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Place On Calendar

HOUSE FILE 614
BY COMMITTEE ON STATE GOVERN-
MENT

(Formerly House Study Bill 168)

Passed House, Date 4-1-87 (p. 1022) Passed Senate, Date 4-13-87 (p. 1255)

Vote: Ayes 96 Nays 1 Vote: Ayes 50 Nays 0

Approved April 23, 1987

A BILL FOR

1 An Act relating to sales of funeral services and funeral
2 merchandise, revising regulatory and reporting provisions,
3 requiring disclosures, requiring permits, providing penalties,
4 providing for the applicability of the Act, and providing an
5 effective date.

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

HOUSE FILE 614

H-3523

1 Amend House File 614 as follows:

2 1. Page 3, line 9, by inserting after the word

3 "a" the following: "state or".

4 2. Page 5, line 30, by inserting after the word

5 "The" the following: "state or".

6 3. Page 6, line 5, by inserting after the word

7 "trustee" the following: "to the extent that

8 organization has been granted those powers under the

9 laws of this state or the United States".

H-3523 FILED MARCH 31, 1987

BY KNAPP of Dubuque

(Adopted 4/1/87 (p. 1027))

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1 Section 1. Section 156.9, subsection 3, Code 1987, is
2 amended by striking the subsection.

3 Sec. 2. Section 156.12, Code 1987, is amended to read as
4 follows:

5 156.12 FUNERAL DIRECTORS -- SOLICITATION OF BUSINESS --
6 EXCEPTIONS -- PENALTY.

7 Every funeral director, or ~~any person acting in their~~ on
8 behalf of a funeral director, who pays or causes to be paid
9 any money or other thing of value as a commission or gratuity
10 for the securing of business for ~~such~~ the funeral director,
11 and every person who accepts or offers to accept any money or
12 other thing of value as a commission or gratuity from a
13 funeral director in order to secure business for the funeral
14 director ~~shall be deemed guilty of~~ commits a simple
15 misdemeanor. This section ~~shall~~ does not ~~be construed as~~
16 ~~prohibiting~~ prohibit any person, firm, co-operative burial
17 association, or corporation, subject to the provisions of this
18 chapter, from using legitimate and honest advertising. This
19 section does not apply to sales made in accordance with
20 chapter 523A.

21 Sec. 3. Section 523A.1, Code 1987, is amended to read as
22 follows:

23 523A.1 TRUST FUND ESTABLISHED.

24 Whenever an agreement is made by any person, firm, or
25 corporation ~~for the final disposition of a dead human body~~
26 ~~wherein delivery of personal property to be used under a~~
27 ~~prearranged funeral plan or the furnishing of professional~~
28 ~~services of a funeral director or embalmer in connection~~
29 ~~therewith, is not immediately required,~~ to furnish, upon the
30 future death of a person named or implied in the agreement,
31 funeral services or funeral merchandise, a minimum of eighty
32 percent of all payments made under the agreement, ~~including~~
33 ~~interest thereon,~~ shall be and remain trust funds until
34 occurrence of the death of the person for whose benefit the
35 funds were paid, unless ~~said~~ the funds are sooner released to

1 the person making ~~such~~ the payment by mutual consent of the
2 parties. Payments otherwise subject to this section are not
3 exempt merely because they are held in certificates of
4 deposit.

5 Interest or income earned on amounts deposited in trust
6 under this section shall remain in trust under the same terms
7 and conditions as the payments made under the agreement,
8 except that the seller may withdraw so much of the interest or
9 income as represents the difference between the amount needed
10 to adjust the trust funds for inflation as set by the
11 commissioner based on the consumer price index and the
12 interest or income earned during the preceding year not to
13 exceed fifty percent of the total interest or income, on a
14 calendar year basis. The early withdrawal of interest or
15 income pursuant to this provision does not affect the
16 purchaser's right to the full refund or credit of such
17 interest or income in the event the payments and interest in
18 trust are released to the purchaser or in the event of a
19 nonguaranteed price agreement, respectively. This provision
20 does not affect the purchaser's right to a total refund of
21 principal and interest or income in the event of
22 nonperformance.

23 If an agreement pursuant to this section is to be paid in
24 installment payments, the seller shall deposit eighty percent
25 of each payment in trust until the full amount to be trusted
26 has been deposited. If the agreement is financed with or sold
27 to a financial institution, then the agreement shall be
28 considered paid in full and the deposit requirements of this
29 section shall be satisfied within thirty days after the close
30 of the month in which payment is received from the financial
31 institution.

32 This section does not apply to payments for merchandise de-
33 livered to the purchaser. Delivery includes storage in a
34 warehouse under the control of the seller when a receipt of
35 ownership in the name of the purchaser is delivered to the

1 purchaser, the merchandise is insured against loss, and the
2 annual reporting requirements of section 523A.2, subsection 1,
3 are satisfied.

4 Sec. 4. Section 523A.2, Code 1987, is amended to read as
5 follows:

6 523A.2 DEPOSIT OF FUNDS -- RECORDS -- EXAMINATIONS --
7 REPORTS.

8 1. a. All funds held in trust under section 523A.1 shall
9 be deposited in an a federally insured bank, savings and loan
10 association, or credit union authorized to conduct business in
11 this state, or trust department thereof, within thirty days
12 after the receipt of the funds and shall be held in a separate
13 account or in one common trust fund under a trust agreement in
14 the name of the depositor in trust for the designated
15 beneficiary until released under either of the conditions
16 provided in pursuant to section 523A.1.

17 b. The seller under an agreement referred to in section
18 523A.1 shall maintain accurate records of all receipts,
19 expenditures, interest or earnings, and disbursements relating
20 to funds held in trust and shall make these records available
21 to the depositor, beneficiary of the account, or the principal
22 beneficiary of the trust, or the person designated by the depositor for
23 that purpose, at any reasonable time upon request.

24 c. The seller under an agreement referred to in section
25 523A.1 shall file a statement of the funds held in trust
26 annually on or before the first day of the month of March
27 of each year, or on the first day of the month of March
28 of each year if the first day of the month of March is a
29 holiday, with the depositor, beneficiary of the account, or the
30 principal beneficiary of the trust, or the person designated by the
31 depositor for that purpose.

32 The seller under an agreement referred to in section
33 523A.1 shall file a notice with the depositor, beneficiary of the
34 trust, or the principal beneficiary of the trust, or the person
35 designated by the depositor for that purpose, of the funds held in trust under section 523A.1. This notice
shall be filed on forms furnished by the seller, and shall be
filed not later than March 1 of each year. Each notice shall

1 ~~contain the required information for all receipts of the~~
2 ~~seller during the previous calendar year.~~ with the
3 commissioner not later than March 1 of each year a report
4 including the following information:

5 (1) The name and address of the seller and the name and
6 address of the establishment that will provide the funeral
7 services or funeral merchandise.

8 (2) The name of the purchaser, beneficiary, and the amount
9 of each agreement under section 523A.1 made in the preceding
10 year and the date on which it was made.

11 (3) The total value of agreements subject to section
12 523A.1 entered into, the total amount paid pursuant to those
13 agreements, and the total amount deposited in trust as
14 required under section 523A.1, during the preceding year.

15 (4) The amount of any payments received pursuant to
16 agreements reported in previous years in accordance with
17 subparagraphs (2) and (3) and the amount of those payments
18 deposited in trust for each purchaser.

19 (5) The change in status of any trust account, including
20 total amount of interest or income withdrawn from each trust
21 account in the preceding year, and for each purchaser, any
22 other amounts withdrawn from trust and the reason for each
23 withdrawal. However, regular increments of interest or income
24 need not be reported on a yearly basis.

25 (6) The name and address of the financial institution in
26 which trust funds were deposited, and the name and address of
27 each insurance company which funds agreements under section
28 523A.1.

29 (7) The name and address of each purchaser of funeral
30 merchandise delivered in lieu of trusting pursuant to section
31 523A.1, and a description of that merchandise for each
32 purchaser.

33 (8) The complete inventory of funeral merchandise and its
34 location in the seller's possession that has been delivered in
35 lieu of trusting pursuant to section 523A.1.

1 (9) Other information reasonably required by the com-
2 missioner for purposes of administration of this chapter.

3 The information required by subparagraphs (7) and (8) shall
4 include a verified statement of a certified public accountant
5 that the certified public accountant has conducted a physical
6 inventory of the funeral merchandise specified in subparagraph
7 (8) and that each item of that merchandise is in the seller's
8 possession at the specified location. The statement shall be
9 on a form prescribed by the commissioner.

10 The report shall be accompanied by a filing fee determined
11 by the commissioner which shall be sufficient to defray the
12 costs of administering this chapter.

13 e d. A financial institution referred to in paragraph "a"
14 of this subsection shall file notice with the county-recorder
15 for the county in which the trust agreement is filed
16 commissioner of all funds deposited under the trust agreement.
17 This The notice shall be on forms furnished prescribed by the
18 seller commissioner and shall be filed not later than March 1
19 of each year. Each notice shall contain the required
20 information for all deposits made during the previous calendar
21 year. The seller shall furnish the financial institution with
22 the appropriate forms. Forms may be obtained from the
23 commissioner.

24 f e. Notwithstanding chapter 22, all records maintained by
25 a county-recorder the commissioner under this subsection shall
26 be confidential and shall not be made available for inspection
27 or copying by any person except upon approval of the county
28 attorney or a representative of the county commissioner or the
29 attorney general.

30 f. The federally insured bank, savings and loan associa-
31 tion, or credit union in which trust funds are held shall not
32 be owned or under the control of the seller and shall not use
33 any funds required to be held in trust pursuant to this
34 chapter or chapter 566A to purchase an interest in any
35 contract or agreement to which the seller is a party, or

1 otherwise to invest, directly or indirectly, in the seller's
2 business operations.

3 g. The bank, savings and loan, credit union, or trust
4 department thereof, in which trust funds are held shall serve
5 as trustee and may invest, reinvest, exchange, retain, sell,
6 and otherwise manage the trust fund. The trustee may combine
7 trust accounts established pursuant to this chapter as long as
8 a separate accounting of each purchaser's principal, interest,
9 and income is maintained. The seller may appoint an
10 independent investment advisor to act in an advisory capacity
11 with the trustee relative to the investment of the trust
12 funds. The trust shall pay the cost of the operation of the
13 trust and any annual audit fees.

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:~~

20 ~~a--Identification-of-each-financial-institution-in-which~~
21 ~~trust-funds-are-held-under-subsection-1, paragraph-"a"-7-and-a~~
22 ~~listing-of-each-trust-agreement-governing-funds-held-in-the~~
23 ~~respective-financial-institutions-and-the-date-each-agreement~~
24 ~~was-filed-with-the-county-recorder.~~

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

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

1 4. If a seller under an agreement referred to in section
2 523A.1 ceases to do business, whether voluntarily or
3 involuntarily, all funds held in trust under section 523A.1,
4 including accrued interest or earnings, shall be repaid to the
5 purchaser under the agreement.

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

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

19 7. This chapter does not prohibit the funding of an
20 agreement otherwise subject to section 523A.1 by insurance
21 proceeds derived from a policy issued by an insurance company
22 authorized to conduct business in this state. The seller of
23 an agreement subject to this chapter which is to be funded by
24 insurance proceeds shall obtain all permits required to be
25 obtained under this chapter and comply with the reporting
26 requirements of this section.

27 Sec. 5. Section 523A.5, subsection 1, Code 1987, is
28 amended to read as follows:

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

32 Sec. 6. Section 523A.5, subsection 2, Code 1987, is
33 amended by adding the following new paragraph:

34 NEW PARAGRAPH. c. "Commissioner" means the commissioner
35 of insurance or the deputy appointed under section 502.601.

1 Sec. 7. Section 523A.7, Code 1987, is amended to read as
2 follows:

3 523A.7 BOND IN LIEU OF TRUST FUND.

4 1. In lieu of the trust fund required by sections 523A.1
5 and 523A.2, a seller may file with the ~~county-attorney-of-the~~
6 ~~county-in-which-the-seller-maintains-its-principal-place-of~~
7 business commissioner a surety bond ~~in-open-penalty~~ that is
8 issued by a surety company authorized to do business in this
9 state and that is conditioned on the faithful performance by
10 the seller of agreements subject to this chapter. The
11 liability of the surety extends to each agreement that is
12 subject to this chapter and that is executed during the time
13 the bond is in force and until performance of the agreement or
14 rescission of the agreement by mutual consent of the parties;
15 and, to the extent expressly agreed to in writing by the
16 surety company under subsection 3, paragraph "b", the
17 liability of the surety extends to each agreement that is
18 subject to this chapter and that was executed prior to the
19 time the bond was in force and until performance of the
20 agreement or rescission of the agreement by mutual consent of
21 the parties. A buyer who is aggrieved by a breach of a
22 condition of the bond covering the contract of that buyer may
23 maintain an action against the bond, provided that if, at the
24 time of the breach, the buyer is aware of the buyer's rights
25 under the bond and how to file a claim against the bond, the
26 surety shall not be liable as a result of any breach of
27 condition unless notice of a claim is received by the surety
28 within sixty days following the discovery of the acts,
29 omissions, or conditions constituting the breach of condition,
30 except as otherwise provided in subsection 2. A surety bond
31 submitted under this subsection shall not be canceled by a
32 surety company except upon a written notice of cancellation
33 given by the surety company to the ~~county-attorney~~
34 commissioner by restricted certified mail, and the surety bond
35 shall not be canceled prior to the expiration of sixty days

1 after the receipt by the county-attorney commissioner of the
2 notice of cancellation.

3 2. If a seller becomes insolvent or otherwise ceases to
4 engage in business prior to or within sixty days after the
5 cancellation of a bond submitted under subsection 1, the
6 seller shall be deemed to have breached the conditions of the
7 surety bond with respect to all outstanding contracts subject
8 to this chapter as of the day prior to cancellation of the
9 bond. The county-attorney commissioner shall mail written
10 notice by restricted certified mail to the buyer under each
11 outstanding contract of the seller that a claim against the
12 bond must be filed with the surety company within sixty days
13 after the date of mailing of the notice. The surety company
14 shall cease to be liable with respect to all agreements except
15 those for which claims are filed with the surety company
16 within sixty days after the date the notices are mailed by the
17 county-attorney commissioner.

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

22 a. The seller shall comply with the trust requirements of
23 sections 523A.1 and 523A.2 with respect to all contracts
24 subject to this chapter that are executed on or after the
25 effective date of cancellation of the surety bond, or the
26 seller may submit a substitute surety bond meeting the
27 requirements of subsection 1, ~~provided-that~~ but the seller
28 ~~shall~~ must comply with sections 523A.1 and 523A.2 with respect
29 to any contracts executed on or after the effective date of
30 cancellation of the earlier surety bond and prior to the date
31 on which the later surety bond takes effect.

32 b. Within sixty days after the effective date of the
33 cancellation of the surety bond, the seller shall submit to
34 the county-attorney commissioner an undertaking by another
35 surety company that a substitute surety bond meeting the

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

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

34 5. Upon receiving a notice of cancellation of a surety
35 bond, the county-attorney commissioner shall notify the seller

1 of the requirements of this chapter resulting from
2 cancellation of the bond. The notice may be in the form of a
3 copy of this section and sections 523A.1 and 523A.2.

4 6. Upon receiving a notice of cancellation, unless the
5 seller has complied with the requirements of this section, the
6 county attorney general shall seek an injunction to prohibit
7 the seller from making further agreements subject to this
8 chapter and shall commence an action to attach and levy
9 execution upon property of the seller when the seller fails to
10 perform an agreement subject to this chapter, to the extent
11 necessary to secure compliance with this chapter, and the
12 county attorney may bring criminal charges under section
13 523A.2, subsection 6.

14 7. The surety under this section shall not be owned or
15 under the control of the seller.

16 Sec. 8. NEW SECTION. 523A.8 DISCLOSURES.

17 1. Every agreement for funeral merchandise or funeral
18 services under this chapter shall be written in clear, under-
19 standable language and shall be printed or typed in easy-to-
20 read type, size, and style, and shall:

21 a. Identify the seller, the sales person's permit and
22 establishment name and permit number, the expiration date of
23 the salesperson's permit, the purchaser, and the person for
24 whom the funeral services or funeral merchandise are purchased
25 if other than the purchaser.

26 b. Specify the funeral services or funeral merchandise, or
27 both, to be provided, and the cost of each service and mer-
28 chandise item.

29 c. State clearly the conditions on which substitution will
30 be allowed.

31 d. Set forth the total purchase price and the terms under
32 which it is to be paid.

33 e. State clearly whether the agreement is a guaranteed
34 price contract or a nonguaranteed price contract.

35 f. State clearly whether the agreement is a revocable or

1 irrevocable contract, and who has the authority to revoke the
2 contract.

3 g. State the amount or percentage of money to be placed in
4 trust.

5 h. Explain the disposition of the interest and disclose
6 what fees and expenses may be charged if incurred.

7 i. Specify the purchaser's right to cancel and damages for
8 cancellation, if any.

9 j. State the name and address of the commissioner.

10 2. Every agreement shall be signed by the purchaser, the
11 seller, and if the agreement is for funeral services as
12 defined in chapter 156, a person licensed to deliver those
13 services.

14 Sec. 9. NEW SECTION. 523A.9 ESTABLISHMENT PERMITS.

15 1. A person, as defined in section 4.1, subsection 13,
16 shall not engage in the business of selling, promoting, or
17 otherwise entering into agreements to furnish, upon the future
18 death of a person named or implied in the agreement, funeral
19 services, property for use in funeral services, or funeral
20 merchandise without an establishment permit as provided for in
21 this section. An establishment doing business shall obtain a
22 permit for each location.

23 2. An applicant for a permit under this section shall
24 submit to the commissioner an application on a form provided
25 by the commissioner. The application shall include at a
26 minimum the following information:

27 a. The name and location of the applicant's business.

28 b. The name and location of the provider who will provide
29 the funeral services or funeral merchandise.

30 c. The name and address of each owner, officer, or other
31 official of the applicant's business, or in the event that the
32 applicant is a corporation, the names and addresses of the
33 chief executive officer and the members of the board of di-
34 rectors.

35 d. The types of professional services or funeral

1 merchandise to be sold.

2 An application for a permit pursuant to this section shall
3 be accompanied by a copy of each sales agreement the permit
4 holder will use for sales of funeral services or funeral
5 merchandise under section 523A.1.

6 A permit holder shall inform the commissioner of changes in
7 the information within thirty days of the change.

8 4. The applicant for a permit shall submit a fee in the
9 amount of fifty dollars.

10 5. Permits granted under this section are not assignable.

11 6. Upon the filing of an application for a permit, if the
12 commissioner finds that the applicant has not been convicted
13 of a criminal offense involving dishonesty or false statement
14 and can provide the funeral services or funeral merchandise
15 the applicant purports to sell, the commissioner shall issue
16 the permit.

17 7. If the commissioner does not grant the permit, the
18 commissioner shall notify the applicant in writing of the
19 denial and the reasons for the denial. The commissioner shall
20 approve or deny every application for a license within ninety
21 days after the filing thereof, but any failure of the
22 commissioner to act within that time period shall not be
23 deemed to be an approval of the application.

24 Sec. 10. NEW SECTION. 523A.10 SALES PERMITS.

25 1. An individual shall not sell, promote, or otherwise
26 enter into an agreement to furnish, upon the future death of a
27 person named or implied in the agreement, funeral services or
28 funeral merchandise without a permit as provided for in this
29 section. An individual permit holder must be an employee or
30 agent of an establishment which holds a permit pursuant to
31 section 523A.9 and which can deliver the funeral services or
32 funeral merchandise being sold. The establishment is liable
33 for the acts of its employees and agents, independent or
34 otherwise, performed in the course of obtaining or attempting
35 to obtain an agreement for the sale of funeral services or

1 funeral merchandise under section 523A.1.

2 2. This chapter does not allow a person to engage in the
3 practice of mortuary science without a license. However, a
4 person having a valid permit under this section may engage in
5 the preneed sale of a funeral director's services as an
6 employee or agent of a funeral establishment that may furnish
7 the funeral services in accordance with chapter 156.

8 3. An applicant for a permit under this section shall
9 submit to the commissioner an application on a form provided
10 by the commissioner. The application shall include at a
11 minimum the following information:

12 a. The name and address of the applicant.

13 b. The name and address of the applicant's employer or the
14 establishment on whose behalf the applicant will be making or
15 attempting to make sales, and, if different, the name and
16 address of the provider who will provide the funeral services
17 or funeral merchandise.

18 A permit holder shall inform the commissioner of changes in
19 the information within thirty days of the change.

20 4. The permit shall be deemed effective upon filing the
21 application with the commissioner. The permit shall disclose
22 on its face the permit holder's employer or the establishment
23 on whose behalf the applicant will be making or attempting to
24 make sales, the permit number, and the expiration date. A
25 permit under this section shall expire one year from the date
26 the application is filed.

27 5. The application fee shall be five dollars.

28 6. Permits granted under this section are not assignable.

29 7. The commissioner may revoke a permit if the
30 commissioner determines that the permit holder has been
31 convicted of a criminal offense involving dishonesty or false
32 statement or that the establishment cannot provide the funeral
33 services or funeral merchandise the establishment purports to
34 sell.

35 Sec. 11. NEW SECTION. 523A.11 INVESTIGATIONS.

1 The attorney general or the commissioner may, for the
2 purpose of discovering violations of this chapter or any rules
3 adopted under this chapter:

4 1. Investigate the business and examine the books, ac-
5 counts, records, and files used by every permit holder under
6 this chapter.

7 2. Administer oaths and affirmations, subpoena witnesses,
8 receive evidence, and require the production of documents and
9 records in connection with an investigation or proceeding
10 being conducted pursuant to this chapter.

11 3. Apply to the district court for issuance of an order
12 requiring a person's appearance before the commissioner or
13 attorney general, or a designee of either or both, in cases
14 where the person has refused to obey a subpoena issued by the
15 commissioner or attorney general. The person may also be
16 required to produce documentary evidence germane to the
17 subject of the investigation. Failure to obey a court order
18 under this subsection constitutes contempt of court.

19 Sec. 12. NEW SECTION. 523A.12 SUSPENSION OR REVOCATION
20 OF PERMITS.

21 1. The commissioner may, pursuant to chapter 17A, suspend
22 or revoke any permit issued pursuant to this chapter if the
23 commissioner finds any of the following:

24 a. The permit holder has violated any provisions of this
25 chapter or any rule adopted under this chapter or any other
26 state or federal law applicable to the conduct of the permit
27 holder's business.

28 b. Any fact or condition exists which, if it had existed
29 at the time of the original application for the permit, would
30 have warranted the commissioner refusing originally to issue
31 the permit.

32 c. The permit holder is found upon investigation to be
33 insolvent, in which case the permit shall be revoked
34 immediately.

35 d. The permit holder, for the purpose of avoiding the

1 trusting requirement for funeral services under section
2 523A.1, attributes amounts paid pursuant to the agreement to
3 funeral merchandise that is delivered under section 523A.1
4 rather than to funeral services sold to the purchaser. The
5 sale of funeral services at a lower price when the sale is
6 made in conjunction with the sale of funeral merchandise to be
7 delivered pursuant to section 523A.1 than the services are
8 regularly and customarily sold for when not sold in
9 conjunction with funeral merchandise is evidence that the
10 permit holder is acting with the purpose of avoiding the
11 trusting requirement for funeral services under section
12 523A.1.

13 2. The commissioner may, on good cause shown, suspend any
14 permit for a period not exceeding thirty days, pending inves-
15 tigation.

16 Except as provided in the preceding paragraph, a permit
17 shall not be revoked or suspended except after notice and
18 hearing in accordance with chapter 17A.

19 3. Any permit holder may surrender a permit by delivering
20 to the commissioner written notice that the permit holder sur-
21 renders the permit, but the surrender shall not affect the
22 permit holder's civil or criminal liability for acts committed
23 before the surrender.

24 4. Revocation, suspension, or surrender of a permit does
25 not impair or affect the obligation of any pre-existing lawful
26 contract between the permit holder and any person.

27 Sec. 13. NEW SECTION. 523A.13 PROSECUTION FOR VIOLATIONS
28 OF LAW.

29 If the commissioner believes that grounds exist for the
30 criminal prosecution of persons subject to this chapter for
31 violations of this chapter or any other law of this state, the
32 commissioner may forward to the attorney general the grounds
33 for the belief, including all evidence in the commissioner's
34 possession, in order that the attorney general may proceed
35 with the matter as the attorney general deems appropriate. At

1 the request of the attorney general, the county attorney shall
2 appear and prosecute the action when brought in the county
3 attorney's county.

4 Sec. 14. NEW SECTION. 523A.14 INJUNCTIONS.

5 The attorney general may apply to the district court in any
6 county of the state for an injunction to restrain a person
7 subject to this chapter and any agents, employees, or as-
8 sociates of the person from engaging in conduct or practices
9 deemed contrary to the public interest. In any proceeding for
10 an injunction, the attorney general may apply to the court for
11 the issuance of a subpoena to require the appearance of a
12 defendant and the defendant's agents and any documents, books,
13 and records germane to the hearing upon the petition for an
14 injunction. Upon proof of any of the offenses described in
15 the petition for injunction the court may grant the injunc-
16 tion.

17 Sec. 15. NEW SECTION. 523A.15 FRAUDULENT PRACTICES.

18 A person who commits any of the following acts commits a
19 fraudulent practice and is punishable as provided in chapter
20 714:

21 1. Knowingly makes, causes to be made, or subscribes to a
22 false statement or representation in a report or other docu-
23 ment required under this chapter, or renders such a report or
24 document misleading through the deliberate omission of
25 information properly belonging in the report or document.

26 2. Conspires to defraud in connection with the sale of
27 funeral services or funeral merchandise under this chapter.

28 3. Deliberately misrepresents or omits a material fact
29 relative to the sale of funeral services or funeral
30 merchandise under this chapter.

31 Sec. 16. NEW SECTION. 523A.16 RULES.

32 The commissioner may adopt rules necessary to administer
33 this chapter, in accordance with chapter 17A.

34 Sec. 17. Section 331.602, subsection 29A, Code 1987, is
35 amended by striking the subsection.

1 Sec. 18. Section 331.756, subsection 70A, Code 1987, is
2 amended by striking the subsection.

3 Sec. 19. APPLICABILITY. The administrative and reporting
4 requirements of this Act apply to agreements in effect on July
5 1, 1987, as well as to agreements entered into on or after
6 that date.

7 Sec. 20. EFFECTIVE DATE. Sections 9 and 10 of this Act
8 take effect on January 1, 1988.

9 EXPLANATION

10 This bill substantially revises the laws relating to
11 prearranged funerals. It removes the prohibition against a
12 funeral director engaging in the business of selling funeral
13 services and funeral merchandise to be furnished upon the
14 future death of a person. It revises provisions relating to
15 trust funds, financial institutions in which trust funds are
16 held, and withdrawal of interest. Under the bill, trust fund
17 requirements would not apply where payments are for
18 merchandise stored in a warehouse of the seller if the
19 purchaser has received a receipt of ownership, the merchandise
20 is insured against loss, and reporting requirements are met.

21 The bill provides for regulation by the commissioner of
22 insurance and deletes duties of county recorders and county
23 attorneys with respect to reporting and investigations.
24 Reporting and audit requirements are revised and reports are
25 made to the commissioner.

26 The bill adds provisions for disclosure to purchasers,
27 issuance of permits, and investigations and enforcement by the
28 attorney general. False statements and misrepresentations are
29 declared to be fraudulent practices, punishable as provided in
30 chapter 714.

31 The requirements for establishment permits and sales
32 permits do not take effect until January 1, 1988. Other
33 provisions take effect July 1, 1987.

34 Administrative and reporting requirements apply to agree-
35 ments in effect on July 1, 1987, as well as to agreements
36 entered into on or after that date.

HOUSE FILE 614
BY COMMITTEE ON STATE GOVERN-
MENT

(As Amended and Passed by the House April 1, 1987)

Passed House, Date 4-1-87 (p. 1022) Passed Senate, Date 4-13-87 (p. 1255)

Vote: Ayes 96 Nays 1 Vote: Ayes 50 Nays 0

Approved April 23, 1987 (p. 1655)

A BILL FOR

1 An Act relating to sales of funeral services and funeral
2 merchandise, revising regulatory and reporting provisions,
3 requiring disclosures, requiring permits, providing penalties,
4 providing for the applicability of the Act, and providing an
5 effective date.

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

HOUSE FILE 614

S-3527

endments _____

1 Amend House File 614 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 156.3, Code 1987, is amended
6 to read as follows:

7 156.3 ELIGIBILITY REQUIREMENTS.

8 To be eligible to take the examination for a
9 funeral director's license, a person must have
10 ~~completed two academic years of instruction in a~~
11 ~~recognized college, junior college or university~~
12 ~~received a bachelor of science or bachelor of arts~~
13 ~~degree from an institution accredited by the north~~
14 ~~central association of colleges and secondary schools~~
15 ~~or an equivalent accrediting association in another~~
16 ~~region of the United States, in a course of study~~
17 ~~approved by the board or have equivalent education as~~
18 ~~defined by the board and have satisfactorily completed~~
19 ~~a course of instruction in mortuary science in an~~
20 ~~accredited school approved by the board."~~

21 2. Page 18, line 10, by inserting after the
22 figure "1988." the following: "Section 1 of this Act
23 takes effect January 1, 1992."

24 3. Title page, line 3, by inserting after the
25 word "penalties," the following: "revising
26 educational requirements for funeral directors,".

27 4. By renumbering as necessary.

S-3527

Filed April 13, 1987
NOT GERMANE (p. 1255)

BY RAY TAYLOR
BERL E. PRIEBE

TLSB 1911HC 72

jw/jw/5

1 Section 1. Section 156.9, subsection 3, Code 1987, is
2 amended by striking the subsection.

3 Sec. 2. Section 156.12, Code 1987, is amended to read as
4 follows:

5 156.12 FUNERAL DIRECTORS -- SOLICITATION OF BUSINESS --
6 EXCEPTIONS -- PENALTY.

7 Every funeral director, or any person acting ~~in their~~ on
8 behalf of a funeral director, who pays or causes to be paid
9 any money or other thing of value as a commission or gratuity
10 for the securing of business for ~~such~~ the funeral director,
11 and every person who accepts or offers to accept any money or
12 other thing of value as a commission or gratuity from a
13 funeral director in order to secure business for the funeral
14 director ~~shall be deemed guilty of~~ commits a simple
15 misdemeanor. This section ~~shall~~ does not ~~be construed as~~
16 ~~prohibiting~~ prohibit any person, firm, co-operative burial
17 association, or corporation, subject to the provisions of this
18 chapter, from using legitimate and honest advertising. This
19 section does not apply to sales made in accordance with
20 chapter 523A.

21 Sec. 3. Section 523A.1, Code 1987, is amended to read as
22 follows:

23 523A.1 TRUST FUND ESTABLISHED.

24 Whenever an agreement is made by any person, firm, or
25 corporation ~~for the final disposition of a dead human body~~
26 ~~wherein delivery of personal property to be used under a~~
27 ~~prearranged funeral plan or the furnishing of professional~~
28 ~~services of a funeral director or embalmer in connection~~
29 ~~therewith, is not immediately required,~~ to furnish, upon the
30 future death of a person named or implied in the agreement,
31 funeral services or funeral merchandise, a minimum of eighty
32 percent of all payments made under the agreement, including
33 ~~interest thereon,~~ shall be and remain trust funds until
34 occurrence of the death of the person for whose benefit the
35 funds were paid, unless ~~said~~ the funds are sooner released to

1 the person making such the payment by mutual consent of the
2 parties. Payments otherwise subject to this section are not
3 exempt merely because they are held in certificates of
4 deposit.

5 Interest or income earned on amounts deposited in trust
6 under this section shall remain in trust under the same terms
7 and conditions as the payments made under the agreement,
8 except that the seller may withdraw so much of the interest or
9 income as represents the difference between the amount needed
10 to adjust the trust funds for inflation as set by the
11 commissioner based on the consumer price index and the
12 interest or income earned during the preceding year not to
13 exceed fifty percent of the total interest or income, on a
14 calendar year basis. The early withdrawal of interest or
15 income pursuant to this provision does not affect the
16 purchaser's right to the full refund or credit of such
17 interest or income in the event the payments and interest in
18 trust are released to the purchaser or in the event of a
19 nonguaranteed price agreement, respectively. This provision
20 does not affect the purchaser's right to a total refund of
21 principal and interest or income in the event of
22 nonperformance.

23 If an agreement pursuant to this section is to be paid in
24 installment payments, the seller shall deposit eighty percent
25 of each payment in trust until the full amount to be trusted
26 has been deposited. If the agreement is financed with or sold
27 to a financial institution, then the agreement shall be
28 considered paid in full and the deposit requirements of this
29 section shall be satisfied within thirty days after the close
30 of the month in which payment is received from the financial
31 institution.

32 This section does not apply to payments for merchandise de-
33 livered to the purchaser. Delivery includes storage in a
34 warehouse under the control of the seller when a receipt of
35 ownership in the name of the purchaser is delivered to the

1 purchaser, the merchandise is insured against loss, and the
2 annual reporting requirements of section 523A.2, subsection 1,
3 are satisfied.

4 Sec. 4. Section 523A.2, Code 1987, is amended to read as
5 follows:

6 523A.2 DEPOSIT OF FUNDS -- RECORDS -- EXAMINATIONS --
7 REPORTS.

8 1. a. All funds held in trust under section 523A.1 shall
9 be deposited in an a state or federally insured bank, savings
10 and loan association, or credit union authorized to conduct
11 business in this state, or trust department thereof, within
12 thirty days after the receipt of the funds and shall be held
13 in a separate account or in one common trust fund under a
14 trust agreement in the name of the depositor in trust for the
15 designated beneficiary until released ~~under either of the~~
16 ~~conditions provided in~~ pursuant to section 523A.1.

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

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

30 d c. The seller under an agreement referred to in section
31 523A.1 shall file ~~notice-with-the-county-recorder-for-the~~
32 ~~county-in-which-the-trust-agreement-is-filed-of-each-receipt~~
33 ~~of-funds-held-in-trust-under-section-523A.1.--This-notice~~
34 ~~shall-be-filed-on-forms-furnished-by-the-seller,-and-shall-be~~
35 ~~filed-not-later-than-March-1-of-each-year.--Each-notice-shall~~

1 ~~contain the required information for all receipts of the~~
2 ~~seller during the previous calendar year with the~~
3 commissioner not later than March 1 of each year a report
4 including the following information:

5 (1) The name and address of the seller and the name and
6 address of the establishment that will provide the funeral
7 services or funeral merchandise.

8 (2) The name of the purchaser, beneficiary, and the amount
9 of each agreement under section 523A.1 made in the preceding
10 year and the date on which it was made.

11 (3) The total value of agreements subject to section
12 523A.1 entered into, the total amount paid pursuant to those
13 agreements, and the total amount deposited in trust as
14 required under section 523A.1, during the preceding year.

15 (4) The amount of any payments received pursuant to
16 agreements reported in previous years in accordance with
17 subparagraphs (2) and (3) and the amount of those payments
18 deposited in trust for each purchaser.

19 (5) The change in status of any trust account, including
20 total amount of interest or income withdrawn from each trust
21 account in the preceding year, and for each purchaser, any
22 other amounts withdrawn from trust and the reason for each
23 withdrawal. However, regular increments of interest or income
24 need not be reported on a yearly basis.

25 (6) The name and address of the financial institution in
26 which trust funds were deposited, and the name and address of
27 each insurance company which funds agreements under section
28 523A.1.

29 (7) The name and address of each purchaser of funeral
30 merchandise delivered in lieu of trusting pursuant to section
31 523A.1, and a description of that merchandise for each
32 purchaser.

33 (8) The complete inventory of funeral merchandise and its
34 location in the seller's possession that has been delivered in
35 lieu of trusting pursuant to section 523A.1.

1 (9) Other information reasonably required by the com-
2 missioner for purposes of administration of this chapter.

3 The information required by subparagraphs (7) and (8) shall
4 include a verified statement of a certified public accountant
5 that the certified public accountant has conducted a physical
6 inventory of the funeral merchandise specified in subparagraph
7 (8) and that each item of that merchandise is in the seller's
8 possession at the specified location. The statement shall be
9 on a form prescribed by the commissioner.

10 The report shall be accompanied by a filing fee determined
11 by the commissioner which shall be sufficient to defray the
12 costs of administering this chapter.

13 e d. A financial institution referred to in paragraph "a"
14 ~~of this subsection shall file notice with the county-recorder~~
15 ~~for the county in which the trust agreement is filed~~
16 commissioner of all funds deposited under the trust agreement.
17 ~~This~~ The notice shall be on forms furnished prescribed by the
18 seller commissioner and shall be filed not later than March 1
19 of each year. Each notice shall contain the required
20 information for all deposits made during the previous calendar
21 year. ~~The seller shall furnish the financial institution with~~
22 ~~the appropriate forms.~~ Forms may be obtained from the
23 commissioner.

24 f e. Notwithstanding chapter 22, all records maintained by
25 ~~a county-recorder~~ the commissioner under this subsection shall
26 be confidential and shall not be made available for inspection
27 or copying ~~by any person~~ except upon approval of the county
28 ~~attorney or a representative of the county~~ commissioner or the
29 attorney general.

30 f. The state or federally insured bank, savings and loan
31 association, or credit union in which trust funds are held
32 shall not be owned or under the control of the seller and
33 shall not use any funds required to be held in trust pursuant
34 to this chapter or chapter 566A to purchase an interest in any
35 contract or agreement to which the seller is a party, or

1 otherwise to invest, directly or indirectly, in the seller's
2 business operations.

3 g. The bank, savings and loan, credit union, or trust
4 department thereof, in which trust funds are held shall serve
5 as trustee to the extent that organization has been granted
6 those powers under the laws of this state or the United States
7 and may invest, reinvest, exchange, retain, sell, and
8 otherwise manage the trust fund. The trustee may combine
9 trust accounts established pursuant to this chapter as long as
10 a separate accounting of each purchaser's principal, interest,
11 and income is maintained. The seller may appoint an
12 independent investment advisor to act in an advisory capacity
13 with the trustee relative to the investment of the trust
14 funds. The trust shall pay the cost of the operation of the
15 trust and any annual audit fees.

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

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

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

33 3. The insurance-division commissioner shall adopt rules
34 under chapter 17A specifying the form, content, and cost of
35 the forms for the notices and disclosures required by this

1 section, and shall sell blank forms at that cost to any person
2 on request.

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

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

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

21 7. This chapter does not prohibit the funding of an
22 agreement otherwise subject to section 523A.1 by insurance
23 proceeds derived from a policy issued by an insurance company
24 authorized to conduct business in this state. The seller of
25 an agreement subject to this chapter which is to be funded by
26 insurance proceeds shall obtain all permits required to be
27 obtained under this chapter and comply with the reporting
28 requirements of this section.

29 Sec. 5. Section 523A.5, subsection 1, Code 1987, is
30 amended to read as follows:

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

34 Sec. 6. Section 523A.5, subsection 2, Code 1987, is
35 amended by adding the following new paragraph:

1 NEW PARAGRAPH. c. "Commissioner" means the commissioner
2 of insurance or the deputy appointed under section 502.601.

3 Sec. 7. Section 523A.7, Code 1987, is amended to read as
4 follows:

5 523A.7 BOND IN LIEU OF TRUST FUND.

6 1. In lieu of the trust fund required by sections 523A.1
7 and 523A.2, a seller may file with the ~~county-attorney-of-the~~
8 ~~county-in-which-the-seller-maintains-its-principal-place-of~~
9 business commissioner a surety bond ~~in-open-penalty~~ that is
10 issued by a surety company authorized to do business in this
11 state and that is conditioned on the faithful performance by
12 the seller of agreements subject to this chapter. The
13 liability of the surety extends to each agreement that is
14 subject to this chapter and that is executed during the time
15 the bond is in force and until performance of the agreement or
16 rescission of the agreement by mutual consent of the parties;
17 and, to the extent expressly agreed to in writing by the
18 surety company under subsection 3, paragraph "b", the
19 liability of the surety extends to each agreement that is
20 subject to this chapter and that was executed prior to the
21 time the bond was in force and until performance of the
22 agreement or rescission of the agreement by mutual consent of
23 the parties. A buyer who is aggrieved by a breach of a
24 condition of the bond covering the contract of that buyer may
25 maintain an action against the bond, provided that if, at the
26 time of the breach, the buyer is aware of the buyer's rights
27 under the bond and how to file a claim against the bond, the
28 surety shall not be liable as a result of any breach of
29 condition unless notice of a claim is received by the surety
30 within sixty days following the discovery of the acts,
31 omissions, or conditions constituting the breach of condition,
32 except as otherwise provided in subsection 2. A surety bond
33 submitted under this subsection shall not be canceled by a
34 surety company except upon a written notice of cancellation
35 given by the surety company to the ~~county-attorney~~

1 commissioner by restricted certified mail, and the surety bond
2 shall not be canceled prior to the expiration of sixty days
3 after the receipt by the county-attorney commissioner of the
4 notice of cancellation.

5 2. If a seller becomes insolvent or otherwise ceases to
6 engage in business prior to or within sixty days after the
7 cancellation of a bond submitted under subsection 1, the
8 seller shall be deemed to have breached the conditions of the
9 surety bond with respect to all outstanding contracts subject
10 to this chapter as of the day prior to cancellation of the
11 bond. The county-attorney commissioner shall mail written
12 notice by restricted certified mail to the buyer under each
13 outstanding contract of the seller that a claim against the
14 bond must be filed with the surety company within sixty days
15 after the date of mailing of the notice. The surety company
16 shall cease to be liable with respect to all agreements except
17 those for which claims are filed with the surety company
18 within sixty days after the date the notices are mailed by the
19 county-attorney commissioner.

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

24 a. The seller shall comply with the trust requirements of
25 sections 523A.1 and 523A.2 with respect to all contracts
26 subject to this chapter that are executed on or after the
27 effective date of cancellation of the surety bond, or the
28 seller may submit a substitute surety bond meeting the
29 requirements of subsection 1, ~~provided that~~ but the seller
30 ~~shall~~ must comply with sections 523A.1 and 523A.2 with respect
31 to any contracts executed on or after the effective date of
32 cancellation of the earlier surety bond and prior to the date
33 on which the later surety bond takes effect.

34 b. Within sixty days after the effective date of the
35 cancellation of the surety bond, the seller shall submit to

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

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

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

6 6. Upon receiving a notice of cancellation, unless the
7 seller has complied with the requirements of this section, the
8 county attorney general shall seek an injunction to prohibit
9 the seller from making further agreements subject to this
10 chapter and shall commence an action to attach and levy
11 execution upon property of the seller when the seller fails to
12 perform an agreement subject to this chapter, to the extent
13 necessary to secure compliance with this chapter, and the
14 county attorney may bring criminal charges under section
15 523A.2, subsection 6.

16 7. The surety under this section shall not be owned or
17 under the control of the seller.

18 Sec. 8. NEW SECTION. 523A.8 DISCLOSURES.

19 1. Every agreement for funeral merchandise or funeral
20 services under this chapter shall be written in clear, under-
21 standable language and shall be printed or typed in easy-to-
22 read type, size, and style, and shall:

23 a. Identify the seller, the sales person's permit and
24 establishment name and permit number, the expiration date of
25 the salesperson's permit, the purchaser, and the person for
26 whom the funeral services or funeral merchandise are purchased
27 if other than the purchaser.

28 b. Specify the funeral services or funeral merchandise, or
29 both, to be provided, and the cost of each service and mer-
30 chandise item.

31 c. State clearly the conditions on which substitution will
32 be allowed.

33 d. Set forth the total purchase price and the terms under
34 which it is to be paid.

35 e. State clearly whether the agreement is a guaranteed

1 price contract or a nonguaranteed price contract.

2 f. State clearly whether the agreement is a revocable or
3 irrevocable contract, and who has the authority to revoke the
4 contract.

5 g. State the amount or percentage of money to be placed in
6 trust.

7 h. Explain the disposition of the interest and disclose
8 what fees and expenses may be charged if incurred.

9 i. Specify the purchaser's right to cancel and damages for
10 cancellation, if any.

11 j. State the name and address of the commissioner.

12 2. Every agreement shall be signed by the purchaser, the
13 seller, and if the agreement is for funeral services as
14 defined in chapter 156, a person licensed to deliver those
15 services.

16 Sec. 9. NEW SECTION. 523A.9 ESTABLISHMENT PERMITS.

17 1. A person, as defined in section 4.1, subsection 13,
18 shall not engage in the business of selling, promoting, or
19 otherwise entering into agreements to furnish, upon the future
20 death of a person named or implied in the agreement, funeral
21 services, property for use in funeral services, or funeral
22 merchandise without an establishment permit as provided for in
23 this section. An establishment doing business shall obtain a
24 permit for each location.

25 2. An applicant for a permit under this section shall
26 submit to the commissioner an application on a form provided
27 by the commissioner. The application shall include at a
28 minimum the following information:

29 a. The name and location of the applicant's business.

30 b. The name and location of the provider who will provide
31 the funeral services or funeral merchandise.

32 c. The name and address of each owner, officer, or other
33 official of the applicant's business, or in the event that the
34 applicant is a corporation, the names and addresses of the
35 chief executive officer and the members of the board of di-

1 rectors.

2 d. The types of professional services or funeral
3 merchandise to be sold.

4 An application for a permit pursuant to this section shall
5 be accompanied by a copy of each sales agreement the permit
6 holder will use for sales of funeral services or funeral
7 merchandise under section 523A.1.

8 A permit holder shall inform the commissioner of changes in
9 the information within thirty days of the change.

10 4. The applicant for a permit shall submit a fee in the
11 amount of fifty dollars.

12 5. Permits granted under this section are not assignable.

13 6. Upon the filing of an application for a permit, if the
14 commissioner finds that the applicant has not been convicted
15 of a criminal offense involving dishonesty or false statement
16 and can provide the funeral services or funeral merchandise
17 the applicant purports to sell, the commissioner shall issue
18 the permit.

19 7. If the commissioner does not grant the permit, the
20 commissioner shall notify the applicant in writing of the
21 denial and the reasons for the denial. The commissioner shall
22 approve or deny every application for a license within ninety
23 days after the filing thereof, but any failure of the
24 commissioner to act within that time period shall not be
25 deemed to be an approval of the application.

26 Sec. 10. NEW SECTION. 523A.10 SALES PERMITS.

27 1. An individual shall not sell, promote, or otherwise
28 enter into an agreement to furnish, upon the future death of a
29 person named or implied in the agreement, funeral services or
30 funeral merchandise without a permit as provided for in this
31 section. An individual permit holder must be an employee or
32 agent of an establishment which holds a permit pursuant to
33 section 523A.9 and which can deliver the funeral services or
34 funeral merchandise being sold. The establishment is liable
35 for the acts of its employees and agents, independent or

1 otherwise, performed in the course of obtaining or attempting
2 to obtain an agreement for the sale of funeral services or
3 funeral merchandise under section 523A.1.

4 2. This chapter does not allow a person to engage in the
5 practice of mortuary science without a license. However, a
6 person having a valid permit under this section may engage in
7 the preneed sale of a funeral director's services as an
8 employee or agent of a funeral establishment that may furnish
9 the funeral services in accordance with chapter 156.

10 3. An applicant for a permit under this section shall
11 submit to the commissioner an application on a form provided
12 by the commissioner. The application shall include at a
13 minimum the following information:

14 a. The name and address of the applicant.

15 b. The name and address of the applicant's employer or the
16 establishment on whose behalf the applicant will be making or
17 attempting to make sales, and, if different, the name and
18 address of the provider who will provide the funeral services
19 or funeral merchandise.

20 A permit holder shall inform the commissioner of changes in
21 the information within thirty days of the change.

22 4. The permit shall be deemed effective upon filing the
23 application with the commissioner. The permit shall disclose
24 on its face the permit holder's employer or the establishment
25 on whose behalf the applicant will be making or attempting to
26 make sales, the permit number, and the expiration date. A
27 permit under this section shall expire one year from the date
28 the application is filed.

29 5. The application fee shall be five dollars.

30 6. Permits granted under this section are not assignable.

31 7. The commissioner may revoke a permit if the
32 commissioner determines that the permit holder has been
33 convicted of a criminal offense involving dishonesty or false
34 statement or that the establishment cannot provide the funeral
35 services or funeral merchandise the establishment purports to

1 sell.

2 Sec. 11. NEW SECTION. 523A.11 INVESTIGATIONS.

3 The attorney general or the commissioner may, for the
4 purpose of discovering violations of this chapter or any rules
5 adopted under this chapter:

6 1. Investigate the business and examine the books, ac-
7 counts, records, and files used by every permit holder under
8 this chapter.

9 2. Administer oaths and affirmations, subpoena witnesses,
10 receive evidence, and require the production of documents and
11 records in connection with an investigation or proceeding
12 being conducted pursuant to this chapter.

13 3. Apply to the district court for issuance of an order
14 requiring a person's appearance before the commissioner or
15 attorney general, or a designee of either or both, in cases
16 where the person has refused to obey a subpoena issued by the
17 commissioner or attorney general. The person may also be
18 required to produce documentary evidence germane to the
19 subject of the investigation. Failure to obey a court order
20 under this subsection constitutes contempt of court.

21 Sec. 12. NEW SECTION. 523A.12 SUSPENSION OR REVOCATION
22 OF PERMITS.

23 1. The commissioner may, pursuant to chapter 17A, suspend
24 or revoke any permit issued pursuant to this chapter if the
25 commissioner finds any of the following:

26 a. The permit holder has violated any provisions of this
27 chapter or any rule adopted under this chapter or any other
28 state or federal law applicable to the conduct of the permit
29 holder's business.

30 b. Any fact or condition exists which, if it had existed
31 at the time of the original application for the permit, would
32 have warranted the commissioner refusing originally to issue
33 the permit.

34 c. The permit holder is found upon investigation to be
35 insolvent, in which case the permit shall be revoked

1 immediately.

2 d. The permit holder, for the purpose of avoiding the
3 trusting requirement for funeral services under section
4 523A.1, attributes amounts paid pursuant to the agreement to
5 funeral merchandise that is delivered under section 523A.1
6 rather than to funeral services sold to the purchaser. The
7 sale of funeral services at a lower price when the sale is
8 made in conjunction with the sale of funeral merchandise to be
9 delivered pursuant to section 523A.1 than the services are
10 regularly and customarily sold for when not sold in
11 conjunction with funeral merchandise is evidence that the
12 permit holder is acting with the purpose of avoiding the
13 trusting requirement for funeral services under section
14 523A.1.

15 2. The commissioner may, on good cause shown, suspend any
16 permit for a period not exceeding thirty days, pending inves-
17 tigation.

18 Except as provided in the preceding paragraph, a permit
19 shall not be revoked or suspended except after notice and
20 hearing in accordance with chapter 17A.

21 3. Any permit holder may surrender a permit by delivering
22 to the commissioner written notice that the permit holder sur-
23 renders the permit, but the surrender shall not affect the
24 permit holder's civil or criminal liability for acts committed
25 before the surrender.

26 4. Revocation, suspension, or surrender of a permit does
27 not impair or affect the obligation of any pre-existing lawful
28 contract between the permit holder and any person.

29 Sec. 13. NEW SECTION. 523A.13 PROSECUTION FOR VIOLATIONS
30 OF LAW.

31 If the commissioner believes that grounds exist for the
32 criminal prosecution of persons subject to this chapter for
33 violations of this chapter or any other law of this state, the
34 commissioner may forward to the attorney general the grounds
35 for the belief, including all evidence in the commissioner's

1 possession, in order that the attorney general may proceed
2 with the matter as the attorney general deems appropriate. At
3 the request of the attorney general, the county attorney shall
4 appear and prosecute the action when brought in the county
5 attorney's county.

6 Sec. 14. NEW SECTION. 523A.14 INJUNCTIONS.

7 The attorney general may apply to the district court in any
8 county of the state for an injunction to restrain a person
9 subject to this chapter and any agents, employees, or as-
10 sociates of the person from engaging in conduct or practices
11 deemed contrary to the public interest. In any proceeding for
12 an injunction, the attorney general may apply to the court for
13 the issuance of a subpoena to require the appearance of a
14 defendant and the defendant's agents and any documents, books,
15 and records germane to the hearing upon the petition for an
16 injunction. Upon proof of any of the offenses described in
17 the petition for injunction the court may grant the injunc-
18 tion.

19 Sec. 15. NEW SECTION. 523A.15 FRAUDULENT PRACTICES.

20 A person who commits any of the following acts commits a
21 fraudulent practice and is punishable as provided in chapter
22 714:

- 23 1. Knowingly makes, causes to be made, or subscribes to a
24 false statement or representation in a report or other docu-
25 ment required under this chapter, or renders such a report or
26 document misleading through the deliberate omission of
27 information properly belonging in the report or document.
- 28 2. Conspires to defraud in connection with the sale of
29 funeral services or funeral merchandise under this chapter.
- 30 3. Deliberately misrepresents or omits a material fact
31 relative to the sale of funeral services or funeral
32 merchandise under this chapter.

33 Sec. 16. NEW SECTION. 523A.16 RULES.

34 The commissioner may adopt rules necessary to administer
35 this chapter, in accordance with chapter 17A.

1 Sec. 17. Section 331.602, subsection 29A, Code 1987, is
2 amended by striking the subsection.

3 Sec. 18. Section 331.756, subsection 70A, Code 1987, is
4 amended by striking the subsection.

5 Sec. 19. APPLICABILITY. The administrative and reporting
6 requirements of this Act apply to agreements in effect on July
7 1, 1987, as well as to agreements entered into on or after
8 that date.

9 Sec. 20. EFFECTIVE DATE. Sections 9 and 10 of this Act
10 take effect on January 1, 1988.

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HOUSE FILE 614
FISCAL NOTE

REQUESTED BY REPRESENTATIVE KNAPP

In compliance with a written request received March 31, 1987, a fiscal note for HOUSE FILE 614 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House File 614 substantially revises the laws relating to prearranged funerals. Funeral establishments or cemetery association who provide preneed funeral service would be required to file a report with the the Insurance Department. The Insurance Department will examine the reports and enforce the law. The Attorney General's Office or the Insurance Commissioner may initiate investigations deemed necessary to determine violations pursuant to this chapter. The bill provides for the collection of fees in addition to the assessment of penalties for noncompliance.

ASSUMPTIONS: The fiscal impact of House File 614 is based on the following assumptions.

1. The number of initial permits filed will be approximately 500 at a cost of \$50.00 each.
2. The number of annual sales permits will be 800 at a cost of \$5.00 each.
3. Approximately 10,000 contract will be filled each year with the Insurance Division at a cost of \$10.00 each.

FISCAL IMPACT: The fiscal impact of House File 614 on the Attorney General's Office can be absorbed within their current budget. The fiscal effect on the Insurance Division is as follows.

(dollars in thousands)

	Fiscal Year 1988			Fiscal Year 1989		
	Current Law	Proposed Law	Increase (Decrease)	Current Law	Proposed Law	Increase (Decrease)
REVENUE						
Initial Permit	0	\$ 25	\$ 25	\$ 0	\$ 25	\$ 25
Sales Permit	0	4	4	0	4	4
Filing Fee	0	100	100	0	100	100
Total	\$ 0	\$ 129	\$ 129	\$ 0	\$ 129	\$ 129
EXPENDITURES						
PSE II	\$ 0	\$ 35	\$ 35	\$ 0	\$ 35	\$ 35
Examiner II	0	27	27	0	27	27
Accountant	0	21	21	0	0	0
Clerk	0	13	13	0	13	13
Total	\$ 0	\$ 96	\$ 96	\$ 0	\$ 75	\$ 75
NET EFFECT	\$ 0	\$ 33	\$ 33	\$ 0	\$ 54	\$ 54

Source: The Attorney General
The Division of Insurance

(LSB 1911H. JEM)

LED APRIL 3, 1987

BY DENNIS PROUTY, FISCAL DIRECTOR

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
STATE GOVERNMENT BILL)

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

A BILL FOR

1 An act relating to sales of funeral services and funeral
2 merchandise, revising regulatory and reporting provisions,
3 requiring disclosures, requiring permits, providing penalties,
4 providing for the applicability of the Act, and providing an
5 effective date.

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

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SUB COMMITTEE ASSIGNMENTS

CHAIR: *Knapp*

COMMITTEE: *State Government*

2/24/87

1 Section 1. Section 156.9, subsection 3, Code 1987, is
2 amended by striking the subsection.

3 Sec. 2. Section 156.12, Code 1987, is amended to read as
4 follows:

5 156.12 FUNERAL DIRECTORS -- SOLICITATION OF BUSINESS --
6 EXCEPTIONS -- PENALTY.

7 Every funeral director, or any person acting ~~in their~~ on
8 behalf of a funeral director, who pays or causes to be paid
9 any money or other thing of value as a commission or gratuity
10 for the securing of business for ~~such~~ the funeral director,
11 and every person who accepts or offers to accept any money or
12 other thing of value as a commission or gratuity from a
13 funeral director in order to secure business for the funeral
14 director ~~shall be deemed guilty of~~ commits a simple
15 misdemeanor. This section ~~shall~~ does not be construed as
16 prohibiting prohibit any person, firm, co-operative burial
17 association, or corporation, subject to the provisions of this
18 chapter, from using legitimate and honest advertising. This
19 section does not apply to sales made in accordance with
20 chapter 523A.

21 Sec. 3. Section 523A.1, Code 1987, is amended to read as
22 follows:

23 523A.1 TRUST FUND ESTABLISHED.

24 Whenever an agreement is made by any person, firm, or
25 corporation ~~for the final disposition of a dead human body~~
26 ~~wherein delivery of personal property to be used under a~~
27 ~~prearranged funeral plan or the furnishing of professional~~
28 ~~services of a funeral director or embalmer in connection~~
29 ~~therewith, is not immediately required,~~ to furnish, upon the
30 future death of a person named or implied in the agreement,
31 funeral services or funeral merchandise, a minimum of eighty
32 percent of all payments made under the agreement, including
33 ~~interest thereon,~~ shall be and remain trust funds until
34 occurrence of the death of the person for whose benefit the
35 funds were paid, unless ~~said~~ the funds are sooner released to

1 the person making such the payment by mutual consent of the
2 parties. Payments otherwise subject to this section are not
3 exempt merely because they are held in certificates of
4 deposit.

5 Interest or income earned on amounts deposited in trust
6 under this section shall remain in trust under the same terms
7 and conditions as the payments made under the agreement,
8 except that the seller may withdraw so much of the interest or
9 income as represents the difference between the amount needed
10 to adjust the trust funds for inflation as set by the
11 commissioner based on the consumer price index and the
12 interest or income earned during the preceding year not to
13 exceed fifty percent of the total interest or income, on a
14 calendar year basis. The early withdrawal of interest or
15 income pursuant to this provision does not affect the
16 purchaser's right to the full refund or credit of such
17 interest or income in the event the payments and interest in
18 trust are released to the purchaser or in the event of a
19 nonguaranteed price agreement. This provision does not affect
20 the purchaser's right to a total refund of principal and
21 interest or income in the event of nonperformance.

22 If an agreement pursuant to this section is to be paid in
23 installment payments, the seller shall deposit eighty percent
24 of each payment in trust until the full amount to be trusted
25 has been deposited. If the agreement is financed with or sold
26 to a financial institution, then the agreement shall be
27 considered paid in full and the deposit requirements of this
28 section shall be satisfied within thirty days after the close
29 of the month in which payment is received from the financial
30 institution.

31 This section does not apply to payments for merchandise de-
32 livered to the purchaser. Delivery includes storage in a
33 warehouse of the seller when a receipt of ownership in the
34 name of the purchaser is delivered to the purchaser, the
35 merchandise is insured against loss, and the annual reporting

1 requirements of section 523A.2, subsection 1, are satisfied.

2 Sec. 4. Section 523A.2, Code 1987, is amended to read as
3 follows:

4 523A.2 DEPOSIT OF FUNDS -- RECORDS -- EXAMINATIONS --
5 REPORTS.

6 1. a. All funds held in trust under section 523A.1 shall
7 be deposited in an a federally insured bank, savings and loan
8 association, or credit union authorized to conduct business in
9 this state within thirty days after the receipt of the funds
10 and shall be held in a separate account or in one common trust
11 fund under a trust agreement in the name of the depositor in
12 trust for the designated beneficiary until released under
13 ~~either-of-the-conditions-provided-in~~ pursuant to section
14 523A.1.

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

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

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

1 commissioner not later than March 1 of each year a report
2 including the following information:

3 (1) The name and address of the seller and the name and
4 address of the establishment that will provide the funeral
5 services or funeral merchandise.

6 (2) The name of the purchaser, beneficiary, and the amount
7 of each agreement under section 523A.1 made in the preceding
8 year and the date on which it was made.

9 (3) The total value of agreements subject to section
10 523A.1 entered into, the total amount paid pursuant to those
11 agreements, and the total amount deposited in trust as
12 required under section 523A.1, during the preceding year.

13 (4) The amount of any payments received pursuant to
14 agreements reported in previous years in accordance with
15 subparagraphs (2) and (3) and the amount of those payments
16 deposited in trust for each purchaser.

17 (5) The change in status of any trust account, including
18 total amount of interest or income withdrawn from each trust
19 account in the preceding year, and for each purchaser, any
20 other amounts withdrawn from trust and the reason for each
21 withdrawal. However, regular increments of interest or income
22 need not be reported on a yearly basis.

23 (6) The name and address of the financial institution in
24 which trust funds were deposited, and the name and address of
25 each insurance company which funds agreements under section
26 523A.1.

27 (7) The name and address of each purchaser of funeral
28 merchandise delivered in lieu of trusting pursuant to section
29 523A.1, and a description of that merchandise for each
30 purchaser.

31 (8) The complete inventory of funeral merchandise and its
32 location in the seller's possession that has been delivered in
33 lieu of trusting pursuant to section 523A.1.

34 (9) Other information reasonably required by the com-
35 missioner for purposes of administration of this chapter.

1 The information required by subparagraphs (7) and (8) shall
2 include a verified statement of a certified public accountant
3 that the certified public accountant has conducted a physical
4 inventory of the funeral merchandise specified in subparagraph
5 (8) and that each item of that merchandise is in the seller's
6 possession at the specified location. The statement shall be
7 on a form prescribed by the commissioner.

8 The report shall be accompanied by a filing fee determined
9 by the commissioner which shall be sufficient to defray the
10 costs of administering this chapter.

11 e d. A financial institution referred to in paragraph "a"
12 of this subsection shall file notice with the county recorder
13 for the county in which the trust agreement is filed
14 commissioner of all funds deposited under the trust agreement.
15 This The notice shall be on forms furnished prescribed by the
16 seller commissioner and shall be filed not later than March 1
17 of each year. Each notice shall contain the required
18 information for all deposits made during the previous calendar
19 year. The seller shall furnish the financial institution with
20 the appropriate forms. Forms may be obtained from the
21 commissioner.

22 f e. Notwithstanding chapter 22, all records maintained by
23 a county recorder the commissioner under this subsection shall
24 be confidential and shall not be made available for inspection
25 or copying by any person except the county attorney or a
26 representative of the county attorney general.

27 f. The federally insured bank, savings and loan associa-
28 tion, or credit union in which trust funds are held shall not
29 be owned or under the control of the seller and shall not use
30 any funds required to be held in trust pursuant to this
31 chapter or chapter 566A to purchase an interest in any
32 contract or agreement to which the seller is a party, or
33 otherwise to invest, directly or indirectly, in the seller's
34 business operations.

35 g. The bank, savings and loan, or credit union in which

1 trust funds are held shall serve as trustee and may invest,
2 reinvest, exchange, retain, sell, and otherwise manage the
3 trust fund. The trustee may combine trust accounts
4 established pursuant to this chapter as long as a separate
5 accounting of each purchaser's principal, interest, and income
6 is maintained. The seller may appoint an independent
7 investment advisor to act in an advisory capacity with the
8 trustee relative to the investment of the trust funds. The
9 trust shall pay the cost of the operation of the trust and any
10 annual audit fees.

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

17 a.---~~Identification-of-each-financial-institution-in-which~~
18 ~~trust-funds-are-held-under-subsection-1, paragraph-"a", and a~~
19 ~~listing-of-each-trust-agreement-governing-funds-held-in-the~~
20 ~~respective-financial-institutions-and-the-date-each-agreement~~
21 ~~was-filed-with-the-county-recorder.~~

22 b.---~~Authorization-for-the-county-attorney~~ commissioner an
23 authorization for the commissioner or a designee to
24 investigate, audit, and verify all funds, accounts, safe-
25 deposit boxes, and other evidence of trust funds held by or in
26 a financial institution ~~under-paragraph-"a"-of-this~~
27 ~~subsection.~~

28 3. The ~~insurance-division~~ commissioner shall adopt rules
29 under chapter 17A specifying the form, content, and cost of
30 the forms for the notices and disclosures required by this
31 section, and shall sell blank forms at that cost to any person
32 on request.

33 4. If a seller under an agreement referred to in section
34 523A.1 ceases to do business, whether voluntarily or
35 involuntarily, all funds held in trust under section 523A.1,

1 including accrued interest or earnings, shall be repaid to the
2 purchaser under the agreement.

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

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

16 7. This chapter does not prohibit the funding of an
17 agreement otherwise subject to section 523A.1 by insurance
18 proceeds derived from a policy issued by an insurance company
19 authorized to conduct business in this state. The seller of
20 an agreement subject to this chapter which is to be funded by
21 insurance proceeds shall obtain all permits required to be
22 obtained under this chapter and comply with the reporting
23 requirements of this section.

24 Sec. 5. Section 523A.5, subsection 1, Code 1987, is
25 amended to read as follows:

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

29 Sec. 6. Section 523A.5, subsection 2, Code 1987, is
30 amended by adding the following new paragraph:

31 NEW PARAGRAPH. c. "Commissioner" means the commissioner
32 of insurance or the deputy appointed under section 502.601.

33 Sec. 7. Section 523A.7, Code 1987, is amended to read as
34 follows:

35 523A.7 BOND IN LIEU OF TRUST FUND.

1 1. In lieu of the trust fund required by sections 523A.1
2 and 523A.2, a seller may file with the ~~county-attorney-of-the~~
3 ~~county-in-which-the-seller-maintains-its-principal-place-of~~
4 ~~business~~ commissioner a surety bond ~~in-open-penalty~~ that is
5 issued by a surety company authorized to do business in this
6 state and that is conditioned on the faithful performance by
7 the seller of agreements subject to this chapter. The
8 liability of the surety extends to each agreement that is
9 subject to this chapter and that is executed during the time
10 the bond is in force and until performance of the agreement or
11 rescission of the agreement by mutual consent of the parties;
12 and, to the extent expressly agreed to in writing by the
13 surety company under subsection 3, paragraph "b", the
14 liability of the surety extends to each agreement that is
15 subject to this chapter and that was executed prior to the
16 time the bond was in force and until performance of the
17 agreement or rescission of the agreement by mutual consent of
18 the parties. A buyer who is aggrieved by a breach of a
19 condition of the bond covering the contract of that buyer may
20 maintain an action against the bond, provided that if, at the
21 time of the breach, the buyer is aware of the buyer's rights
22 under the bond and how to file a claim against the bond, the
23 surety shall not be liable as a result of any breach of
24 condition unless notice of a claim is received by the surety
25 within sixty days following the discovery of the acts,
26 omissions, or conditions constituting the breach of condition,
27 except as otherwise provided in subsection 2. A surety bond
28 submitted under this subsection shall not be canceled by a
29 surety company except upon a written notice of cancellation
30 given by the surety company to the ~~county-attorney~~
31 commissioner by restricted certified mail, and the surety bond
32 shall not be canceled prior to the expiration of sixty days
33 after the receipt by the ~~county-attorney~~ commissioner of the
34 notice of cancellation.

35 2. If a seller becomes insolvent or otherwise ceases to

1 engage in business prior to or within sixty days after the
2 cancellation of a bond submitted under subsection 1, the
3 seller shall be deemed to have breached the conditions of the
4 surety bond with respect to all outstanding contracts subject
5 to this chapter as of the day prior to cancellation of the
6 bond. The county-attorney commissioner shall mail written
7 notice by restricted certified mail to the buyer under each
8 outstanding contract of the seller that a claim against the
9 bond must be filed with the surety company within sixty days
10 after the date of mailing of the notice. The surety company
11 shall cease to be liable with respect to all agreements except
12 those for which claims are filed with the surety company
13 within sixty days after the date the notices are mailed by the
14 county-attorney commissioner.

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

19 a. The seller shall comply with the trust requirements of
20 sections 523A.1 and 523A.2 with respect to all contracts
21 subject to this chapter that are executed on or after the
22 effective date of cancellation of the surety bond, or the
23 seller may submit a substitute surety bond meeting the
24 requirements of subsection 1, ~~provided that~~ but the seller
25 ~~shall~~ must comply with sections 523A.1 and 523A.2 with respect
26 to any contracts executed on or after the effective date of
27 cancellation of the earlier surety bond and prior to the date
28 on which the later surety bond takes effect.

29 b. Within sixty days after the effective date of the
30 cancellation of the surety bond, the seller shall submit to
31 the county-attorney commissioner an undertaking by another
32 surety company that a substitute surety bond meeting the
33 requirements of subsection 1 is in effect and that the
34 liability of the substitute surety bond extends to all
35 outstanding contracts of the seller that were executed but not

1 performed or extinguished prior to the effective date of the
2 substitute surety bond, or the seller shall submit to the
3 county-attorney commissioner a financial statement accompanied
4 by an unqualified opinion based upon an audit performed by a
5 certified public accountant licensed in this state certifying
6 the total amount of outstanding liabilities of the seller on
7 contracts subject to this chapter and proof of deposit by the
8 seller in trust under sections 523A.1 and 523A.2 of either the
9 amount specified in sections 523A.1, including interest as set
10 by the commissioner based on the interest which would have
11 been earned had the funds been maintained in trust, with
12 respect to all of those outstanding contracts or such lesser
13 amount-as-is-certified-in-the-report-of-the-certified-public
14 accountant-to-be-adequate-to-assure-the-performance-by-the
15 seller-of-each-of-those-outstanding-contracts, where
16 applicable, that delivery of merchandise has been made in
17 compliance with section 523A.1. The surety may require such
18 security as is necessary to comply with this section. Upon
19 compliance by the seller with this paragraph, the surety
20 company canceling the surety bond shall cease to be liable
21 with respect to any outstanding contracts of the seller except
22 those with respect to which a breach of condition occurred
23 prior to cancellation and timely claims were filed.

24 4. Section 523A.2, subsection 1, paragraphs "b", "c", and
25 "d" "e", subsection 5, and, to the extent it is applicable,
26 subsection 6, apply to sellers whose agreements are covered by
27 a surety bond maintained under this section, and section
28 523A.2 continues to apply to any agreements of those sellers
29 that are not covered by a surety bond maintained under this
30 section.

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

1 6. Upon receiving a notice of cancellation, unless the
2 seller has complied with the requirements of this section, the
3 county attorney general shall seek an injunction to prohibit
4 the seller from making further agreements subject to this
5 chapter and shall commence an action to attach and levy
6 execution upon property of the seller when the seller fails to
7 perform an agreement subject to this chapter, to the extent
8 necessary to secure compliance with this chapter, and the
9 county attorney may bring criminal charges under section
10 523A.2, subsection 6.

11 7. The surety under this section shall not be owned or
12 under the control of the seller.

13 Sec. 8. NEW SECTION. 523A.8 DISCLOSURES.

14 1. Every agreement for funeral merchandise or funeral
15 services under this chapter shall be written in clear, under-
16 standable language and shall be printed or typed in easy-to-
17 read type, size, and style, and shall:

18 a. Identify the seller, the sales person's permit and
19 establishment name and permit number, the expiration date of
20 the salesperson's permit, the purchaser, and the person for
21 whom the funeral services or funeral merchandise are purchased
22 if other than the purchaser.

23 b. Specify the funeral services or funeral merchandise, or
24 both, to be provided, and the cost of each service and mer-
25 chandise item.

26 c. State clearly the conditions on which substitution will
27 be allowed.

28 d. Set forth the total purchase price and the terms under
29 which it is to be paid.

30 e. State clearly whether the agreement is a guaranteed
31 price contract or a nonguaranteed price contract.

32 f. State clearly whether the agreement is a revocable or
33 irrevocable contract, and who has the authority to revoke the
34 contract.

35 g. State the amount or percentage of money to be placed in

1 trust.

2 h. Explain the disposition of the interest and disclose
3 what fees and expenses may be charged if incurred.

4 i. Specify the purchaser's right to cancel and damages for
5 cancellation, if any.

6 j. State the name and address of the commissioner.

7 2. Every agreement shall be signed by the purchaser, the
8 seller, and if the agreement is for funeral services as
9 defined in chapter 156, a person licensed to deliver those
10 services.

11 Sec. 9. NEW SECTION. 523A.9 ESTABLISHMENT PERMITS.

12 1. A person, as defined in section 4.1, subsection 13,
13 shall not engage in the business of selling, promoting, or
14 otherwise entering into agreements to furnish, upon the future
15 death of a person named or implied in the agreement, funeral
16 services, property for use in funeral services, or funeral
17 merchandise without an establishment permit as provided for in
18 this section. An establishment doing business from more than
19 one location shall obtain a permit for each location.

20 2. An applicant for a permit under this section shall
21 submit to the commissioner an application on a form provided
22 by the commissioner. The application shall include at a
23 minimum the following information:

24 a. The name and location of the applicant's business.

25 b. The name and location of the provider who will provide
26 the funeral services or funeral merchandise.

27 c. The name and address of each owner, officer, or other
28 official of the applicant's business, or in the event that the
29 applicant is a corporation, the names and addresses of the
30 chief executive officer and the members of the board of di-
31 rectors.

32 d. The types of professional services or funeral
33 merchandise to be sold.

34 An application for a permit pursuant to this section shall
35 be accompanied by a copy of each sales agreement the permit

1 holder will use for sales of funeral services or funeral
2 merchandise under section 523A.1.

3 A permit holder shall inform the commissioner of changes in
4 the information within thirty days of the change.

5 4. The applicant for a permit shall submit a fee in the
6 amount of fifty dollars.

7 5. Permits granted under this section are not assignable.

8 6. Upon the filing of an application for a permit, if the
9 commissioner finds that the applicant has not been convicted
10 of a criminal offense involving dishonesty or false statement
11 and can provide the funeral services or funeral merchandise
12 the applicant purports to sell, the commissioner shall issue
13 the permit.

14 7. If the commissioner does not grant the permit, the
15 commissioner shall notify the applicant in writing of the
16 denial and the reasons for the denial. The commissioner shall
17 approve or deny every application for a license within ninety
18 days after the filing thereof, but any failure of the
19 commissioner to act within that time period shall not be
20 deemed to be an approval of the application.

21 Sec. 10. NEW SECTION. 523A.10 SALES PERMITS.

22 1. An individual shall not sell, promote, or otherwise
23 enter into an agreement to furnish, upon the future death of a
24 person named or implied in the agreement, funeral services or
25 funeral merchandise without a permit as provided for in this
26 section. An individual permit holder must be an employee or
27 agent of an establishment which holds a permit pursuant to
28 section 523A.9 and which can deliver the funeral services or
29 funeral merchandise being sold. The establishment is liable
30 for the acts of its employees and agents, independent or
31 otherwise, performed in the course of obtaining or attempting
32 to obtain an agreement for the sale of funeral services or
33 funeral merchandise under section 523A.1.

34 2. This chapter does not allow a person to engage in the
35 practice of mortuary science without a license. However, a

1 person having a valid permit under this section may engage in
2 the preneed sale of a funeral director's services as an
3 employee or agent of a funeral establishment that may furnish
4 the funeral services in accordance with chapter 156.

5 3. An applicant for a permit under this section shall
6 submit to the commissioner an application on a form provided
7 by the commissioner. The application shall include at a
8 minimum the following information:

9 a. The name and address of the applicant.

10 b. The name and address of the applicant's employer or the
11 establishment on whose behalf the applicant will be making or
12 attempting to make sales, and, if different, the name and
13 address of the provider who will provide the funeral services
14 or funeral merchandise.

15 A permit holder shall inform the commissioner of changes in
16 the information within thirty days of the change.

17 4. The permit shall be deemed effective upon filing the
18 application with the commissioner. The permit shall disclose
19 on its face the permit holder's employer or the establishment
20 on whose behalf the applicant will be making or attempting to
21 make sales, the permit number, and the expiration date. A
22 permit under this section shall expire one year from the date
23 the application is filed.

24 5. The application fee shall be five dollars.

25 6. Permits granted under this section are not assignable.

26 7. The commissioner may revoke a permit if the
27 commissioner determines that the permit holder has been
28 convicted of a criminal offense involving dishonesty or false
29 statement or that the establishment cannot provide the funeral
30 services or funeral merchandise the establishment purports to
31 sell.

32 Sec. 11. NEW SECTION. 523A.11 INVESTIGATIONS.

33 The attorney general or the commissioner may, for the
34 purpose of discovering violations of this chapter or any rules
35 adopted under this chapter:

1 1. Investigate the business and examine the books, ac-
2 counts, records, and files used by every permit holder under
3 this chapter.

4 2. Administer oaths and affirmations, subpoena witnesses,
5 receive evidence, and require the production of documents and
6 records in connection with an investigation or proceeding
7 being conducted pursuant to this chapter.

8 3. Apply to the district court for issuance of an order
9 requiring a person's appearance before the commissioner or
10 attorney general, or a designee of either or both, in cases
11 where the person has refused to obey a subpoena issued by the
12 commissioner or attorney general. The person may also be
13 required to produce documentary evidence germane to the
14 subject of the investigation. Failure to obey a court order
15 under this subsection constitutes contempt of court.

16 Sec. 12. NEW SECTION. 523A.12 SUSPENSION OR REVOCATION
17 OF PERMITS.

18 1. The commissioner may, pursuant to chapter 17A, suspend
19 or revoke any permit issued pursuant to this chapter if the
20 commissioner finds any of the following:

21 a. The permit holder has violated any provisions of this
22 chapter or any rule adopted under this chapter or any other
23 state or federal law applicable to the conduct of the permit
24 holder's business.

25 b. Any fact or condition exists which, if it had existed
26 at the time of the original application for the permit, would
27 have warranted the commissioner refusing originally to issue
28 the permit.

29 c. The permit holder is found upon investigation to be
30 insolvent, in which case the permit shall be revoked
31 immediately.

32 2. The commissioner may, on good cause shown, suspend any
33 permit for a period not exceeding thirty days, pending inves-
34 tigation.

35 Except as provided in the preceding paragraph, a permit

1 shall not be revoked or suspended except after notice and
2 hearing in accordance with chapter 17A.

3 3. Any permit holder may surrender a permit by delivering
4 to the commissioner written notice that the permit holder sur-
5 renders the permit, but the surrender shall not affect the
6 permit holder's civil or criminal liability for acts committed
7 before the surrender.

8 4. Revocation, suspension, or surrender of a permit does
9 not impair or affect the obligation of any pre-existing lawful
10 contract between the permit holder and any person.

11 Sec. 13. NEW SECTION. 523A.13 PROSECUTION FOR VIOLATIONS
12 OF LAW.

13 If the commissioner believes that grounds exist for the
14 criminal prosecution of persons subject to this chapter for
15 violations of this chapter or any other law of this state, the
16 commissioner may forward to the attorney general the grounds
17 for the belief, including all evidence in the commissioner's
18 possession, in order that the attorney general may proceed
19 with the matter as the attorney general deems appropriate. At
20 the request of the attorney general, the county attorney shall
21 appear and prosecute the action when brought in the county
22 attorney's county.

23 Sec. 14. NEW SECTION. 523A.14 INJUNCTIONS.

24 The attorney general may apply to the district court in any
25 county of the state for an injunction to restrain a person
26 subject to this chapter and any agents, employees, or as-
27 sociates of the person from engaging in conduct or practices
28 deemed contrary to the public interest. In any proceeding for
29 an injunction, the attorney general may apply to the court for
30 the issuance of a subpoena to require the appearance of a
31 defendant and the defendant's agents and any documents, books,
32 and records germane to the hearing upon the petition for an
33 injunction. Upon proof of any of the offenses described in
34 the petition for injunction the court may grant the injunc-
35 tion.

1 Sec. 15. NEW SECTION. 523A.15 FRAUDULENT PRACTICES.

2 A person who commits any of the following acts commits a
3 fraudulent practice and is punishable as provided in chapter
4 714:

5 1. Knowingly makes, causes to be made, or subscribes to a
6 false statement or representation in a report or other docu-
7 ment required under this chapter, or renders such a report or
8 document misleading through the deliberate omission of
9 information properly belonging in the report or document.

10 2. Conspires to defraud in connection with the sale of
11 funeral services or funeral merchandise under this chapter.

12 3. Deliberately misrepresents or omits a material fact
13 relative to the sale of funeral services or funeral
14 merchandise under this chapter.

15 Sec. 16. NEW SECTION. 523A.16 RULES.

16 The commissioner may adopt rules necessary to administer
17 this chapter, in accordance with chapter 17A.

18 Sec. 17. APPLICABILITY. The administrative and reporting
19 requirements of this Act apply to agreements in effect on July
20 1, 1987, as well as to agreements entered into on or after
21 that date.

22 Sec. 18. EFFECTIVE DATE. Sections 9 and 10 of this Act
23 take effect on January 1, 1988.

24 EXPLANATION

25 This bill substantially revises the laws relating to
26 prearranged funerals. It removes the prohibition against a
27 funeral director engaging in the business of selling funeral
28 services and funeral merchandise to be furnished upon the
29 future death of a person. It revises provisions relating to
30 trust funds, financial institutions in which trust funds are
31 held, and withdrawal of interest. Under the bill, trust fund
32 requirements would not apply where payments are for
33 merchandise stored in a warehouse of the seller if the
34 purchaser has received a receipt of ownership, the merchandise
35 is insured against loss, and reporting requirements are met.

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1 The bill provides for regulation by the commissioner of
2 insurance and deletes duties of county recorders and county
3 attorneys with respect to reporting and investigations.
4 Reporting and audit requirements are revised and reports are
5 made to the commissioner.

6 The bill adds provisions for disclosure to purchasers,
7 issuance of permits, and investigations and enforcement by the
8 attorney general. False statements and misrepresentations are
9 declared to be fraudulent practices, punishable as provided in
10 chapter 714.

11 The requirements for establishment permits and sales
12 permits do not take effect until January 1, 1988. Other
13 provisions take effect July 1, 1987.

14 Administrative and reporting requirements apply to agree-
15 ments in effect on July 1, 1987, as well as to agreements
16 entered into on or after that date.

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HOUSE FILE 614

AN ACT

RELATING TO SALES OF FUNERAL SERVICES AND FUNERAL MERCHANDISE, REVISING REGULATORY AND REPORTING PROVISIONS, REQUIRING DISCLOSURES, REQUIRING PERMITS, PROVIDING PENALTIES, PROVIDING FOR THE APPLICABILITY OF THE ACT, AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 156.9, subsection 3, Code 1987, is amended by striking the subsection.

Sec. 2. Section 156.12, Code 1987, is amended to read as follows:

156.12 FUNERAL DIRECTORS -- SOLICITATION OF BUSINESS -- EXCEPTIONS -- PENALTY.

Every funeral director, or any person acting in their on behalf of a funeral director, who pays or causes to be paid any money or other thing of value as a commission or gratuity for the securing of business for such the funeral director, and every person who accepts or offers to accept any money or other thing of value as a commission or gratuity from a funeral director in order to secure business for the funeral director shall be deemed guilty of commits a simple misdemeanor. This section shall does not be construed as prohibiting prohibit any person, firm, co-operative burial association, or corporation, subject to the provisions of this chapter, from using legitimate and honest advertising. This section does not apply to sales made in accordance with chapter 523A.

Sec. 3. Section 523A.1, Code 1987, is amended to read as follows:

523A.1 TRUST FUND ESTABLISHED.

Whenever an agreement is made by any person, firm, or corporation for the final disposition of a dead human body

wherein delivery of personal property to be used under a prearranged funeral plan or the furnishing of professional services of a funeral director or embalmer in connection therewith; is not immediately required, to furnish, upon the future death of a person named or implied in the agreement, funeral services or funeral merchandise, a minimum of eighty percent of all payments made under the agreement, including interest thereon, shall be and remain trust funds until occurrence of the death of the person for whose benefit the funds were paid, unless said the funds are sooner released to the person making such the payment by mutual consent of the parties. Payments otherwise subject to this section are not exempt merely because they are held in certificates of deposit.

Interest or income earned on amounts deposited in trust under this section shall remain in trust under the same terms and conditions as the payments made under the agreement, except that the seller may withdraw so much of the interest or income as represents the difference between the amount needed to adjust the trust funds for inflation as set by the commissioner based on the consumer price index and the interest or income earned during the preceding year not to exceed fifty percent of the total interest or income, on a calendar year basis. The early withdrawal of interest or income pursuant to this provision does not affect the purchaser's right to the full refund or credit of such interest or income in the event the payments and interest in trust are released to the purchaser or in the event of a nonquaranteed price agreement, respectively. This provision does not affect the purchaser's right to a total refund of principal and interest or income in the event of nonperformance.

If an agreement pursuant to this section is to be paid in installment payments, the seller shall deposit eighty percent of each payment in trust until the full amount to be trusted has been deposited. If the agreement is financed with or sold

to a financial institution, then the agreement shall be considered paid in full and the deposit requirements of this section shall be satisfied within thirty days after the close of the month in which payment is received from the financial institution.

This section does not apply to payments for merchandise delivered to the purchaser. Delivery includes storage in a warehouse under the control of the seller when a receipt of ownership in the name of the purchaser is delivered to the purchaser, the merchandise is insured against loss, and the annual reporting requirements of section 523A.2, subsection 1, are satisfied.

Sec. 4. Section 523A.2, Code 1987, is amended to read as follows:

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

1. a. All funds held in trust under section 523A.1 shall be deposited in an a state or federally insured bank, savings and loan association, or credit union authorized to conduct business in this state, or trust department thereof, within thirty days after the receipt 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 released under either of the conditions provided in pursuant to 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 commissioner 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 file notice with 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 filed on forms furnished by the seller, and shall be filed 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 with the commissioner not later than March 1 of each year a report including the following information:~~

- (1) The name and address of the seller and the name and address of the establishment that will provide the funeral services or funeral merchandise.
- (2) The name of the purchaser, beneficiary, and the amount of each agreement under section 523A.1 made in the preceding year and the date on which it was made.
- (3) The total value of agreements subject to section 523A.1 entered into, the total amount paid pursuant to those agreements, and the total amount deposited in trust as required under section 523A.1, during the preceding year.
- (4) The amount of any payments received pursuant to agreements reported in previous years in accordance with subparagraphs (2) and (3) and the amount of those payments deposited in trust for each purchaser.
- (5) The change in status of any trust account, including total amount of interest or income withdrawn from each trust account in the preceding year, and for each purchaser, any other amounts withdrawn from trust and the reason for each withdrawal. However, regular increments of interest or income need not be reported on a yearly basis.
- (6) The name and address of the financial institution in which trust funds were deposited, and the name and address of each insurance company which funds agreements under section 523A.1.

(7) The name and address of each purchaser of funeral merchandise delivered in lieu of trusting pursuant to section 523A.1, and a description of that merchandise for each purchaser.

(8) The complete inventory of funeral merchandise and its location in the seller's possession that has been delivered in lieu of trusting pursuant to section 523A.1.

(9) Other information reasonably required by the commissioner for purposes of administration of this chapter.

The information required by subparagraphs (7) and (8) shall include a verified statement of a certified public accountant that the certified public accountant has conducted a physical inventory of the funeral merchandise specified in subparagraph (8) and that each item of that merchandise is in the seller's possession at the specified location. The statement shall be on a form prescribed by the commissioner.

The report shall be accompanied by a filing fee determined by the commissioner which shall be sufficient to defray the costs of administering this chapter.

e d. A financial institution referred to in paragraph "a" of this subsection shall file notice with the county-recorder for-the-county-in-which-the-trust-agreement-is-filed commissioner of all funds deposited under the trust agreement. This The notice shall be on forms furnished prescribed by the seller commissioner and shall be filed 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: Forms may be obtained from the commissioner.

e e. Notwithstanding chapter 22, all records maintained by e-county-recorder the commissioner under this subsection shall be confidential and shall not be made available for inspection or copying by any-person except upon approval of the county attorney-or-a-representative-of-the-county commissioner or the attorney general.

f. The state or federally insured bank, savings and loan association, or credit union in which trust funds are held shall not be owned or under the control of the seller and shall not use any funds required to be held in trust pursuant to this chapter or chapter 566A to purchase an interest in any contract or agreement to which the seller is a party, or otherwise to invest, directly or indirectly, in the seller's business operations.

g. The bank, savings and loan, credit union, or trust department thereof, in which trust funds are held shall serve as trustee to the extent that organization has been granted those powers under the laws of this state or the United States and may invest, reinvest, exchange, retain, sell, and otherwise manage the trust fund. The trustee may combine trust accounts established pursuant to this chapter as long as a separate accounting of each purchaser's principal, interest, and income is maintained. The seller may appoint an independent investment advisor to act in an advisory capacity with the trustee relative to the investment of the trust funds. The trust shall pay the cost of the operation of the trust and any annual audit fees.

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-1y-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 commissioner an authorization for the commissioner 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 division commissioner 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 commissioner may require the performance of an audit of the seller's business by a certified public accountant if the county attorney commissioner 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 commissioner 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.

7. This chapter does not prohibit the funding of an agreement otherwise subject to section 523A.1 by insurance proceeds derived from a policy issued by an insurance company authorized to conduct business in this state. The seller of an agreement subject to this chapter which is to be funded by insurance proceeds shall obtain all permits required to be obtained under this chapter and comply with the reporting requirements of this section.

Sec. 5. Section 523A.5, subsection 1, Code 1987, is amended to read as follows:

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

Sec. 6. Section 523A.5, subsection 2, Code 1987, is amended by adding the following new paragraph:

NEW PARAGRAPH. c. "Commissioner" means the commissioner of insurance or the deputy appointed under section 502.601.

Sec. 7. Section 523A.7, Code 1987, is amended to read as follows:

523A.7 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 commissioner 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 if, at the time of the breach, the buyer is aware of the buyer's rights under the bond and how to file a claim against the bond, 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 discovery of 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 commissioner 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 commissioner 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 commissioner 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 commissioner.

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 ~~but~~ the seller shall must 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 commissioner 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 commissioner 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, including interest as set by the commissioner based on the interest which would have been earned had the funds been maintained in trust, 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, where applicable, that delivery of merchandise has been made in compliance with section 523A.1. The surety may require such security as is necessary to comply with this section. 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", "c", and "d" "e", 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 commissioner 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 general 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 the county attorney may bring criminal charges under section 523A.2, subsection 6.

7. The surety under this section shall not be owned or under the control of the seller.

Sec. 8. NEW SECTION. 523A.8 DISCLOSURES.

1. Every agreement for funeral merchandise or funeral services under this chapter shall be written in clear, understandable language and shall be printed or typed in easy-to-read type, size, and style, and shall:

a. Identify the seller, the salesperson's permit and establishment name and permit number, the expiration date of the salesperson's permit, the purchaser, and the person for whom the funeral services or funeral merchandise are purchased if other than the purchaser.

b. Specify the funeral services or funeral merchandise, or both, to be provided, and the cost of each service and merchandise item.

c. State clearly the conditions on which substitution will be allowed.

d. Set forth the total purchase price and the terms under which it is to be paid.

e. State clearly whether the agreement is a guaranteed price contract or a nonguaranteed price contract.

f. State clearly whether the agreement is a revocable or irrevocable contract, and who has the authority to revoke the contract.

g. State the amount or percentage of money to be placed in trust.

h. Explain the disposition of the interest and disclose what fees and expenses may be charged if incurred.

i. Specify the purchaser's right to cancel and damages for cancellation, if any.

j. State the name and address of the commissioner.

2. Every agreement shall be signed by the purchaser, the seller, and if the agreement is for funeral services as defined in chapter 156, a person licensed to deliver those services.

Sec. 9. NEW SECTION. 523A.9 ESTABLISHMENT PERMITS.

1. A person, as defined in section 4.1, subsection 13, shall not engage in the business of selling, promoting, or otherwise entering into agreements to furnish, upon the future death of a person named or implied in the agreement, funeral services, property for use in funeral services, or funeral merchandise without an establishment permit as provided for in this section. An establishment doing business shall obtain a permit for each location.

2. An applicant for a permit under this section shall submit to the commissioner an application on a form provided by the commissioner. The application shall include at a minimum the following information:

a. The name and location of the applicant's business.

b. The name and location of the provider who will provide the funeral services or funeral merchandise.

c. The name and address of each owner, officer, or other official of the applicant's business, or in the event that the applicant is a corporation, the names and addresses of the chief executive officer and the members of the board of directors.

d. The types of professional services or funeral merchandise to be sold.

An application for a permit pursuant to this section shall be accompanied by a copy of each sales agreement the permit holder will use for sales of funeral services or funeral merchandise under section 523A.1.

A permit holder shall inform the commissioner of changes in the information within thirty days of the change.

4. The applicant for a permit shall submit a fee in the amount of fifty dollars.

5. Permits granted under this section are not assignable.

6. Upon the filing of an application for a permit, if the commissioner finds that the applicant has not been convicted of a criminal offense involving dishonesty or false statement and can provide the funeral services or funeral merchandise the applicant purports to sell, the commissioner shall issue the permit.

7. If the commissioner does not grant the permit, the commissioner shall notify the applicant in writing of the denial and the reasons for the denial. The commissioner shall approve or deny every application for a license within ninety days after the filing thereof, but any failure of the commissioner to act within that time period shall not be deemed to be an approval of the application.

Sec. 10. NEW SECTION. 523A.10 SALES PERMITS.

1. An individual shall not sell, promote, or otherwise enter into an agreement to furnish, upon the future death of a person named or implied in the agreement, funeral services or funeral merchandise without a permit as provided for in this section. An individual permit holder must be an employee or agent of an establishment which holds a permit pursuant to section 523A.9 and which can deliver the funeral services or funeral merchandise being sold. The establishment is liable for the acts of its employees and agents, independent or otherwise, performed in the course of obtaining or attempting to obtain an agreement for the sale of funeral services or funeral merchandise under section 523A.1.

2. This chapter does not allow a person to engage in the practice of mortuary science without a license. However, a person having a valid permit under this section may engage in the preneed sale of a funeral director's services as an employee or agent of a funeral establishment that may furnish the funeral services in accordance with chapter 156.

3. An applicant for a permit under this section shall submit to the commissioner an application on a form provided by the commissioner. The application shall include at a minimum the following information:

a. The name and address of the applicant.

b. The name and address of the applicant's employer or the establishment on whose behalf the applicant will be making or attempting to make sales, and, if different, the name and address of the provider who will provide the funeral services or funeral merchandise.

A permit holder shall inform the commissioner of changes in the information within thirty days of the change.

4. The permit shall be deemed effective upon filing the application with the commissioner. The permit shall disclose on its face the permit holder's employer or the establishment on whose behalf the applicant will be making or attempting to make sales, the permit number, and the expiration date. A permit under this section shall expire one year from the date the application is filed.

5. The application fee shall be five dollars.

6. Permits granted under this section are not assignable.

7. The commissioner may revoke a permit if the commissioner determines that the permit holder has been convicted of a criminal offense involving dishonesty or false statement or that the establishment cannot provide the funeral services or funeral merchandise the establishment purports to sell.

Sec. 11. NEW SECTION. 523A.11 INVESTIGATIONS.

The attorney general or the commissioner may, for the purpose of discovering violations of this chapter or any rules adopted under this chapter:

1. Investigate the business and examine the books, accounts, records, and files used by every permit holder under this chapter.

2. Administer oaths and affirmations, subpoena witnesses, receive evidence, and require the production of documents and records in connection with an investigation or proceeding being conducted pursuant to this chapter.

3. Apply to the district court for issuance of an order requiring a person's appearance before the commissioner or attorney general, or a designee of either or both, in cases where the person has refused to obey a subpoena issued by the commissioner or attorney general. The person may also be required to produce documentary evidence germane to the subject of the investigation. Failure to obey a court order under this subsection constitutes contempt of court.

Sec. 12. NEW SECTION. 523A.12 SUSPENSION OR REVOCATION OF PERMITS.

1. The commissioner may, pursuant to chapter 17A, suspend or revoke any permit issued pursuant to this chapter if the commissioner finds any of the following:

a. The permit holder has violated any provisions of this chapter or any rule adopted under this chapter or any other state or federal law applicable to the conduct of the permit holder's business.

b. Any fact or condition exists which, if it had existed at the time of the original application for the permit, would have warranted the commissioner refusing originally to issue the permit.

c. The permit holder is found upon investigation to be insolvent, in which case the permit shall be revoked immediately.

d. The permit holder, for the purpose of avoiding the trusting requirement for funeral services under section 523A.1, attributes amounts paid pursuant to the agreement to funeral merchandise that is delivered under section 523A.1 rather than to funeral services sold to the purchaser. The

sale of funeral services at a lower price when the sale is made in conjunction with the sale of funeral merchandise to be delivered pursuant to section 523A.1 than the services are regularly and customarily sold for when not sold in conjunction with funeral merchandise is evidence that the permit holder is acting with the purpose of avoiding the trusting requirement for funeral services under section 523A.1.

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

Except as provided in the preceding paragraph, a permit shall not be revoked or suspended except after notice and hearing in accordance with chapter 17A.

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

4. Revocation, suspension, or surrender of a permit does not impair or affect the obligation of any preexisting lawful contract between the permit holder and any person.

Sec. 13. NEW SECTION. 523A.13 PROSECUTION FOR VIOLATIONS OF LAW.

If the commissioner believes that grounds exist for the criminal prosecution of persons subject to this chapter for violations of this chapter or any other law of this state, the commissioner may forward to the attorney general the grounds for the belief, including all evidence in the commissioner's possession, in order that the attorney general may proceed with the matter as the attorney general deems appropriate. At the request of the attorney general, the county attorney shall appear and prosecute the action when brought in the county attorney's county.

Sec. 14. NEW SECTION. 523A.14 INJUNCTIONS.

The attorney general may apply to the district court in any county of the state for an injunction to restrain a person subject to this chapter and any agents, employees, or associates of the person from engaging in conduct or practices deemed contrary to the public interest. In any proceeding for an injunction, the attorney general may apply to the court for the issuance of a subpoena to require the appearance of a defendant and the defendant's agents and any documents, books, and records germane to the hearing upon the petition for an injunction. Upon proof of any of the offenses described in the petition for injunction the court may grant the injunction.

Sec. 15. NEW SECTION. 523A.15 FRAUDULENT PRACTICES.

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

1. Knowingly makes, causes to be made, or subscribes to a false statement or representation in a report or other document required under this chapter, or renders such a report or document misleading through the deliberate omission of information properly belonging in the report or document.
2. Conspires to defraud in connection with the sale of funeral services or funeral merchandise under this chapter.
3. Deliberately misrepresents or omits a material fact relative to the sale of funeral services or funeral merchandise under this chapter.

Sec. 16. NEW SECTION. 523A.16 RULES.

The commissioner may adopt rules necessary to administer this chapter, in accordance with chapter 17A.

Sec. 17. Section 331.602, subsection 29A, Code 1987, is amended by striking the subsection.

Sec. 18. Section 331.756, subsection 70A, Code 1987, is amended by striking the subsection.

Sec. 19. APPLICABILITY. The administrative and reporting requirements of this Act apply to agreements in effect on July 1, 1987, as well as to agreements entered into on or after that date.

Sec. 20. EFFECTIVE DATE. Sections 9 and 10 of this Act take effect on January 1, 1988.

DONALD D. AVENSON
Speaker of the House

JO ANN ZIMMERMAN
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 614, Seventy-second General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved  1987

TERRY E. BRANSTAD
Governor