination and instruct them as to the scope of the examination.

5. A cemetery or person from whom information is sought, and its officers, directors, and agents shall provide to the examiners appointed under subsection 4, timely, convenient, and free access at their offices, at all reasonable hours, to all books, records, accounts, papers, documents, and all electronic or other recordings related to the property, assets, business, and affairs of the cemetery being examined and shall facilitate the examination as much as possible. If a cemetery, by its officers, directors, employees, or agents, refuses to submit to an examination as provided in this chapter, the commissioner shall immediately report the refusal to the attorney general, who shall then immediately apply to district court for the appointment of a receiver to administer the final affairs of the cemetery.

6. This section shall not be construed to limit the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory actions pursuant to this chapter. Findings of fact and conclusions made pursuant to an examination are deemed to be prima facie evidence in any legal or regulatory action.

Sec. 43. NEW SECTION. 523I.213B VENUE.

All actions relating to the enforcement of this chapter shall be governed by the laws of the state of Iowa. Venue of any action relating to enforcement of this chapter may be in a court of competent jurisdiction in Polk county, at the discretion of the commissioner.

Sec. 44. Section 523I.304, Code 2007, is amended by adding the following new subsection:

NEW SUBSECTION. 7. A cemetery owned and controlled by a governmental subdivision shall adopt and enforce a rule

allowing any veteran who is a landowner or who lives within the governmental subdivision to purchase an interment space and to be interred within the cemetery. For the purposes of this section, "veteran" means the same as defined in section 35.1 or a resident of this state who served in the armed forces of the United States, completed a minimum aggregate of ninety days of active federal service, and was discharged under honorable conditions.

Sec. 45. Section 523I.305, subsection 3, Code 2007, is amended to read as follows:

3. SPECIFICATIONS. Upon request, a cemetery shall provide reasonable written specifications and instructions governing installation of memorials, which shall apply to all installations whether performed by the cemetery or another person. The written specifications shall include provisions governing hours of installation or any other relevant administrative requirements of the cemetery. A copy of these specifications and instructions shall be provided upon request, without charge, to the owner of the interment space, next of kin, or a personal representative or agent of the owner, including the person installing the memorial. The person installing the memorial shall comply with the cemetery's written installation specifications and instructions. In order to verify that a memorial is installed on the proper interment space in accordance with cemetery rules and regulations, the cemetery shall mark the place on the interment space where the memorial is to be installed and shall inspect the installation when completed. This subsection shall not be construed to require that a cemetery lay out or engineer an interment space for the installation of a memorial. A cemetery shall not adopt or enforce any rule prohibiting the installation of a memorial by a memorial dealer or independent third party, unless the rule is adopted applicable to all memorials from whatever source obtained and enforced uniformly for all memorials installed in the cemetery.

Sec. 46. NEW SECTION. 523I.314A STANDARDS FOR INTERMENT SPACES.

1. A standard interment space for full body interment developed on or after July 1, 2007, shall measure at least forty inches in width and ninety-six inches in length.

2. Prior to the sale of interment rights in an undeveloped area of a cemetery, internal reference markers shall be installed and maintained no more than one hundred feet apart. The internal reference markers shall be established with reference to survey markers that are no more than two hundred feet apart, have been set by a surveyor and mapper, and have been documented in a land survey. Both the map and the land survey shall be maintained by the cemetery and made available upon request to the commissioner and to members of the public.

Sec. 47. Section 523I.808, Code 2007, is amended to read as follows:

523I.808 ~~AUDIT~~ EXAMINATION FEE.

An ~~audit~~ examination fee shall be submitted with the cemetery's annual report in an amount equal to five dollars for each certificate of interment rights issued during the fiscal year covered by the report. The cemetery may charge the ~~audit~~ examination fee directly to the purchaser of the interment rights.

Sec. 48. Section 523I.810, subsection 9, Code 2007, is amended to read as follows:

9. A cemetery may, by resolution adopted by a vote of at least two-thirds of the members of its board at any authorized meeting of the board, authorize the withdrawal and use of not more than twenty percent of the principal of the care fund to acquire additional land for cemetery purposes, to repair a mausoleum or other building or structure intended for cemetery purposes, ~~or~~ to build, improve, or repair roads and walkways in the cemetery, or to purchase recordkeeping software used to maintain ownership records or interment records. The resolution shall establish a reasonable repayment schedule, not to exceed five years, and provide for interest in an amount comparable to the care fund's current rate of return on its investments. However, the care fund shall not be diminished below an amount equal to the greater of twenty-five thousand dollars or five thousand dollars per acre of land in the cemetery. The resolution, and either a bond or proof of insurance to guarantee replenishment of the care fund, shall be filed with the commissioner thirty days prior to the withdrawal of funds.

Sec. 49. Section 523I.813, subsection 1, Code 2007, is amended by striking the subsection and inserting in lieu thereof the following:

1. A perpetual care cemetery shall file an annual report at the end of each fiscal year of the cemetery.

Sec. 50. Section 523I.813, Code 2007, is amended by adding the following new subsection:

NEW SUBSECTION. 3. The commissioner shall levy an administrative penalty in the amount of five hundred dollars against a cemetery that fails to file the annual report when due, payable to the state for deposit in the general fund of the state.

DIVISION II

COORDINATING AMENDMENTS

Sec. 51. Section 523A.102, subsection 9, paragraphs b and c, Code 2007, are amended to read as follows:

b. If authorized by a purchaser under a purchase agreement, cemetery merchandise has been permanently identified with the name of the purchaser or the beneficiary and delivered to a bonded warehouse or storage facility approved by the commissioner and both title to the merchandise and a warehouse receipt have been delivered to the purchaser or beneficiary and a copy of the warehouse receipt has been delivered to the establishment seller for retention in its files.

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

Sec. 52. Section 523A.102, subsection 21, Code 2007, is amended to read as follows:

21. "Parent company" means a corporation that has a controlling interest in an-establishment a seller.

Sec. 53. Section 523A.205, subsection 1, Code 2007, is amended to read as follows:

1. A financial institution shall file with the commissioner not later than March 1 of each year an annual report on a form prescribed by the commissioner showing all funds deposited by an-establishment a seller under a trust

agreement during the previous year. Each report shall contain all information requested.

Sec. 54. Section 523A.401, subsection 5, paragraphs a and b, Code 2007, are amended to read as follows:

a. Except as necessary and appropriate to satisfy the requirements regarding burial trust funds under Title XIX of the federal Social Security Act, the policy shall not be owned by the establishment seller, the policy shall not be irrevocably assigned to the establishment seller, and the assignment of proceeds from the insurance policy to the establishment seller shall be limited to the establishment's seller's interests as they appear in the purchase agreement, and conditioned on the establishment's seller's delivery of cemetery merchandise, funeral merchandise, and funeral services pursuant to a purchase agreement.

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

Sec. 55. Section 523A.401, subsection 6, unnumbered paragraph 1, Code 2007, is amended to read as follows:

With the written consent of the purchaser, an existing prepaid purchase agreement with trust-funded benefits may be converted to a prepaid purchase agreement with insurance-funded benefits provided the establishment seller and the insurance benefits comply with the following provisions:

Sec. 56. Section 523A.401, subsection 6, paragraph d, Code 2007, is amended to read as follows:

d. The establishment seller shall maintain a copy of any prepaid trust-funded purchase agreement that was converted to a prepaid insurance-funded purchase agreement and retain the payment history records for each converted purchase agreement prior to conversion until the cemetery merchandise, funeral merchandise, and funeral services have been delivered.

Sec. 57. Section 523A.401, subsection 8, Code 2007, is amended to read as follows:

8. An insurance company issuing policies funding purchase agreements subject to this chapter shall file an annual report with the commissioner on a form prescribed by the commissioner. The report shall list the applicable insurance

policies outstanding for each establishment seller. Computer printouts may be submitted so long as each legibly provides the same information required in the prescribed form.

Sec. 58. Section 523A.402, subsection 5, paragraphs a and b, Code 2007, are amended to read as follows:

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

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

Sec. 59. Section 523A.402, subsection 6, unnumbered paragraph 1, Code 2007, is amended to read as follows:

With the written consent of the purchaser, an existing prepaid purchase agreement with trust-funded benefits may be converted to a prepaid purchase agreement with annuity-funded benefits provided the establishment seller and the annuity benefits comply with the following provisions:

Sec. 60. Section 523A.402, subsection 6, paragraph d, Code 2007, is amended to read as follows:

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

Sec. 61. Section 523A.402, subsection 8, Code 2007, is amended to read as follows:

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

Sec. 62. Section 523A.404, subsection 4, Code 2007, is amended to read as follows:

4. ~~An-establishment~~ A seller is prohibited from requiring delivery as a condition of the sale.

Sec. 63. Section 523A.405, subsection 9, unnumbered paragraph 1, Code 2007, is amended to read as follows:

With the consent of the purchaser, an existing prepaid purchase agreement with trust-funded benefits may be converted to a prepaid purchase agreement funded by a surety bond provided the ~~establishment~~ seller and the surety bond comply with the following provisions:

Sec. 64. Section 523A.405, subsection 9, paragraph c, Code 2007, is amended to read as follows:

c. The ~~establishment~~ seller shall maintain a copy of any prepaid trust-funded agreement that was converted to a prepaid purchase agreement funded by a surety bond and retain the payment history records for each converted purchase agreement prior to conversion until the cemetery merchandise, funeral merchandise, and funeral services have been delivered.

Sec. 65. Section 523A.601, subsection 2, paragraph e, Code 2007, is amended to read as follows:

e. State clearly that the purchaser is entitled to transfer the trust funding, insurance funding, or other trust assets or select another ~~establishment~~ seller to receive the trust funding, insurance funding, or any other trust assets.

Sec. 66. Section 523A.601, subsection 5, paragraph h, Code 2007, is amended to read as follows:

h. If the funding is being transferred from another ~~establishment~~ seller, any material facts related to the revocation of the prior purchase agreement and the transfer of the existing trust funds.

Sec. 67. Section 523A.602, subsection 2, paragraph b, subparagraphs (1) and (2), Code 2007, are amended to read as follows:

(1) If a purchase agreement is canceled, a purchaser requests a transfer of the trust assets upon cancellation of a purchase agreement, or another ~~establishment~~ seller provides merchandise or services designated in a purchase agreement, the seller shall refund or transfer within thirty days of receiving a written demand no less than the purchase price of the applicable cemetery merchandise, funeral merchandise, and

funeral services adjusted for inflation, using the consumer price index amounts announced by the commissioner annually, less any actual expenses incurred by the seller pursuant to the purchase agreement as set forth in the purchase agreement under section 523A.601, subsection 1, paragraph "f". The amount of the actual expenses deducted by the seller shall not exceed ten percent of the purchase price of the applicable cemetery merchandise, funeral merchandise, and funeral services. The seller may also deduct the value of the cemetery merchandise, funeral merchandise, and funeral services already received by, delivered to, or warehoused for the purchaser.

(2) If a purchase agreement is canceled before the purchase price is paid in full, a purchaser requests a transfer of the trust assets upon cancellation of a purchase agreement before the purchase price is paid in full, or another establishment seller provides cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, designated in a purchase agreement before the purchase price is paid in full, the seller shall refund or transfer within thirty days of receiving a written demand no less than the amount paid by the purchaser, less any actual expenses incurred by the seller pursuant to the purchase agreement as set forth in the purchase agreement under section 523A.601, subsection 1, paragraph "f". The amount of the actual expenses deducted by the seller shall not exceed ten percent of the total original purchase price of the applicable cemetery merchandise, funeral merchandise, funeral services, or a combination thereof. The seller may also deduct the value of the cemetery merchandise, funeral merchandise, and funeral services already received by, delivered to, or warehoused for the purchaser.

Sec. 68. Section 523A.602, subsection 2, paragraph b, subparagraph (3), unnumbered paragraph 1, Code 2007, is amended to read as follows:

For the purposes of this paragraph "b", "actual expenses" means all reasonable business expenses of an-establishment a seller that are associated with the sale of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof. "Actual expenses" includes but is not limited to the following:

Sec. 69. Section 523A.602, subsection 2, paragraph b, subparagraph (3), subparagraph subdivisions (d) and (g), Code 2007, are amended to read as follows:

(d) Licensing fees of the establishment seller.

(g) Expenses related to employees of the establishment seller such as licensing fees, continuing education, and salaries and commissions.

Sec. 70. Section 523A.802, subsection 1, Code 2007, is amended to read as follows:

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

Sec. 71. Section 523A.803, subsection 1, paragraph d, Code 2007, is amended to read as follows:

d. Investigate the establishment seller and examine the books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records used by every applicant and ~~permit-holder~~ licensee under this chapter.

Sec. 72. Section 523A.804, unnumbered paragraph 1, Code 2007, is amended to read as follows:

The commissioner may order ~~an-establishment~~ a seller to participate in mediation in any dispute regarding a purchase agreement. Mediation performed under this section shall be conducted by a mediator appointed by the commissioner and shall comply with the provisions of chapter 679C.

Sec. 73. Section 523A.806, subsection 2, Code 2007, is amended to read as follows:

2. Revocation or suspension of any ~~permit~~ license issued under this chapter.

Sec. 74. Section 523A.901, subsection 1, Code 2007, is amended to read as follows:

1. GROUNDS FOR LIQUIDATION. The commissioner may petition the district court for an order directing the commissioner to liquidate ~~an-establishment~~ the business of a seller on either of the following grounds:

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

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

Sec. 75. Section 523A.901, subsection 2, paragraphs a, b, c, and e, Code 2007, are amended to read as follows:

a. An order to liquidate the business of an-establishment a seller shall appoint the commissioner as liquidator and shall direct the liquidator to immediately take possession of the assets of the establishment seller and to administer them under the general supervision of the court. The liquidator is vested with the title to the property, contracts, and rights of action and the books and records of the establishment seller ordered liquidated, wherever located, as of the entry of the final order of liquidation. The filing or recording of the order with the clerk of court and the recorder of deeds of the county in which its principal office or place of business is located, or in the case of real estate, with the recorder of deeds of the county where the property is located, is notice as a deed, bill of sale, or other evidence of title duly filed or recorded with the recorder of deeds.

b. Upon issuance of an order, the rights and liabilities of an-establishment a seller and of the establishment's seller's creditors, purchasers, owners, and other persons interested in the establishment's seller's estate shall become fixed as of the date of the entry of the order of liquidation, except as provided in subsection 14.

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

e. Within five days after the initiation of an appeal of an order of liquidation, which order has not been stayed, the

commissioner shall present for the court's approval a plan for the continued performance of the establishment's seller's obligations during the pendency of an appeal. The plan shall provide for the continued performance of purchase agreements in the normal course of events, notwithstanding the grounds alleged in support of the order of liquidation including the ground of insolvency. If the defendant establishment's seller's financial condition, in the judgment of the commissioner, will not support the full performance of all obligations during the appeal pendency period, the plan may prefer the claims of certain purchasers and claimants over creditors and interested parties as well as other purchasers and claimants, as the commissioner finds to be fair and equitable considering the relative circumstances of such purchasers and claimants. The court shall examine the plan submitted by the commissioner and if it finds the plan to be in the best interests of the parties, the court shall approve the plan. An action shall not lie against the commissioner or any of the commissioner's deputies, agents, clerks, assistants, or attorneys by any party based on preference in an appeal pendency plan approved by the court.

Sec. 76. Section 523A.901, subsection 3, paragraph a, subparagraphs (4), (6), (7), (8), (9), (10), (11), (12), (13), (14), (17), and (18), Code 2007, are amended to read as follows:

(4) Pay reasonable compensation to persons appointed and defray from the funds or assets of the establishment seller all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the establishment seller. If the property of the establishment seller does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs so incurred out of the insurance division regulatory fund. Amounts so advanced for expenses of administration shall be repaid to the insurance division regulatory fund for the use of the division out of the first available moneys of the establishment seller.

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

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

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

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

(7) Conduct public and private sales of the property of the establishment seller.

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

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

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

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

(12) Continue to prosecute and to institute in the name of the establishment seller or in the liquidator's own name any and all suits and other legal proceedings, in this state or elsewhere, and to abandon the prosecution of claims the liquidator deems unprofitable to pursue further.

(13) Prosecute an action on behalf of the creditors, purchasers, or owners against an officer of the establishment seller or any other person.

(14) Remove records and property of the establishment seller to the offices of the commissioner or to other places as may be convenient for the purposes of efficient and orderly execution of the liquidation.

(17) File necessary documents for recording in the office of the recorder of deeds or record office in this state or elsewhere where property of the establishment seller is located.

(18) Assert defenses available to the establishment seller against third persons including statutes of limitations, statutes of fraud, and the defense of usury. A waiver of a defense by the establishment seller after a petition in liquidation has been filed shall not bind the liquidator.

Sec. 77. Section 523A.901, subsection 4, paragraph a, subparagraphs (1) and (2), Code 2007, are amended to read as follows:

(1) Mailing notice, by first-class mail, to all persons known or reasonably expected to have claims against the establishment seller, including purchasers, at their last known address as indicated by the records of the establishment seller.

(2) Publication of notice in a newspaper of general circulation in the county in which the establishment seller has its principal place of business and in other locations as the liquidator deems appropriate.

Sec. 78. Section 523A.901, subsection 4, paragraph c, Code 2007, is amended to read as follows:

c. If notice is given pursuant to this subsection, the distribution of assets of the establishment seller under this chapter shall be conclusive with respect to claimants, whether or not a claimant actually received notice.

Sec. 79. Section 523A.901, subsection 5, Code 2007, is amended to read as follows:

5. ACTIONS BY AND AGAINST LIQUIDATOR.

a. After issuance of an order appointing a liquidator of an-establishment the business of a seller, an action at law or equity shall not be brought against the establishment seller within this state or elsewhere, and existing actions shall not

be maintained or further presented after issuance of the order. Whenever in the liquidator's judgment, protection of the estate of the establishment seller necessitates intervention in an action against the establishment seller that is pending outside this state, the liquidator may intervene in the action. The liquidator may defend, at the expense of the estate of the establishment seller, an action in which the liquidator intervenes under this section.

b. Within two years or such additional time as applicable law may permit, the liquidator, after the issuance of an order for liquidation, may institute an action or proceeding on behalf of the estate of the establishment seller upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which the order is entered. If a period of limitation is fixed by agreement for instituting a suit or proceeding upon a claim, or for filing a claim, proof of claim, proof of loss, demand, notice, or the like, or if in a proceeding, judicial or otherwise, a period of limitation is fixed in the proceeding or pursuant to applicable law for taking an action, filing a claim or pleading, or doing an act, and if the period has not expired at the date of the filing of the petition, the liquidator may, for the benefit of the estate, take any action or do any act, required of or permitted to the establishment seller, within a period of one hundred eighty days subsequent to the entry of an order for liquidation, or within a further period as is shown to the satisfaction of the court not to be unfairly prejudicial to the other party.

c. A statute of limitations or defense of laches shall not run with respect to an action against an-establishment a seller between the filing of a petition for liquidation against the establishment business of a seller and the denial of the petition. An action against the establishment seller that might have been commenced when the petition was filed may be commenced within sixty days after the petition is denied.

Sec. 80. Section 523A.901, subsection 6, paragraph a, Code 2007, is amended to read as follows:

a. As soon as practicable after the liquidation order but not later than one hundred twenty days after such order, the liquidator shall prepare in duplicate a list of the

establishment's seller's assets. The list shall be amended or supplemented as the liquidator may determine. One copy shall be filed in the office of the clerk of court, and one copy shall be retained for the liquidator's files. Amendments and supplements shall be similarly filed.

Sec. 81. Section 523A.901, subsection 7, paragraph a, Code 2007, is amended to read as follows:

a. A transfer made and an obligation incurred by ~~an establishment~~ a seller whose business is within one year prior to the filing of a successful petition for liquidation under this chapter is fraudulent as to then existing and future creditors if made or incurred without fair consideration, or with actual intent to hinder, delay, or defraud either existing or future creditors. A fraudulent transfer made or an obligation incurred by ~~an-establishment~~ a seller whose business is ordered to be liquidated under this chapter may be avoided by the liquidator, except as to a person who in good faith is a purchaser, lienor, or obligee for a present fair equivalent value. A purchaser, lienor, or obligee, who in good faith has given a consideration less than present fair equivalent value for such transfer, lien, or obligation, may retain the property, lien, or obligation as security for repayment. The court may, on due notice, order any such transfer, lien, or obligation to be preserved for the benefit of the estate, and in that event, the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.

Sec. 82. Section 523A.901, subsection 7, paragraph b, subparagraph (2), Code 2007, is amended to read as follows:

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

Sec. 83. Section 523A.901, subsection 8, paragraphs a, b, and c, Code 2007, are amended to read as follows:

a. After a petition for liquidation has been filed, a transfer of real property of the ~~establishment seller~~ made to a person acting in good faith is valid against the liquidator if made for a present fair equivalent value. If the transfer is not made for a present fair equivalent value, then the transfer is valid to the extent of the present consideration

actually paid for which amount the transferee shall have a lien on the property transferred. The commencement of a proceeding in liquidation is constructive notice upon the recording of a copy of the petition for or order of liquidation with the recorder of deeds in the county where any real property in question is located. The exercise by a court of the United States or a state or jurisdiction to authorize a judicial sale of real property of the establishment seller within a county in a state shall not be impaired by the pendency of a proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.

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

(1) A transfer of the property, other than real property, of the establishment seller made to a person acting in good faith is valid against the liquidator if made for a present fair equivalent value. If the transfer was not made for a present fair equivalent value, then the transfer is valid to the extent of the present consideration actually paid for which amount the transferee shall have a lien on the property transferred.

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

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

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

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

Sec. 84. Section 523A.901, subsection 9, paragraph a, subparagraphs (1) and (2), Code 2007, are amended to read as follows:

(1) A preference is a transfer of the property of an **establishment a seller** to or for the benefit of a creditor for an antecedent debt made or suffered by the **establishment seller** within one year before the filing of a successful petition for liquidation under this chapter, the effect of which transfer may be to enable the creditor to obtain a greater percentage of this debt than another creditor of the same class would receive. If a liquidation order is entered while the **establishment seller** is already subject to a receivership, then the transfers are preferences if made or suffered within one year before the filing of the successful petition for the receivership, or within two years before the filing of the successful petition for liquidation, whichever time is shorter.

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

(a) The **establishment seller** was insolvent at the time of the transfer.

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

(c) At the time the transfer was made, the creditor receiving it or to be benefited by the transfer or the creditor's agent acting with reference to the transfer had reasonable cause to believe that the **establishment seller** was insolvent or was about to become insolvent.

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

Sec. 85. Section 523A.901, subsection 9, paragraph b, subparagraph (2), Code 2007, is amended to read as follows:

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

Sec. 86. Section 523A.901, subsection 9, paragraphs e, i, and j, Code 2007, are amended to read as follows:

e. If a lien which is voidable under paragraph "a", subparagraph (2), has been dissolved by the furnishing of a bond or other obligation, the surety of which has been indemnified directly or indirectly by the transfer or the creation of a lien upon property of ~~an-establishment~~ a seller before the filing of a petition under this chapter which results in the liquidation order, the indemnifying transfer or lien is also voidable.

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

j. If within four months before the filing of a successful petition for liquidation under this chapter, or at any time in contemplation of a proceeding to liquidate, ~~an-establishment~~ a seller, directly or indirectly, pays money or transfers property to an attorney for services rendered or to be rendered, the transaction may be examined by the court on its own motion or shall be examined by the court on petition of the liquidator. The payment or transfer shall be held valid only to the extent of a reasonable amount to be determined by the court. The excess may be recovered by the liquidator for the benefit of the estate. However, where the attorney is in a position of influence in the ~~establishment~~ business of the seller or an affiliate, payment of any money or the transfer of any property to the attorney for services rendered or to be rendered shall be governed by the provisions of paragraph "a", subparagraph (2), subparagraph subdivision (d).

Sec. 87. Section 523A.901, subsection 9, paragraph k, subparagraphs (1) and (2), Code 2007, are amended to read as follows:

(1) An officer, manager, employee, shareholder, subscriber, attorney, or other person acting on behalf of the ~~establishment~~ seller who knowingly participates in giving any preference when the person has reasonable cause to believe the ~~establishment~~ seller is or is about to become insolvent at the

time of the preference is personally liable to the liquidator for the amount of the preference. There is an inference that reasonable cause exists if the transfer was made within four months before the date of filing of this successful petition for liquidation.

(2) A person receiving property from the ~~establishment~~ seller or the benefit of the property of the ~~establishment~~ seller as a preference voidable under paragraph "a" is personally liable for the property and shall account to the liquidator.

Sec. 88. Section 523A.901, subsection 13, paragraph d, Code 2007, is amended to read as follows:

d. A judgment or order against ~~an-establishment~~ a seller entered after the date of filing of a successful petition for liquidation, or a judgment or order against the ~~establishment~~ seller entered at any time by default or by collusion need not be considered as evidence of liability or of the amount of damages. A judgment or order against ~~an-establishment~~ a seller before the filing of the petition need not be considered as evidence of liability or of the amount of damages.

Sec. 89. Section 523A.901, subsection 16, Code 2007, is amended to read as follows:

16. CLAIMS OF OTHER PERSON. If a creditor, whose claim against ~~an-establishment~~ a seller is secured in whole or in part by the undertaking of another person, fails to prove and file that claim, then the other person may do so in the creditor's name and shall be subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by the other person in the creditor's name to the extent that the other person discharges the undertaking. However, in the absence of an agreement with the creditor to the contrary, the other person is not entitled to any distribution until the amount paid to the creditor on the undertaking plus the distributions paid on the claim from the ~~establishment's~~ seller's estate to the creditor equal the amount of the entire claim of the creditor. An excess received by the creditor shall be held by the creditor in trust for the other person.

Sec. 90. Section 523A.901, subsection 18, unnumbered paragraph 1, Code 2007, is amended to read as follows:

The priority of distribution of claims from the establishment's seller's estate shall be in accordance with the order in which each class of claims is set forth. Claims in each class shall be paid in full or adequate funds retained for the payment before the members of the next class receive any payment. Subclasses shall not be established within a class. The order of distribution of claims is as follows:

Sec. 91. Section 523A.901, subsection 18, paragraph a, subparagraph (1), Code 2007, is amended to read as follows:

(1) Actual and necessary costs of preserving or recovering the assets of the establishment seller.

Sec. 92. Section 523A.901, subsection 19, paragraph a, Code 2007, is amended to read as follows:

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

Sec. 93. Section 523A.901, subsection 21, paragraph b, Code 2007, is amended to read as follows:

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

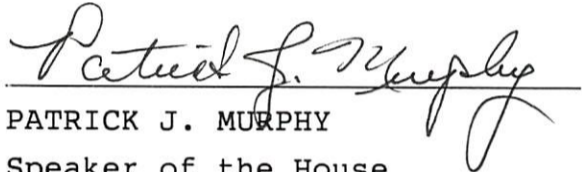
Sec. 94. Section 523A.901, subsection 24, Code 2007, is amended to read as follows:

24. DISPOSITION OF RECORDS DURING AND AFTER TERMINATION OF LIQUIDATION. If it appears to the commissioner that the

records of ~~an-establishment~~ the business of a seller in the process of liquidation or completely liquidated are no longer useful, the commissioner may recommend to the court and the court shall direct what records shall be retained for future reference and what records shall be destroyed.

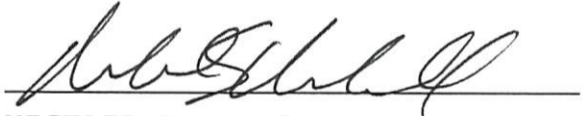


JOHN P. KIBBIE
President of the Senate



PATRICK J. MURPHY
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 559, Eighty-second General Assembly.



MICHAEL E. MARSHALL
Secretary of the Senate

Approved May 24th, 2007



CHESTER J. CULVER
Governor