

*Bill*

County Government: Clark of Lee, Chair; Hall and Johnson of Linn.

HOUSE FILE 2218

BY HANSEN of O'Brien, CLARK of Lee, HARBOR, TOFTE, TYRRELL, GROSS, CONNORS, COCHRAN, WOODS, DIEMER, SCHROEDER, CRABB, MAULSBY, DANKER, JOHNSON of Linn, HALL, SWARTZ, ANDERSON of Jasper, OXLEY, PELLETT, JOHNSON of Woodbury, ANDERSON of Audubon, HOLT, DE GROOT, HALVORSON of Webster, SULLIVAN, DIELEMAN, PAVICH, BYERLY, RENKEN, WELSH, SWEARINGEN, JOCHUM, LONERGAN, CLARK of Cerro Gordo and GETTINGS

JAN 2 1882

Judiciary & Law Enforcement

Passed House, Date 3-4-82 (p. 655) Passed Senate, Date 4-8-82 (p. 1118)  
Vote: Ayes 82 Nays 15 Vote: Ayes 46 Nays 1  
Approved 5/20/82

*Written to measure (p. 679)  
" Table 2.3/15 (p. 550)*

# A BILL FOR

1 An Act relating to prearranged agreements for the final  
2 disposition of dead human bodies, and providing a penalty.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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2218

1 Section 1. Section 523A.2, Code 1981, is amended to read  
2 as follows:

3 523A.2 DEPOSIT OF FUNDS--RECORDS--EXAMINATIONS.

4 1. a. All ~~such-trust~~ funds held in trust under section  
5 523A.1 shall be deposited in a an insured bank ~~or-trust~~  
6 ~~company~~, savings and loan association, or credit union  
7 authorized to ~~transact~~ conduct business in this state within  
8 thirty days after the receipt ~~thereof~~ of the funds and shall  
9 be held in a separate account or in one common trust fund  
10 under a trust agreement in the name of the depositor in trust  
11 for the designated beneficiary until ~~said-trust-fund-is~~  
12 released under either of the conditions provided in section  
13 523A.1.

14 b. The seller under an agreement referred to in section  
15 523A.1 shall maintain accurate records of all receipts,  
16 expenditures, interest or earnings, and disbursements re-  
17 lating to funds held in trust, and shall make these records  
18 available to the county attorney of the county in which the  
19 principal place of business of the seller is located for  
20 examination at any reasonable time upon request.

21 c. The seller under an agreement referred to in section  
22 523A.1 shall file a copy of each trust agreement required  
23 by paragraph a of this subsection with the county recorder  
24 of the county in which the seller maintains its principal  
25 place of business within thirty days after the date of the  
26 sale to which the trust agreement relates, or within thirty  
27 days after the date of the first sale in the case of a common  
28 trust fund.

29 d. The seller under an agreement referred to in section  
30 523A.1 shall give notice to the county recorder for the county  
31 in which the trust agreement is filed of each receipt of funds  
32 held in trust under section 523A.1. This notice shall be  
33 given on forms furnished by the seller and within thirty days  
34 after receipt of the funds.

35 e. A financial institution referred to in paragraph a

1 of this subsection shall give notice to the county recorder  
2 for the county in which the trust agreement is filed of all  
3 funds deposited under the trust agreement. This notice shall  
4 be on a form furnished by the seller and shall be given within  
5 thirty days after each deposit of funds is received. The  
6 seller shall provide appropriate forms at the time the trust  
7 account is established.

8 2. In addition to complying with subsection 1, each seller  
9 under an agreement referred to in section 523A.1 shall file  
10 annually with the county attorney of the county in which the  
11 seller maintains its principal place of business a written  
12 statement that is signed by the seller and notarized and that  
13 contains all of the following information:

14 a. Identification of each financial institution in which  
15 trust funds are held under subsection 1, paragraph a, and  
16 a listing of each trust agreement governing funds held in  
17 the respective financial institutions and the date each  
18 agreement was filed with the county recorder.

19 b. Authorization for the county attorney or a designee  
20 to investigate, audit, and verify all funds, accounts, safe-  
21 deposit boxes and other evidence of trust funds held by or  
22 in a financial institution under paragraph a of this  
23 subsection.

24 3. The state department of health shall adopt rules under  
25 chapter 17A specifying the form, content and cost of the forms  
26 for the notices and disclosures required by this section,  
27 and shall sell blank forms at that cost to any person on  
28 request.

29 4. If a seller under an agreement referred to in section  
30 523A.1 ceases to do business, whether voluntarily or involun-  
31 tarily, all funds held in trust under section 523A.1, including  
32 accrued interest or earnings, shall be repaid to the purchaser  
33 under the agreement.

34 5. The county attorney of the county in which a sale re-  
35 ferred to in section 523A.1 takes place may require the per-

1 formance of an audit of the seller's business by a certified  
2 public accountant if the county attorney receives reasonable  
3 evidence that the seller is not complying with this chapter.  
4 The audit shall be paid for by the seller, and a copy of the  
5 report of audit shall be delivered to the county attorney  
6 and to the seller.

7 6. A seller or financial institution that knowingly fails  
8 to comply with any requirement of this section or that know-  
9 ingly submits false information in a document or notice re-  
10 quired by this section commits a serious misdemeanor.

11 Sec. 2. Section 523A.4, Code 1981, is repealed and the  
12 following inserted in lieu thereof:

13 523A.4 SCOPE OF CHAPTER.

14 1. This chapter applies only to the sale of funeral ser-  
15 vices, funeral merchandise, or a combination of these.

16 2. As used in this chapter:

17 a. "Funeral services" means one or more services to be  
18 provided at the time of the final disposition of a dead human  
19 body, including but not limited to services necessarily or  
20 customarily provided in connection with a funeral, or services  
21 necessarily or customarily provided in connection with the  
22 interment, entombment, or cremation of a dead human body,  
23 or a combination of these. "Funeral services" does not include  
24 perpetual care or maintenance to be furnished after interment.

25 b. "Funeral merchandise" means one or more types of  
26 personal property to be used at the time of the final  
27 disposition of a dead human body, including but not limited  
28 to clothing, caskets, and interment receptacles. "Funeral  
29 merchandise" does not include real property, and does not  
30 include personal property which will be affixed to real  
31 property at the time of sale such as, but not limited to,  
32 grave markers, tombstones, and monuments.

33 EXPLANATION

34 This bill amends chapter 523A, relating to the regulation  
35 of preneed agreements for the sale of property or services

1 to be used in connection with the final disposition of dead  
2 human bodies. Existing law requires that 80 percent of the  
3 contract price of certain agreements be held in trust until  
4 performance of the contract or until released as otherwise  
5 agreed to by both parties.

6 The amendments establish more stringent record keeping  
7 requirements, require the seller and the depository financial  
8 institution to file certain information with the county  
9 recorder, require the seller to file annual reports with the  
10 county attorney, require the state department of health to  
11 prescribe and distribute forms for reports and notices, and  
12 gives county attorneys investigatory powers. The amendments  
13 also reduce the degree of the offense for violations from  
14 an aggravated misdemeanor to a serious misdemeanor, but extend  
15 the scope of the penalty to include financial institutions  
16 that fail to comply with the reporting requirements. The  
17 amendments also define the types of services and property  
18 that are subject to the chapter.

19 The bill would take effect July 1 following enactment.

FISCAL NOTE  
House File 2218  
Requested by Rep. Dieleman  
February 18, 1982

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22  
23 In compliance with a written request there is hereby submitted a  
Fiscal Note for H. F. 2218 pursuant to Joint Rule 16.

24 House File 2218, An Act relating to pre-arranged agreements for the final  
25 disposition of dead human bodies, and providing a penalty.

26 Fiscal Impact: Due to the fact that this bill requires the seller to bear the  
27 costs arising from this legislation, there are no additional stat  
28 costs anticipated. The Department of Health will be able to re-  
29 cover their expenses of developing the required forms by charging  
the seller.

30 Source: State Department of Health

31 FILED FEBRUARY 22, 1982

BY GERRY RANKIN  
Fiscal Director

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HOUSE FILE 2218

H-5190

1 Amend House File 2218 as follows:

2 1. Page 1, by striking lines 22 through 28 and  
3 inserting in lieu thereof the words "523A.1 shall  
4 file not later than February 1 of each year with the  
5 county recorder of the county in which the seller  
6 maintains its principal place of business a copy of  
7 each trust agreement created as required by paragraph  
8 a of this subsection for sales made during the previous  
9 calendar year."

10 2. Page 1, by striking lines 33 and 34 and  
11 inserting in lieu thereof the words "given on forms  
12 furnished by the seller, and shall be given not later  
13 than February 1 of each year. Each notice shall  
14 contain the required information for all receipts  
15 of the seller during the previous calendar year."

16 3. Page 2, by striking lines 4 through 7 and  
17 inserting in lieu thereof the words "be on forms  
18 furnished by the seller and shall be given not later  
19 than February 1 of each year. Each notice shall  
20 contain the required information for all deposits  
21 made during the previous calendar year. The seller  
22 shall furnish the financial institution with the  
23 appropriate forms."

H-5190 FILED FEBRUARY 18, 1982 BY SMALLEY of Polk

*Adopted 2/4 (p. 647)*

HOUSE FILE 2218

H-5192

1 Amend House File 2218 as follows:

2 1. Page 3, line 32, by striking the words "and  
3 monuments" and inserting in lieu thereof the words  
4 "monuments, and burial vaults".

H-5192 FILED

FEBRUARY 18, 1982

*Loss 3/4 (p. 648)*

*Motion to reconsider lost 3/4 (p. 653)*

BY HORN of Linn

LIND of Black Hawk

HOUSE FILE 2218

H-5181

- 1 Amend House File 2218 as follows:
- 2 1. Page 1, line 13, by inserting after the number
- 3 "523A.1" the words ", or until delivery. For purposes
- 4 of this section, delivery of funeral merchandise is
- 5 deemed to be made when the merchandise is placed in
- 6 a bonded warehouse and is identifiable as the property
- 7 of the buyer or when the property is released to the
- 8 buyer".

H-5181 FILED FEBRUARY 18, 1982

BY TRUCANO of Polk

*Last 2/2 (p 637)*

HOUSE FILE 2218

H-5188

- 1 Amend House File 2218 as follows:
- 2 1. Page 3, by inserting after line 32 the
- 3 following:
- 4 "3. This chapter does not apply to the sale of
- 5 any personal property by a person who is subject to
- 6 chapter 566 or 566A."

H-5188 FILED FEBRUARY 18, 1982

BY COREY of Louisa

*Last 2/4 (p 651)*

HOUSE FILE 2218

H-5189

- 1 Amend House File 2218 as follows:
- 2 1. Page 3, by inserting after line 32 the
- 3 following:
- 4 "Sec. 3. Chapter 523A, Code 1981, as amended by
- 5 this Act, applies only to agreements executed on or
- 6 after the effective date of this Act. Agreements
- 7 executed prior to the effective date of this Act shall
- 8 be governed by chapter 523A as it existed on the date
- 9 those agreements were executed."

H-5189 FILED FEBRUARY 18, 1982

BY COREY of Louisa

*Adopted 2/4 (p 651)*

HOUSE FILE 2218

H-5191

- 1 Amend House File 2218 as follows:
- 2 1. Page 2, by inserting after line 7 the following:
- 3 "f. Notwithstanding chapter 68A, all records
- 4 maintained by a county recorder under this subsection
- 5 shall be confidential and shall not be made available
- 6 for inspection or copying by any person except the
- 7 county attorney or a representative of the county
- 8 attorney."

H-5191 FILED FEBRUARY 18, 1982

BY SMALLEY of Polk

*Adopted 2/4 (p 647)  
Motion to Reconsider Last (p 654)*

- 1 Amend House File 2218 as follows:  
 2 1. Page 1, by inserting before line 1 the  
 3 following:  
 4 "Section 1. Section 523A.1, Code 1981, is amended  
 5 to read as follows:  
 6 523A.1 TRUST FUND ESTABLISHED.  
 7 1. Whenever an agreement is made by any person,  
 8 firm or corporation for the final disposition of a  
 9 dead human body wherein delivery of personal property  
 10 to be used under a prearranged funeral plan or the  
 11 furnishing of professional services of a funeral  
 12 director or embalmer in connection therewith, is not  
 13 immediately required, ~~eighty-percent-of-all-payments~~  
 14 ~~made-under-the-agreement~~ the amount specified in  
 15 subsection 2, including interest thereon, shall be  
 16 and remain trust funds until occurrence of the death  
 17 of the person for whose benefit the funds were paid,  
 18 unless said funds are sooner released to the person  
 19 making such payment by mutual consent of the parties.  
 20 2. The amount to be held in trust under subsection  
 21 1 is equal to the sum of the following:  
 22 a. The contract price of funeral services to be  
 23 delivered under the agreement.  
 24 b. The adjusted wholesale cost of funeral  
 25 merchandise to be delivered under the agreement.  
 26 3. For purposes of subsection 2, "adjusted  
 27 wholesale cost" means the wholesale cost of the funeral  
 28 merchandise as of the date of execution of the  
 29 agreement, provided that each year after the date  
 30 of execution of the agreement the seller shall deposit  
 31 an additional amount into trust equal to the increase  
 32 in the wholesale price of the funeral merchandise  
 33 during the previous year."  
 34 2. By renumbering sections.

H-5195 FILED  
 FEBRUARY 18, 1982  
*House 2/2 (p. 635)*

BY COREY of Louisa  
 CARPENTER of Polk  
 BRANDT of Black Hawk

## HOUSE FILE 2218

H-5197

- 1 Amend House File 2218 as follows:  
 2 1. Page 1, line 16, by inserting after the word  
 3 "earnings," the word "agreements,".  
 4 2. By striking page 1, line 21, through page 2,  
 5 line 7.  
 6 3. Page 2, by striking lines 17 and 18, and  
 7 inserting in lieu thereof the following: "the respective  
 8 financial institutions and the date of each agreement."

H-5197 FILED FEBRUARY 18, 1982 BY SMALLEY of Polk  
*W/R 3/4 (p. 647)*

1 Amend House File 2218 as follows:

2 1. By striking everything after the enacting  
3 clause and inserting in lieu thereof the following:

4 "Section 1. Sections 2 through 12 of this Act  
5 are enacted as a new chapter of the Code.

6 Sec. 2. NEW SECTION. PURPOSE AND SCOPE. The  
7 purpose of this chapter is to provide security for  
8 the performance of contracts, transactions, or other  
9 arrangements under which individuals obtain and pay  
10 in advance for goods or services to be used in  
11 connection with and at the final disposition of their  
12 own bodies or those of other persons after death.

13 This chapter applies to any contract that contains  
14 these provisions, including but not limited to a  
15 contract for the sale of goods or services, or a  
16 contract to procure goods or services as an agent  
17 or independent contractor on behalf of the buyer.

18 Sec. 3. NEW SECTION. OTHER LAWS NOT AFFECTED.  
19 This chapter does not supersede chapter 156, relating  
20 to the licensure of funeral directors.

21 Sec. 4. NEW SECTION. DEFINITIONS. As used in  
22 this chapter, unless the context otherwise requires:

23 1. "Department" means the department of banking.

24 2. "Licensee" means a person who is required to  
25 be licensed under this chapter.

26 Sec. 5. NEW SECTION. LICENSE REQUIRED. A person  
27 shall not offer or contract to deliver or to secure  
28 the delivery of goods or services pursuant to a  
29 prearrangement contract except when licensed under  
30 this chapter and except in accordance with this  
31 chapter. This section does not require the licensure  
32 of officers, employees, or agents of a licensee while  
33 engaged in the solicitation or execution of contracts  
34 on behalf of the licensee.

35 Sec. 6. NEW SECTION. LICENSE APPLICATION. An  
36 application for a license shall be in a verified  
37 writing on forms furnished by the department. The  
38 application form shall contain or be accompanied by  
39 all of the following:

40 1. The applicant's name and business address,  
41 and the address of each of the applicant's offices  
42 within this state.

43 2. The name of each state or other jurisdiction  
44 in which the applicant presently is conducting the  
45 activity regulated under this chapter or any other  
46 similar business, the names under which the business  
47 is conducted, and the business addresses within each  
48 state or other jurisdiction.

49 3. A description of any adverse order, judgment,  
50 or decree entered against the applicant by a regulatory

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Page Two

1 agency or court in any state or other jurisdiction  
2 in relation to the activity regulated under this  
3 chapter or any other similar business.

4 4. The name of the jurisdiction in which the  
5 applicant is organized as a corporation, and a copy  
6 of the articles of incorporation.

7 5. The name, address or residence, and principal  
8 occupation for the past three years of every director  
9 and officer of the applicant or every person occupying  
10 a similar status or performing similar functions;  
11 and the name, address, and principal occupation for  
12 the past three years of every principal owner and  
13 principal stockholder, and for this purpose, any  
14 person whose interest in the applicant exceeds twenty-  
15 five percent of the outstanding interests is a  
16 principal owner or stockholder.

17 6. Copies of the current tax return or financial  
18 statement of the applicant.

19 7. The name and address of each financial  
20 institution by which trust funds are to be held or  
21 administered under this chapter, and a copy of all  
22 trust agreements.

23 8. If any of the goods or services to be delivered  
24 under a contract are to be supplied by a person other  
25 than the applicant, the name and address of that  
26 person, a description of each item to be supplied  
27 by that person, and a copy of the contract, whether  
28 existing or proposed, between the applicant and that  
29 person under which the goods or services are to be  
30 supplied.

31 9. An irrevocable appointment of the department  
32 as agent for the receipt of service of process in  
33 any civil proceeding arising under this chapter against  
34 the applicant, its principal owners, principal  
35 stockholders, directors or general manager, or their  
36 personal representatives.

37 10. An application fee of one hundred dollars.

38 Sec. 7. NEW SECTION. ISSUANCE OR DENIAL OF  
39 LICENSE.

40 1. Upon receipt of proper application, the  
41 department shall issue a license if the department  
42 determines that the following criteria are satisfied:

43 a. The applicant has met all general requirements  
44 for engaging in business in this state.

45 b. The officers or persons occupying similar  
46 status or performing similar functions have the  
47 ability, experience, integrity, financial stability,  
48 and responsibility to engage in the licensed activity.

49 2. The department shall deny the license if it  
50 is determined that the application is incomplete,

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B Three

1 that the applicant has made false statements or  
2 misrepresentations in the application, that the  
3 applicant is insolvent, that the applicant has  
4 conducted business in a fraudulent manner, that the  
5 applicant is not authorized to transact business in  
6 this state, or that the required trust fund or  
7 depository has not been properly established. If  
8 a license is denied, the department shall give written  
9 notice to the applicant setting forth the specific  
10 reasons for denial and the method by which the  
11 applicant may remedy the deficiency. If the denial  
12 is not remedied within thirty days, the applicant  
13 may request a hearing on the denial. The hearing  
14 should be conducted as a contested case under chapter  
15 17A.

16 3. The department shall either issue or deny a  
17 license within ninety days following receipt of proper  
18 application unless the period is extended with consent  
19 of the applicant.

20 4. Upon issuance of a license, the licensee shall  
21 post and maintain the license on the business premises  
22 of the licensee and in a place where the license is  
23 readily visible to customers of the licensee.

24 5. A license issued under this chapter shall be  
25 for a term of five years from the date issued, and  
26 may be renewed upon application and payment of the  
27 application fee.

28 Sec. 8. NEW SECTION. DELIVERY. Delivery of goods  
29 pursuant to a prearrangement contract shall be by  
30 actual or constructive delivery in accordance with  
31 chapter 554.

32 Sec. 9. NEW SECTION. TRUST IMPOSED.

33 1. Consideration received from a buyer under a  
34 prearrangement contract is impressed with a trust  
35 to the following extent:

36 a. With respect to services, seventy-five percent  
37 of the purchase price of the services contracted for.

38 b. With respect to goods, an amount equal to one  
39 hundred ten percent of the ascribed cost of the goods  
40 contracted for. Ascribed cost is a cost figure  
41 determined on the basis of the average wholesale price  
42 of similar goods available for purchase on the  
43 wholesale market during the preceding year.

44 2. If the purchase price is payable by the buyer  
45 in two or more payments, the amount received in trust  
46 is as follows:

47 a. With respect to services, that portion of each  
48 payment which bears the same relation to seventy-five  
49 percent of the price of the services as the amount  
of the payment bears to the total purchase price.

Page 4  
1 b. With respect to goods, that portion of each  
2 payment which bears the same relation to one hundred  
3 ten percent of the ascribed cost of the goods as the  
4 amount of the payment bears to the total purchase  
5 price.

6 Sec. 10. NEW SECTION. TRUST FUND REQUIREMENTS.

7 1. The trustee of the trust fund shall maintain  
8 accurate accounts, books, and records of all trust  
9 fund transactions. The accounts, books, and records  
10 are subject to examination by the department.

11 2. The department may authorize a licensee to  
12 act as trustee of a trust fund established under this  
13 section upon written application by the licensee.  
14 Authorization shall be given by the department if  
15 the licensee establishes one or more of the following:

16 a. The licensee is financially responsible in  
17 accordance with criteria established by rule.

18 b. No state or national bank or trust company  
19 that is convenient to the licensee's place of business  
20 will accept the funds.

21 c. The licensee files with the department a  
22 performance bond or its equivalent equal to fifty  
23 percent of the value of the trust fund.

24 d. Other criteria established by administrative  
25 rule.

26 Sec. 11. NEW SECTION. REVOCATION OF LICENSE.

27 1. The department may revoke a license issued  
28 under this chapter with a hearing conducted as a  
29 contested case under chapter 17A upon any of the  
30 following grounds:

31 a. Violation by a licensee or by any of its  
32 employees or agents of any provision of this chapter.

33 b. The existence of any fact which, if it had  
34 existed at the time of application for the license,  
35 would have been grounds for denial of a license.

36 c. Bankruptcy of the licensee.

37 d. Dissolution of the business organization of  
38 the licensee, whether voluntary or involuntary.

39 2. Upon revocation of a license the department  
40 shall issue orders as necessary to protect the  
41 beneficiaries of prearrangement contracts.

42 3. Revocation of a license does not absolve the  
43 licensee from liability on existing prearrangement  
44 contracts, and does not absolve the licensee from  
45 depositing funds into trust with respect to payments  
46 received subsequent to the date of revocation.

47 Sec. 12. NEW SECTION. PENALTIES.

48 1. A person who conducts business without a license  
49 in violation of this chapter commits an aggravated  
50 misdemeanor.

Page 5

1 2. A licensee who fails to comply with this chapter  
2 commits a serious misdemeanor.

3 Sec. 13. Chapter 523A, Code 1981, is repealed.

4 Sec. 14. This Act takes effect January 1 following  
5 enactment, and applies to contracts executed on or  
6 after that date."

7 2. Amend the title, by striking lines 1 and 2  
8 and inserting in lieu thereof the words "An Act  
9 regulating the pre-need sale of funeral and cemetery  
10 goods or services and providing penalties."

H-5198 FILED

FEBRUARY 18, 1982

Filed not 9/13/82 (3633)

BY HORN of Linn

RUNNING of Linn

TRUCANO of Polk

HOUSE FILE 2218

H-5199

Amend House File 2218 as follows:

2 1. Page 1, by inserting before line 1 the  
3 following:  
4 "Section 1. Section 523A.1, Code 1981, is amended  
5 to read as follows:  
6 523A.1 Trust fund established. Whenever  
7 an agreement is made by any person, firm  
8 or corporation for the final disposition of a dead  
9 human body wherein delivery of personal property to  
10 be used under a prearranged funeral plan or the  
11 furnishing of professional services of a funeral  
12 director or embalmer in connection therewith, is not  
13 immediately required, eighty fifty percent of all  
14 payments made under the agreement, including interest  
15 thereon, shall be and remain trust funds until  
16 occurrence of the death of the person for whose  
17 benefit the funds were paid, unless said funds are  
18 sooner released to the person making such payment by  
19 mutual consent of the parties."

H-5199 FILED  
FEBRUARY 18, 1982  
*W/D 3/4 (p. 651)*

BY RUNNING of Linn  
BAXTER of Des Moines  
TRUCANO of Polk

H-5199

1 Amend House File 2218 as follows:

2 1. Page 1, by inserting before line 1 the  
3 following:

4 "Section 1. Section 523A.1, Code 1981, is amended  
5 to read as follows:

6 523A.1 Trust fund established. Whenever  
7 an agreement is made by any person, firm  
8 or corporation for the final disposition of a dead  
9 human body wherein delivery of personal property to  
10 be used under a prearranged funeral plan or the  
11 furnishing of professional services of a funeral  
12 director or embalmer in connection therewith, is not  
13 immediately required, eighty fifty percent of all  
14 payments made under the agreement, including interest  
15 thereon, shall be and remain trust funds until  
16 occurrence of the death of the person for whose  
17 benefit the funds were paid, unless said funds are  
18 sooner released to the person making such payment by  
19 mutual consent of the parties."

H-5199 FILED  
FEBRUARY 18, 1982

BY RUNNING of Linn  
BAXTER of Des Moines  
TRUCANO of Polk

*Hand 2/2 (p. 626)  
That is to mean (p. 657) w/d (p. 652)*

HOUSE FILE 2218

H-5284

- 1 Amend House File 2218, as follows:
- 2 1. Page 3, by inserting after line 32 the
- 3 following:
- 4 "Sec. \_\_\_\_\_. This Act takes effect January 1, 1983."

H-5284 FILED MARCH 2, 1982 BY HORN of Linn

*Lost 3/4 (p. 652)*

HOUSE FILE 2218

H-5283

- 1 Amend House File 2218, as follows:
- 2 1. Page 3, by inserting after line 32 the
- 3 following:
- 4 "Sec. \_\_\_\_\_. This Act takes effect July 1, 1983."

H-5283 FILED MARCH 2, 1982 BY HORN of Linn

*Lost 3/4 (p. 652)*

HOUSE FILE 2218

H-5280

- 1 Amend House File 2218 as follows:
- 2 1. Page 3, by inserting after line 10 the
- 3 following:
- 4 "Sec. \_\_\_\_\_. Chapter 523A, Code 1981, is amended
- 5 by adding the following new section:
- 6 NEW SECTION. COUNTY REIMBURSEMENT FOR RECORD
- 7 KEEPING AND ENFORCEMENT. Each county treasurer shall
- 8 be reimbursed from the general fund of the state in
- 9 an amount equal to the record keeping required of
- 10 the county recorder and enforcement cost sustained
- 11 by the county attorney in carrying out the actions
- 12 required by section 1 of this Act. The county
- 13 treasurer shall receive the vouchers covering the
- 14 costs submitted by the county recorder and the county
- 15 attorney. The county treasurer shall apportion the
- 16 disbursement in the manner provided in section 445.57."
- 17 2. Renumber sections and correct internal
- 18 references as necessary.

H-5280 FILED MARCH 2, 1982 BY HOWELL of Floyd

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HOUSE FILE 2218

H-5279

1 Amend House File 2218 as follows:

2 1. Page 3, by striking lines 13 through 32 and  
3 inserting in lieu thereof the following:

4 "523A.4 SCOPE OF CHAPTER--DEFINITIONS--FUNDING  
5 FOR COUNTY RECORDERS AND COUNTY ATTORNEYS.

6 1. This chapter applies to the sale of funeral  
7 services and funeral merchandise sold by funeral  
8 directors licensed under chapter 156 and burial  
9 merchandise sold by persons regulated under chapters  
10 566 and 566A.

11 2. As used in this chapter:

12 a. "Funeral services" means one or more services  
13 to be provided at the time of the final disposition  
14 of a dead human body, including but not limited to  
15 services necessarily or customarily provided in  
16 connection with a funeral, or services necessarily  
17 or customarily provided in connection with the  
18 interment, entombment, or cremation of a dead human  
19 body, or a combination of these. "Funeral services"  
20 does not include perpetual care or maintenance to  
21 be furnished after interment.

22 b. "Funeral merchandise" means one or more types  
23 of personal property to be used at the time of the  
24 final disposition of a dead human body, including  
25 but not limited to clothing, caskets, and interment  
26 receptacles. "Funeral merchandise" does not include  
27 real property, and does not include personal property  
28 which will be affixed to real property at the time  
29 of sale such as, but not limited to, grave markers,  
30 tombstones, and monuments.

31 c. "Burial merchandise" means one or more types  
32 of personal property to be used at the time of a final  
33 disposition of a dead human body, including but not  
34 limited to vaults, vault beds, grave markers,  
35 tombstones and monuments.

36 "Burial merchandise" shall be delivered or funds  
37 equal to the wholesale cost shall be placed in trust  
38 which will be reviewed annually and adjusted so that  
39 the total deposit in trust will equal the current  
40 wholesale price of the merchandise.

41 3. Each county treasurer shall be reimbursed from  
42 the general fund of the state in an amount equal to  
43 the record keeping required of the county recorder  
44 and enforcement costs sustained by the county attorney  
45 in carrying out the actions required by section 1  
46 of this Act. The county treasurer shall receive the  
47 vouchers covering the costs submitted by the county  
48 recorder and the county attorney. The county treasurer  
49 shall apportion the disbursement in the manner provided  
50 in section 445.57."

March 3, 1982

HOUSE FILE 2218

H-5294

1 Amend House File 2218 as follows:

2 1. By striking everything after the enacting clause  
3 and inserting in lieu thereof the following:

4 "Section 1. Chapter 523A, Code 1981, is repealed  
5 and sections 2 through 30 of this Act are inserted in  
6 lieu thereof:

7 Sec. 2. NEW SECTION. PURPOSE AND SCOPE. The  
8 purpose of this chapter is to provide security for  
9 the performance of contracts under which individuals  
10 arrange to obtain and pay in advance for goods or  
11 services to be used in connection with the final  
12 disposition of their own bodies or those of other  
13 persons after death. Except as provided in section  
14 3 of this Act, this chapter applies to any contract  
15 that contains these provisions, including but not  
16 limited to a contract for the sale of goods or  
17 services, or a contract to procure goods or services  
18 as an agent or independent contractor on behalf of  
19 the buyer.

20 Sec. 3. NEW SECTION. EXEMPTIONS. This chapter  
21 does not apply to any of the following:

22 1. A contract requiring the immediate delivery  
23 of all goods or services to be furnished.

24 2. A contract that is subject to regulation under  
25 Title XX, relating to insurance.

26 3. A trust agreement having substantial purposes  
27 other than that of providing for the final disposition  
28 of a dead human being.

29 4. A contract for the sale of a cemetery lot,  
30 grave, grave marker, tombstone, monument, mausoleum  
31 crypt, turf-top crypt, niche or columbarium; provided,  
32 however, that this exemption does not apply if the  
33 contract also includes or is executed in contemplation  
34 of the sale of other goods or services pursuant to  
35 a prearrangement contract.

36 Sec. 4. NEW SECTION. OTHER LAWS NOT AFFECTED.  
37 This chapter does not supersede the provisions of  
38 chapter 156, relating to the licensure of funeral  
39 directors.

40 Sec. 5. NEW SECTION. DEFINITIONS. As used in  
41 this chapter, unless the context otherwise requires:

42 1. "Beneficiary" means the person in whose final  
43 disposition goods or services are to be furnished  
44 pursuant to a prearrangement contract.

45 2. "Department" means the department of banking.

46 3. "Earnings" means appreciation in value of a  
47 trust fund as a result of investment, including but  
48 not limited to interest income, dividends, and gains  
49 from the sale of investments.

50 4. "Funeral director" means a person licensed  
51 under chapter 156.

1 5. "Licensee" means a person who is required to  
2 be licensed under this chapter.

3 6. "Goods" means personal property to be used  
4 in connection with the final disposition of a dead  
5 human body, including but not limited to a casket,  
6 vault, grave marker, tombstone, monument, urn or vase.  
7 "Goods" does not include real property, and does not  
8 include personal property which is affixed to real  
9 property at the time of sale.

10 7. "Prearrangement contract" or "contract" means  
11 a contract that is characterized, wholly or in part,  
12 by all of the following:

13 a. A person promises to deliver or to secure the  
14 delivery of goods, services, or a combination of goods  
15 and services, that are to be used in the final  
16 disposition of the body of a specified individual  
17 after his or her death.

18 b. The contract is executed prior to the death  
19 of the person in whose final disposition the goods  
20 or services are to be used, and delivery is or may  
21 be contingent upon the death of that person.

22 c. Consideration is to be paid in advance, whether  
23 in a lump sum or in installments.

24 8. "Purchase price" means the consideration that  
25 is to be paid under a prearrangement contract in  
26 exchange for the promise to deliver or to secure the  
27 delivery of the goods or services.

28 9. "Seller" means a person who directly or through  
29 an agent or employee promises in a prearrangement  
30 contract to deliver or to secure the delivery of the  
31 goods or services. "To sell" includes a promise to  
32 furnish goods or services that are to be purchased  
33 from or supplied by another person.

34 10. "Services" means services to be provided in  
35 connection with the final disposition of a dead human  
36 body, including but not limited to services necessarily  
37 or customarily provided in connection with a funeral,  
38 or services necessarily or customarily provided in  
39 connection with the interment, entombment or cremation  
40 of a dead human body, or a combination of these.

41 "Services" does not include perpetual care or main-  
42 tenance to be furnished after interment, entombment  
43 or cremation.

44 Sec. 6. NEW SECTION. PREARRANGEMENT CONTRACTS  
45 REGULATED. A person shall not offer or contract to  
46 deliver or to secure the delivery of goods or services  
47 pursuant to a prearrangement contract except when  
48 licensed under this chapter and except in accordance  
49 with the provisions of this chapter. This section  
50 does not require the licensure of officers, employees

1 or agents of a licensee while engaged in the  
2 solicitation or execution of contracts on behalf of  
3 the licensee.

4 Sec. 7. NEW SECTION. LICENSE APPLICATION. An  
5 application for a license shall be in a verified  
6 writing on forms furnished by the department. The  
7 application form shall contain or be accompanied by  
8 all of the following:

9 1. The applicant's name and business address,  
10 and the address of each of the applicant's offices  
11 within this state.

12 2. The name of each state or other jurisdiction  
13 in which the applicant presently is conducting the  
14 activity regulated under this chapter or any other  
15 similar business, the names under which the business  
16 is conducted, and the business addresses within each  
17 state or other jurisdiction.

18 3. A description of any adverse order, judgment  
19 or decree entered against the applicant by a regulatory  
20 agency or court in any state or other jurisdiction  
21 in relation to the activity regulated under this  
22 chapter or any other similar business.

23 4. The form of the applicant's business or-  
24 ganization, and if the applicant is a statutory entity,  
25 the jurisdiction in which organized and a copy of  
26 the articles of incorporation or other instrument  
27 establishing the applicant as a legal entity.

28 5. The name, address of residence, and principal  
29 occupation for the past five years of every director  
30 and officer of the applicant or every person occupying  
31 a similar status or performing similar functions;  
32 and the name, address and principal occupation for  
33 the past five years of every principal owner and  
34 principal stockholder, and for this purpose, any  
35 person whose interest in the applicant exceeds ten  
36 percent of the outstanding interests shall be a  
37 principal owner or stockholder.

38 6. Copies of the current financial statements  
39 of the applicant.

40 7. The name and address of each financial  
41 institution by which trust funds are to be held or  
42 administered under this chapter, and a copy of all  
43 trust agreements.

44 8. If any of the goods or services to be delivered  
45 under a contract are to be supplied by a person other  
46 than the applicant, the name and address of that  
47 person, a description of each item to be supplied  
48 by that person, and a copy of the contract, whether  
49 existing or proposed, between the applicant and that  
50 person under which the goods or services are to be

1 supplied.

2 9. An irrevocable appointment of the department  
3 as agent for the receipt of service of process in  
4 any civil proceeding arising under this chapter against  
5 the applicant, its principal owners, principal  
6 stockholders, directors or general manager or their  
7 personal representatives.

8 10. Other information or documents required by  
9 the department.

10 11. The names and addresses of all individuals  
11 who will be authorized by the applicant to solicit  
12 prearrangement sales on behalf of the licensee, and  
13 the names and addresses of all individuals who will  
14 be authorized by the applicant to execute  
15 prearrangement contracts on behalf of the applicant.

16 Sec. 8. NEW SECTION. ISSUANCE OR DENIAL OF  
17 LICENSE.

18 1. Upon receipt of proper application, the  
19 department shall issue a license if the department  
20 determines that the following criteria are satisfied:

21 a. The applicant has met all general requirements  
22 for engaging in business in this state.

23 b. The principal owners, principal stockholders,  
24 and all directors and officers or persons occupying  
25 similar status or performing similar functions have  
26 the ability, experience, integrity, financial stability  
27 and responsibility to engage in the licensed activity.

28 c. Capitalization of at least fifteen thousand  
29 dollars in counties with a population of not more  
30 than fifty thousand, capitalization of at least twenty-  
31 five thousand dollars in counties with a population  
32 between fifty thousand and one hundred fifty thousand,  
33 and capitalization of at least fifty thousand dollars  
34 in counties with a population of one hundred fifty  
35 thousand or more.

36 2. The department shall deny the license if it  
37 is determined that the application is incomplete,  
38 that the applicant has made false statements or  
39 misrepresentations in the application, that the  
40 applicant is insolvent, that the applicant has con-  
41 ducted business in a fraudulent manner, that the  
42 applicant is not authorized to transact business in  
43 this state, or that the required trust fund or  
44 depository has not been properly established. If  
45 a license is denied, the department shall give written  
46 notice to the applicant setting forth the reasons  
47 for denial.

48 3. The department shall issue or deny a license  
49 within ninety days following receipt of proper  
50 application.

1 4. Upon issuance of a license, the licensee shall  
2 post and maintain the license on the business premises  
3 of the licensee and in a place where the license is  
4 readily visible to customers of the licensee.

5 5. A license issued under this chapter shall be  
6 in effect for a period of one year from the date  
7 issued, and may be renewed in the manner prescribed  
8 by the department.

9 Sec. 9. NEW SECTION. SURETY BOND.

10 1. At the time a license is issued a licensee  
11 shall post with the department and thereafter maintain  
12 in force either a bond in the principal sum of twenty-  
13 five thousand dollars issued by an authorized corporate  
14 surety in favor of the state of Iowa, or a deposit  
15 in the same amount made up of cash or negotiable  
16 securities or their equivalent. If a deposit is made  
17 in lieu of a bond, the deposit shall at all times  
18 be maintained at a market value of not less than the  
19 amount of the required bond. A licensee may deposit  
20 only those securities which are approved for use as  
21 a deposit by rule issued by the department.

22 2. In lieu of posting the full amount of the bond  
23 or deposit specified in subsection 1, the department  
24 may approve the posting of a bond or deposit in the  
25 amount of five thousand dollars or a whole number  
26 multiple thereof, not to exceed twenty-five thousand  
27 dollars, if it finds that the circumstances and status  
28 of the applicant's intended business do not immediately  
29 warrant the posting of the amount specified in  
30 subsection 1. The department thereafter may require  
31 the licensee periodically to post an additional bond  
32 or deposit of five thousand dollars or a whole number  
33 multiple thereof until the amount specified in  
34 subsection 1 is satisfied. The department may require  
35 a quarterly report during the period of time in which  
36 a licensee maintains a bond or deposit of an amount  
37 less than that specified in subsection 1.

38 3. The bond or deposit shall be held exclusively  
39 for the benefit of buyers under prearrangement  
40 contracts and other persons as their interests may  
41 appear who may be damaged by misuse or diversion of  
42 moneys by the seller or agents or employees of the  
43 seller. The aggregate liability of the surety for  
44 all breaches of the conditions of the bond shall,  
45 in no event, exceed the sum of the bond. The surety  
46 shall have the right to cancel a bond upon sixty days'  
47 notice to the department, and shall be relieved of  
48 liability for any breach of condition occurring after  
49 the effective date of cancellation.

50 4. Upon written request by a licensee, the

1 department may reduce the bond or deposit require-  
2 ment in five-thousand dollar increments if it finds  
3 that the circumstances and status of the licensee's  
4 business warrant a reduction.

5 5. The department shall release the bond or deposit  
6 after the licensee has ceased doing business and when  
7 the department is satisfied of the nonexistence of  
8 any obligation or liability of the licensee for which  
9 the bond or deposit is held.

10 Sec. 10. NEW SECTION. GUARANTEE TRUST FUND.

11 A licensee shall, within thirty days after the end  
12 of its accounting year, deposit with the department  
13 the amount of ten dollars for each prearranged sale  
14 made during the accounting year. These funds shall  
15 be deposited by the department into a separate  
16 guarantee trust fund to be held and invested in  
17 accordance with the trust laws of Iowa. When the  
18 fund, including earnings, reaches the amount of one  
19 hundred thousand dollars, the department shall suspend  
20 the requirement to make any further annual deposits;  
21 provided, however, that a new licensee shall be  
22 required to deposit into the fund an amount equivalent  
23 to the amount deposited by other licensees as  
24 determined by the department and on the same basis.  
25 Pursuant to rules issued by the department, this fund  
26 shall be subject to the payment of claims arising  
27 against any licensee for failure to comply with the  
28 terms of this chapter with respect to the delivery  
29 of goods or services or the refund of money. The  
30 guarantee fund shall not be liable for the payment  
31 of a claim until the claimant has exhausted all civil  
32 and administrative remedies, including but not limited  
33 to bankruptcy proceedings.

34 Sec. 11. NEW SECTION. TERMS OF PREARRANGEMENT  
35 CONTRACTS.

36 1. A prearrangement contract shall not be executed  
37 by a licensee unless it complies with applicable  
38 federal and state disclosure requirements.

39 2. A prearrangement contract shall not be executed  
40 by a licensee unless it contains all of the following  
41 information:

42 a. The names and addresses of the licensee and  
43 of the buyer.

44 b. The name and address of the beneficiary.

45 c. Clear and conspicuous specifications of the  
46 goods and services to be delivered under the contract.

47 If the licensee is not the person by whom the goods  
48 or services are to be delivered, the contract must  
49 disclose the name and address of the person who is  
50 to deliver the goods or services, and the contract

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1 shall not be valid unless the person is a party to  
2 the contract and agrees in the contract to deliver  
3 the goods or services.

4 d. The price of each item to be delivered, the  
5 total contract price, and the manner in which the  
6 purchase price is to be paid.

7 e. The date and place of execution of the contract.

8 f. The type of trust account in which funds are  
9 to be held, and the total amount to be entrusted.

10 g. The signature of the individual executing the  
11 contract on behalf of the seller, and identification  
12 of the individual by typed or printed name and title  
13 or capacity.

14 3. A licensee shall not be entitled to enforce  
15 a contract made in violation of this section or another  
16 provision of this chapter, but the buyer or the legal  
17 representative of the buyer shall be entitled to  
18 recover all amounts paid in contemplation of the  
19 contract.

20 4. Delivery of goods pursuant to the contract  
21 shall be by actual or constructive delivery in ac-  
22 cordance with chapter 554.

23 5. Delivery of merchandise or services pursuant  
24 to the contract shall be due within a reasonable time  
25 after written notice to the licensee of the death  
26 of the beneficiary. If timely delivery cannot be  
27 made because of national emergency, strike,  
28 insurrection or act of God, the period for delivery  
29 shall be extended until the expiration of fifteen  
30 days after the termination of the event preventing  
31 delivery.

32 6. The contract shall contain a warranty to the  
33 buyer that the goods to be delivered under the contract  
34 will be accepted for intended purposes by any cemetery  
35 of the buyer's choice. Upon a breach of this warranty,  
36 the buyer shall have the option to cancel the contract  
37 and receive a refund of the money held in trust with  
38 respect to the contract, or to receive from trust  
39 such amount as may be necessary to remedy the breach.

40 7. The seller under a prearrangement contract  
41 is liable to the buyer for the performance of all  
42 obligations due the buyer under the contract or this  
43 chapter, whether or not another person has agreed  
44 to perform one or more of the obligations.

45 8. The written contract shall constitute the  
46 entire agreement between the parties relative to its  
47 subject matter. All obligations of both parties shall  
48 be fixed, and enforceable by the other parties to  
49 the contract.

50 Sec. 12. NEW SECTION. TERMINATION OF CONTRACT.

1 1. If the beneficiary of a prearrangement contract  
2 changes his or her place of legal residence to a place  
3 that makes delivery of part or all of the goods or  
4 services impossible or impracticable, the buyer is  
5 entitled to cancel the contract, and upon submitting  
6 a written request to the licensee is entitled to  
7 receive a refund equal to the greater of the sum paid  
8 by the buyer toward the purchase price of the contract  
9 or the amount held in trust with respect to the  
10 contract. Refunds shall be made within thirty days  
11 after receipt of the request.

12 2. Upon default by a licensee of a prearrangement  
13 contract, the buyer is entitled, upon submitting a  
14 written demand to the licensee, to receive a refund  
15 equal to the greater of the sum paid by the buyer  
16 toward the purchase price of the contract or the  
17 amount held in trust with respect to the contract.  
18 Refund shall be made within thirty days after receipt  
19 of the demand.

20 3. A prearrangement contract terminates if the  
21 licensee ceases doing business, dies, becomes insolvent  
22 or bankrupt, makes an assignment for the benefit of  
23 creditors, or otherwise is unable to satisfy  
24 obligations under this chapter unless, within thirty  
25 days of the occurrence of the event or within such  
26 additional period of time as may be granted by the  
27 department, the contract is assigned to another  
28 licensee who agrees in a writing submitted to the  
29 department to accept all liabilities and obligations  
30 arising out of the contract. An assignment does not  
31 preclude a termination until written approval is  
32 issued by the department.

33 4. A prearrangement contract terminates upon a  
34 breach of the contract by the buyer unless the parties  
35 agree following the occurrence of the breach to waive  
36 the termination of the contract because of that breach.  
37 Upon a termination, the buyer is entitled to receive  
38 a refund equal to the greater of the sum paid by the  
39 buyer toward the purchase price of the contract or  
40 the amount held in trust with respect to the contract.

41 5. A prearrangement contract terminates if the  
42 beneficiary dies before the buyer has paid the full  
43 purchase price, unless the parties or their  
44 representatives agree at the time of death to an  
45 alternate method of performance. Upon a termination  
46 the buyer is entitled to receive a refund equal to  
47 the greater of the sum paid by the buyer toward the  
48 purchase price or the amount held in trust with respect  
49 to the contract.

50 6. A prearrangement contract terminates if for

1 any reason the heir or personal representative of  
2 the beneficiary refuses to accept delivery. Upon  
3 a termination, the buyer is entitled to receive a  
4 refund equal to the greater of the sum paid by the  
5 buyer toward the purchase price or the amount held  
6 in trust with respect to the contract.

7 7. A licensee may not cancel a prearrangement  
8 contract except upon the default of the buyer.

9 8. Nothing contained in this section prohibits  
10 or restricts a buyer who is receiving public assistance  
11 from making an irrevocable prearrangement contract  
12 in accordance with rules of the department of social  
13 services.

14 Sec. 13. NEW SECTION. DESIGNATION OF TRUST FUND  
15 RECIPIENTS.

16 1. A licensee shall designate in writing to the  
17 department one or more individuals, either by name  
18 or by office or position, who shall be personally  
19 responsible for the receipt of trust funds and delivery  
20 of trust funds to the financial institution in which  
21 the funds are to be held. A licensee shall not  
22 substitute another individual except upon prior notice  
23 to the department.

24 2. A person designated as the trustee of a trust  
25 account or common trust fund shall not be replaced  
26 without prior written notice to and approval by the  
27 department.

28 Sec. 14. NEW SECTION. TRUST IMPOSED.

29 1. Except as provided in subsection 5,  
30 consideration received from a buyer under a  
31 prearrangement contract is impressed with a trust  
32 to the following extent:

33 a. With respect to services, seventy-five percent  
34 of the purchase price of the services contracted for.

35 b. With respect to goods, an amount equal to one  
36 hundred twenty-five percent of the ascribed cost of  
37 the goods contracted for. Ascribed cost shall be  
38 a cost figure determined on the basis of the average  
39 wholesale price of fungible goods available for  
40 purchase on the wholesale market during the preceding  
41 year.

42 2. If the purchase price is payable by the buyer  
43 in two or more payments, the amount received in trust  
44 is as follows:

45 a. With respect to services, that portion of each  
46 payment which bears the same relation to seventy-five  
47 percent of the price of the services as the amount  
48 of the payment bears to the total purchase price.

49 b. With respect to goods, that portion of each  
50 payment which bears the same relation to one hundred

1 twenty-five percent of the ascribed cost of the goods  
2 as the amount of the payment bears to the total  
3 purchase price.

4 3. Money received in trust under this section  
5 shall not be used, transferred or disbursed except  
6 as permitted by this chapter.

7 4. The department may, pursuant to administrative  
8 rules, reduce the amount required to be entrusted  
9 under this section with respect to any licensee who  
10 provides the department with evidence of financial  
11 responsibility that is equivalent to the trust  
12 requirements of this chapter.

13 5. A licensee is entitled to retain, for purposes  
14 of covering selling expenses, servicing costs and  
15 general overhead, an amount not to exceed one-half  
16 of each payment received until the licensee has  
17 received for its own use and benefit an amount not  
18 to exceed ten percent of the purchase price.

19 Sec. 15. NEW SECTION. TRUST FUND REQUIREMENTS.

20 1. A licensee shall designate a trustee to  
21 administer funds received in trust under this chapter.  
22 The trustee shall be a state or national bank or trust  
23 company authorized to engage in business as a trustee  
24 in this state.

25 2. Funds deposited with a trustee shall be held  
26 in a common trust fund under a written trust agreement  
27 naming the seller as trustor for the benefit of the  
28 buyers and beneficiaries of prearrangement contracts.  
29 The trust shall be administered in accordance with  
30 the provisions of this chapter, including any  
31 amendments enacted after the effective date of the  
32 trust agreement.

33 3. The trustee of the trust fund shall maintain  
34 accurate accounts, books and records of all trust  
35 fund transactions. The accounts, books and records  
36 shall be subject to examination by the department.

37 Sec. 16. NEW SECTION. RECORDS.

38 1. A licensee shall maintain accurate and current  
39 accounts, books and records for each prearrangement  
40 contract, and shall retain these documents for a  
41 period of three years following performance or other  
42 disposition of the contract. All accounts, books  
43 and records shall comply with generally accepted  
44 accounting principles.

45 2. The accounts, books and records required of  
46 a licensee include all of the following:

47 a. A copy of each prearrangement contract.

48 b. With respect to each contract, a record of  
49 payments received, amounts deposited in trust,

50 adjustments to trust balance, disbursements from trust

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1 and the reason for each disbursement and the recipient  
2 of the disbursement, and the date of every transaction.

3 c. The name and address of each financial  
4 institution in which trust funds are held, and the  
5 account number or its equivalent for each trust  
6 account.

7 d. The aggregate amount of funds held in trust,  
8 and a reconciliation of this amount with individual  
9 prearrangement contracts. All accounts must be  
10 reconciled at least quarterly, and on the same closing  
11 date.

12 e. A copy of each document which serves as  
13 authority under this chapter for the disbursement  
14 of trust funds.

15 f. Other documents or records required by  
16 administrative rule.

17 3. All accounts, books and records required by  
18 this section shall be maintained in this state and  
19 at the business location designated on the license.

20 Sec. 17. NEW SECTION. EARNINGS OF TRUST FUNDS.  
21 Earnings on entrusted funds shall be credited to the  
22 accounts of the respective contracts for which the  
23 trust funds are held, and shall be subject to  
24 reinvestment and distribution in the same manner as  
25 the original principal.

26 Sec. 18. NEW SECTION. DISTRIBUTION OF TRUST FUND.

27 1. The money held in trust with respect to a  
28 prearrangement contract shall be subject to  
29 distribution to the licensee upon the delivery of  
30 the goods and services as required by the contract.  
31 Disbursement shall not be made by the trustee until  
32 receipt of a written acknowledgement by the buyer  
33 or his or her heir or representative of performance  
34 of the contract, or until the expiration of ten days  
35 following receipt from the licensee of a written  
36 verification of performance of the contract.

37 2. If a prearrangement contract is terminated  
38 or canceled prior to performance for any of the causes  
39 set forth in section 12 of this Act, the buyer is  
40 entitled to receive a refund of the amount held in  
41 trust with respect to the contract. Distribution  
42 shall be made within thirty days after the receipt  
43 of a written request for a refund.

44 Sec. 19. NEW SECTION. TRUST FUNDS EXEMPT FROM  
45 PROCESS.

46 1. In the absence of fraud, funds held in trust  
47 as required by this chapter are not subject to  
48 attachment, garnishment or other process, or to  
49 seizure, appropriation or application by any legal  
50 or equitable process or by operation of law to any

1 debt or liability of the licensee, buyer or beneficiary  
2 under a prearrangement contract, except a debt or  
3 liability of the licensee to the buyer arising out  
4 of the prearrangement contract.

5 Sec. 20. NEW SECTION. ANNUAL REPORT.

6 1. A licensee shall submit an annual report to  
7 the department on forms supplied by the department.  
8 The report shall be filed not later than March 31,  
9 and shall disclose the condition of the licensee as  
10 of January 1 of the year in which filed.

11 2. The annual statement shall contain or be  
12 accompanied by all of the following:

13 a. An itemization of all outstanding prearrangement  
14 contracts, the dates of execution of these contracts,  
15 the names of all parties and beneficiaries under these  
16 contracts, the amount paid by the buyer with respect  
17 to each contract and the amount remaining to be paid  
18 by the buyer under each contract.

19 b. The name and address of the place of business  
20 of the licensee.

21 c. Verification by the licensee of the following:

22 (1) The licensee and the trustee had sufficient  
23 funds available during the calendar year to perform  
24 obligations under contracts.

25 (2) The licensee and trustees have complied with  
26 this chapter and rules of the department.

27 d. Such other information as may be considered  
28 necessary by the department in order for it to meet  
29 its responsibilities under this chapter.

30 3. If the licensee is an individual, the statement  
31 shall be sworn by him or her; if a firm or association,  
32 by all members thereof; and if a corporation, by the  
33 president and secretary thereof.

34 Sec. 21. NEW SECTION. EXAMINATION OF RECORDS.

35 The department shall, from time to time and at least  
36 once every three years, examine the records and affairs  
37 of each licensee or other person in relation to all  
38 matters relevant to the financial affairs of the  
39 licensee. The licensee or other person shall produce  
40 or make these records available for examination upon  
41 the request of the department. The department may  
42 examine the records and affairs of a licensee or other  
43 person at any time, whether or not in relation to  
44 a formal examination. A written report of each  
45 examination shall be maintained on file by the  
46 department and shall be subject to examination and  
47 copying by any person under chapter 68A.

48 Sec. 22. NEW SECTION. FEES.

49 1. An applicant for initial licensure under this  
50 chapter shall submit an application processing fee

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Page 13

1 of one hundred dollars. The processing fee is not  
2 subject to refund for any reason.

3 2. A licensee shall pay a fee for each examina-  
4 tion required or permitted by this chapter as  
5 determined by the department, provided that the fee  
6 shall not exceed five hundred dollars for any  
7 examination. The fee shall be based on the costs  
8 of each examination, including the salary and travel  
9 expenses of the examiner and all expenses incurred  
10 in the examination, plus those costs of operating  
11 and maintaining the department incurred as a result  
12 of this chapter. Each licensee shall be assessed  
13 a proportionate share of overall costs, based on the  
14 following schedule:

15 a. Each licensee having less than fifty outstanding  
16 prearrangement contracts shall pay a fee of fifty  
17 dollars plus an amount equal to one-fourth of one  
18 percent of the total amount held in trust.

19 b. Each licensee having fifty or more outstanding  
20 prearrangement contracts shall pay a fee of one hundred  
21 dollars plus an amount equal to one-fourth of one  
22 percent of the total amount held in trust.

23 Sec. 23. NEW SECTION. ADMINISTRATIVE RULES.

24 The department may adopt rules that are reasonably  
25 necessary in the administration and enforcement of  
26 this chapter.

27 Sec. 24. NEW SECTION. REMEDIAL ORDERS.

28 1. Upon notice and opportunity for hearing, the  
29 department may issue a remedial order against a person  
30 who is in violation of the requirements of this  
31 chapter. The respondent shall comply with the remedial  
32 order within such reasonable period of time as may  
33 be stated by the department in the order. The use  
34 of this authority by the department is discretionary,  
35 and is not required as a condition precedent to any  
36 other administrative, criminal or civil proceeding.

37 2. A hearing under this section shall be conducted  
38 as a contested case under chapter 17A.

39 Sec. 25. NEW SECTION. JUDICIAL ASSISTANCE.

40 1. The department may commence an action in the  
41 district court to obtain such remedial orders as may  
42 be necessary to stop or prevent violations of this  
43 chapter.

44 2. The board may commence an action in the district  
45 court to compel compliance with the requirements of  
46 this chapter, including rules promulgated under this  
47 chapter, or to compel compliance with a remedial order  
48 issued by the board.

49 Sec. 26. NEW SECTION. REVOCATION OF LICENSE.

50 1. The department may revoke a license issued

1 under this chapter upon any of the following grounds:

2 a. Failure of the licensee to file a required  
3 report.

4 b. Failure of the licensee to maintain proper  
5 bond.

6 c. Violation by a licensee or by any of its  
7 employees or agents of any provision of this chapter  
8 or any rule adopted under this chapter.

9 d. The existence of any fact which, if it had  
10 existed at the time of application for the licensee,  
11 would have been grounds for denial of a license.

12 e. Failure of a licensee to comply with a remedial  
13 order issued by the department or by the district  
14 court.

15 f. Bankruptcy of the licensee.

16 g. Dissolution of the business organization of  
17 the licensee, whether voluntary or involuntary.

18 2. Upon revocation of a license the department  
19 shall issue such orders as may be necessary to protect  
20 the beneficiaries of prearrangement contracts.

21 3. Revocation of a license does not absolve the  
22 licensee from liability on existing prearrangement  
23 contracts, and does not absolve the licensee from  
24 depositing funds into trust out of payments received  
25 from buyers subsequent to the date of revocation.

26 Sec. 27. NEW SECTION. VOLUNTARY LICENSE  
27 CANCELLATION.

28 1. A licensee may request in writing that the  
29 department cancel a license issued under this chapter.  
30 At the time of submitting the request the licensee  
31 shall surrender the license, or in the event of its  
32 loss or destruction the licensee shall submit a sworn  
33 statement to that effect.

34 2. A request for cancellation shall be accompanied  
35 by an affidavit of the licensee setting forth the  
36 following particulars:

37 a. The amount of trust funds held under this  
38 chapter, if any.

39 b. Whether or not those trust funds are to be  
40 refunded, and if so, the manner in which they are  
41 to be refunded.

42 c. Whether or not the obligations of the licensee  
43 under outstanding prearrangement contracts, if any,  
44 are to be assumed by another licensee, and if so the  
45 name and address of that licensee.

46 d. The date on which the licensee and its employees  
47 and agents ceased to sell goods or services pursuant  
48 to prearrangement contracts.

49 e. The specific reasons why the licensee wishes  
50 to cancel the license.

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Page 15

1 f. Whether or not any civil or criminal actions  
2 are pending against the licensee in this state, and  
3 if so, the title, case number, jurisdiction and nature  
4 of each action.

5 g. Other information required by administrative  
6 rule.

7 3. Upon receipt of a request to cancel a license,  
8 the department shall schedule the case for hearing  
9 as a contested case. The department shall give  
10 written notice of the request to the attorney general.

11 4. The department shall not cancel a license upon  
12 the request of a licensee except upon proof that the  
13 following conditions are satisfied, where applicable:

14 a. The rights of buyers under outstanding  
15 prearrangement contracts are secured, either through  
16 restitution of all payments made on these contracts,  
17 including the refunds payable out of trust, or through  
18 assumption by a qualified person of the performance  
19 obligations under those contracts, or through an  
20 undertaking filed by the licensee that it will per-  
21 form all contracts as the obligations arise in the  
22 future.

23 b. If the outstanding prearrangement contracts  
24 are to be assigned, the assignee agrees in writing  
25 with the department that it will comply with all  
26 relevant provisions of this chapter with respect to  
27 the contracts.

28 c. If the licensee is to perform the obligations  
29 of outstanding contracts, the licensee agrees in  
30 writing with the department that it will comply with  
31 all relevant provisions of this chapter until such  
32 time as all contract obligations have been satisfied  
33 and all trust funds distributed as permitted by this  
34 chapter.

35 d. If contracts are to be assigned, completion  
36 of such written documents as may be necessary to  
37 assure the continued existence of a qualified trustee.

38 Sec. 28. NEW SECTION. DISSOLUTION. A licensee  
39 shall give written notice to the department of the  
40 initiation of any voluntary or involuntary proceedings  
41 to dissolve the business entity of the licensee.  
42 The department shall take such actions and shall issue  
43 such orders as may be necessary to assure the proper  
44 disposition of trust funds; including but not limited  
45 to the commencement of an action for the appointment  
46 of a receiver. Upon written application and pursuant  
47 to hearing, the department may authorize the assignment  
48 of prearrangement contracts to another qualified  
49 person and the appointment of another trustee.

50 Sec. 29. NEW SECTION. LIABILITY OF SELLER FOR

1 BREACH OF CONTRACT. Nothing contained in this chapter  
2 shall absolve a seller from liability for breach of  
3 a prearrangement contract, provided that any amount  
4 refunded from trust shall mitigate damages incurred.

5 Sec. 30. NEW SECTION. PENALTIES.

6 1. A person who conducts business without a license  
7 in violation of this chapter commits an aggravated  
8 misdemeanor.

9 2. A licensee who fails to comply with the  
10 requirements of this chapter or rules promulgated  
11 under this chapter commits a serious misdemeanor.

12 Sec. 31. Section 156.9, subsection 3, Code 1981,  
13 is amended to read as follows:

14 3. If the funeral director ~~generally engages in~~  
15 ~~the business of selling or issuing burial contracts~~  
16 ~~or burial certificates in anticipation of the death~~  
17 ~~of a person,~~ or enters into any contract with another  
18 person to furnish funeral supplies or funeral service  
19 to persons who have been solicited by or who have  
20 agreed with that person to purchase the supplies or  
21 services. This subsection shall not apply to contracts  
22 with the United States or any department of the federal  
23 government or to any contract made in conjunction  
24 with the sale of any life insurance policy issued  
25 by a life insurance company licensed to transact  
26 business in Iowa.

27 Sec. 32. Section 156.12, Code 1981, is repealed.

28 Sec. 33. NEW SECTION. EFFECTIVE DATE--APPLICA-  
29 BILITY.

30 1. This Act takes effect January 1 following its  
31 enactment.

32 2. The department of banking may promulgate rules  
33 prior to the effective date of this Act, provided  
34 that any such rule shall take effect on the effective  
35 date of this Act.

36 3. A person engaged in the business of selling  
37 goods or services through prearrangement contracts  
38 on the effective date of this Act has a privilege  
39 to continue to make such sales without a license after  
40 the effective date of this Act, provided, however,  
41 that this privilege shall exist only if the applicant  
42 submits an application for a license within thirty  
43 days after the effective date, and this privilege  
44 terminates at such time thereafter as the department  
45 either denies a license or issues a license, and  
46 further provided that the seller otherwise shall  
47 comply with the provisions of this chapter."

H-5294 FILED  
MARCH 2, 1982

*Filed not germane 3/2 (\$ 629)*

BY TRUCANO of Polk  
COREY of Louisa

BRANDT of Black Hawk  
HORN of Linn

State Government  
Drake, Chair  
Lura  
Gallagher

BY HANSEN of O'Brien, CLARK of Lee, HARBOR, TOFTE, TYRRELL, GROSS, CONNORS, COCHRAN, WOODS, DIEMER, SCHROEDER, CRABB, MAULSBY, DANKER, JOHNSON of Linn, HALL, SWARTZ, ANDERSON of Jasper, OXLEY, PELLETT, JOHNSON of Woodbury, ANDERSON of Audubon, HOLT, DE GROOT, HALVORSON of Webster, SULLIVAN, DIELEMAN, PAVICH, BYERLY, RENKEN, WELSH, SWEARINGEN, JOCHUM, LONERGAN, CLARK of Cerro Gordo and GETTINGS

(As Amended and Passed by the House)

Re Passed House, Date 4-20-82 (p. 1586) Passed Senate, Date 4-8-82 (p. 1118)

Vote: Ayes 99 Nays 1 Vote: Ayes 46 Nays 1

Approved May 20 1982  
motion to reconsider (p. 1119) 2/10 4/14

# A BILL FOR

1 An Act relating to prearranged agreements for the final  
2 disposition of dead human bodies, and providing a penalty.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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House Amendments \_\_\_\_\_

5472, 5446, 5447, 5448, 5449, 5450, 5451, 5452, 5453, 5454, 5455, 5456, 5457, 5458, 5459, 5460, 5461, 5462, 5463, 5464, 5465, 5466, 5467, 5468, 5469, 5470, 5471, 5472, 5473, 5474, 5475, 5476, 5477, 5478, 5479, 5480, 5481, 5482, 5483, 5484, 5485, 5486, 5487, 5488, 5489, 5490, 5491, 5492, 5493, 5494, 5495, 5496, 5497, 5498, 5499, 5500

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1 Section 1. Section 523A.2, Code 1981, is amended to read  
2 as follows:

3 523A.2 DEPOSIT OF FUNDS--RECORDS--EXAMINATIONS.

4 1. a. All ~~such-trust~~ funds held in trust under section  
5 523A.1 shall be deposited in a an insured bank or-trust  
6 company, savings and loan association, or credit union  
7 authorized to ~~transact~~ conduct business in this state within  
8 thirty days after the receipt ~~thereof~~ of the funds and shall  
9 be held in a separate account or in one common trust fund  
10 under a trust agreement in the name of the depositor in trust  
11 for the designated beneficiary until ~~said-trust-fund-is~~  
12 released under either of the conditions provided in section  
13 523A.1.

14 b. The seller under an agreement referred to in section  
15 523A.1 shall maintain accurate records of all receipts,  
16 expenditures, interest or earnings, and disbursements re-  
17 lating to funds held in trust, and shall make these records  
18 available to the county attorney of the county in which the  
19 principal place of business of the seller is located for  
20 examination at any reasonable time upon request.

21 c. The seller under an agreement referred to in section  
22 523A.1 shall file not later than February 1 of each year with  
23 the county recorder of the county in which the seller maintains  
24 its principal place of business a copy of each trust agreement  
25 created as required by paragraph a of this subsection for  
26 sales made during the previous calendar year.

27 d. The seller under an agreement referred to in section  
28 523A.1 shall give notice to the county recorder for the county  
29 in which the trust agreement is filed of each receipt of funds  
30 held in trust under section 523A.1. This notice shall be  
31 given on forms furnished by the seller, and shall be given  
32 not later than February 1 of each year. Each notice shall  
33 contain the required information for all receipts of the  
34 seller during the previous calendar year.

35 e. A financial institution referred to in paragraph a

1 of this subsection shall give notice to the county recorder  
 2 for the county in which the trust agreement is filed of all  
 3 funds deposited under the trust agreement. This notice shall  
 4 be on forms furnished by the seller and shall be given not  
 5 later than ~~February~~ 1 of each year. Each notice shall contain  
 6 the required information for all deposits made during the  
 7 previous calendar year. The seller shall furnish the financial  
 8 institution with the appropriate forms.

9 f. Notwithstanding chapter 68A, all records maintained  
 10 by a county recorder under this subsection shall be  
 11 confidential and shall not be made available for inspection  
 12 or copying by any person except the county attorney or a  
 13 representative of the county attorney.

14 2. In addition to complying with subsection 1, each seller  
 15 under an agreement referred to in section 523A.1 shall file  
 16 annually with the county attorney of the county in which the  
 17 seller maintains its principal place of business a written  
 18 statement that is signed by the seller and notarized and that  
 19 contains all of the following information:

5464 20 a. Identification of each financial institution in which  
 21 trust funds are held under subsection 1, paragraph a, and  
 22 a listing of each trust agreement governing funds held in  
 23 the respective financial institutions and the date each  
 24 agreement was filed with the county recorder.

25 b. Authorization for the county attorney or a designee  
 26 to investigate, audit, and verify all funds, accounts, safe-  
 27 deposit boxes and other evidence of trust funds held by or  
 28 in a financial institution under paragraph a of this  
 29 subsection.

5452-30 3. ~~The state department of health~~ shall adopt rules under  
 31 chapter 17A specifying the form, content and cost of the forms  
 32 for the notices and disclosures required by this section,  
 33 and shall sell blank forms at that cost to any person on  
 34 request.

35 4. If a seller under an agreement referred to in section

1 523A.1 ceases to do business, whether voluntarily or involun-  
2 tarily, all funds held in trust under section 523A.1, including  
3 accrued interest or earnings, shall be repaid to the purchaser  
4 under the agreement.

5 5. The county attorney of the county in which a sale re-  
6 ferred to in section 523A.1 takes place may require the per-  
7 formance of an audit of the seller's business by a certified  
8 public accountant if the county attorney receives reasonable  
9 evidence that the seller is not complying with this chapter.  
10 The audit shall be paid for by the seller, and a copy of the  
11 report of audit shall be delivered to the county attorney  
12 and to the seller.

13 6. A seller or financial institution that knowingly fails  
14 to comply with any requirement of this section or that know-  
15 ingly submits false information in a document or notice re-  
16 quired by this section commits a serious misdemeanor.

17 Sec. 2. Section 523A.4, Code 1981, is repealed and the  
18 following inserted in lieu thereof:

19 523A.4 SCOPE OF CHAPTER.

20 1. This chapter applies only to the sale of funeral ser-  
21 vices, funeral merchandise, or a combination of these.

22 2. As used in this chapter:

23 a. "Funeral services" means one or more services to be  
24 provided at the time of the final disposition of a dead human  
25 body, including but not limited to services necessarily or  
26 customarily provided in connection with a funeral, or services  
27 necessarily or customarily provided in connection with the  
28 interment, entombment, or cremation of a dead human body,  
29 or a combination of these. "Funeral services" does not include  
30 perpetual care or maintenance to be furnished after interment.

31 b. "Funeral merchandise" means one or more types of  
32 personal property to be used at the time of the final  
33 disposition of a dead human body, including but not limited  
34 to clothing, caskets, and interment receptacles. "Funeral  
35 merchandise" does not include real property, and does not

1 include personal property which will be affixed to real  
2 property at the time of sale such as, but not limited to,  
3 grave markers, tombstones, and monuments.

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4 Sec. 3. Chapter 523A, Code 1981, is amended by adding  
5 the following new section:

6 NEW SECTION. Any prearranged agreement for the sale of  
7 funeral services or merchandise under this chapter shall be  
8 given to the customer at least seventy-two hours prior to  
9 its execution, and shall have affixed to its front the  
10 following notice:

11 YOU ARE ADVISED TO SEEK PROFESSIONAL ADVICE  
12 AND CONSULT WITH FAMILY MEMBERS CONCERNING THE  
13 LEGAL AND FINANCIAL EFFECTS OF THIS AGREEMENT  
14 BEFORE SIGNING IT. OTHER FINANCIAL  
15 ARRANGEMENTS ARE AVAILABLE TO ASSURE YOUR  
16 BURIAL ACCORDING TO YOUR WISHES. ANY PERSON  
17 OR INSTITUTION OFFERING TO SELL YOU  
18 PREARRANGED FUNERAL SERVICES OR MERCHANDISE  
19 MUST PROVIDE YOU THE AGREEMENT FOR YOUR  
20 REVIEW AT LEAST 72 HOURS BEFORE YOU SIGN IT.

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21 Sec. 4. Chapter 523A, Code 1981, as amended by this Act,  
22 applies only to agreements executed on or after the effective  
23 date of this Act. Agreements executed prior to the effective  
24 date of this Act shall be governed by chapter 523A as it  
25 existed on the date those agreements were executed.

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HOUSE FILE 2218

H-5312

1 Amend amendment H-5181 to House File 2218, as  
 2 follows:  
 3 1. Page 1, line 6, by striking the word  
 4 "bonded" and inserting in lieu thereof the word  
 5 "licensed".

H-5312 FILED MARCH 3, 1982 BY TRUCANO of Polk  
 ADOPTED BY UNANIMOUS CONSENT (p. 437)

HOUSE FILE 2218

H-5315

1 Amend House File 2218, as follows:  
 2 1. Page 3, by inserting after line 32 the  
 3 following: ...  
 4 "Sec. .... Chapter 523A, Code 1981, is amended  
 5 by adding the following new section:  
 6 NEW SECTION. Any prearranged agreement for the  
 7 sale of funeral services or merchandise under this  
 8 chapter shall be given to the customer at least  
 9 seventy-two hours prior to its execution, and shall  
 10 have affixed to its front the following notice:  
 11 YOU ARE ADVISED TO SEEK PROFESSIONAL ADVICE  
 12 AND CONSULT WITH FAMILY MEMBERS CONCERNING THE  
 13 LEGAL AND FINANCIAL EFFECTS OF THIS AGREEMENT  
 14 BEFORE SIGNING IT. OTHER FINANCIAL  
 15 ARRANGEMENTS ARE AVAILABLE TO ASSURE YOUR  
 16 BURIAL ACCORDING TO YOUR WISHES. ANY PERSON  
 17 OR INSTITUTION OFFERING TO SELL YOU  
 18 PREARRANGED FUNERAL SERVICES OR MERCHANDISE  
 19 MUST PROVIDE YOU THE AGREEMENT FOR YOUR  
 20 REVIEW AT LEAST 72 HOURS BEFORE YOU SIGN IT."

H-5315 FILED MARCH 3, 1982 BY PELTON of Clinton  
*Adopted 3/4 (p. 652)*

HOUSE FILE 2218

H-5343

1 Amend House File 2218, as follows:  
 2 1. Page 3, by striking lines 30 through 32 and  
 3 inserting in lieu thereof the following: "include  
 4 personal property which will become a part of the  
 5 real property at the time of interment, such as, but  
 6 not limited to, vaults, grave markers, tombstones  
 7 and monuments."

H-5343 FILED MARCH 8, 1982 BY SCHROEDER of Pottawattamie

HOUSE FILE 2218

H-5302

- 1 Amend amendment H-5294 to House File 2218, as  
2 follows:  
3 1. Page 10, by inserting after line 18, the  
4 following:  
5 "Sec. \_\_\_\_ . NEW SECTION. DEPOSIT OF TRUST FUNDS.  
6 All money received in trust under this chapter shall,  
7 within thirty days after receipt, be deposited in a  
8 savings and loan association or state or national  
9 bank authorized to transact business in this state.  
10 The deposit accounts or trust accounts shall be held  
11 in the name of the licensee for the benefit of  
12 buyers and beneficiaries of prearrangement contracts."  
13 2. By renumbering as necessary.

H-5302 FILED MARCH 3, 1982 BY TRUCANO of Polk  
ADOPTED (p. 628)

HOUSE FILE 2218

H-5303

- 1 Amend amendment H-5294 to House File 2218, as  
2 follows:  
3 1. Page 13, line 44, by striking the word  
4 "board" and inserting in lieu thereof the word  
5 "department".  
6 2. Page 13, line 48, by striking the word  
7 "board" and inserting in lieu thereof the word  
8 "department".

H-5303 FILED MARCH 3, 1982 BY TRUCANO of Polk  
ADOPTED (p. 629)

HOUSE FILE 2218

H-5301

- 1 Amend amendment H-5294 to House File 2218, as  
2 follows:  
3 1. Page 11, by striking lines 40 and 41 and  
4 inserting in lieu thereof the following: "entitled  
5 to receive a refund of the amount provided for by  
6 section 12 of this Act. Distribution".

H-5301 FILED MARCH 3, 1982 BY TRUCANO of Polk  
ADOPTED (p. 628)

HOUSE FILE 2218

S-5434

1 Amend the Committee on State Government amendment,  
2 S-5391, to House File 2218 as amended, passed, and  
3 reprinted by the House, as follows:  
4 1. By striking lines 9 through 15 and inserting  
5 in lieu thereof the following:  
6 "4. Page 3, by striking line 30 and inserting  
7 in lieu thereof the words "perpetual care or  
8 maintenance."  
9 5. Page 4, by striking lines 2 and 3 and inserting  
10 in lieu thereof the word "property."  
11 6. Page 4, by striking lines 6 through 20 and  
12 inserting in lieu thereof the following:  
13 "NEW SECTION. COMPLIANCE WITH OTHER LAWS. The  
14 seller of funeral services or funeral merchandise  
15 shall comply with chapter 82 with respect to all  
16 contracts that are subject to regulation under this  
17 chapter. A failure to comply is subject to the  
18 remedies and penalties provided in that chapter.  
19 Sec. \_\_\_\_ Chapter 523A, Code 1981, is amended  
20 by adding the following new section:  
21 NEW SECTION. BOND IN LIEU OF TRUST FUND.  
22 1. In lieu of the trust fund required by sections  
23 523A.1 and 523A.2, a seller may file with the county  
24 attorney of the county in which the seller maintains  
25 its principal place of business a bond issued by a  
26 surety company authorized to do business in this state  
27 and conditioned on the faithful performance by the  
28 seller of agreements subject to this chapter. A bond  
29 shall not be canceled by the surety company until  
30 at least sixty days after a notice of proposed  
31 cancellation given by restricted certified mail is  
32 received by the county attorney. A notice shall be  
33 given to the county attorney in the same manner if  
34 the bond is canceled. The liability of the surety  
35 company shall cover all agreements subject to this  
36 chapter made by the seller during the time the bond  
37 is in force.  
38 2. Section 523A.2, subsection 1, paragraphs b  
39 and f, subsection 5, and, to the extent it is  
40 applicable, subsection 6, apply to sellers and  
41 agreements subject to this section.  
42 3. Upon receiving a notice of proposed  
43 cancellation, the county attorney shall notify the  
44 seller that upon cancellation of the bond the seller  
45 becomes subject to all of this chapter including the  
46 penalty in section 523A.2, subsection 6, for all  
47 agreements subject to this chapter.  
48 4. Upon receiving a notice of cancellation, unless  
49 the seller has complied with sections 523A.1 and  
50 523A.2, the county attorney is entitled to an

1 injunction to prohibit the seller from making further  
 2 agreements subject to this chapter and an action to  
 3 attach and levy execution upon property of the seller  
 4 when the seller fails to perform an agreement subject  
 5 to this chapter, to the extent necessary to secure  
 6 compliance with this chapter, and may bring criminal  
 7 charges under section 523A.2, subsection 6.

8 Sec. \_\_\_\_\_. Section 82.1, Code 1981, is amended  
 9 by adding the following new subsection:

10 NEW SUBSECTION. "Door-to-door sale" also means  
 11 a sale of funeral services or funeral merchandise  
 12 regulated under chapter 523A, irrespective of the  
 13 place or manner of sale."

14 7. By renumbering as necessary."

S-5434 FILED BY RICHARD F. DRAKE  
 MARCH 31, 1982 WILLIAM D. PALMER

*Placed out of order 4/8 (p. 1117)*

HOUSE FILE 2218

S-5433

1 Amend House File 2218 as amended, passed, and  
 2 reprinted by the House, as follows:

3 1. Page 4, by inserting after line 20 the  
 4 following:

5 "Sec. \_\_\_\_\_. Chapter 523A, Code 1981, is amended  
 6 by adding the following new section:

7 NEW SECTION. EXEMPT TRANSACTIONS. Prearranged  
 8 agreements which are covered by the right of rescission  
 9 under Title 15 United States Code, Consumer Credit  
 10 Protection Act or right of rescission under Chapter  
 11 82 Code of Iowa Door to Door ~~Sales~~ are hereby exempt."

S-5433 FILED BY JOE BROWN  
 MARCH 31, 1982

*4/25 4/8 (p. 1118)*

HOUSE FILE 2218

S-5391

- 1 Amend House File 2218 as amended, passed and  
 2 reprinted by the House, as follows:  
 3 1. Page 1, line 22, by striking the word "February"  
 4 and inserting in lieu thereof the word "March".  
 5 2. Page 1, line 32, by striking the word "February"  
 6 and inserting in lieu thereof the word "March".  
 7 3. Page 2, line 5, by striking the word "February"  
 8 and inserting in lieu thereof the word "March".  
 9 4. Page 4, by inserting after line 3 the following:  
 10 "3. This Act does not apply to any cemetery that  
 11 maintains a bond that is issued by a surety company  
 12 authorized to do business in this state and that is  
 13 conditioned upon the faithful performance by the  
 14 cemetery of agreements that otherwise are subject  
 15 to this chapter."

S-5391 FILED BY COMMITTEE ON STATE GOVERNMENT  
 MARCH 29, 1982 JOHN N. NYSTROM, CHAIR

*Adopted as amended by 5523  
 4/8 (p. 1177)*

HOUSE FILE 2218

S-5411

- 1 Amend House File 2218 as amended, passed and  
 2 reprinted by the House, as follows:  
 3 1. Page 4, by inserting after line 20 the  
 4 following:  
 5 "Sec. Chapter 523A, Code 1981, is amended  
 6 by adding the following new section:  
 7 NEW SECTION. SURETY BOND.  
 8 1. The seller under contracts that are subject  
 9 to the trust requirements of this chapter shall  
 10 maintain a bond in the principal sum of twenty-five  
 11 thousand dollars that is issued by a corporate surety  
 12 company authorized to transact business in Iowa, and  
 13 in favor of the state of Iowa.  
 14 2. The bond required by subsection 1 shall be  
 15 held exclusively for the benefit of buyers under the  
 16 contracts who may be damaged by the failure of the  
 17 seller or the seller's employees or agents to comply  
 18 with the requirements of this chapter. The aggregate  
 19 liability of the surety for all breaches of the  
 20 conditions of the bond shall not exceed the principal  
 21 sum of the bond."

S-5411 FILED BY CHARLES P. MILLER

MARCH 30, 1982

*7/12 4/8 (p. 1115)*

S-5410

1 Amend House File 2218 as amended, passed and  
2 reprinted by the House, as follows:

3 1. Page 1, by inserting before line 1 the  
4 following:

5 "Section 1. Section 523A.1, Code 1981, is amended  
6 to read as follows:

7 523A.1 TRUST FUND ESTABLISHED.

8 1. Whenever an agreement is made by any person,  
9 firm or corporation for the final disposition of a  
10 dead human body wherein delivery of personal property  
11 to be used under a prearranged funeral plan or the  
12 furnishing of professional services of a funeral  
13 director or embalmer in connection therewith, is not  
14 immediately required, ~~eighty-percent-of-all-payments~~  
15 ~~made-under-the-agreement~~ the amount specified in  
16 subsection 2, including interest thereon, shall be  
17 and remain trust funds until occurrence of the death  
18 of the person for whose benefit the funds were paid,  
19 unless said funds are sooner released to the person  
20 making such payment by mutual consent of the parties.

21 2. The amount to be held in trust under subsection  
22 1 is equal to the sum of the following:

23 a. The contract price of funeral services to be  
24 delivered under the agreement.

25 b. The adjusted wholesale cost of funeral  
26 merchandise to be delivered under the agreement.

27 3. For purposes of subsection 2, "adjusted  
28 wholesale cost" means the wholesale cost of the funeral  
29 merchandise as of the date of execution of the  
30 agreement, provided that each year after the date  
31 of execution of the agreement the seller shall deposit  
32 an additional amount into trust equal to the increase  
33 in the wholesale price of the funeral merchandise  
34 during the previous year."

35 2. By renumbering sections.

S-5410 FILED  
MARCH 30, 1982

BY CHARLES P. MILLER

7/15 4/8 (p. 1113)

S-5465

HOUSE FILE 2218

1 Amend House File 2218 as amended, passed and  
2 reprinted by the House, as follows:

3 1. By striking everything after the enacting  
4 clause and inserting in lieu thereof the following:  
5 "Section 1. Chapter 523A, Code 1981, is repealed  
6 and sections 2 through 31 of this Act are inserted  
7 in lieu thereof.

8 Sec. 2. NEW SECTION. PURPOSE AND SCOPE. The  
9 purpose of this chapter is to provide security for  
10 the performance of contracts under which individuals  
11 arrange to obtain and pay in advance for goods or  
12 services to be used in connection with the final  
13 disposition of their own bodies or those of other  
14 persons after death. Except as provided in section  
15 3 of this Act, this chapter applies to any contract  
16 that contains these provisions, including but not  
17 limited to a contract for the sale of goods or  
18 services, or a contract to procure goods or services  
19 as an agent or independent contractor on behalf of  
20 the buyer.

21 Sec. 3. NEW SECTION. EXEMPTIONS. This chapter  
22 does not apply to any of the following:

- 23 1. A contract requiring the immediate delivery  
24 of all goods or services to be furnished.  
25 2. A contract that is subject to regulation under  
26 Title XX, relating to insurance.  
27 3. A trust agreement having substantial purposes  
28 other than that of providing for the final disposition  
29 of a dead human being.  
30 4. A contract for the sale of a cemetery lot,  
31 grave, grave marker, tombstone, monument, mausoleum  
32 crypt, turf-top crypt, niche or columbarium; provided,  
33 however, that this exemption does not apply if the  
34 contract also includes or is executed in contemplation  
35 of the sale of other goods or services pursuant to  
36 a prearrangement contract.

37 Sec. 4. NEW SECTION. OTHER LAWS NOT AFFECTED.  
38 This chapter does not supersede the provisions of  
39 chapter 156, relating to the licensure of funeral  
40 directors.

41 Sec. 5. NEW SECTION. DEFINITIONS. As used in  
42 this chapter, unless the context otherwise requires:

- 43 1. "Beneficiary" means the person in whose final  
44 disposition goods or services are to be furnished  
45 pursuant to a prearrangement contract.  
46 2. "Department" means the department of banking.  
47 3. "Earnings" means appreciation in value of a  
48 trust fund as a result of investment, including but  
49 not limited to interest income, dividends, and gains  
50 from the sale of investments.

1 4. "Funeral director" means a person licensed  
2 under chapter 156.  
3 5. "Licensee" means a person who is required to  
4 be licensed under this chapter.  
5 6. "Goods" means personal property to be used  
6 in connection with the final disposition of a dead  
7 human body, including but not limited to a casket,  
8 vault, grave marker, tombstone, monument, urn or vase.  
9 "Goods" does not include real property, and does not  
10 include personal property which is affixed to real  
11 property at the time of sale.  
12 7. "Prearrangement contract" or "contract" means  
13 a contract that is characterized, wholly or in part,  
14 by all of the following:  
15 a. A person promises to deliver or to secure the  
16 delivery of goods, services, or a combination of goods  
17 and services, that are to be used in the final  
18 disposition of the body of a specified individual  
19 after his or her death.  
20 b. The contract is executed prior to the death  
21 of the person in whose final disposition the goods  
22 or services are to be used, and delivery is or may  
23 be contingent upon the death of that person.  
24 c. Consideration is to be paid in advance, whether  
25 in a lump sum or in installments.  
26 8. "Purchase price" means the consideration that  
27 is to be paid under a prearrangement contract in  
28 exchange for the promise to deliver or to secure the  
29 delivery of the goods or services.  
30 9. "Seller" means a person who directly or through  
31 an agent or employee promises in a prearrangement  
32 contract to deliver or to secure the delivery of the  
33 goods or services. "To sell" includes a promise to  
34 furnish goods or services that are to be purchased  
35 from or supplied by another person.  
36 10. "Services" means services to be provided in  
37 connection with the final disposition of a dead human  
38 body, including but not limited to services necessarily  
39 or customarily provided in connection with a funeral,  
40 or services necessarily or customarily provided in  
41 connection with the interment, entombment or cremation  
42 of a dead human body, or a combination of these.  
43 "Services" does not include perpetual care or main-  
44 tenance to be furnished after interment, entombment  
45 or cremation.  
46 Sec. 6. NEW SECTION. PREARRANGEMENT CONTRACTS  
47 REGULATED. A person shall not offer or contract to  
48 deliver or to secure the delivery of goods or services  
49 pursuant to a prearrangement contract except when  
50 licensed under this chapter and except in accordance

1 with the provisions of this chapter. This section  
2 does not require the licensure of officers, employees  
3 or agents of a licensee while engaged in the  
4 solicitation or execution of contracts on behalf of  
5 the licensee.

6 Sec. 7. NEW SECTION. LICENSE APPLICATION. An  
7 application for a license shall be in a verified  
8 writing on forms furnished by the department. The  
9 application form shall contain or be accompanied by  
10 all of the following:

11 1. The applicant's name and business address,  
12 and the address of each of the applicant's offices  
13 within this state.

14 2. The name of each state or other jurisdiction  
15 in which the applicant presently is conducting the  
16 activity regulated under this chapter or any other  
17 similar business, the names under which the business  
18 is conducted, and the business addresses within each  
19 state or other jurisdiction.

20 3. A description of any adverse order, judgment  
21 or decree entered against the applicant by a regulatory  
22 agency or court in any state or other jurisdiction  
23 in relation to the activity regulated under this  
24 chapter or any other similar business.

25 4. The form of the applicant's business or-  
26 ganization, and if the applicant is a statutory entity,  
27 the jurisdiction in which organized and a copy of  
28 the articles of incorporation or other instrument  
29 establishing the applicant as a legal entity.

30 5. The name, address of residence, and principal  
31 occupation for the past five years of every director  
32 and officer of the applicant or every person occupying  
33 a similar status or performing similar functions;  
34 and the name, address and principal occupation for  
35 the past five years of every principal owner and  
36 principal stockholder, and for this purpose, any  
37 person whose interest in the applicant exceeds ten  
38 percent of the outstanding interests shall be a  
39 principal owner or stockholder.

40 6. Copies of the current financial statements  
41 of the applicant.

42 7. The name and address of each financial  
43 institution by which trust funds are to be held or  
44 administered under this chapter, and a copy of all  
45 trust agreements.

46 8. If any of the goods or services to be delivered  
47 under a contract are to be supplied by a person other  
48 than the applicant, the name and address of that  
49 person, a description of each item to be supplied  
50 by that person, and a copy of the contract, whether

1 existing or proposed, between the applicant and that  
2 person under which the goods or services are to be  
3 supplied.

4 9. An irrevocable appointment of the department  
5 as agent for the receipt of service of process in  
6 any civil proceeding arising under this chapter against  
7 the applicant, its principal owners, principal  
8 stockholders, directors or general manager or their  
9 personal representatives.

10 10. Other information or documents required by  
11 the department.

12 11. The names and addresses of all individuals  
13 who will be authorized by the applicant to solicit  
14 prearrangement sales on behalf of the licensee, and  
15 the names and addresses of all individuals who will  
16 be authorized by the applicant to execute  
17 prearrangement contracts on behalf of the applicant.

18 Sec. 8. NEW SECTION. ISSUANCE OR DENIAL OF  
19 LICENSE.

20 1. Upon receipt of proper application, the  
21 department shall issue a license if the department  
22 determines that the following criteria are satisfied:

23 a. The applicant has met all general requirements  
24 for engaging in business in this state.

25 b. The principal owners, principal stockholders,  
26 and all directors and officers or persons occupying  
27 similar status or performing similar functions have  
28 the ability, experience, integrity, financial stability  
29 and responsibility to engage in the licensed activity.

30 c. Capitalization of at least fifteen thousand  
31 dollars in counties with a population of not more  
32 than fifty thousand, capitalization of at least twenty-  
33 five thousand dollars in counties with a population  
34 between fifty thousand and one hundred fifty thousand,  
35 and capitalization of at least fifty thousand dollars  
36 in counties with a population of one hundred fifty  
37 thousand or more.

38 2. The department shall deny the license if it  
39 is determined that the application is incomplete,  
40 that the applicant has made false statements or  
41 misrepresentations in the application, that the  
42 applicant is insolvent, that the applicant has con-  
43 ducted business in a fraudulent manner, that the  
44 applicant is not authorized to transact business in  
45 this state, or that the required trust fund or  
46 depository has not been properly established. If  
47 a license is denied, the department shall give written  
48 notice to the applicant setting forth the reasons  
49 for denial.

50 3. The department shall issue or deny a license

1 within ninety days following receipt of proper  
2 application.

3 4. Upon issuance of a license, the licensee shall  
4 post and maintain the license on the business premises  
5 of the licensee and in a place where the license is  
6 readily visible to customers of the licensee.

7 5. A license issued under this chapter shall be  
8 in effect for a period of one year from the date  
9 issued, and may be renewed in the manner prescribed  
10 by the department.

11 Sec. 9. NEW SECTION. SURETY BOND.

12 1. At the time a license is issued a licensee  
13 shall post with the department and thereafter maintain  
14 in force either a bond in the principal sum of twenty-  
15 five thousand dollars issued by an authorized corporate  
16 surety in favor of the state of Iowa, or a deposit  
17 in the same amount made up of cash or negotiable  
18 securities or their equivalent. If a deposit is made  
19 in lieu of a bond, the deposit shall at all times  
20 be maintained at a market value of not less than the  
21 amount of the required bond. A licensee may deposit  
22 only those securities which are approved for use as  
23 a deposit by rule issued by the department.

24 2. In lieu of posting the full amount of the bond  
25 or deposit specified in subsection 1, the department  
26 may approve the posting of a bond or deposit in the  
27 amount of five thousand dollars or a whole number  
28 multiple thereof, not to exceed twenty-five thousand  
29 dollars, if it finds that the circumstances and status  
30 of the applicant's intended business do not immediately  
31 warrant the posting of the amount specified in  
32 subsection 1. The department thereafter may require  
33 the licensee periodically to post an additional bond  
34 or deposit of five thousand dollars or a whole number  
35 multiple thereof until the amount specified in  
36 subsection 1 is satisfied. The department may require  
37 a quarterly report during the period of time in which  
38 a licensee maintains a bond or deposit of an amount  
39 less than that specified in subsection 1.

40 3. The bond or deposit shall be held exclusively  
41 for the benefit of buyers under prearrangement  
42 contracts and other persons as their interests may  
43 appear who may be damaged by misuse or diversion of  
44 moneys by the seller or agents or employees of the  
45 seller. The aggregate liability of the surety for  
46 all breaches of the conditions of the bond shall,  
47 in no event, exceed the sum of the bond. The surety  
48 shall have the right to cancel a bond upon sixty days'  
49 notice to the department, and shall be relieved of  
50 liability for any breach of condition occurring after

1 the effective date of cancellation.

2 4. Upon written request by a licensee, the  
3 department may reduce the bond or deposit require-  
4 ment in five-thousand dollar increments if it finds  
5 that the circumstances and status of the licensee's  
6 business warrant a reduction.

7 5. The department shall release the bond or deposit  
8 after the licensee has ceased doing business and when  
9 the department is satisfied of the nonexistence of  
10 any obligation or liability of the licensee for which  
11 the bond or deposit is held.

12 Sec. 10. NEW SECTION. GUARANTEE TRUST FUND.  
13 A licensee shall, within thirty days after the end  
14 of its accounting year, deposit with the department  
15 the amount of ten dollars for each prearranged sale  
16 made during the accounting year. These funds shall  
17 be deposited by the department into a separate  
18 guarantee trust fund to be held and invested in  
19 accordance with the trust laws of Iowa. When the  
20 fund, including earnings, reaches the amount of one  
21 hundred thousand dollars, the department shall suspend  
22 the requirement to make any further annual deposits;  
23 provided, however, that a new licensee shall be  
24 required to deposit into the fund an amount equivalent  
25 to the amount deposited by other licensees as  
26 determined by the department and on the same basis.  
27 Pursuant to rules issued by the department, this fund  
28 shall be subject to the payment of claims arising  
29 against any licensee for failure to comply with the  
30 terms of this chapter with respect to the delivery  
31 of goods or services or the refund of money. The  
32 guarantee fund shall not be liable for the payment  
33 of a claim until the claimant has exhausted all civil  
34 and administrative remedies, including but not limited  
35 to bankruptcy proceedings.

36 Sec. 11. NEW SECTION. TERMS OF PREARRANGEMENT  
37 CONTRACTS.

38 1. A prearrangement contract shall not be executed  
39 by a licensee unless it complies with applicable  
40 federal and state disclosure requirements.

41 2. A prearrangement contract shall not be executed  
42 by a licensee unless it contains all of the following  
43 information:

44 a. The names and addresses of the licensee and  
45 of the buyer.

46 b. The name and address of the beneficiary.

47 c. Clear and conspicuous specifications of the  
48 goods and services to be delivered under the contract.

49 If the licensee is not the person by whom the goods  
50 or services are to be delivered, the contract must

1 disclose the name and address of the person who is  
2 to deliver the goods or services, and the contract  
3 shall not be valid unless the person is a party to  
4 the contract and agrees in the contract to deliver  
5 the goods or services.

6 d. The price of each item to be delivered, the  
7 total contract price, and the manner in which the  
8 purchase price is to be paid.

9 e. The date and place of execution of the contract.

10 f. The type of trust account in which funds are  
11 to be held, and the total amount to be entrusted.

12 g. The signature of the individual executing the  
13 contract on behalf of the seller, and identification  
14 of the individual by typed or printed name and title  
15 or capacity.

16 3. A licensee shall not be entitled to enforce  
17 a contract made in violation of this section or another  
18 provision of this chapter, but the buyer or the legal  
19 representative of the buyer shall be entitled to  
20 recover all amounts paid in contemplation of the  
21 contract.

22 4. Delivery of goods pursuant to the contract  
23 shall be by actual or constructive delivery in ac-  
24 cordance with chapter 554.

25 5. Delivery of merchandise or services pursuant  
26 to the contract shall be due within a reasonable time  
27 after written notice to the licensee of the death  
28 of the beneficiary. If timely delivery cannot be  
29 made because of national emergency, strike,  
30 insurrection or act of God, the period for delivery  
31 shall be extended until the expiration of fifteen  
32 days after the termination of the event preventing  
33 delivery.

34 6. The contract shall contain a warranty to the  
35 buyer that the goods to be delivered under the contract  
36 will be accepted for intended purposes by any cemetery  
37 of the buyer's choice. Upon a breach of this warranty,  
38 the buyer shall have the option to cancel the contract  
39 and receive a refund of the money held in trust with  
40 respect to the contract, or to receive from trust  
41 such amount as may be necessary to remedy the breach.

42 7. The seller under a prearrangement contract  
43 is liable to the buyer for the performance of all  
44 obligations due the buyer under the contract or this  
45 chapter, whether or not another person has agreed  
46 to perform one or more of the obligations.

47 8. The written contract shall constitute the  
48 entire agreement between the parties relative to its  
49 subject matter. All obligations of both parties shall  
50 be fixed, and enforceable by the other parties to

1 the contract.

2     Sec. 12. NEW SECTION. TERMINATION OF CONTRACT.

3     1. If the beneficiary of a prearrangement contract  
4 changes his or her place of legal residence to a place  
5 that makes delivery of part or all of the goods or  
6 services impossible or impracticable, the buyer is  
7 entitled to cancel the contract, and upon submitting  
8 a written request to the licensee is entitled to  
9 receive a refund equal to the greater of the sum paid  
10 by the buyer toward the purchase price of the contract  
11 or the amount held in trust with respect to the  
12 contract. Refunds shall be made within thirty days  
13 after receipt of the request.

14     2. Upon default by a licensee of a prearrangement  
15 contract, the buyer is entitled, upon submitting a  
16 written demand to the licensee, to receive a refund  
17 equal to the greater of the sum paid by the buyer  
18 toward the purchase price of the contract or the  
19 amount held in trust with respect to the contract.  
20 Refund shall be made within thirty days after receipt  
21 of the demand.

22     3. A prearrangement contract terminates if the  
23 licensee ceases doing business, dies, becomes insolvent  
24 or bankrupt, makes an assignment for the benefit of  
25 creditors, or otherwise is unable to satisfy  
26 obligations under this chapter unless, within thirty  
27 days of the occurrence of the event or within such  
28 additional period of time as may be granted by the  
29 department, the contract is assigned to another  
30 licensee who agrees in a writing submitted to the  
31 department to accept all liabilities and obligations  
32 arising out of the contract. An assignment does not  
33 preclude a termination until written approval is  
34 issued by the department.

35     4. A prearrangement contract terminates upon a  
36 breach of the contract by the buyer unless the parties  
37 agree following the occurrence of the breach to waive  
38 the termination of the contract because of that breach.  
39 Upon a termination, the buyer is entitled to receive  
40 a refund equal to the greater of the sum paid by the  
41 buyer toward the purchase price of the contract or  
42 the amount held in trust with respect to the contract.

43     5. A prearrangement contract terminates if the  
44 beneficiary dies before the buyer has paid the full  
45 purchase price, unless the parties or their  
46 representatives agree at the time of death to an  
47 alternate method of performance. Upon a termination  
48 the buyer is entitled to receive a refund equal to  
49 the greater of the sum paid by the buyer toward the  
50 purchase price or the amount held in trust with respect

1 to the contract.

2 6. A prearrangement contract terminates if for  
3 any reason the heir or personal representative of  
4 the beneficiary refuses to accept delivery. Upon  
5 a termination, the buyer is entitled to receive a  
6 refund equal to the greater of the sum paid by the  
7 buyer toward the purchase price or the amount held  
8 in trust with respect to the contract.

9 7. A licensee may not cancel a prearrangement  
10 contract except upon the default of the buyer.

11 8. Nothing contained in this section prohibits  
12 or restricts a buyer who is receiving public assistance  
13 from making an irrevocable prearrangement contract  
14 in accordance with rules of the department of social  
15 services.

16 Sec. 13. NEW SECTION. DESIGNATION OF TRUST FUND  
17 RECIPIENTS.

18 1. A licensee shall designate in writing to the  
19 department one or more individuals, either by name  
20 or by office or position, who shall be personally  
21 responsible for the receipt of trust funds and delivery  
22 of trust funds to the financial institution in which  
23 the funds are to be held. A licensee shall not  
24 substitute another individual except upon prior notice  
25 to the department.

26 2. A person designated as the trustee of a trust  
27 account or common trust fund shall not be replaced  
28 without prior written notice to and approval by the  
29 department.

30 Sec. 14. NEW SECTION. TRUST IMPOSED.

31 1. Except as provided in subsection 5,  
32 consideration received from a buyer under a  
33 prearrangement contract is impressed with a trust  
34 to the following extent:

35 a. With respect to services, seventy-five percent  
36 of the purchase price of the services contracted for.

37 b. With respect to goods, an amount equal to one  
38 hundred twenty-five percent of the ascribed cost of  
39 the goods contracted for. Ascribed cost shall be  
40 a cost figure determined on the basis of the average  
41 wholesale price of fungible goods available for  
42 purchase on the wholesale market during the preceding  
43 year.

44 2. If the purchase price is payable by the buyer  
45 in two or more payments, the amount received in trust  
46 is as follows:

47 a. With respect to services, that portion of each  
48 payment which bears the same relation to seventy-five  
49 percent of the price of the services as the amount  
50 of the payment bears to the total purchase price.

1 b. With respect to goods, that portion of each  
2 payment which bears the same relation to one hundred  
3 twenty-five percent of the ascribed cost of the goods  
4 as the amount of the payment bears to the total  
5 purchase price.

6 3. Money received in trust under this section  
7 shall not be used, transferred or disbursed except  
8 as permitted by this chapter.

9 4. The department may, pursuant to administrative  
10 rules, reduce the amount required to be entrusted  
11 under this section with respect to any licensee who  
12 provides the department with evidence of financial  
13 responsibility that is equivalent to the trust  
14 requirements of this chapter.

15 5. A licensee is entitled to retain, for purposes  
16 of covering selling expenses, servicing costs and  
17 general overhead, an amount not to exceed one-half  
18 of each payment received until the licensee has  
19 received for its own use and benefit an amount not  
20 to exceed ten percent of the purchase price.

21 Sec. 15. NEW SECTION. DEPOSIT OF TRUST FUNDS.  
22 All money received in trust under this chapter shall,  
23 within thirty days after receipt, be deposited in  
24 a savings and loan association or state or national  
25 bank authorized to transact business in this state.  
26 The deposit accounts or trust accounts shall be held  
27 in the name of the licensee for the benefit of buyers  
28 and beneficiaries of prearrangement contracts.

29 Sec. 16. NEW SECTION. TRUST FUND REQUIREMENTS.

30 1. A licensee shall designate a trustee to  
31 administer funds received in trust under this chapter.  
32 The trustee shall be a state or national bank or trust  
33 company authorized to engage in business as a trustee  
34 in this state.

35 2. Funds deposited with a trustee shall be held  
36 in a common trust fund under a written trust agreement  
37 naming the seller as trustor for the benefit of the  
38 buyers and beneficiaries of prearrangement contracts.  
39 The trust shall be administered in accordance with  
40 the provisions of this chapter, including any  
41 amendments enacted after the effective date of the  
42 trust agreement.

43 3. The trustee of the trust fund shall maintain  
44 accurate accounts, books and records of all trust  
45 fund transactions. The accounts, books and records  
46 shall be subject to examination by the department.

47 Sec. 17. NEW SECTION. RECORDS.

48 1. A licensee shall maintain accurate and current  
49 accounts, books and records for each prearrangement  
50 contract, and shall retain these documents for a

1 period of three years following performance or other  
2 disposition of the contract. All accounts, books  
3 and records shall comply with generally accepted  
4 accounting principles.

5 2. The accounts, books and records required of  
6 a licensee include all of the following:

7 a. A copy of each prearrangement contract.  
8 b. With respect to each contract, a record of  
9 payments received, amounts deposited in trust,  
10 adjustments to trust balance, disbursements from trust  
11 and the reason for each disbursement and the recipient  
12 of the disbursement, and the date of every transaction.  
13 c. The name and address of each financial  
14 institution in which trust funds are held, and the  
15 account number or its equivalent for each trust  
16 account.  
17 d. The aggregate amount of funds held in trust,  
18 and a reconciliation of this amount with individual  
19 prearrangement contracts. All accounts must be  
20 reconciled at least quarterly, and on the same closing  
21 date.  
22 e. A copy of each document which serves as  
23 authority under this chapter for the disbursement  
24 of trust funds.  
25 f. Other documents or records required by  
26 administrative rule.

27 3. All accounts, books and records required by  
28 this section shall be maintained in this state and  
29 at the business location designated on the license.

30 Sec. 18. NEW SECTION. EARNINGS OF TRUST FUNDS.  
31 Earnings on entrusted funds shall be credited to the  
32 accounts of the respective contracts for which the  
33 trust funds are held, and shall be subject to  
34 reinvestment and distribution in the same manner as  
35 the original principal.

36 Sec. 19. NEW SECTION. DISTRIBUTION OF TRUST FUND.  
37 1. The money held in trust with respect to a  
38 prearrangement contract shall be subject to  
39 distribution to the licensee upon the delivery of  
40 the goods and services as required by the contract.  
41 Disbursement shall not be made by the trustee until  
42 receipt of a written acknowledgement by the buyer  
43 or his or her heir or representative of performance  
44 of the contract, or until the expiration of ten days  
45 following receipt from the licensee of a written  
46 verification of performance of the contract.

47 2. If a prearrangement contract is terminated  
48 or canceled prior to performance for any of the causes  
49 set forth in section 12 of this Act, the buyer is  
50 entitled to receive a refund of the amount provided

1 for by section 12 of this Act. Distribution shall  
2 be made within thirty days after the receipt of a  
3 written request for a refund.

4 Sec. 20. NEW SECTION. TRUST FUNDS EXEMPT FROM  
5 PROCESS.

6 1. In the absence of fraud, funds held in trust  
7 as required by this chapter are not subject to  
8 attachment, garnishment or other process, or to  
9 seizure, appropriation or application by any legal  
10 or equitable process or by operation of law to any  
11 debt or liability of the licensee, buyer or beneficiary  
12 under a prearrangement contract, except a debt or  
13 liability of the licensee to the buyer arising out  
14 of the prearrangement contract.

15 Sec. 21. NEW SECTION. ANNUAL REPORT.

16 1. A licensee shall submit an annual report to  
17 the department on forms supplied by the department.  
18 The report shall be filed not later than March 31,  
19 and shall disclose the condition of the licensee as  
20 of January 1 of the year in which filed.

21 2. The annual statement shall contain or be  
22 accompanied by all of the following:

23 a. An itemization of all outstanding prearrangement  
24 contracts, the dates of execution of these contracts,  
25 the names of all parties and beneficiaries under these  
26 contracts, the amount paid by the buyer with respect  
27 to each contract and the amount remaining to be paid  
28 by the buyer under each contract.

29 b. The name and address of the place of business  
30 of the licensee.

31 c. Verification by the licensee of the following:

32 (1) The licensee and the trustee had sufficient  
33 funds available during the calendar year to perform  
34 obligations under contracts.

35 (2) The licensee and trustees have complied with  
36 this chapter and rules of the department.

37 d. Such other information as may be considered  
38 necessary by the department in order for it to meet  
39 its responsibilities under this chapter.

40 3. If the licensee is an individual, the statement  
41 shall be sworn by him or her; if a firm or association,  
42 by all members thereof; and if a corporation, by the  
43 president and secretary thereof.

44 Sec. 22. NEW SECTION. EXAMINATION OF RECORDS.

45 The department shall, from time to time and at least  
46 once every three years, examine the records and affairs  
47 of each licensee or other person in relation to all  
48 matters relevant to the financial affairs of the  
49 licensee. The licensee or other person shall produce  
50 or make these records available for examination upon

1 the request of the department. The department may  
2 examine the records and affairs of a licensee or other  
3 person at any time, whether or not in relation to  
4 a formal examination. A written report of each  
5 examination shall be maintained on file by the  
6 department and shall be subject to examination and  
7 copying by any person under chapter 68A.

8 Sec. 23. NEW SECTION. FEES.

9 1. An applicant for initial licensure under this  
10 chapter shall submit an application processing fee  
11 of one hundred dollars. The processing fee is not  
12 subject to refund for any reason.

13 2. A licensee shall pay a fee for each examina-  
14 tion required or permitted by this chapter as  
15 determined by the department, provided that the fee  
16 shall not exceed five hundred dollars for any  
17 examination. The fee shall be based on the costs  
18 of each examination, including the salary and travel  
19 expenses of the examiner and all expenses incurred  
20 in the examination, plus those costs of operating  
21 and maintaining the department incurred as a result  
22 of this chapter. Each licensee shall be assessed  
23 a proportionate share of overall costs, based on the  
24 following schedule:

25 a. Each licensee having less than fifty outstanding  
26 prearrangement contracts shall pay a fee of fifty  
27 dollars plus an amount equal to one-fourth of one  
28 percent of the total amount held in trust.

29 b. Each licensee having fifty or more outstanding  
30 prearrangement contracts shall pay a fee of one hundred  
31 dollars plus an amount equal to one-fourth of one  
32 percent of the total amount held in trust.

33 Sec. 24. NEW SECTION. ADMINISTRATIVE RULES.

34 The department may adopt rules that are reasonably  
35 necessary in the administration and enforcement of  
36 this chapter.

37 Sec. 25. NEW SECTION. REMEDIAL ORDERS.

38 1. Upon notice and opportunity for hearing, the  
39 department may issue a remedial order against a person  
40 who is in violation of the requirements of this  
41 chapter. The respondent shall comply with the remedial  
42 order within such reasonable period of time as may  
43 be stated by the department in the order. The use  
44 of this authority by the department is discretionary,  
45 and is not required as a condition precedent to any  
46 other administrative, criminal or civil proceeding.

47 2. A hearing under this section shall be conducted  
48 as a contested case under chapter 17A.

49 Sec. 26. NEW SECTION. JUDICIAL ASSISTANCE.

50 1. The department may commence an action in the

1 district court to obtain such remedial orders as may  
2 be necessary to stop or prevent violations of this  
3 chapter.

4 2. The department may commence an action in the  
5 district court to compel compliance with the  
6 requirements of this chapter, including rules  
7 promulgated under this chapter, or to compel compliance  
8 with a remedial order issued by the department.

9 Sec. 27. NEW SECTION. REVOCATION OF LICENSE.

10 1. The department may revoke a license issued  
11 under this chapter upon any of the following grounds:

12 a. Failure of the licensee to file a required  
13 report.

14 b. Failure of the licensee to maintain proper  
15 bond.

16 c. Violation by a licensee or by any of its  
17 employees or agents of any provision of this chapter  
18 or any rule adopted under this chapter.

19 d. The existence of any fact which, if it had  
20 existed at the time of application for the licensee,  
21 would have been grounds for denial of a license.

22 e. Failure of a licensee to comply with a remedial  
23 order issued by the department or by the district  
24 court.

25 f. Bankruptcy of the licensee.

26 g. Dissolution of the business organization of  
27 the licensee, whether voluntary or involuntary.

28 2. Upon revocation of a license the department  
29 shall issue such orders as may be necessary to protect  
30 the beneficiaries of prearrangement contracts.

31 3. Revocation of a license does not absolve the  
32 licensee from liability on existing prearrangement  
33 contracts, and does not absolve the licensee from  
34 depositing funds into trust out of payments received  
35 from buyers subsequent to the date of revocation.

36 Sec. 28. NEW SECTION. VOLUNTARY LICENSE  
37 CANCELLATION.

38 1. A licensee may request in writing that the  
39 department cancel a license issued under this chapter.  
40 At the time of submitting the request the licensee  
41 shall surrender the license, or in the event of its  
42 loss or destruction the licensee shall submit a sworn  
43 statement to that effect.

44 2. A request for cancellation shall be accompanied  
45 by an affidavit of the licensee setting forth the  
46 following particulars:

47 a. The amount of trust funds held under this  
48 chapter, if any.

49 b. Whether or not those trust funds are to be  
50 refunded, and if so, the manner in which they are

1 to be refunded.

2 c. Whether or not the obligations of the licensee  
3 under outstanding prearrangement contracts, if any,  
4 are to be assumed by another licensee, and if so the  
5 name and address of that licensee.

6 d. The date on which the licensee and its employees  
7 and agents ceased to sell goods or services pursuant  
8 to prearrangement contracts.

9 e. The specific reasons why the licensee wishes  
10 to cancel the license.

11 f. Whether or not any civil or criminal actions  
12 are pending against the licensee in this state, and  
13 if so, the title, case number, jurisdiction and nature  
14 of each action.

15 g. Other information required by administrative  
16 rule.

17 3. Upon receipt of a request to cancel a license,  
18 the department shall schedule the case for hearing  
19 as a contested case. The department shall give written  
20 notice of the request to the attorney general.

21 4. The department shall not cancel a license upon  
22 the request of a licensee except upon proof that the  
23 following conditions are satisfied, where applicable:

24 a. The rights of buyers under outstanding  
25 prearrangement contracts are secured, either through  
26 restitution of all payments made on these contracts,  
27 including the refunds payable out of trust, or through  
28 assumption by a qualified person of the performance  
29 obligations under those contracts, or through an  
30 undertaking filed by the licensee that it will per-  
31 form all contracts as the obligations arise in the  
32 future.

33 b. If the outstanding prearrangement contracts  
34 are to be assigned, the assignee agrees in writing  
35 with the department that it will comply with all  
36 relevant provisions of this chapter with respect to  
37 the contracts.

38 c. If the licensee is to perform the obligations  
39 of outstanding contracts, the licensee agrees in  
40 writing with the department that it will comply with  
41 all relevant provisions of this chapter until such  
42 time as all contract obligations have been satisfied  
43 and all trust funds distributed as permitted by this  
44 chapter.

45 d. If contracts are to be assigned, completion  
46 of such written documents as may be necessary to  
47 assure the continued existence of a qualified trustee.

48 Sec. 29. NEW SECTION. DISSOLUTION. A licensee  
49 shall give written notice to the department of the  
50 initiation of any voluntary or involuntary proceedings

1 to dissolve the business entity of the licensee.  
2 The department shall take such actions and shall issue  
3 such orders as may be necessary to assure the proper  
4 disposition of trust funds; including but not limited  
5 to the commencement of an action for the appointment  
6 of a receiver. Upon written application and pursuant  
7 to hearing, the department may authorize the assignment  
8 of prearrangement contracts to another qualified  
9 person and the appointment of another trustee.

10 Sec. 30. NEW SECTION. LIABILITY OF SELLER FOR  
11 BREACH OF CONTRACT. Nothing contained in this chapter  
12 shall absolve a seller from liability for breach of  
13 a prearrangement contract, provided that any amount  
14 refunded from trust shall mitigate damages incurred.

15 Sec. 31. NEW SECTION. PENALTIES.

16 1. A person who conducts business without a license  
17 in violation of this chapter commits an aggravated  
18 misdemeanor.

19 2. A licensee who fails to comply with the  
20 requirements of this chapter or rules promulgated  
21 under this chapter commits a serious misdemeanor.

22 Sec. 32. Section 156.9, subsection 3, Code 1981,  
23 is amended to read as follows:

24 3. If the funeral director ~~generally engages in~~  
25 ~~the business of selling or issuing burial contracts~~  
26 ~~or burial certificates in anticipation of the death~~  
27 ~~of a person, or~~ enters into any contract with another  
28 person to furnish funeral supplies or funeral service  
29 to persons who have been solicited by or who have  
30 agreed with that person to purchase the supplies or  
31 services. This subsection shall not apply to contracts  
32 with the United States or any department of the federal  
33 government or to any contract made in conjunction  
34 with the sale of any life insurance policy issued  
35 by a life insurance company licensed to transact  
36 business in Iowa.

37 Sec. 33. Section 156.12, Code 1981, is repealed.

38 Sec. 34. NEW SECTION. EFFECTIVE DATE--APPLICA-  
39 BILITY.

40 1. This Act takes effect January 1 following its  
41 enactment.

42 2. The department of banking may promulgate rules  
43 prior to the effective date of this Act, provided  
44 that any such rule shall take effect on the effective  
45 date of this Act.

46 3. A person engaged in the business of selling  
47 goods or services through prearrangement contracts  
48 on the effective date of this Act has a privilege  
49 to continue to make such sales without a license after  
50 the effective date of this Act, provided, however,

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1 that this privilege shall exist only if the applicant  
2 submits an application for a license within thirty  
3 days after the effective date, and this privilege  
4 terminates at such time thereafter as the department  
5 either denies a license or issues a license, and  
6 further provided that the seller otherwise shall  
7 comply with the provisions of this chapter."

S-5465 FILED BY CHARLES P. MILLER  
APRIL 2, 1982

*Placed out of order 4/8 (p. 118)*

HOUSE FILE 2218

S-5463

1 Amend House File 2218 as amended, passed and  
2 reprinted by the House, as follows:  
3 1. Page 4, by inserting after line 3 the following:  
4 "3. This chapter does not apply to the sale of  
5 any personal property by a person who is subject to  
6 chapter 566 or 566A."

S-5463 FILED BY CHARLES P. MILLER  
APRIL 2, 1982

*4/15 4/8 (p. 118)*

HOUSE FILE 2218

S-5464

1 Amend House File 2218 as amended, passed and  
2 reprinted by the House, as follows:  
3 1. Page 1, line 16, by inserting after the word  
4 "earnings," the word "agreements,".  
5 2. By striking page 1, line 21 through page 2,  
6 line 8.  
7 3. Page 2, by striking lines 23 and 24 and  
8 inserting in lieu thereof the words "the respective  
9 financial institutions and the date of each agreement."

S-5464 FILED BY CHARLES P. MILLER  
APRIL 2, 1982

*4/15 4/8 (p. 118)*

HOUSE FILE 2218

S-5435

- 1 Amend House File 2218 as amended, passed and
- 2 reprinted by the House, as follows:
- 3 1. Page 4, line 3, by striking the words "and
- 4 monuments" and inserting in lieu thereof the words
- 5 "monuments, and burial vaults".

S-5435 FILED

BY JOE BROWN

MARCH 31, 1982

*Placed out of order 4/8 (p 1118)*

HOUSE FILE 2218

S-5436

- 1 Amend House File 2218 as amended, passed and
- 2 reprinted by the House, as follows:
- 3 1. Page 3, by inserting after line 21 the
- 4 following:
- 5 "This chapter does not apply to sales by cemeteries
- 6 wherein the personal property is to be actually
- 7 delivered or installed at cemeteries when requested
- 8 by the purchaser. This provision shall only apply
- 9 if included in the original contract."

S-5436 FILED

BY JOE BROWN

MARCH 31, 1982

*M/S 4/8 (p 1118)*

HOUSE FILE 2218

S-5437

- 1 Amend House File 2218 as amended, passed and
- 2 reprinted by the House, as follows:
- 3 1. Page 4, by inserting after line 3 the following:
- 4 "3. This chapter does not apply to the sale of
- 5 any personal property by a person who is subject to
- 6 chapter 566 or 566A."

S-5437 FILED

BY CHARLES P. MILLER

MARCH 31, 1982

*M/S 4/8 (p 1118)*

HOUSE FILE 2218

S-5452

- 1 Amend House File 2218 as amended, passed and
- 2 reprinted by the House, as follows:
- 3 1. Page 2, line 30, by striking the words "state
- 4 department of health" and inserting in lieu thereof
- 5 the words "insurance department".

S-5452 FILED

BY RICHARD F. DRAKE

APRIL 1, 1982

WILLIAM D. PALMER

*Placed out of order 4/8 (p 1118)*

S-5472

1 Amend House File 2218 as amended, passed and  
2 reprinted by the House, as follows:

3 1. By striking everything after the enacting  
4 clause and inserting in lieu thereof the following:

5 "Section 1. Sections 2 through 12 of this Act  
6 are enacted as a new chapter of the Code.

7 Sec. 2. NEW SECTION. PURPOSE AND SCOPE. The  
8 purpose of this chapter is to provide security for  
9 the performance of contracts, transactions, or other  
10 arrangements under which individuals obtain and pay  
11 in advance for goods or services to be used in  
12 connection with and at the final disposition of their  
13 own bodies or those of other persons after death.  
14 This chapter applies to any contract that contains  
15 these provisions, including but not limited to a  
16 contract for the sale of goods or services, or a  
17 contract to procure goods or services as an agent  
18 or independent contractor on behalf of the buyer.

19 Sec. 3. NEW SECTION. OTHER LAWS NOT AFFECTED.  
20 This chapter does not supersede chapter 156, relating  
21 to the licensure of funeral directors.

22 Sec. 4. NEW SECTION. DEFINITIONS. As used in  
23 this chapter, unless the context otherwise requires:

24 1. "Department" means the department of banking.

25 2. "Licensee" means a person who is required to  
26 be licensed under this chapter.

27 Sec. 5. NEW SECTION. LICENSE REQUIRED. A person  
28 shall not offer or contract to deliver or to secure  
29 the delivery of goods or services pursuant to a  
30 prearrangement contract except when licensed under  
31 this chapter and except in accordance with this  
32 chapter. This section does not require the licensure  
33 of officers, employees, or agents of a licensee while  
34 engaged in the solicitation or execution of contracts  
35 on behalf of the licensee.

36 Sec. 6. NEW SECTION. LICENSE APPLICATION. An  
37 application for a license shall be in a verified  
38 writing on forms furnished by the department. The  
39 application form shall contain or be accompanied by  
40 all of the following:

41 1. The applicant's name and business address,  
42 and the address of each of the applicant's offices  
43 within this state.

44 2. The name of each state or other jurisdiction  
45 in which the applicant presently is conducting the  
46 activity regulated under this chapter or any other  
47 similar business, the names under which the business  
48 is conducted, and the business addresses within each  
49 state or other jurisdiction.

50 3. A description of any adverse order, judgment,

1 or decree entered against the applicant by a regulatory  
2 agency or court in any state or other jurisdiction  
3 in relation to the activity regulated under this  
4 chapter or any other similar business.

5 4. The name of the jurisdiction in which the  
6 applicant is organized as a corporation, and a copy  
7 of the articles of incorporation.

8 5. The name, address or residence, and principal  
9 occupation for the past three years of every director  
10 and officer of the applicant or every person occupying  
11 a similar status or performing similar functions;  
12 and the name, address, and principal occupation for  
13 the past three years of every principal owner and  
14 principal stockholder, and for this purpose, any  
15 person whose interest in the applicant exceeds twenty-  
16 five percent of the outstanding interests is a  
17 principal owner or stockholder.

18 6. Copies of the current tax return or financial  
19 statement of the applicant.

20 7. The name and address of each financial  
21 institution by which trust funds are to be held or  
22 administered under this chapter, and a copy of all  
23 trust agreements.

24 8. If any of the goods or services to be delivered  
25 under a contract are to be supplied by a person other  
26 than the applicant, the name and address of that  
27 person, a description of each item to be supplied  
28 by that person, and a copy of the contract, whether  
29 existing or proposed, between the applicant and that  
30 person under which the goods or services are to be  
31 supplied.

32 9. An irrevocable appointment of the department  
33 as agent for the receipt of service of process in  
34 any civil proceeding arising under this chapter against  
35 the applicant, its principal owners, principal  
36 stockholders, directors or general manager, or their  
37 personal representatives.

38 10. An application fee of one hundred dollars.

39 Sec. 7. NEW SECTION. ISSUANCE OR DENIAL OF  
40 LICENSE.

41 1. Upon receipt of proper application, the  
42 department shall issue a license if the department  
43 determines that the following criteria are satisfied:

44 a. The applicant has met all general requirements  
45 for engaging in business in this state.

46 b. The officers or persons occupying similar  
47 status or performing similar functions have the  
48 ability, experience, integrity, financial stability,  
49 and responsibility to engage in the licensed activity.

50 2. The department shall deny the license if it

1 is determined that the application is incomplete,  
2 that the applicant has made false statements or  
3 misrepresentations in the application, that the  
4 applicant is insolvent, that the applicant has  
5 conducted business in a fraudulent manner, that the  
6 applicant is not authorized to transact business in  
7 this state, or that the required trust fund or  
8 depository has not been properly established. If  
9 a license is denied, the department shall give written  
10 notice to the applicant setting forth the specific  
11 reasons for denial and the method by which the  
12 applicant may remedy the deficiency. If the denial  
13 is not remedied within thirty days, the applicant  
14 may request a hearing on the denial. The hearing  
15 should be conducted as a contested case under chapter  
16 17A.

17 3. The department shall either issue or deny a  
18 license within ninety days following receipt of proper  
19 application unless the period is extended with consent  
20 of the applicant.

21 4. Upon issuance of a license, the licensee shall  
22 post and maintain the license on the business premises  
23 of the licensee and in a place where the license is  
24 readily visible to customers of the licensee.

25 5. A license issued under this chapter shall be  
26 for a term of five years from the date issued, and  
27 may be renewed upon application and payment of the  
28 application fee.

29 Sec. 8. NEW SECTION. DELIVERY. Delivery of goods  
30 pursuant to a prearrangement contract shall be by  
31 actual or constructive delivery in accordance with  
32 chapter 554.

33 Sec. 9. NEW SECTION. TRUST IMPOSED.

34 1. Consideration received from a buyer under a  
35 prearrangement contract is impressed with a trust  
36 to the following extent:

37 a. With respect to services, seventy-five percent  
38 of the purchase price of the services contracted for.

39 b. With respect to goods, an amount equal to one  
40 hundred ten percent of the ascribed cost of the goods  
41 contracted for. Ascribed cost is a cost figure  
42 determined on the basis of the average wholesale price  
43 of similar goods available for purchase on the  
44 wholesale market during the preceding year.

45 2. If the purchase price is payable by the buyer  
46 in two or more payments, the amount received in trust  
47 is as follows:

48 a. With respect to services, that portion of each  
49 payment which bears the same relation to seventy-five  
50 percent of the price of the services as the amount

1 of the payment bears to the total purchase price.  
2 b. With respect to goods, that portion of each  
3 payment which bears the same relation to one hundred  
4 ten percent of the ascribed cost of the goods as the  
5 amount of the payment bears to the total purchase  
6 price.

7 Sec. 10. NEW SECTION. TRUST FUND REQUIREMENTS.

8 1. The trustee of the trust fund shall maintain  
9 accurate accounts, books, and records of all trust  
10 fund transactions. The accounts, books, and records  
11 are subject to examination by the department.

12 2. The department may authorize a licensee to  
13 act as trustee of a trust fund established under this  
14 section upon written application by the licensee.  
15 Authorization shall be given by the department if  
16 the licensee establishes one or more of the following:

17 a. The licensee is financially responsible in  
18 accordance with criteria established by rule.

19 b. No state or national bank or trust company  
20 that is convenient to the licensee's place of business  
21 will accept the funds.

22 c. The licensee files with the department a  
23 performance bond or its equivalent equal to fifty  
24 percent of the value of the trust fund.

25 d. Other criteria established by administrative  
26 rule.

27 Sec. 11. NEW SECTION. REVOCATION OF LICENSE.

28 1. The department may revoke a license issued  
29 under this chapter with a hearing conducted as a  
30 contested case under chapter 17A upon any of the  
31 following grounds:

32 a. Violation by a licensee or by any of its  
33 employees or agents of any provision of this chapter.

34 b. The existence of any fact which, if it had  
35 existed at the time of application for the licensee,  
36 would have been grounds for denial of a license.

37 c. Bankruptcy of the licensee.

38 d. Dissolution of the business organization of  
39 the licensee, whether voluntary or involuntary.

40 2. Upon revocation of a license the department  
41 shall issue orders as necessary to protect the  
42 beneficiaries of prearrangement contracts.

43 3. Revocation of a license does not absolve the  
44 licensee from liability on existing prearrangement  
45 contracts, and does not absolve the licensee from  
46 depositing funds into trust with respect to payments  
47 received subsequent to the date of revocation.

48 Sec. 12. NEW SECTION. PENALTIES.

49 1. A person who conducts business without a license  
50 in violation of this chapter commits an aggravated

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APRIL 7, 1982

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e 5

1 misdemeanor.

2 2. A licensee who fails to comply with this chapter  
3 commits a serious misdemeanor.

4 Sec. 13. Chapter 523A, Code 1981, is repealed.

5 Sec. 14. This Act takes effect January 1 following  
6 enactment, and applies to contracts executed on or  
7 after that date."

8 2. Amend the title, by striking lines 1 and 2  
9 and inserting in lieu thereof the words "An Act  
10 regulating the pre-need sale of funeral and cemetery  
11 goods or services and providing penalties."

S-5472 FILED BY JOE BROWN  
APRIL 6, 1982

*Placed out of order 4/5 (p. 1118)*

S-5523

1 Amend the Committee on State Government amendment,  
2 S-5391, to House File 2218 as amended, passed and  
3 reprinted by the House, as follows:  
4 1. By striking lines 9 through 15 and inserting  
5 in lieu thereof the following:  
6 "4. Page 2, line 30, by striking the words "state  
7 department of health" and inserting in lieu thereof  
8 the words "insurance department".  
9 5. Page 3, line 21, by inserting after the word  
10 "these" the words ", pursuant to a prearranged funeral  
11 plan".  
12 6. Page 3, by striking line 30 and inserting in  
13 lieu thereof the words "perpetual care or maintenance."  
14 7. Page 3, line 34, by inserting after the word  
15 "caskets," the word "vaults,".  
16 8. Page 4, by striking lines 1 through 3 and  
17 inserting in lieu thereof the words "include grave  
18 markers, tombstones, ornamental merchandise, and  
19 monuments."  
20 9. Page 4, by striking lines 6 through 20 and  
21 inserting in lieu thereof the following:  
22 "NEW SECTION. COMPLIANCE WITH OTHER LAWS. The  
23 seller of funeral services or funeral merchandise  
24 shall comply with chapter 82 with respect to all  
25 contracts that are subject to regulation under this  
26 chapter. A failure to comply is subject to the  
27 remedies and penalties provided in that chapter.  
28 Sec. \_\_\_\_ Chapter 523A, Code 1981, is amended  
29 by adding the following new section:  
30 NEW SECTION. BOND IN LIEU OF TRUST FUND.  
31 1. In lieu of the trust fund required by sections  
32 523A.1 and 523A.2, a seller may file with the county  
33 attorney of the county in which the seller maintains  
34 its principal place of business a surety bond in open  
35 penalty that is issued by a surety company authorized  
36 to do business in this state and that is conditioned  
37 on the faithful performance by the seller of agreements  
38 subject to this chapter. The liability of the surety  
39 extends to each agreement that is subject to this  
40 chapter and that is executed during the time the bond  
41 is in force and until performance of the agreement  
42 or rescission of the agreement by mutual consent of  
43 the parties; and, to the extent expressly agreed to  
44 in writing by the surety company under subsection  
45 3, paragraph b, the liability of the surety extends  
46 to each agreement that is subject to this chapter  
47 and that was executed prior to the time the bond was  
48 in force and until performance of the agreement or  
49 rescission of the agreement by mutual consent of the  
50 parties. A buyer who is aggrieved by a breach of

1 a condition of the bond covering the contract of that  
2 buyer may maintain an action against the bond, provided  
3 that the surety shall not be liable as a result of  
4 any breach of condition unless notice of a claim is  
5 received by the surety within sixty days following  
6 the acts, omissions or conditions constituting the  
7 breach of condition, except as otherwise provided  
8 in subsection 2. A surety bond submitted under this  
9 subsection shall not be canceled by a surety company  
10 except upon a written notice of cancellation given  
11 by the surety company to the county attorney by  
12 restricted certified mail, and the surety bond shall  
13 not be canceled prior to the expiration of sixty days  
14 after the receipt by the county attorney of the notice  
15 of cancellation.

16 2. If a seller becomes insolvent or otherwise  
17 ceases to engage in business prior to or within sixty  
18 days after the cancellation of a bond submitted under  
19 subsection 1, the seller shall be deemed to have  
20 breached the conditions of the surety bond with respect  
21 to all outstanding contracts subject to this chapter  
22 as of the day prior to cancellation of the bond.  
23 The county attorney shall mail written notice by  
24 restricted certified mail to the buyer under each  
25 outstanding contract of the seller that a claim against  
26 the bond must be filed with the surety company within  
27 sixty days after the date of mailing of the notice.  
28 The surety company shall cease to be liable with  
29 respect to all agreements except those for which  
30 claims are filed with the surety company within sixty  
31 days after the date the notices are mailed by the  
32 county attorney.

33 3. If a surety bond is canceled by a surety company  
34 under any conditions other than those specified in  
35 subsection 2, the seller shall comply with paragraphs  
36 a and b of this subsection:

37 a. The seller shall comply with the trust  
38 requirements of sections 523A.1 and 523A.2 with respect  
39 to all contracts subject to this chapter that are  
40 executed on or after the effective date of cancellation  
41 of the surety bond, or the seller may submit a  
42 substitute surety bond meeting the requirements of  
43 subsection 1, provided that the seller shall comply  
44 with sections 523A.1 and 523A.2 with respect to any  
45 contracts executed on or after the effective date  
46 of cancellation of the earlier surety bond and prior  
47 to the date on which the later surety bond takes  
48 effect.

49 b. Within sixty days after the effective date  
50 of the cancellation of the surety bond, the seller

1 shall submit to the county attorney an undertaking  
2 by another surety company that a substitute surety  
3 bond meeting the requirements of subsection 1 is in  
4 effect and that the liability of the substitute surety  
5 bond extends to all outstanding contracts of the  
6 seller that were executed but not performed or  
7 extinguished prior to the effective date of the  
8 substitute surety bond, or the seller shall submit  
9 to the county attorney a financial statement  
10 accompanied by an unqualified opinion based upon an  
11 audit performed by a certified public accountant  
12 licensed in this state certifying the total amount  
13 of outstanding liabilities of the seller on contracts  
14 subject to this chapter and proof of deposit by the  
15 seller in trust under sections 523A.1 and 523A.2 of  
16 either the amount specified in sections 523A.1 with  
17 respect to all of those outstanding contracts or such  
18 lesser amount as is certified in the report of the  
19 certified public accountant to be adequate to assure  
20 the performance by the seller of each of those  
21 outstanding contracts. Upon compliance by the seller  
22 with this paragraph, the surety company canceling  
23 the surety bond shall cease to be liable with respect  
24 to any outstanding contracts of the seller except  
25 those with respect to which a breach of condition  
26 occurred prior to cancellation and timely claims were  
27 filed.

28 4. Section 523A.2, subsection 1, paragraphs b  
29 and f, subsection 5, and, to the extent it is  
30 applicable, subsection 6, apply to sellers whose  
31 agreements are covered by a surety bond maintained  
32 under this section, and section 523A.2 continues to  
33 apply to any agreements of those sellers that are  
34 not covered by a surety bond maintained under this  
35 section.

36 5. Upon receiving a notice of cancellation of  
37 a surety bond, the county attorney shall notify the  
38 seller of the requirements of this chapter resulting  
39 from cancellation of the bond. The notice may be  
40 in the form of a copy of this section and sections  
41 523A.1 and 523A.2.

42 6. Upon receiving a notice of cancellation, unless  
43 the seller has complied with the requirements of this  
44 section, the county attorney shall seek an injunction  
45 to prohibit the seller from making further agreements  
46 subject to this chapter and shall commence an action  
47 to attach and levy execution upon property of the  
48 seller when the seller fails to perform an agreement  
49 subject to this chapter, to the extent necessary to  
50 secure compliance with this chapter, and may bring

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1 criminal charges under section 523A.2, subsection  
2 6.

3 Sec. \_\_\_\_ Section 82.1, Code 1981, is amended  
4 by adding the following new subsection:

5 NEW SUBSECTION. "Door-to-door sale" also means  
6 a sale of funeral services or funeral merchandise  
7 regulated under chapter 523A, irrespective of the  
8 place or manner of sale."

9 2. By renumbering as necessary.

S-5523 FILED

APRIL 7, 1982

*Adopted 4/8 (p. 1117)*

BY RICHARD F. DRAKE  
CHARLES P. MILLER  
JOE BROWN  
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FORREST V. SCHWENGELS  
ROLF V. CRAFT  
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SENATE AMENDMENT TO HOUSE FILE 2218

H-5840

1 Amend House File 2218 as amended, passed and  
2 reprinted by the House, as follows:  
3 1. Page 1, line 22, by striking the word "February"  
4 and inserting in lieu thereof the word "March".  
5 2. Page 1, line 32, by striking the word "February"  
6 and inserting in lieu thereof the word "March".  
7 3. Page 2, line 5, by striking the word "February"  
8 and inserting in lieu thereof the word "March".  
9 4. Page 2, line 30, by striking the words "state  
10 department of health" and inserting in lieu thereof  
11 the words "insurance department".  
12 5. Page 3, line 21, by inserting after the word  
13 "these" the words ", pursuant to a prearranged funeral  
14 plan".  
15 6. Page 3, by striking line 30 and inserting in  
16 lieu thereof the words "perpetual care or maintenance."  
17 7. Page 3, line 34, by inserting after the word  
18 "caskets," the word "vaults,".  
19 8. Page 4, by striking lines 1 through 3 and  
20 inserting in lieu thereof the words "include grave  
21 markers, tombstones, ornamental merchandise, and  
22 monuments."  
23 9. Page 4, by striking lines 6 through 20 and  
24 inserting in lieu thereof the following:  
25 "NEW SECTION. COMPLIANCE WITH OTHER LAWS. The  
26 seller of funeral services or funeral merchandise  
27 shall comply with chapter 82 with respect to all  
28 contracts that are subject to regulation under this  
29 chapter. A failure to comply is subject to the  
30 remedies and penalties provided in that chapter.  
31 Sec. \_\_\_\_\_. Chapter 523A, Code 1981, is amended  
32 by adding the following new section:  
33 "NEW SECTION. BOND IN LIEU OF TRUST FUND.  
34 1. In lieu of the trust fund required by sections  
35 523A.1 and 523A.2, a seller may file with the county  
36 attorney of the county in which the seller maintains  
37 its principal place of business a surety bond in open  
38 penalty that is issued by a surety company authorized  
39 to do business in this state and that is conditioned  
40 on the faithful performance by the seller of agreements  
41 subject to this chapter. The liability of the surety  
42 extends to each agreement that is subject to this  
43 chapter and that is executed during the time the bond  
44 is in force and until performance of the agreement  
45 or rescission of the agreement by mutual consent of  
46 the parties; and, to the extent expressly agreed to  
47 in writing by the surety company under subsection  
48 3, paragraph b, the liability of the surety extends  
49 to each agreement that is subject to this chapter  
50 and that was executed prior to the time the bond was

1 in force and until performance of the agreement or  
2 rescission of the agreement by mutual consent of the  
3 parties. A buyer who is aggrieved by a breach of  
4 a condition of the bond covering the contract of that  
5 buyer may maintain an action against the bond, provided  
6 that the surety shall not be liable as a result of  
7 any breach of condition unless notice of a claim is  
8 received by the surety within sixty days following  
9 the acts, omissions or conditions constituting the  
10 breach of condition, except as otherwise provided  
11 in subsection 2. A surety bond submitted under this  
12 subsection shall not be canceled by a surety company  
13 except upon a written notice of cancellation given  
14 by the surety company to the county attorney by  
15 restricted certified mail, and the surety bond shall  
16 not be canceled prior to the expiration of sixty days  
17 after the receipt by the county attorney of the notice  
18 of cancellation.

19 2. If a seller becomes insolvent or otherwise  
20 ceases to engage in business prior to or within sixty  
21 days after the cancellation of a bond submitted under  
22 subsection 1, the seller shall be deemed to have  
23 breached the conditions of the surety bond with respect  
24 to all outstanding contracts subject to this chapter  
25 as of the day prior to cancellation of the bond.  
26 The county attorney shall mail written notice by  
27 restricted certified mail to the buyer under each  
28 outstanding contract of the seller that a claim against  
29 the bond must be filed with the surety company within  
30 sixty days after the date of mailing of the notice.  
31 The surety company shall cease to be liable with  
32 respect to all agreements except those for which  
33 claims are filed with the surety company within sixty  
34 days after the date the notices are mailed by the  
35 county attorney.

36 3. If a surety bond is canceled by a surety company  
37 under any conditions other than those specified in  
38 subsection 2, the seller shall comply with paragraphs  
39 a and b of this subsection:

40 a. The seller shall comply with the trust  
41 requirements of sections 523A.1 and 523A.2 with respect  
42 to all contracts subject to this chapter that are  
43 executed on or after the effective date of cancellation  
44 of the surety bond, or the seller may submit a  
45 substitute surety bond meeting the requirements of  
46 subsection 1, provided that the seller shall comply  
47 with sections 523A.1 and 523A.2 with respect to any  
48 contracts executed on or after the effective date  
49 of cancellation of the earlier surety bond and prior  
50 to the date on which the later surety bond takes

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1 effect.

2 b. Within sixty days after the effective date  
3 of the cancellation of the surety bond, the seller  
4 shall submit to the county attorney an undertaking  
5 by another surety company that a substitute surety  
6 bond meeting the requirements of subsection 1 is in  
7 effect and that the liability of the substitute surety  
8 bond extends to all outstanding contracts of the  
9 seller that were executed but not performed or  
10 extinguished prior to the effective date of the  
11 substitute surety bond, or the seller shall submit  
12 to the county attorney a financial statement  
13 accompanied by an unqualified opinion based upon an  
14 audit performed by a certified public accountant  
15 licensed in this state certifying the total amount  
16 of outstanding liabilities of the seller on contracts  
17 subject to this chapter and proof of deposit by the  
18 seller in trust under sections 523A.1 and 523A.2 of  
19 either the amount specified in sections 523A.1 with  
20 respect to all of those outstanding contracts or such  
21 lesser amount as is certified in the report of the  
22 certified public accountant to be adequate to assure  
23 the performance by the seller of each of those  
24 outstanding contracts. Upon compliance by the seller  
25 with this paragraph, the surety company canceling  
26 the surety bond shall cease to be liable with respect  
27 to any outstanding contracts of the seller except  
28 those with respect to which a breach of condition  
29 occurred prior to cancellation and timely claims were  
30 filed.

31 4. Section 523A.2, subsection 1, paragraphs b  
32 and f, subsection 5, and, to the extent it is  
33 applicable, subsection 6, apply to sellers whose  
34 agreements are covered by a surety bond maintained  
35 under this section, and section 523A.2 continues to  
36 apply to any agreements of those sellers that are  
37 not covered by a surety bond maintained under this  
38 section.

39 5. Upon receiving a notice of cancellation of  
40 a surety bond, the county attorney shall notify the  
41 seller of the requirements of this chapter resulting  
42 from cancellation of the bond. The notice may be  
43 in the form of a copy of this section and sections  
44 523A.1 and 523A.2.

45 6. Upon receiving a notice of cancellation, unless  
46 the seller has complied with the requirements of this  
47 section, the county attorney shall seek an injunction  
48 to prohibit the seller from making further agreements  
49 subject to this chapter and shall commence an action  
50 to attach and levy execution upon property of the

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1 seller when the seller fails to perform an agreement  
2 subject to this chapter, to the extent necessary to  
3 secure compliance with this chapter, and may bring  
4 criminal charges under section 523A.2, subsection  
5 6.

6 Sec. \_\_\_\_ . Section 82.1, Code 1981, is amended  
7 by adding the following new subsection:  
8 NEW SUBSECTION. "Door-to-door sale" also means  
9 a sale of funeral services or funeral merchandise  
10 regulated under chapter 523A, irrespective of the  
11 place or manner of sale."

H-5840 FILED APRIL 14, 1982

RECEIVED FROM THE SENATE

*House concurred 4/20 (p. 1586)*

HOUSE FILE 2218

AN ACT  
RELATING TO PREARRANGED AGREEMENTS FOR THE FINAL DISPOSITION  
OF DEAD HUMAN BODIES, AND PROVIDING A PENALTY.

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

Section 1. Section 523A.2, Code 1981, is amended to read  
as follows:

523A.2 DEPOSIT OF FUNDS--RECORDS--EXAMINATIONS.

1. a. All ~~wash-trust~~ funds held in trust under section 523A.1 shall be deposited in a an insured bank or trust company, savings and loan association, or credit union authorized to transact conduct business in this state within thirty days after the receipt thereof of the funds and shall be held in a separate account or in one common trust fund under a trust agreement in the name of the depositor in trust for the designated beneficiary until said-trust-fund-is released under either of the conditions provided in section 523A.1.

b. The seller under an agreement referred to in section 523A.1 shall maintain accurate records of all receipts, expenditures, interest or earnings, and disbursements relating to funds held in trust, and shall make these records available to the county attorney of the county in which the

principal place of business of the seller is located for examination at any reasonable time upon request.

c. The seller under an agreement referred to in section 523A.1 shall file not later than March 1 of each year with the county recorder of the county in which the seller maintains its principal place of business a copy of each trust agreement created as required by paragraph a of this subsection for sales made during the previous calendar year.

d. The seller under an agreement referred to in section 523A.1 shall give notice to the county recorder for the county in which the trust agreement is filed of each receipt of funds held in trust under section 523A.1. This notice shall be given on forms furnished by the seller, and shall be given not later than March 1 of each year. Each notice shall contain the required information for all receipts of the seller during the previous calendar year.

e. A financial institution referred to in paragraph a of this subsection shall give notice to the county recorder for the county in which the trust agreement is filed of all funds deposited under the trust agreement. This notice shall be on forms furnished by the seller and shall be given not later than March 1 of each year. Each notice shall contain the required information for all deposits made during the previous calendar year. The seller shall furnish the financial institution with the appropriate forms.

f. Notwithstanding chapter 68A, all records maintained by a county recorder under this subsection shall be confidential and shall not be made available for inspection or copying by any person except the county attorney or a representative of the county attorney.

2. In addition to complying with subsection 1, each seller under an agreement referred to in section 523A.1 shall file annually with the county attorney of the county in which the seller maintains its principal place of business a written statement that is signed by the seller and notarized and that contains all of the following information:

a. Identification of each financial institution in which trust funds are held under subsection 1, paragraph a, and a listing of each trust agreement governing funds held in the respective financial institutions and the date each agreement was filed with the county recorder.

b. Authorization for the county attorney or a designee to investigate, audit, and verify all funds, accounts, safe-deposit boxes and other evidence of trust funds held by or in a financial institution under paragraph a of this subsection.

3. The insurance department shall adopt rules under chapter 17A specifying the form, content and cost of the forms for the notices and disclosures required by this section, and shall sell blank forms at that cost to any person on request.

4. If a seller under an agreement referred to in section 523A.1 ceases to do business, whether voluntarily or involuntarily, all funds held in trust under section 523A.1, including accrued interest or earnings, shall be repaid to the purchaser under the agreement.

5. The county attorney of the county in which a sale referred to in section 523A.1 takes place may require the performance of an audit of the seller's business by a certified public accountant if the county attorney receives reasonable evidence that the seller is not complying with this chapter. The audit shall be paid for by the seller, and a copy of the report of audit shall be delivered to the county attorney and to the seller.

6. A seller or financial institution that knowingly fails to comply with any requirement of this section or that knowingly submits false information in a document or notice required by this section commits a serious misdemeanor.

Sec. 2. Section 523A.4, Code 1981, is repealed and the following inserted in lieu thereof:

523A.4 SCOPE OF CHAPTER.

1. This chapter applies only to the sale of funeral services, funeral merchandise, or a combination of these, pursuant to a prearranged funeral plan.

2. As used in this chapter:

a. "Funeral services" means one or more services to be provided at the time of the final disposition of a dead human body, including but not limited to services necessarily or customarily provided in connection with a funeral, or services necessarily or customarily provided in connection with the interment, entombment, or cremation of a dead human body, or a combination of these. "Funeral services" does not include perpetual care or maintenance.

b. "Funeral merchandise" means one or more types of personal property to be used at the time of the final disposition of a dead human body, including but not limited to clothing, caskets, vaults, and interment receptacles. "Funeral merchandise" does not include real property, and does not include grave markers, tombstones, ornamental merchandise, and monuments.

Sec. 3. Chapter 523A, Code 1981, is amended by adding the following new section:

NEW SECTION. COMPLIANCE WITH OTHER LAWS. The seller of funeral services or funeral merchandise shall comply with chapter 82 with respect to all contracts that are subject to regulation under this chapter. A failure to comply is subject to the remedies and penalties provided in that chapter.

Sec. 4. Chapter 523A, Code 1981, is amended by adding the following new section:

NEW SECTION. BOND IN LIEU OF TRUST FUND.

1. In lieu of the trust fund required by sections 523A.1 and 523A.2, a seller may file with the county attorney of the county in which the seller maintains its principal place of business a surety bond in open penalty that is issued by a surety company authorized to do business in this state and that is conditioned on the faithful performance by the seller

of agreements subject to this chapter. The liability of the surety extends to each agreement that is subject to this chapter and that is executed during the time the bond is in force and until performance of the agreement or rescission of the agreement by mutual consent of the parties; and, to the extent expressly agreed to in writing by the surety company under subsection 3, paragraph b, the liability of the surety extends to each agreement that is subject to this chapter and that was executed prior to the time the bond was in force and until performance of the agreement or rescission of the agreement by mutual consent of the parties. A buyer who is aggrieved by a breach of a condition of the bond covering the contract of that buyer may maintain an action against the bond, provided that the surety shall not be liable as a result of any breach of condition unless notice of a claim is received by the surety within sixty days following the acts, omissions or conditions constituting the breach of condition, except as otherwise provided in subsection 2. A surety bond submitted under this subsection shall not be canceled by a surety company except upon a written notice of cancellation given by the surety company to the county attorney by restricted certified mail, and the surety bond shall not be canceled prior to the expiration of sixty days after the receipt by the county attorney of the notice of cancellation.

2. If a seller becomes insolvent or otherwise ceases to engage in business prior to or within sixty days after the cancellation of a bond submitted under subsection 1, the seller shall be deemed to have breached the conditions of the surety bond with respect to all outstanding contracts subject to this chapter as of the day prior to cancellation of the bond. The county attorney shall mail written notice by restricted certified mail to the buyer under each outstanding contract of the seller that a claim against the bond must be filed with the surety company within sixty days

after the date of mailing of the notice. The surety company shall cease to be liable with respect to all agreements except those for which claims are filed with the surety company within sixty days after the date the notices are mailed by the county attorney.

3. If a surety bond is canceled by a surety company under any conditions other than those specified in subsection 2, the seller shall comply with paragraphs a and b of this subsection:

a. The seller shall comply with the trust requirements of sections 523A.1 and 523A.2 with respect to all contracts subject to this chapter that are executed on or after the effective date of cancellation of the surety bond, or the seller may submit a substitute surety bond meeting the requirements of subsection 1, provided that the seller shall comply with sections 523A.1 and 523A.2 with respect to any contracts executed on or after the effective date of cancellation of the earlier surety bond and prior to the date on which the later surety bond takes effect.

b. Within sixty days after the effective date of the cancellation of the surety bond, the seller shall submit to the county attorney an undertaking by another surety company that a substitute surety bond meeting the requirements of subsection 1 is in effect and that the liability of the substitute surety bond extends to all outstanding contracts of the seller that were executed but not performed or extinguished prior to the effective date of the substitute surety bond, or the seller shall submit to the county attorney a financial statement accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state certifying the total amount of outstanding liabilities of the seller on contracts subject to this chapter and proof of deposit by the seller in trust under sections 523A.1 and 523A.2 of either the amount specified in sections 523A.1 with respect to all of those outstanding

contracts or such lesser amount as is certified in the report of the certified public accountant to be adequate to assure the performance by the seller of each of those outstanding contracts. Upon compliance by the seller with this paragraph, the surety company canceling the surety bond shall cease to be liable with respect to any outstanding contracts of the seller except those with respect to which a breach of condition occurred prior to cancellation and timely claims were filed.

4. Section 523A.2, subsection 1, paragraphs b and f, subsection 5, and, to the extent it is applicable, subsection 6, apply to sellers whose agreements are covered by a surety bond maintained under this section, and section 523A.2 continues to apply to any agreements of those sellers that are not covered by a surety bond maintained under this section.

5. Upon receiving a notice of cancellation of a surety bond, the county attorney shall notify the seller of the requirements of this chapter resulting from cancellation of the bond. The notice may be in the form of a copy of this section and sections 523A.1 and 523A.2.

6. Upon receiving a notice of cancellation, unless the seller has complied with the requirements of this section, the county attorney shall seek an injunction to prohibit the seller from making further agreements subject to this chapter and shall commence an action to attach and levy execution upon property of the seller when the seller fails to perform an agreement subject to this chapter, to the extent necessary to secure compliance with this chapter, and may bring criminal charges under section 523A.2, subsection 6.

Sec. 5. Section 82.1, Code 1981, is amended by adding the following new subsection:

NEW SUBSECTION. "Door-to-door sale" also means a sale of funeral services or funeral merchandise regulated under chapter 523A, irrespective of the place or manner of sale.

Sec. 6. Chapter 523A, Code 1981, as amended by this Act, applies only to agreements executed on or after the effective

date of this Act. Agreements executed prior to the effective date of this Act shall be governed by chapter 523A as it existed on the date those agreements were executed.

\_\_\_\_\_  
DELWYN STROMER  
Speaker of the House

\_\_\_\_\_  
TERRY E. BRANSTAD  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2218, Sixty-ninth General Assembly.

\_\_\_\_\_  
ELIZABETH A. ISAACSON  
Chief Clerk of the House

Approved 5/20, 1982

\_\_\_\_\_  
ROBERT D. RAY  
Governor