

Reprinted

FEB 21 1990
Place On Calendar

HOUSE FILE 2537
BY COMMITTEE ON SMALL
BUSINESS AND COMMERCE

(SUCCESSOR TO HSB 716)

Passed House, Date 2/1/90 (p. 774) Passed Senate, Date _____
Vote: Ayes 64 Nays 33 Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the sale of funeral services and merchandise.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2537

1 Section 1. Section 523A.1, unnumbered paragraphs 3 and 4,
2 Code 1989, are amended to read as follows:

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54413 If an agreement pursuant to this section is to be paid in
4 installment payments, the seller shall deposit eighty percent
5 of each payment in trust until the full amount to be trusted
6 has been deposited. If the agreement is financed with or sold
7 to a financial institution, then the agreement shall be
8 considered paid in full and the deposit requirements of this
9 section shall be satisfied within thirty days after ~~the close~~
10 ~~of-the-month~~ receipt of the funds in which payment is received
11 from the financial institution.

12 This section does not apply to payments for merchandise de-
13 livered to the purchaser. Delivery includes storage in a
14 warehouse under the control of the seller or any other
15 warehouse or storage facility approved by the commissioner
16 when a receipt of ownership in the name of the purchaser is
17 delivered to the purchaser, the merchandise is insured against
18 loss, the merchandise is protected against damage, title has
19 been transferred to the purchaser, the merchandise is
20 appropriately identified and described in a manner that it can
21 be distinguished from other similar items of merchandise, the
22 method of storage allows for visual audits of the merchandise,
23 and the annual reporting requirements of section 523A.2,
24 subsection 1, are satisfied.

25 Sec. 2. Section 523A.2, subsection 1, paragraphs a, f, and
26 g, Code Supplement 1989, are amended to read as follows:

27 a. All funds held in trust under section 523A.1 shall be
28 deposited in a state or federally insured bank, savings and
29 loan association, or credit union authorized to conduct
30 business in this state, or trust department thereof, or in a
31 trust company authorized to conduct business in this state,
544132 within thirty days after the receipt of the funds and shall be
33 ~~held in-a-separate-account-or-in-one-common-trust-fund-under-a~~
34 ~~trust-agreement-in-the-name-of-the-depositor-in-trust~~ as
35 provided in paragraph "g" for the designated beneficiary until

1 released pursuant to section 523A.1.

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

10 g. ~~The-bank,-savings-and-loan,-credit-union,-or-trust~~
11 ~~department-thereof,-in-which-trust-funds-are-held-shall-serve~~
12 ~~as-trustee-to-the-extent-that-organization-has-been-granted~~
13 ~~those-powers-under-the-laws-of-this-state-or-the-United-States~~
14 and All funds required to be deposited for a purpose described
15 in section 523A.1 shall be deposited in a manner consistent
16 with one of the following:

17 (1) The payments will be deposited directly by the
18 purchaser in an irrevocable interest-bearing burial account in
19 the name of the purchaser.

20 (2) The payments will be deposited directly by the
21 purchaser in a separate account in the name of the purchaser.
22 The account may be made payable to the seller on the death of
23 the purchaser or the designated beneficiary, provided that,
24 until death, the purchaser retains the exclusive power to
25 hold, manage, pledge, and invest the funds in the account and
26 may revoke the trust and withdraw the funds, in whole or in
27 part, at any time.

28 (3) The payments will be deposited by the purchaser or the
29 seller in a separate burial trust account in the name of the
30 purchaser, as trustee, in trust for the named beneficiary, to
31 be held, invested, and administered as a trust account for the
32 benefit and protection of the person for whose benefit the
33 funds were paid. The depositor shall notify the financial
34 institution of the existence and terms of the trust, including
35 at a minimum the name of each party to the agreement, the name

1 and address of the trustee, and the name and address of the
2 beneficiary. The account may be made payable to the seller
3 upon the death of the designated beneficiary.

4 (4) The payments will be deposited in the name of the
5 trustee, as trustee, under the terms of a master trust
6 agreement and the trustee may invest, reinvest, exchange,
7 retain, sell, and otherwise manage the trust fund for the
8 benefit and protection of the person for whose benefit the
9 funds were paid. ~~The trustee may combine trust accounts~~
10 established pursuant to this chapter

11 PARAGRAPH DIVIDED. In addition to the methods provided for
12 above, the commissioner may by rule authorize other methods of
13 deposit upon a finding that the other method provides
14 equivalent safety of the principal and interest or income and
15 the seller does not have the ability to utilize any of the
16 proceeds prior to performance. Moneys deposited under the
17 master trust agreement may be commingled for investment
18 purposes as long as each deposit includes a detailed listing
19 of the amount deposited in trust for each beneficiary and a
20 separate accounting of each purchaser's principal, interest,
21 and income is maintained. ~~The Subject to the master trust~~
22 agreement, the seller may appoint an independent investment
23 advisor to act in an advisory capacity with the trustee
24 relative to the investment of the trust funds. The trust
25 shall pay the cost of the operation of the trust and any
26 annual audit fees.

27 The financial institution, or the trust department of the
28 financial institution in which trust funds are held, may serve
29 as trustee to the extent the institution or department has
30 been granted those powers under the laws of this state or the
31 United States. The seller or any officer, director, agent,
32 employee, or affiliate of the seller shall not serve as
33 trustee.

34 Sec. 3. Section 523A.2, subsection 4, Code Supplement
35 1989, is amended to read as follows:

1 4. If a seller under an agreement referred to in section
2 523A.1 ceases to do business, whether voluntarily or
3 involuntarily, and the obligation to provide the merchandise
4 and services has not been assumed by another funeral home or
5 cemetery holding an establishment permit issued under this
6 chapter, all funds held in trust under section 523A.1,
7 including accrued interest or earnings, shall be repaid to the
53818 purchaser under the agreement.

53899 Sec. 4. Section 523A.2, subsection 6, Code Supplement
10 1989, is amended by striking the subsection and inserting in
11 lieu thereof the following:

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

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20 Sec. 5. Section 523A.5, subsection 2, paragraph b, Code
21 1989, is amended to read as follows:

22 b. "Funeral merchandise" means one or more types of
23 personal property to be used at the time of the final
24 disposition of a dead human body, including but not limited to
25 clothing, caskets, vaults, and interment receptacles.
26 "Funeral merchandise" does not include real property or, if
27 the agreement requires installation within twelve months of
28 the purchase, and does not include grave markers, tombstones,
29 ornamental merchandise, and monuments.

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30 Sec. 6. Section 523A.9, subsection 5, Code 1989, is
31 amended to read as follows:

32 5. Upon the filing of an application for a permit, if the
33 commissioner shall issue the permit, unless the commissioner
34 finds that the any of the following apply:

35 a. The applicant is insolvent.

1 b. The applicant has failed to comply with any terms or
2 conditions of this chapter and such failure is deemed by the
3 commissioner to substantially impede the applicant's ability
4 to abide by the provisions of this chapter.

5 c. The applicant has not been convicted of a criminal
6 offense involving dishonesty or false statement. and-can

7 d. The applicant cannot provide the funeral services or
8 funeral merchandise the applicant purports to sell,-the
9 commissioner-shall-issue-the-permit.

10 Sec. 7. Section 523A.12, subsection 1, paragraph a, Code
11 1989, is amended to read as follows:

12 a. The permit holder has committed a fraudulent act,
13 engaged in a fraudulent practice, or violated any provisions
14 of this chapter or any rule adopted under this chapter or any
15 other state or federal law applicable to the conduct of the
16 permit holder's business.

17 Sec. 8. Section 523A.12, subsection 1, Code 1989, is
18 amended by adding the following new paragraph:

19 NEW PARAGRAPH. e. The permit holder is found upon
20 investigation to have engaged in a deceptive act or practice
21 or has deliberately misrepresented or omitted a material fact
22 relative to the sale of funeral services or funeral
23 merchandise under this chapter.

24 Sec. 9. Section 523A.13, Code 1989, is amended to read as
25 follows:

26 523A.13 PROSECUTION FOR VIOLATIONS OF LAW.

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

1 prosecute the action when brought in the county attorney's
2 county.

3 Sec. 10. Section 523A.15, Code 1989, is amended to read as
4 follows:

5 523A.15 FRAUDULENT PRACTICES.

6 A person who commits any of the following acts commits a
7 fraudulent practice and is punishable as provided in chapter
8 714:

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

11 ± 2. Knowingly makes, causes to be made, or subscribes to
12 a false statement or representation in a report or other docu-
13 ment required under this chapter, or renders such a report or
14 document misleading through the deliberate omission of
15 information properly belonging in the report or document.

16 2 3. Conspires to defraud in connection with the sale of
17 funeral services or funeral merchandise under this chapter.

18 4. Fails to deposit funds in compliance with section
19 523A.1 or withdraws any funds in a manner inconsistent with
20 this chapter.

21 5. Knowingly sells or offers funeral merchandise or
22 funeral services without an establishment permit.

23 3 6. Deliberately misrepresents or omits a material fact
24 relative to the sale of funeral services or funeral
25 merchandise under this chapter.

26 Sec. 11. NEW SECTION. 523A.17 CEASE AND DESIST ORDERS.

27 If an audit or investigation provides reasonable evidence
28 that a seller has violated any provisions of this chapter or
29 any rule adopted under this chapter, the commissioner may
30 issue an order directed at the seller to cease and desist from
31 engaging in such act or practice.

32 Sec. 12. NEW SECTION. 523A.18 VIOLATIONS AND PENALTIES.

33 A violation of this chapter or rules adopted by the
34 commissioner pursuant to this chapter is a violation of
35 section 714.16, subsection 2, paragraph "a". The remedies and

1 penalties provided by section 714.16, including but not
2 limited to, provisions relating to injunctive relief and
3 penalties, apply to violations of this chapter.

4 Sec. 13. NEW SECTION. 523A.19 RECEIVERSHIPS.

5 1. The commissioner shall notify the attorney general if
6 the commissioner finds that any seller engaged in the business
7 subject to this chapter meets one or more of the following
8 conditions:

9 a. Is insolvent.

10 b. Has utilized trust funds for personal or business
11 purposes in a manner inconsistent with this chapter and the
12 amount of funds currently held in trust is less than eighty
13 percent of all payments made under the agreements referred to
14 in section 523A.1.

15 c. Has refused to pay any just claim or demand based on an
16 agreement referred to in section 523A.1.

17 d. The commissioner finds upon investigation that a seller
18 is unable to pay any just claim or demand based on such
19 agreements which have been legally determined to be just and
20 outstanding.

21 2. The attorney general may apply to the district court in
22 any county of the state for a receivership. Upon proof of any
23 of the grounds for a receivership described in this section,
24 the court may grant a receivership.

25 Sec. 14. NEW SECTION. 523A.20 INSURANCE DIVISION'S
26 REGULATORY FUND.

543327 The insurance division may authorize the creation of a
28 special revenue fund in the state treasury, to be known as the
29 insurance division regulatory fund. Commencing July 1, 1990,
30 and annually thereafter, the commissioner may assess each
31 establishment permit holder an annual assessment, of two
32 dollars per prearranged funeral agreement sold during the
33 previous year, not to exceed two hundred fifty dollars, for
34 the purpose of establishing and funding the regulatory fund.
35 The moneys in the regulatory fund shall be retained in the

1 fund together with any interest or earnings that are earned on
2 the balance. The moneys are appropriated and, subject to
3 authorization by the commissioner, may be used to pay
4 investigative expenses and the expenses of receiverships
5 established pursuant to section 523A.19. An annual assessment
6 shall not be imposed if the current balance of the fund
7 exceeds two hundred thousand dollars.

8 Sec. 15. NEW SECTION. 523A.21 FUNERAL SALES PROTECTION
9 FUND.

528910 1. A funeral sales protection fund is created in the
11 office of the treasurer of state. Funds collected under this
12 section shall be placed in the funeral sales protection fund
13 and are appropriated and are available to pay all claims,
14 necessary reserves, and all administrative costs of the
15 funeral sales protection fund and program. Moneys in the fund
16 shall not revert to the general fund and interest on the
17 moneys in the fund shall be retained as a part of the fund and
18 shall not accrue to the general fund of the state, section
19 8.33 notwithstanding. The commissioner shall establish the
20 amount for a loss reserve. If the insurance division
21 determines that the funeral sales protection fund contains
22 surplus moneys above the amount set aside in the protection
23 fund as the loss reserve, the surplus funds shall be
24 transferred to the insurance revolving fund.

25 2. Claims are payable solely out of the moneys, assets,
26 and revenues of the funeral sales protection fund, and are not
27 an indebtedness or liability of the state. Claims are subject
28 to reduction and disqualification by the amount of any payment
29 received, or to be received, from or on behalf of, the person
30 who misappropriated the claimants' funds or from public funds.

31 3. The commissioner may adopt rules to establish
32 procedures and standards for administration of the fund and to
33 determine the eligibility of claimants, to determine whether
34 restitution is otherwise available, and to determine the
35 amount of the restitution to be authorized from the funeral

1 sales protection fund.

2 4. A right of legal action by the claimant against a
3 person who has misappropriated burial funds is not lost as a
4 consequence of a person receiving reparation from the funeral
5 sales protection fund. If a person receiving reparation from
6 the fund seeks indemnification which would reduce the
7 reparation under this section, the funeral sales protection
8 fund is subrogated to the recovery to the extent of payments
9 by the fund to or on behalf of the claimant. The commissioner
10 has a right of legal action against a person who has
11 misappropriated burial funds resulting in payment of
12 reparation by the funeral sales protection fund to the extent
13 of the reparation payment. However, legal action by the
14 commissioner does not affect the right of a person to seek
15 further relief in other legal actions, and is not an election
16 of remedies by an aggrieved person.

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17 5. Commencing July 1, 1990, and annually thereafter,
18 financial institutions or sellers shall transfer to the
19 funeral sales protection fund a portion of the interest or
20 income earned during the preceding calendar year on funds
21 required to be deposited and held for a purpose described in
22 section 523A.1. The amount of the interest to be remitted to
23 the state shall be equal to the lesser of the actual interest
24 or income accrued during the previous calendar year or one-
25 half of one percent of the moneys held pursuant to section
26 523A.1 on December 31 of the previous calendar year. The
27 seller may have the depository remit the interest or income,
28 but in either case, it is the responsibility of the seller to
29 assure that the payment is remitted.

30 EXPLANATION

31 This bill alters the provisions regulating the sale of
32 prearranged funeral contracts, by adding additional
33 administrative powers for the commissioner of insurance to
34 conduct investigations and to enforce the law. The bill
35 alters the requirements for trust accounts securing

1 prearranged funeral contracts and adds new disclosure
2 requirements for such contracts. The bill authorizes the
3 suspension or revocation of a permit or the issuance of cease
4 and desist orders in certain circumstances. Additionally, a
5 regulatory fund is created within the division of insurance to
6 fund audits and investigations, and a funeral sales protection
7 fund is created similar to the client security fund for
8 lawyers to secure performance of prearranged funeral services
9 or funeral merchandise contracts in event of default by the
10 seller.

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HOUSE FILE 2537
FISCAL NOTE

A fiscal note for House File 2537 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House File 2537 alters the provisions regulating the sale of prearranged funeral contracts, by adding additional enforcement and administrative powers to the Commissioner of Insurance to conduct investigations and to enforce the law. The bill also creates a regulatory fund and a funeral sales protection fund.

ASSUMPTIONS:

1. One-time costs would be incurred for equipment.
2. Money in the regulatory fund and the funeral sales protection fund will not revert to the General Fund.
3. Administrative costs to implement the bill will be paid from the funeral sales protection fund.
4. Preneed sales are equal to \$28 million.
5. Seventy percent of the revenue generated from preneed sales would be deposited in trust with a financial institution.
6. The assessments for the funeral sales protection fund apply to all funds held in trust on December 31 of the previous calendar year, with exception for any sales involving a deposit of 100% of all payments received by the seller, and that 50% of all trustable sales would qualify for such exception.
7. The assessment will be equal to 0.005% of the amount held in trust subject to the assessment.
8. Annual preneed sales equal 5,900 sales.
9. Eighty million dollars was held in trust on December 31, 1989. The actual amount is not known.
10. Implementation will require an addition of one FTE position to provide administration.

HOUSE FILE 2537
BY COMMITTEE ON SMALL
BUSINESS AND COMMERCE

(SUCCESSOR TO HSB 716)

(As Amended and Passed by the House March 1, 1990)

^{per 130}
Passed House, Date 4/6/90 (p. 2155) Passed Senate, Date 4/2/90 (p. 1462)
Vote: Ayes 91 Nays 0 Vote: Ayes 48 Nays 1

Approved April 27, 1990

*Motion to reconsider (p. 1473)
w/d 4/5 (p. 1554)*

A BILL FOR

1 An Act relating to the sale of funeral services and merchandise.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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House Amendments _____

Deleted Language *

HOUSE FILE 2537

S-5435

- 1 Amend House File 2537, as amended, passed, and
- 2 reprinted by the House, as follows:
- 3 1. Page 4, by striking lines 10 through 16.
- 4 2. Page 4, by striking lines 27 through 34.
- 5 3. By striking page 8, line 19 through page 10,
- 6 line 27.
- 7 4. By renumbering as necessary.

By COMMITTEE ON COMMERCE
WILLIAM D. PALMER, Chairperson

S-5435 FILED MARCH 12, 1990

*B - Adopted 4/2 (p. 1461), A - Lost (p. 1441)
A - Reconsidered & Adopted (p. 1462)*

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1 Section 1. Section 523A.1, unnumbered paragraphs 3 and 4,
2 Code 1989, are amended to read as follows:

3 If an agreement pursuant to this section is to be paid in
4 installment payments, the seller shall deposit eighty percent
5 of each payment in trust until the full amount to be trusted
6 has been deposited. If the agreement is financed with or sold
7 to a financial institution, then the agreement shall be
8 considered paid in full and the deposit requirements of this
9 section shall be satisfied within thirty fifteen days after
10 the close of the month of receipt of the funds in which
11 payment-is-received from the financial institution.

12 This section does not apply to payments for merchandise de-
13 livered to the purchaser. Delivery includes storage in a
14 warehouse under the control of the seller or any other
15 warehouse or storage facility approved by the commissioner
16 when a receipt of ownership in the name of the purchaser is
17 delivered to the purchaser, the merchandise is insured against
18 loss, the merchandise is protected against damage, title has
19 been transferred to the purchaser, the merchandise is
20 appropriately identified and described in a manner that it can
21 be distinguished from other similar items of merchandise, the
22 method of storage allows for visual audits of the merchandise,
23 and the annual reporting requirements of section 523A.2,
24 subsection 1, are satisfied.

25 Sec. 2. Section 523A.2, subsection 1, paragraphs a, f, and
26 g, Code Supplement 1989, are amended to read as follows:

27 a. All funds held in trust under section 523A.1 shall be
28 deposited in a state or federally insured bank, savings and
29 loan association, or credit union authorized to conduct
30 business in this state, or trust department thereof, or in a
31 trust company authorized to conduct business in this state,
32 within thirty fifteen days after the close of the month of
33 receipt of the funds and shall be held in-a-separate-account
34 or-in-one-common-trust-fund-under-a-trust-agreement-in-the
35 name-of-the-depositor-in-trust as provided in paragraph "g"

1 for the designated beneficiary until released pursuant to
2 section 523A.1.

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

11 g. ~~The-bank, savings-and-loan, credit-union, or-trust~~
12 ~~department-thereof, in-which-trust-funds-are-held-shall-serve~~
13 ~~as-trustee-to-the-extent-that-organization-has-been-granted~~
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22 purchaser in a separate account in the name of the purchaser.
23 The account may be made payable to the seller on the death of
24 the purchaser or the designated beneficiary, provided that,
25 until death, the purchaser retains the exclusive power to
26 hold, manage, pledge, and invest the funds in the account and
27 may revoke the trust and withdraw the funds, in whole or in
28 part, at any time.

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30 seller in a separate burial trust account in the name of the
31 purchaser, as trustee, in trust for the named beneficiary, to
32 be held, invested, and administered as a trust account for the
33 benefit and protection of the person for whose benefit the
34 funds were paid. The depositor shall notify the financial
35 institution of the existence and terms of the trust, including

1 at a minimum the name of each party to the agreement, the name
2 and address of the trustee, and the name and address of the
3 beneficiary. The account may be made payable to the seller
4 upon the death of the designated beneficiary.

5 (4) The payments will be deposited in the name of the
6 trustee, as trustee, under the terms of a master trust
7 agreement and the trustee may invest, reinvest, exchange,
8 retain, sell, and otherwise manage the trust fund for the
9 benefit and protection of the person for whose benefit the
10 funds were paid. ~~The trustee may combine trust accounts~~
11 established pursuant to this chapter

12 PARAGRAPH DIVIDED. In addition to the methods provided for
13 above, the commissioner may by rule authorize other methods of
14 deposit upon a finding that the other method provides
15 equivalent safety of the principal and interest or income and
16 the seller does not have the ability to utilize any of the
17 proceeds prior to performance. Moneys deposited under the
18 master trust agreement may be commingled for investment
19 purposes as long as each deposit includes a detailed listing
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23 agreement, the seller may appoint an independent investment
24 advisor to act in an advisory capacity with the trustee
25 relative to the investment of the trust funds. The trust
26 shall pay the cost of the operation of the trust and any
27 annual audit fees.

28 The financial institution, or the trust department of the
29 financial institution in which trust funds are held, may serve
30 as trustee to the extent the institution or department has
31 been granted those powers under the laws of this state or the
32 United States. The seller or any officer, director, agent,
33 employee, or affiliate of the seller shall not serve as
34 trustee.

35 Sec. 3. Section 523A.2, subsection 4, Code Supplement

1 1989, is amended to read as follows:

2 4. If a seller under an agreement referred to in section
3 523A.1 ceases to do business, whether voluntarily or
4 involuntarily, and the obligation to provide the merchandise
5 and services has not been assumed by another funeral home or
6 cemetery holding an establishment permit issued under this
7 chapter, all funds held in trust under section 523A.1,
8 including accrued interest or earnings, shall be repaid to the
9 purchaser under the agreement.

* 10 Sec. 4. Section 523A.2, subsection 7, Code Supplement
11 1989, is amended by adding the following new unnumbered
12 paragraph:

13 NEW UNNUMBERED PARAGRAPH. A funeral insurance policy shall
14 not discriminate on the basis of race, color, creed, sex,
15 religion, marital status, national origin, or disability in
16 the issuance, terms, conditions, or rates of the policy.

17 Sec. 5. Section 523A.5, subsection 2, paragraph b, Code
18 1989, is amended to read as follows:

19 b. "Funeral merchandise" means one or more types of
20 personal property to be used at the time of the final
21 disposition of a dead human body, including but not limited to
22 clothing, caskets, vaults, and interment receptacles.

23 "Funeral merchandise" does not include real property or, if
24 the agreement requires installation within twelve months of
25 the purchase, and does not include grave markers, tombstones,
26 ornamental merchandise, and monuments.

27 Sec. 6. Section 523A.9, subsection 2, paragraph d,
28 unnumbered paragraph 1, Code 1989, is amended to read as
29 follows:

30 The types of professional services or funeral merchandise
31 to-be-sold that the applicant can actually provide either by
32 contractual agreement with another permit holder, by purchase
33 of merchandise from a wholesaler, or by physical services of
34 the permit holder or its employees.

35 Sec. 7. Section 523A.9, subsection 5, Code 1989, is

1 amended to read as follows:

2 5. Upon the filing of an application for a permit, if the
3 commissioner shall issue the permit, unless the commissioner
4 finds that the any of the following apply:

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6 b. The applicant has failed to comply with any terms or
7 conditions of this chapter and such failure is deemed by the
8 commissioner to substantially impede the applicant's ability
9 to abide by the provisions of this chapter.

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26 or has deliberately misrepresented or omitted a material fact
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32 If the commissioner believes that grounds exist for the
33 criminal prosecution of persons subject to this chapter for
34 violations of this chapter or any other law of this state, the
35 commissioner may forward to the attorney general or the county

1 attorney the grounds for the belief, including all evidence in
2 the commissioner's possession, in order that the attorney
3 general or the county attorney may proceed with the matter as
4 ~~the attorney-general-deems~~ deemed appropriate. At the request
5 of the attorney general, the county attorney shall appear and
6 prosecute the action when brought in the county attorney's
7 county.

8 Sec. 11. Section 523A.15, Code 1989, is amended to read as
9 follows:

10 523A.15 FRAUDULENT PRACTICES.

11 A person who commits any of the following acts commits a
12 fraudulent practice and is punishable as provided in chapter
13 714:

14 1. Knowingly fails to comply with any requirement of this
15 chapter.

16 ± 2. Knowingly makes, causes to be made, or subscribes to
17 a false statement or representation in a report or other docu-
18 ment required under this chapter, or renders such a report or
19 document misleading through the deliberate omission of
20 information properly belonging in the report or document.

21 2 3. Conspires to defraud in connection with the sale of
22 funeral services or funeral merchandise under this chapter.

23 4. Fails to deposit funds in compliance with section
24 523A.1 or withdraws any funds in a manner inconsistent with
25 this chapter.

26 5. Knowingly sells or offers funeral merchandise or
27 funeral services without an establishment permit.

28 3 6. Deliberately misrepresents or omits a material fact
29 relative to the sale of funeral services or funeral
30 merchandise under this chapter.

31 Sec. 12. NEW SECTION. 523A.17 CEASE AND DESIST ORDERS.

32 If an audit or investigation provides reasonable evidence
33 that a seller has violated any provisions of this chapter or
34 any rule adopted under this chapter, the commissioner may
35 issue an order directed at the seller to cease and desist from

1 engaging in such act or practice.

2 Sec. 13. NEW SECTION. 523A.18 VIOLATIONS AND PENALTIES.

3 A violation of this chapter or rules adopted by the
4 commissioner pursuant to this chapter is a violation of
5 section 714.16, subsection 2, paragraph "a". The remedies and
6 penalties provided by section 714.16, including but not
7 limited to, provisions relating to injunctive relief and
8 penalties, apply to violations of this chapter.

9 Sec. 14. NEW SECTION. 523A.19 RECEIVERSHIPS.

10 1. The commissioner shall notify the attorney general if
11 the commissioner finds that any seller engaged in the business
12 subject to this chapter meets one or more of the following
13 conditions:

14 a. Is insolvent.

15 b. Has utilized trust funds for personal or business
16 purposes in a manner inconsistent with this chapter and the
17 amount of funds currently held in trust is less than eighty
18 percent of all payments made under the agreements referred to
19 in section 523A.1.

20 c. Has refused to pay any just claim or demand based on an
21 agreement referred to in section 523A.1.

22 d. The commissioner finds upon investigation that a seller
23 is unable to pay any just claim or demand based on such
24 agreements which have been legally determined to be just and
25 outstanding.

26 2. The attorney general may apply to the district court in
27 any county of the state for a receivership. Upon proof of any
28 of the grounds for a receivership described in this section,
29 the court may grant a receivership.

30 Sec. 15. NEW SECTION. 523A.20 INSURANCE DIVISION'S
31 REGULATORY FUND.

32 The insurance division may authorize the creation of a
33 special revenue fund in the state treasury, to be known as the
34 insurance division regulatory fund. Commencing July 1, 1990,
35 and annually thereafter, the commissioner shall allocate from

1 the fees paid pursuant to section 523A.2, one dollar for each
2 agreement reported on an establishment permit holder's annual
3 report for deposit to the regulatory fund. The remainder of
4 the fees collected pursuant to section 523A.2 shall be
5 deposited into the insurance revolving fund; provided,
6 however, that if the balance of the regulatory fund on that
7 July 1 exceeds two hundred thousand dollars, the allocation to
8 the regulatory fund shall not be made and the total sum of the
9 fees paid pursuant to section 523A.2 shall be deposited in the
10 insurance revolving fund. The moneys in the regulatory fund
11 shall be retained in the fund together with any interest or
12 earnings that are earned on the balance. The moneys are
13 appropriated and, subject to authorization by the
14 commissioner, may be used to pay investigative expenses and
15 the expenses of receiverships established pursuant to section
16 523A.19. An annual assessment shall not be imposed if the
17 current balance of the fund exceeds two hundred thousand
18 dollars.

19 Sec. 16. NEW SECTION. 523A.21 FUNERAL SALES PROTECTION
20 FUND.

21 1. A funeral sales protection fund is created in the
22 office of the treasurer of state. The funeral sales
23 protection fund and program are intended to provide a security
24 mechanism to assure that purchasers of funeral merchandise and
25 funeral services receive the full benefit of their contracted
26 purchases in the event of fraud, misappropriation,
27 nonperformance, or other material breach by the seller, in the
28 event that the seller is insolvent, unavailable for suit, or
29 otherwise unable to pay damages or to compensate by specific
30 performance, in whole or in part. Funds collected under this
31 section shall be placed in the funeral sales protection fund
32 and are appropriated and are available to pay all claims,
33 necessary reserves, and all administrative costs of the
34 funeral sales protection fund and program. Moneys in the fund
35 shall not revert to the general fund and interest on the

1 moneys in the fund shall be retained as a part of the fund and
2 shall not accrue to the general fund of the state, section
3 8.33 notwithstanding.

4 2. Claims are payable solely out of the moneys, assets,
5 and revenues of the funeral sales protection fund, and are not
6 an indebtedness or liability of the state. Claims are subject
7 to reduction and disqualification by the amount of any payment
8 received, or to be received, from or on behalf of, the person
9 who misappropriated the claimants' funds or from public funds.

10 3. The commissioner may adopt rules to establish
11 procedures and standards for administration of the fund and to
12 determine the eligibility of claimants, to determine whether
13 restitution is otherwise available, and to determine the
14 amount of the restitution to be authorized from the funeral
15 sales protection fund.

16 4. A right of legal action by the claimant against a
17 person who has misappropriated burial funds is not lost as a
18 consequence of a person receiving reparation from the funeral
19 sales protection fund. If a person receiving reparation from
20 the fund seeks indemnification which would reduce the
21 reparation under this section, the funeral sales protection
22 fund is subrogated to the recovery to the extent of payments
23 by the fund to or on behalf of the claimant. The commissioner
24 has a right of legal action against a person who has
25 misappropriated burial funds resulting in payment of
26 reparation by the funeral sales protection fund to the extent
27 of the reparation payment. However, legal action by the
28 commissioner does not affect the right of a person to seek
29 further relief in other legal actions, and is not an election
30 of remedies by an aggrieved person.

31 5. Commencing July 1, 1990, and annually thereafter,
32 financial institutions or sellers, upon receipt of an
33 assessment issued by the commissioner, shall transfer to the
34 funeral sales protection fund a portion of the interest or
35 income earned during the preceding calendar year on funds

1 required to be deposited and held for a purpose described in
2 section 523A.1, as declared annually by the seller on a report
3 form submitted to the commissioner. The assessment shall not
4 apply to funds for which the seller certifies under oath, on
5 the annual report form submitted to the commissioner, that the
6 seller did not retain any portion of payment the seller
7 received pursuant to those agreements to furnish, upon the
8 future death of a person named or implied in the agreement,
9 funeral services or funeral merchandise and that the seller
10 deposited one hundred percent of each payment received in a
11 financial institution pursuant to section 523A.2, subsection
12 1. The amount of the interest to be remitted to the state
13 shall be equal to the lesser of the actual interest or income
14 accrued during the previous calendar year or one-half of one
15 percent of the moneys held pursuant to section 523A.1 on
16 December 31 of the previous calendar year. The seller may
17 remit the interest or income, but in either case, it is the
18 responsibility of the financial institution holding the funds
19 to assure that the payment is remitted. Annually, on December
20 31, the commissioner shall determine the net value of the cash
21 and securities in the fund on that date. If the commissioner
22 determines that the moneys in the fund, after deducting all
23 claims and requests for reimbursement against the fund not
24 disposed of at the date of valuation and all expenses properly
25 chargeable against the fund, equals or exceeds two million
26 dollars, an assessment shall not be issued or payable for the
27 following calendar year.

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HOUSE FILE 2537

H-5443

Amend House File 2537 as follows:

- 2 1. Page 1, line 1, by striking the figure "3
3 and" and inserting the following: "1, 3, and".
4 2. Page 1, by inserting after line 2, the following:
5 "1. Whenever an agreement is made by any person,
6 firm, or corporation to furnish, upon the future death
7 of a person named or implied in the agreement, funeral
8 services ~~or-funeral-merchandise~~, a minimum of eighty
9 percent of all payments made under the agreement shall
10 be and remain trust funds until occurrence of the
11 death of the person for whose benefit the funds were
12 paid, unless the funds are sooner released to the
13 person making the payment by mutual consent of the
14 parties.
- 15 2. Whenever an agreement is made by any person,
16 firm, or corporation to furnish, upon the future death
17 of a person named or implied in the agreement, funeral
18 or cemetery merchandise, a minimum of one hundred ten
19 percent of the wholesale cost of the merchandise,
20 based upon the current advertised prices available
21 from a manufacturer or wholesaler who has delivered
22 the same or substantially the same type of merchandise
23 to the seller during the last twelve months, shall be
24 and remain trust funds until purchase of the
25 merchandise or the occurrence of the death of the
26 person for whose benefit the funds were paid, unless
27 the funds are sooner released to the person making the
28 payment by mutual consent of the parties. A minimum
29 of eighty percent of all payments made under the
30 agreement shall be deposited in trust until the amount
31 required by this subsection has been deposited in
32 trust.
- 33 3. The seller shall keep copies of all price
34 advertisements upon which the seller relied to
35 determine the wholesale cost which shall be made
36 available to the commissioner upon request. The
37 seller shall review wholesale costs no less than
38 annually and make additional deposits as necessary to
39 assure that the amount held in trust is always equal
40 to or in excess of the current one hundred ten percent
41 of the wholesale cost of the merchandise. The seller
42 and the manufacturer or wholesaler upon which price
43 the seller relies to determine the wholesale cost
44 shall not be commonly owned or affiliated. A seller
45 shall not be restricted from obtaining products and
46 prices from any manufacturer or wholesaler commonly
47 providing these products to other sellers within the
48 state.
- 49 4. Payments otherwise subject to this-section
50 subsection 1 or 2 are not exempt merely because they

-1-

H-5443

Page 2

1 are held in certificates of deposit.

By CORBETT of Linn

H-5443 FILED FEBRUARY 28, 1990

Post 3/1 (p. 767)

HOUSE FILE 2537

H-5436

1 Amend House File 2537 as follows:

2 1. Page 9, by striking lines 19 through 28 and
3 inserting the following: "funeral sales protection
4 fund a fee of two dollars per prearranged agreement
5 sold during the preceding calendar year, not to exceed
6 two hundred fifty dollars. It is the responsibility
7 of the seller to".

8 2. Page 9, by inserting after line 29, the
9 following:

10 "6. Overall responsibility for supervising and
11 administering the funeral sales protection fund shall
12 be vested in a seven member board appointed by the
13 governor. The board shall consist of two members from
14 businesses holding establishment permits under this
15 chapter to sell funeral services, two members holding
16 establishment permits under this chapter to sell
17 cemetery merchandise, and three public members not
18 connected in any way, such as by virtue of being a
19 supplier or a relative, with any establish permit
20 holder under this chapter. The board shall meet
21 annually, or more often at its discretion, to review
22 the status of the fund and issue such directions to
23 the commissioner as may be needed to administer the
24 fund. Board members shall serve ten-year terms, be
25 subject to reconfirmation by the senate every two
26 years, and arrive at its decisions by majority vote
27 with a required quorum of five members, at least one
28 of which must be from each member category."

By CORBETT of Linn

H-5436 FILED FEBRUARY 28, 1990

*A - Adopted B - Loss 3/1 (p. 772)
Loss 3/1 (p. 774)*

HOUSE FILE 2537

H-5441

1 Amend House File 2537 as follows:

2 1. Page 1, by striking lines 9 and 10, and
3 inserting the following: "section shall be satisfied
4 within thirty fifteen days after the close of the
5 month of receipt of the funds in-which-payment-is
6 received".

7 2. Page 1, by striking line 32, and inserting the
8 following: "within thirty fifteen days after the
9 close of the month of receipt of the funds and shall
10 be".

By CORBETT of Linn

H-5441 FILED FEBRUARY 28, 1990

Adopted 3/1 (p. 768)

HOUSE FILE 2537

H-5439

1 Amend House File 2537 as follows:

2 1. Page 4, by inserting after line 29, the
3 following:

4 "Sec. ____ . Section 523A.9, subsection 2, paragraph
5 d, unnumbered paragraph 1, Code 1989, is amended to
6 read as follows:

7 The types of professional services or funeral
8 ~~merchandise to-be-sold~~ that the applicant can actually
9 provide either by contractual agreement with another
10 permit holder, by purchase of merchandise from a
11 wholesaler, or by physical services of the permit
12 holder or its employees".

13 2. Page 6, by inserting after line 25, the
14 following:

15 "7. Sells any funeral merchandise or funeral
16 service not listed on the application for an
17 establishment permit or any amended application for an
18 establishment permit.

19 8. Collects, accepts, or deposits money for any
20 purpose other than funeral services or funeral
21 merchandise.

22 9. Charges a casket handling fee if the casket is
23 sold by another establishment or is provided in any
24 other way by the purchaser.

25 10. Fails to provide a casket price list to the
26 prospective purchaser for the purchaser's retention
27 prior to discussing or showing samples or photographs
28 of caskets being offered.

29 11. Fails to show sample or photographs of the
30 three least expensive caskets offered on the general
31 price list, which must correspond with the general
32 price list used for sales at the time of need.

33 12. Fails to inform customers that each of the
34 three least expensive caskets shown can be obtained in
35 other colors or fails to obtain and provide such
36 caskets in other colors upon customer request,
37 provided those colors are available from regular
38 wholesale suppliers.

39 13. Discourages a customer's purchase of any
40 funeral merchandise or service which is advertised or
41 offered for sale by the establishment permit holder or
42 other establishment permit holder with the purpose of
43 encouraging the purchase of different, additional, or
44 more expensive funeral merchandise or funeral
45 services.

46 14. Disparaging the quality or appearance of the
47 least expensive caskets or of caskets or other burial
48 containers offered by another establishment permit
49 holder, except that true factual statements concerning
50 features, design, or construction do not constitute

1 disparagement.

2 15. Suggests directly or by implication that a
3 customer's concern for price or expressed interest in
4 inexpensive funeral merchandise or funeral services is
5 improper, inappropriate, or indicative of diminished
6 respect or affection for the deceased.

7 16. Fails to provide by telephone, upon request,
8 accurate information regarding the retail prices of
9 funeral merchandise or funeral services offered for
10 sale by that establishment permit holder.

11 17. Fails to provide a written price list by mail
12 when requested by a customer or prospective customer.

13 18. Makes any false, misleading, or
14 unsubstantiated statement or claim, directly or by
15 implication, of watertightness or airtightness of
16 caskets or outer burial containers, sealed or
17 unsealed.

18 19. Makes any false, misleading, or
19 unsubstantiated statements or claims that natural
20 decomposition or decay of human remains can be
21 prevented or substantially delayed by any one or more
22 of the following:

23 a. Embalming.

24 b. A casket, sealed or unsealed.

25 c. An outer burial container, sealed or unsealed."

26 3. By renumbering as necessary.

By CORBETT of Linn

H-5439 FILED FEBRUARY 28, 1990

A - Adopted, B - Lost 3/1 (p. 772)

HOUSE FILE 2537

H-5426

1 Amend the amendment, H-5389, to House File 2537, as
2 follows:

3 1. Page 1, by inserting after line 12, the
4 following:

5 " . Page 7, by striking lines 30 through 34, and
6 inserting the following:

7 "and annually thereafter, the commissioner shall allocate
8 from the fees paid pursuant to section 523A.2, one dollar
9 for each agreement reported on an establishment permit
10 holder's annual report for deposit to the regulatory fund.
11 The remainder of the fees collected pursuant to section
12 523A.2 shall be deposited into the insurance revolving
13 fund; provided, however, that if the balance of the
14 regulatory fund on that July 1 exceeds two hundred
15 thousand dollars, the allocation to the regulatory fund
16 shall not be made and the total sum of the fees paid
17 pursuant to section 523A.2 shall be deposited in the
18 insurance revolving fund."

19 . Page 8, line 11, by inserting after the word "state."
20 the following: "The funeral sales protection fund and
21 program are intended to provide a security mechanism to
22 assure that purchasers of funeral merchandise and funeral
23 services receive the full benefit of their contracted
24 purchases in the event of fraud, misappropriation,
25 nonperformance, or other material breach by the seller,
26 in the event that the seller is insolvent, unavailable
27 for suit, or otherwise unable to pay damages or to
28 compensate by specific performance, in whole or in part."

By DODERER of Johnson
GARMAN of Story

H-5426 FILED FEBRUARY 28, 1990

Adopted 3/1 (p. 770)

HOUSE FILE 2537

H-5379

- 1 Amend House File 2537 as follows:
- 2 1. Page 4, by inserting after line 19, the
- 3 following:
- 4 "Sec. ____ . Section 523A.2, subsection 7, Code
- 5 Supplement 1989, is amended to read as follows:
- 6 7. This chapter does not prohibit the funding of
- 7 an agreement otherwise subject to section 523A.1 by
- 8 insurance proceeds derived from a policy issued by an
- 9 insurance company authorized to conduct business in
- 10 this state, provided that a policy shall not
- 11 discriminate for premium charges on the basis of sex.
- 12 The seller of an agreement subject to this chapter
- 13 which is to be funded by insurance proceeds shall
- 14 obtain all permits and pay all fees required to be
- 15 obtained under this chapter and comply with the
- 16 reporting requirements of this section."
- 17 2. By renumbering as necessary.

By CORBETT of Linn

H-5379 FILED FEBRUARY 27, 1990

w/d 3/1 (p. 774)

HOUSE FILE 2537

H-5381

- 1 Amend House File 2537 as follows:
- 2 1. Page 4, line 8, by inserting after the word
- 3 "agreement" the following: "on the death of the
- 4 agreement's beneficiary or one year after the seller
- 5 ceases to do business, whichever is sooner".

By CORBETT of Linn

H-5381 FILED FEBRUARY 27, 1990

Law 3/1 (p. 768)

HOUSE FILE 2537

H-5433

- 1 Amend House File 2537 as follows:
- 2 1. Page 8, by striking lines 3 through 5, and
- 3 inserting the following: "authorization by the
- 4 commissioner, may only be used to pay the expenses of
- 5 receivership established pursuant to section 523A.19,
- 6 except that any funds in excess of four hundred
- 7 thousand dollars shall be used to reduce
- 8 administrative charges collected under sections
- 9 523A.2, 523A.9, and 523A.10. An annual assessment".

By CORBETT of Linn

H-5433 FILED FEBRUARY 28, 1990

Law 3/1 (p. 773)

HOUSE FILE 2537

H-5389

- 1 Amend House File 2537 as follows:
- 2 1. Page 4, by striking lines 9 through 19.
- 3 2. Page 4, by inserting before line 20, the
- 4 following:
- 5 "Sec. ____ . Section 523A.2, subsection 7, Code
- 6 Supplement 1989, is amended by adding the following
- 7 new unnumbered paragraph:
- 8 NEW UNNUMBERED PARAGRAPH. A funeral insurance
- 9 policy shall not discriminate on the basis of race,
- 10 color, creed, sex, religion, marital status, national
- 11 origin, or disability in the issuance, terms,
- 12 conditions, or rates of the policy."
- 13 3. Page 8, by striking lines 19 through 24 and
- 14 inserting the following: "8.33 notwithstanding."
- 15 4. Page 9, line 18, by inserting after the word
- 16 "sellers" the following: ", upon receipt of an
- 17 assessment issued by the commissioner,".
- 18 5. Page 9, line 22, by inserting after the figure
- 19 "523A.1" the following: ", as declared annually by
- 20 the seller on a report form submitted to the
- 21 commissioner. The assessment shall not apply to funds
- 22 for which the seller certifies under oath, on the
- 23 annual report form submitted to the commissioner, that
- 24 the seller did not retain any portion of payment the
- 25 seller received pursuant to those agreements to
- 26 furnish, upon the future death of a person named or
- 27 implied in the agreement, funeral services or funeral
- 28 merchandise and that the seller deposited one hundred
- 29 percent of each payment received in a financial
- 30 institution pursuant to section 523A.2, subsection 1".
- 31 6. Page 9, line 27, by striking the words "have
- 32 the depository".
- 33 7. Page 9, line 28, by striking the word "seller"
- 34 and inserting the following: "financial institution
- 35 holding the funds".
- 36 8. Page 9, line 29, by inserting after the word
- 37 "remitted." the following: "Annually, on December 31,
- 38 the commissioner shall determine the net value of the
- 39 cash and securities in the fund on that date. If the
- 40 commissioner determines that the moneys in the fund,
- 41 after deducting all claims and requests for
- 42 reimbursement against the fund not disposed of at the
- 43 date of valuation and all expenses properly chargeable
- 44 against the fund, equals or exceeds two million
- 45 dollars, an assessment shall not be issued or payable
- 46 for the following calendar year."
- 47 9. By renumbering as necessary.

By DODERER of Johnson

H-5389 FILED FEBRUARY 27, 1990

Adopted as amended by 5426 3/1 (p. 770)

HOUSE FILE 2537

S-5806

1 Amend House File 2537, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 4, by striking lines 17 through 26.

4 2. Page 10, by inserting after line 27, the
5 following:

6 "Sec. . NEW SECTION. 523E.1 TRUST FUND

7 ESTABLISHED.

8 1. If an agreement is made by a person to furnish,
9 upon the future death of a person named or implied in
10 the agreement, cemetery merchandise, a minimum of one
11 hundred twenty-five percent of the wholesale cost of
12 the cemetery merchandise, based upon the current
13 advertised prices available from a manufacturer or
14 wholesaler who has delivered the same or substantially
15 the same type of merchandise to the seller during the
16 last twelve months, shall be and remain trust funds
17 until purchase of the merchandise or the occurrence of
18 the death of the person for whose benefit the funds
19 were paid, unless the funds are sooner released to the
20 person making the payment by mutual consent of the
21 parties. Payments otherwise subject to this section
22 are not exempt merely because they are held in
23 certificates of deposit.

24 2. The seller shall keep copies of all price
25 advertisements upon which the seller relies to
26 determine the wholesale cost. The copies of price
27 advertisements so maintained shall be made available
28 to the commissioner upon request. The seller shall
29 review wholesale costs no less than annually and make
30 additional deposits as necessary to assure that the
31 amount held in trust is always equal to or in excess
32 of one hundred twenty-five percent of the wholesale
33 cost of the merchandise. The seller and the
34 manufacturer or wholesaler upon whose price the seller
35 relies to determine the wholesale cost shall not be
36 commonly owned or affiliated.

37 3. Interest or income earned on amounts deposited
38 in trust under this subsection shall remain in trust
39 under the same terms and conditions as the payments
40 made under the agreement and purchasers shall have a
41 right to a total refund of principal and interest or
42 income in the event of nonperformance.

43 4. If an agreement subject to this subsection is
44 to be paid in installment payments, the seller shall
45 deposit fifty percent of each payment in trust until
46 the full amount to be trusted has been deposited. If
47 the agreement is financed with or sold to a financial
48 institution, the agreement shall be considered paid in
49 full and the deposit requirements of this section
50 shall be satisfied within fifteen days after the close

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1 of the month of receipt of the funds from the
2 financial institution.

3 This section does not apply to payments for
4 merchandise delivered to the purchaser. Delivery
5 includes storage in a warehouse under the control of
6 the seller or any other warehouse or storage facility
7 approved by the commissioner when a receipt of
8 ownership in the name of the purchaser is delivered to
9 the purchaser, the merchandise is insured against
10 loss, the merchandise is protected against damage,
11 title has been transferred to the purchaser, the
12 merchandise is appropriately identified and described
13 in a manner that it can be distinguished from other
14 similar items of merchandise, the method of storage
15 allows for visual audits of the merchandise, and the
16 annual reporting requirements of section 523E.2,
17 subsection 1, are satisfied.

18 Sec. ____ . NEW SECTION. 523E.2 DEPOSIT OF FUNDS -
19 - RECORDS -- EXAMINATIONS -- REPORTS.

20 1. a. All funds held in trust under section
21 523E.1 shall be deposited in a state or federally
22 insured bank, savings and loan association, or credit
23 union authorized to conduct business in this state, or
24 trust department thereof, or in a trust company
25 authorized to conduct business in this state, within
26 fifteen days after the close of the month of receipt
27 of the funds and shall be held as provided in
28 paragraph "g" for the designated beneficiary until
29 released pursuant to section 523E.1.

30 b. The seller under an agreement referred to in
31 section 523E.1 shall maintain accurate records of all
32 receipts, expenditures, interest or earnings, and
33 disbursements relating to funds held in trust, and
34 shall make these records available to the commissioner
35 for examination at any reasonable time upon request.

36 c. The seller under an agreement referred to in
37 section 523E.1 shall file with the commissioner not
38 later than March 1 of each year a report including the
39 following information:

40 (1) The name and address of the seller and the
41 name and address of the establishment that will
42 provide the cemetery merchandise.

43 (2) The name of the purchaser, beneficiary, and
44 the amount of each agreement under section 523E.1 made
45 in the preceding year and the date on which it was
46 made.

47 (3) The total value of agreements subject to
48 section 523E.1 entered into, the total amount paid
49 pursuant to those agreements, and the total amount
50 deposited in trust as required under section 523E.1,

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1 during the preceding year.

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

6 (5) The change in status of any trust account, for
7 each purchaser, any other amounts withdrawn from trust
8 and the reason for each withdrawal. However, regular
9 increments of interest or income need not be reported
10 on a yearly basis.

11 (6) The name and address of the financial
12 institution in which trust funds were deposited, and
13 the name and address of each insurance company which
14 funds agreements under section 523E.1.

15 (7) The name and address of each purchaser of
16 cemetery merchandise delivered in lieu of trusting
17 pursuant to section 523E.1, and a description of that
18 merchandise for each purchaser.

19 (8) The complete inventory of cemetery merchandise
20 and its location in the seller's possession that has
21 been delivered in lieu of trusting pursuant to section
22 523E.1.

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

26 The information required by subparagraphs (7) and
27 (8) shall include a verified statement of a certified
28 public accountant that the certified public accountant
29 has conducted a physical inventory of the cemetery
30 merchandise specified in subparagraph (8) and that
31 each item of that merchandise is in the seller's
32 possession at the specified location. The statement
33 shall be on a form prescribed by the commissioner.
34 The commissioner shall permit the filing of a unified
35 annual report by a seller subject to both chapter 523A
36 and this chapter.

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

41 d. A financial institution referred to in
42 paragraph "a" shall file notice with the commissioner
43 of all funds deposited under the trust agreement. The
44 notice shall be on forms prescribed by the
45 commissioner and shall be filed not later than March 1
46 of each year. Each notice shall contain the required
47 information for all deposits made during the previous
48 calendar year. Forms may be obtained from the
49 commissioner.

50 e. Notwithstanding chapter 22, all records

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1 maintained by the commissioner under this subsection
2 shall be confidential and shall not be made available
3 for inspection or copying except upon approval of the
4 commissioner or the attorney general.

5 f. The financial institution in which trust funds
6 are held shall not be owned or under the control of
7 the seller and shall not use any funds required to be
8 held in trust pursuant to this chapter or chapter 566A
9 to purchase an interest in any contract or agreement
10 to which the seller is a party, or otherwise to
11 invest, directly or indirectly, in the seller's
12 business operations.

13 g. All funds required to be deposited for a
14 purpose described in section 523E.1 shall be deposited
15 in a manner consistent with one of the following:

16 (1) The payments shall be deposited directly by
17 the purchaser in an irrevocable interest-bearing
18 burial account in the name of the purchaser.

19 (2) The payments shall be deposited directly by
20 the purchaser in a separate account in the name of the
21 purchaser. The account may be made payable to the
22 seller on the death of the purchaser or the designated
23 beneficiary, provided that, until death, the purchaser
24 retains the exclusive power to hold, manage, pledge,
25 and invest the funds in the account and may revoke the
26 trust and withdraw the funds, in whole or in part, at
27 any time.

28 (3) The payments shall be deposited by the
29 purchaser or the seller in a separate burial trust
30 account in the name of the purchaser, as trustee, in
31 trust for the named beneficiary, to be held, invested,
32 and administered as a trust account for the benefit
33 and protection of the person for whose benefit the
34 funds were paid. The depositor shall notify the
35 financial institution of the existence and terms of
36 the trust, including at a minimum the name of each
37 party to the agreement, the name and address of the
38 trustee, and the name and address of the beneficiary.
39 The account may be made payable to the seller upon
40 death of the designated beneficiary.

41 (4) The payments shall be deposited in the name of
42 the trustee, as trustee, under the terms of a master
43 trust agreement and the trustee may invest, reinvest,
44 exchange, retain, sell, and otherwise manage the trust
45 fund for the benefit and protection of the person for
46 whose benefit the funds were paid.

47 In addition to the methods provided for in this
48 section, the commissioner may by rule authorize other
49 methods of deposit upon a finding that that method
50 provides equivalent safety of the principal and

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1 interest or income and the seller does not have the
2 ability to utilize any of the proceeds prior to
3 performance. Money deposited under the master trust
4 agreement may be commingled for investment purposes as
5 long as each deposit includes a detailed listing of
6 the amount deposited in trust for each beneficiary and
7 a separate accounting of each purchaser's principal,
8 interest, and income is maintained. Subject to the
9 master trust agreement, the seller may appoint an
10 independent investment advisor to act in an advisory
11 capacity with the trustee relative to the investment
12 of the trust funds. The trust shall pay the cost of
13 the operation of the trust and any annual audit fees.

14 The financial institution, or the trust department
15 of the financial institution, in which trust funds are
16 held may serve as trustee to the extent that the
17 organization has been granted those powers under the
18 laws of this state or the United States. The seller
19 or any officer, director, agent, employee, or
20 affiliate of the seller shall not serve as trustee.

21 2. In addition to complying with subsection 1,
22 each seller under an agreement referred to in section
23 523E.1 shall file annually with the commissioner an
24 authorization for the commissioner or a designee to
25 investigate, audit, and verify all funds, accounts,
26 safe-deposit boxes, and other evidence of trust funds
27 held by or in a financial institution.

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

33 4. If a seller under an agreement referred to in
34 section 523E.1 ceases to do business, whether
35 voluntarily or involuntarily, and the obligation to
36 provide the merchandise and services has not been
37 assumed by another funeral home or cemetery holding an
38 establishment permit issued under this chapter, all
39 funds held in trust under section 523E.1, including
40 accrued interest or earnings, shall be repaid to the
41 purchaser under the agreement.

42 5. The commissioner may require the performance of
43 an audit of the seller's business by a certified
44 public accountant if the commissioner receives
45 reasonable evidence that the seller is not complying
46 with this chapter. The audit shall be paid for by the
47 seller, and a copy of the report of audit shall be
48 delivered to the commissioner and to the seller.

49 6. This chapter does not prohibit the funding of
50 an agreement otherwise subject to section 523E.1 by

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1 insurance proceeds derived from a policy issued by an
2 insurance company authorized to conduct business in
3 this state. The seller of an agreement subject to
4 this chapter which is to be funded by insurance
5 proceeds shall obtain all permits required to be
6 obtained under this chapter and comply with the
7 reporting requirements of this section.

8 Sec. ____ . NEW SECTION. 523E.5 SCOPE OF CHAPTER -
9 - DEFINITIONS.

10 1. This chapter applies only to the sale of
11 cemetery merchandise.

12 2. As used in this chapter:

13 a. "Cemetery merchandise" means grave markers,
14 tombstones, ornamental merchandise, and monuments if
15 the agreement does not require installation within
16 twelve months of the purchase.

17 b. "Commissioner" means the commissioner of
18 insurance or the deputy appointed under section
19 502.601.

20 Sec. ____ . NEW SECTION. 523E.6 COMPLIANCE WITH
21 OTHER LAWS.

22 The seller of cemetery merchandise shall comply
23 with chapter 82 with respect to all contracts that are
24 subject to regulation under this chapter. A failure
25 to comply is subject to the remedies and penalties
26 provided in that chapter.

27 Sec. ____ . NEW SECTION. 523E.7 BOND IN LIEU OF
28 TRUST FUND.

29 1. In lieu of the trust fund required by sections
30 523E.1 and 523E.2, a seller may file with the
31 commissioner a surety bond that is issued by a surety
32 company authorized to do business in this state and
33 that is conditioned on the faithful performance by the
34 seller of agreements subject to this chapter. The
35 liability of the surety extends to each agreement that
36 is subject to this chapter and that is executed during
37 the time the bond is in force and until performance of
38 the agreement or rescission of the agreement by mutual
39 consent of the parties; and, to the extent expressly
40 agreed to in writing by the surety company under
41 subsection 3, paragraph "b", the liability of the
42 surety extends to each agreement that is subject to
43 this chapter and that was executed prior to the time
44 the bond was in force and until performance of the
45 agreement or rescission of the agreement by mutual
46 consent of the parties. A buyer who is aggrieved by a
47 breach of a condition of the bond covering the
48 contract of that buyer may maintain an action against
49 the bond, provided that if, at the time of the breach,
50 the buyer is aware of the buyer's rights under the

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

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

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

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

48 b. Within sixty days after the effective date of
49 the cancellation of the surety bond, the seller shall
50 submit to the commissioner an undertaking by another

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

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

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

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

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1 secure compliance with this chapter, and the county
2 attorney may bring criminal charges under section
3 523E.15.

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

6 Sec. ____ . NEW SECTION. 523E.8 DISCLOSURES.

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

11 a. Identify the seller, the salesperson's permit
12 and establishment name and permit number, the
13 expiration date of the salesperson's permit, the
14 purchaser, and the person for whom the cemetery
15 merchandise is purchased if other than the purchaser.

16 b. Specify the cemetery merchandise to be
17 provided, and the cost of each merchandise item.

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

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

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

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

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

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

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

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

36 2. Every agreement shall be signed by the
37 purchaser and the seller.

38 Sec. ____ . NEW SECTION. 523E.9 ESTABLISHMENT
39 PERMITS.

40 1. A person, as defined in section 4.1, subsection
41 13, shall not engage in the business of selling,
42 promoting, or otherwise entering into agreements to
43 furnish, upon the future death of a person named or
44 implied in the agreement, cemetery merchandise without
45 an establishment permit as provided for in this
46 section. An establishment doing business shall obtain
47 a permit for each location.

48 2. An applicant for a permit under this section
49 shall submit to the commissioner an application on a
50 form provided by the commissioner. The commissioner

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1 shall permit application for a permit under section
2 523A.9 on the same form as for this section provided
3 the scope of sales by the establishment is clearly
4 indicated to include funeral services, funeral
5 merchandise, or cemetery merchandise, or a combination
6 of any of these. The application shall include at a
7 minimum the following information:

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

10 b. The name and location of the provider who will
11 provide the cemetery merchandise.

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

17 d. The types of cemetery merchandise to be sold.

18 An application for a permit pursuant to this
19 section shall be accompanied by a copy of each sales
20 agreement the permit holder will use for sales of
21 cemetery merchandise under section 523E.1.

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

25 3. The applicant for a permit shall submit a fee
26 in the amount of fifty dollars; provided, however,
27 that if an applicant also applies for or has a permit
28 under section 523A.9, no additional fee shall be
29 required under this subsection.

30 4. Permits granted under this section are not
31 assignable.

32 5. Upon the filing of an application for a permit,
33 the commissioner shall issue the permit unless the
34 commissioner finds any of the following:

35 a. The applicant is insolvent.

36 b. The applicant has failed to comply with any
37 terms or conditions of this chapter and that failure
38 is deemed by the commissioner to substantially impede
39 the applicant's ability to abide by this chapter.

40 c. The applicant has been convicted of a criminal
41 offense involving dishonesty or false statement.

42 d. The applicant cannot provide the cemetery
43 merchandise the applicant purports to sell.

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

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1 approval of the application.

2 ✓ Sec. ____ . NEW SECTION. 523E.10 SALES PERMITS.

3 1. An individual shall not sell, promote, or
4 otherwise enter into an agreement to furnish, upon the
5 future death of a person named or implied in the
6 agreement, cemetery merchandise without a permit as
7 provided for in this section. An individual permit
8 holder must be an employee or agent of an
9 establishment which holds a permit pursuant to section
10 523E.9 and which can deliver the cemetery merchandise
11 being sold. The establishment is liable for the acts
12 of its employees and agents, independent or otherwise,
13 performed in the course of obtaining or attempting to
14 obtain an agreement for the sale of cemetery
15 merchandise under section 523E.1.

16 2. An applicant for a permit under this section
17 shall submit to the commissioner an application on a
18 form provided by the commissioner. The commissioner
19 shall permit application for a permit under section
20 523A.10 on the same form as for this section provided
21 the scope of sales by the individual is clearly
22 indicated to include funeral services, funeral
23 merchandise, or cemetery merchandise, or a combination
24 of any of these. The application shall include at a
25 minimum the following information:

26 a. The name and address of the applicant.

27 b. The name and address of the applicant's
28 employer or the establishment on whose behalf the
29 applicant will be making or attempting to make sales,
30 and, if different, the name and address of the
31 provider who will provide the cemetery merchandise.

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

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

43 4. The application fee shall be five dollars;
44 provided, however, that if an applicant also applies
45 for or has a permit under section 523A.10, no
46 additional fee shall be required under this
47 subsection.

48 5. Permits granted under this section are not
49 assignable.

50 6. The commissioner may revoke a permit if the

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1 commissioner determines that the permit holder has
2 been convicted of a criminal offense involving
3 dishonesty or false statement or that the
4 establishment cannot provide the cemetery merchandise
5 the establishment purports to sell.

6 Sec. ____ . NEW SECTION. 523E.11 INVESTIGATIONS.

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

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

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

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

27 Sec. ____ . NEW SECTION. 523E.12 SUSPENSION OR
28 REVOCATION OF PERMITS.

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

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

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

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

44 d. The permit holder, for the purpose of avoiding
45 a trusting requirement under section 523A.1 or 523E.1,
46 attributes amounts paid pursuant to the agreement to
47 funeral merchandise or cemetery merchandise that is
48 delivered under section 523A.1 or to cemetery
49 merchandise rather than to funeral services sold to
50 the purchaser. The sale of funeral services at a

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1 lower price when the sale is made in conjunction with
2 the sale of funeral merchandise or cemetery
3 merchandise to be delivered pursuant to section 523A.1
4 than the services are regularly and customarily sold
5 for when not sold in conjunction with funeral
6 merchandise or cemetery merchandise is evidence that
7 the permit holder is acting with the purpose of
8 avoiding a trusting requirement under section 523A.1
9 or 523E.1.

10 e. The permit holder is found upon investigation
11 to have engaged in a deceptive act or practice or has
12 deliberately misrepresented or omitted a material fact
13 relative to the sale of funeral services, funeral
14 merchandise, or cemetery merchandise under this
15 chapter.

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

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

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

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

31 Sec. ____ . NEW SECTION. 523E.13 PROSECUTION FOR
32 VIOLATIONS OF LAW.

33 If the commissioner believes that grounds exist for
34 the criminal prosecution of persons subject to this
35 chapter for violations of this chapter or any other
36 law of this state, the commissioner may forward to the
37 attorney general or the county attorney the grounds
38 for the belief, including all evidence in the
39 commissioner's possession, in order that the attorney
40 general or the county attorney may proceed with the
41 matter as deemed appropriate. At the request of the
42 attorney general, the county attorney shall appear and
43 prosecute the action when brought in the county
44 attorney's county.

45 Sec. ____ . NEW SECTION. 523E.14 INJUNCTIONS.

46 The attorney general may apply to the district
47 court in any county of the state for an injunction to
48 restrain a person subject to this chapter and any
49 agents, employees, or associates of the person from
50 engaging in conduct or practices deemed contrary to

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1 the public interest. In any proceeding for an
2 injunction, the attorney general may apply to the
3 court for the issuance of a subpoena to require the
4 appearance of a defendant and the defendant's agents
5 and any documents, books, and records germane to the
6 hearing upon the petition for an injunction. Upon
7 proof of any of the offenses described in the petition
8 for injunction the court may grant the injunction.

9 Sec. ____ . NEW SECTION. 523E.15 FRAUDULENT
10 PRACTICES.

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

14 1. Knowingly fails to comply with any requirement
15 of this chapter.

16 2. Knowingly makes, causes to be made, or
17 subscribes to a false statement or representation in a
18 report or other document required under this chapter,
19 or renders such a report or document misleading
20 through the deliberate omission of information
21 properly belonging in the report or document.

22 3. Conspires to defraud in connection with the
23 sale of cemetery merchandise under this chapter.

24 4. Fails to deposit funds in compliance with
25 section 523E.1, or withdraws funds in a manner
26 inconsistent with this chapter.

27 5. Knowingly sells or offers cemetery merchandise
28 without an establishment permit.

29 6. Deliberately misrepresents or omits a material
30 fact relative to the sale of cemetery merchandise
31 under this chapter.

32 Sec. ____ . NEW SECTION. 523E.16 RULES.

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

36 Sec. ____ . NEW SECTION. 523E.17 CEASE AND DESIST
37 ORDERS.

38 If an audit or investigation provides reasonable
39 evidence that a seller has violated any provisions of
40 this chapter or any rule adopted under this chapter,
41 the commissioner may issue an order directed at the
42 seller to cease and desist from engaging in such act
43 or practice.

44 Sec. ____ . NEW SECTION. 523E.18 VIOLATIONS AND
45 PENALTIES.

46 A violation of this chapter or rules adopted by the
47 commissioner pursuant to this chapter is a violation
48 of section 714.16, subsection 2, paragraph "a". The
49 remedies and penalties provided by section 714.16,
50 including but not limited to, provisions relating to

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1 injunctive relief and penalties, apply to violations
2 of this chapter.

3 Sec. ____ . NEW SECTION. 523E.19 RECEIVERSHIPS.

4 1. The commissioner shall notify the attorney
5 general if the commissioner finds that any seller
6 engaged in the business subject to this chapter meets
7 one or more of the following conditions:

8 a. Is insolvent.

9 b. Has utilized trust funds for personal or
10 business purposes in a manner inconsistent with this
11 chapter and the amount of funds currently held in
12 trust is less than fifty percent of all payments made
13 under the agreements referred to in section 523E.1.

14 c. Has refused to pay any just claim or demand
15 based on an agreement referred to in section 523E.1.

16 d. The commissioner finds upon investigation that
17 a seller is unable to pay any just claim or demand
18 based on such agreements which have been legally
19 determined to be just and outstanding.

20 2. The attorney general may apply to the district
21 court in any county of the state for a receivership.
22 Upon proof of any of the grounds for a receivership
23 described in this section, the court may grant a
24 receivership.

25 Sec. ____ . NEW SECTION. 523E.20 INSURANCE
26 DIVISION'S REGULATORY FUND.

27 The insurance division may authorize the creation
28 of a special revenue fund in the state treasury, to be
29 known as the insurance division regulatory fund.
30 Commencing July 1, 1990, and annually thereafter, the
31 commissioner shall allocate from the fees paid
32 pursuant to section 523E.2, one dollar for each
33 agreement reported on an establishment permit holder's
34 annual report for deposit to the regulatory fund. The
35 remainder of the fees collected pursuant to section
36 523E.2 shall be deposited into the insurance revolving
37 fund; provided, however, that if the balance of the
38 regulatory fund on that July 1 exceeds two hundred
39 thousand dollars, the allocation to the regulatory
40 fund shall not be made and the total sum of the fees
41 paid pursuant to section 523E.2 shall be deposited in
42 the insurance revolving fund. The moneys in the
43 regulatory fund shall be retained in the fund together
44 with any interest or earnings that are earned on the
45 balance. The moneys are appropriated and, subject to
46 authorization by the commissioner, may be used to pay
47 investigative expenses and the expenses of
48 receiverships established pursuant to section 523E.19.
49 An annual assessment shall not be imposed if the
50 current balance of the fund exceeds two hundred

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1 thousand dollars.

2 Sec. ____ . NEW SECTION. 566A.12 RECORDS.

3 A cemetery subject to any trust requirement under
4 this chapter shall file a copy of its report to the
5 district court with the consumer protection division
6 of the department of justice within seven days of
7 filing the report with the district court, but in any
8 event, not later than March 1 of each year. The
9 cemetery shall maintain accurate records of all
10 receipts, expenditures, interest or earnings, and
11 disbursements relating to funds held in trust.

12 Sec. ____ . NEW SECTION. 566A.13 VIOLATIONS AND
13 PENALTIES.

14 A violation of this chapter or rules adopted by the
15 attorney general pursuant to this chapter is a
16 violation of section 714.16, subsection 2, paragraph
17 "a". The remedies and penalties provided by section
18 714.16, including but not limited to, provisions
19 relating to injunctive relief and penalties, apply to
20 a violation of this chapter.

21 Sec. ____ . CODIFICATION.

22 The Code editor shall entitle new chapter 523E, as
23 enacted in this Act, as "Sales of Cemetery
24 Merchandise". Sections 523E.3 and 523E.4 shall be
25 reserved."

26 3. By renumbering as necessary.

By MICHAEL GRONSTAL

S-5806 FILED MARCH 30, 1990

Adopted 4/2 (p. 1461)

SENATE AMENDMENT TO HOUSE FILE 2537

H-6130

1 Amend House File 2537, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 4, by striking lines 10 through 16.

4 2. Page 4, by striking lines 17 through 26.

5 3. Page 4, by striking lines 27 through 34.

6 4. By striking page 8, line 19 through page 10,
7 line 27.

8 5. Page 10, by inserting after line 27, the
9 following:

10 "Sec. ____ . NEW SECTION. 523E.1 TRUST FUND
11 ESTABLISHED.

12 1. If an agreement is made by a person to furnish,
13 upon the future death of a person named or implied in
14 the agreement, cemetery merchandise, a minimum of one
15 hundred twenty-five percent of the wholesale cost of
16 the cemetery merchandise, based upon the current
17 advertised prices available from a manufacturer or
18 wholesaler who has delivered the same or substantially
19 the same type of merchandise to the seller during the
20 last twelve months, shall be and remain trust funds
21 until purchase of the merchandise or the occurrence of
22 the death of the person for whose benefit the funds
23 were paid, unless the funds are sooner released to the
24 person making the payment by mutual consent of the
25 parties. Payments otherwise subject to this section
26 are not exempt merely because they are held in
27 certificates of deposit.

28 2. The seller shall keep copies of all price
29 advertisements upon which the seller relies to
30 determine the wholesale cost. The copies of price
31 advertisements so maintained shall be made available
32 to the commissioner upon request. The seller shall
33 review wholesale costs no less than annually and make
34 additional deposits as necessary to assure that the
35 amount held in trust is always equal to or in excess
36 of one hundred twenty-five percent of the wholesale
37 cost of the merchandise. The seller and the
38 manufacturer or wholesaler upon whose price the seller
39 relies to determine the wholesale cost shall not be
40 commonly owned or affiliated.

41 3. Interest or income earned on amounts deposited
42 in trust under this subsection shall remain in trust
43 under the same terms and conditions as the payments
44 made under the agreement and purchasers shall have a
45 right to a total refund of principal and interest or
46 income in the event of nonperformance.

47 4. If an agreement subject to this subsection is
48 to be paid in installment payments, the seller shall
49 deposit fifty percent of each payment in trust until
50 the full amount to be trusted has been deposited. If

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1 the agreement is financed with or sold to a financial
2 institution, the agreement shall be considered paid in
3 full and the deposit requirements of this section
4 shall be satisfied within fifteen days after the close
5 of the month of receipt of the funds from the
6 financial institution.

7 This section does not apply to payments for
8 merchandise delivered to the purchaser. Delivery
9 includes storage in a warehouse under the control of
10 the seller or any other warehouse or storage facility
11 approved by the commissioner when a receipt of
12 ownership in the name of the purchaser is delivered to
13 the purchaser, the merchandise is insured against
14 loss, the merchandise is protected against damage,
15 title has been transferred to the purchaser, the
16 merchandise is appropriately identified and described
17 in a manner that it can be distinguished from other
18 similar items of merchandise, the method of storage
19 allows for visual audits of the merchandise, and the
20 annual reporting requirements of section 523E.2,
21 subsection 1, are satisfied.

22 Sec. ____ . NEW SECTION. 523E.2 DEPOSIT OF FUNDS -
23 -RECORDS -- EXAMINATIONS -- REPORTS.

24 1. a. All funds held in trust under section
25 523E.1 shall be deposited in a state or federally
26 insured bank, savings and loan association, or credit
27 union authorized to conduct business in this state, or
28 trust department thereof, or in a trust company
29 authorized to conduct business in this state, within
30 fifteen days after the close of the month of receipt
31 of the funds and shall be held as provided in
32 paragraph "g" for the designated beneficiary until
33 released pursuant to section 523E.1.

34 b. The seller under an agreement referred to in
35 section 523E.1 shall maintain accurate records of all
36 receipts, expenditures, interest or earnings, and
37 disbursements relating to funds held in trust, and
38 shall make these records available to the commissioner
39 for examination at any reasonable time upon request.

40 c. The seller under an agreement referred to in
41 section 523E.1 shall file with the commissioner not
42 later than March 1 of each year a report including the
43 following information:

44 (1) The name and address of the seller and the
45 name and address of the establishment that will
46 provide the cemetery merchandise.

47 (2) The name of the purchaser, beneficiary, and
48 the amount of each agreement under section 523E.1 made
49 in the preceding year and the date on which it was
50 made.

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1 (3) The total value of agreements subject to
2 section 523E.1 entered into, the total amount paid
3 pursuant to those agreements, and the total amount
4 deposited in trust as required under section 523E.1,
5 during the preceding year.

6 (4) The amount of any payments received pursuant
7 to agreements reported in previous years in accordance
8 with subparagraphs (2) and (3) and the amount of those
9 payments deposited in trust for each purchaser.

10 (5) The change in status of any trust account, for
11 each purchaser, any other amounts withdrawn from trust
12 and the reason for each withdrawal. However, regular
13 increments of interest or income need not be reported
14 on a yearly basis.

15 (6) The name and address of the financial
16 institution in which trust funds were deposited, and
17 the name and address of each insurance company which
18 funds agreements under section 523E.1.

19 (7) The name and address of each purchaser of
20 cemetery merchandise delivered in lieu of trusting
21 pursuant to section 523E.1, and a description of that
22 merchandise for each purchaser.

23 (8) The complete inventory of cemetery merchandise
24 and its location in the seller's possession that has
25 been delivered in lieu of trusting pursuant to section
26 523E.1.

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

30 The information required by subparagraphs (7) and
31 (8) shall include a verified statement of a certified
32 public accountant that the certified public accountant
33 has conducted a physical inventory of the cemetery
34 merchandise specified in subparagraph (8) and that
35 each item of that merchandise is in the seller's
36 possession at the specified location. The statement
37 shall be on a form prescribed by the commissioner.
38 The commissioner shall permit the filing of a unified
39 annual report by a seller subject to both chapter 523A
40 and this chapter.

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

45 d. A financial institution referred to in
46 paragraph "a" shall file notice with the commissioner
47 of all funds deposited under the trust agreement. The
48 notice shall be on forms prescribed by the
49 commissioner and shall be filed not later than March 1
50 of each year. Each notice shall contain the required

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1 information for all deposits made during the previous
2 calendar year. Forms may be obtained from the
3 commissioner.

4 e. Notwithstanding chapter 22, all records
5 maintained by the commissioner under this subsection
6 shall be confidential and shall not be made available
7 for inspection or copying except upon approval of the
8 commissioner or the attorney general.

9 f. The financial institution in which trust funds
10 are held shall not be owned or under the control of
11 the seller and shall not use any funds required to be
12 held in trust pursuant to this chapter or chapter 566A
13 to purchase an interest in any contract or agreement
14 to which the seller is a party, or otherwise to
15 invest, directly or indirectly, in the seller's
16 business operations.

17 g. All funds required to be deposited for a
18 purpose described in section 523E.1 shall be deposited
19 in a manner consistent with one of the following:

20 (1) The payments shall be deposited directly by
21 the purchaser in an irrevocable interest-bearing
22 burial account in the name of the purchaser.

23 (2) The payments shall be deposited directly by
24 the purchaser in a separate account in the name of the
25 purchaser. The account may be made payable to the
26 seller on the death of the purchaser or the designated
27 beneficiary, provided that, until death, the purchaser
28 retains the exclusive power to hold, manage, pledge,
29 and invest the funds in the account and may revoke the
30 trust and withdraw the funds, in whole or in part, at
31 any time.

32 (3) The payments shall be deposited by the
33 purchaser or the seller in a separate burial trust
34 account in the name of the purchaser, as trustee, in
35 trust for the named beneficiary, to be held, invested,
36 and administered as a trust account for the benefit
37 and protection of the person for whose benefit the
38 funds were paid. The depositor shall notify the
39 financial institution of the existence and terms of
40 the trust, including at a minimum the name of each
41 party to the agreement, the name and address of the
42 trustee, and the name and address of the beneficiary.
43 The account may be made payable to the seller upon
44 death of the designated beneficiary.

45 (4) The payments shall be deposited in the name of
46 the trustee, as trustee, under the terms of a master
47 trust agreement and the trustee may invest, reinvest,
48 exchange, retain, sell, and otherwise manage the trust
49 fund for the benefit and protection of the person for
50 whose benefit the funds were paid.

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1 In addition to the methods provided for in this
2 section, the commissioner may by rule authorize other
3 methods of deposit upon a finding that that method
4 provides equivalent safety of the principal and
5 interest or income and the seller does not have the
6 ability to utilize any of the proceeds prior to
7 performance. Money deposited under the master trust
8 agreement may be commingled for investment purposes as
9 long as each deposit includes a detailed listing of
10 the amount deposited in trust for each beneficiary and
11 a separate accounting of each purchaser's principal,
12 interest, and income is maintained. Subject to the
13 master trust agreement, the seller may appoint an
14 independent investment advisor to act in an advisory
15 capacity with the trustee relative to the investment
16 of the trust funds. The trust shall pay the cost of
17 the operation of the trust and any annual audit fees.

18 The financial institution, or the trust department
19 of the financial institution, in which trust funds are
20 held may serve as trustee to the extent that the
21 organization has been granted those powers under the
22 laws of this state or the United States. The seller
23 or any officer, director, agent, employee, or
24 affiliate of the seller shall not serve as trustee.

25 2. In addition to complying with subsection 1,
26 each seller under an agreement referred to in section
27 523E.1 shall file annually with the commissioner an
28 authorization for the commissioner or a designee to
29 investigate, audit, and verify all funds, accounts,
30 safe-deposit boxes, and other evidence of trust funds
31 held by or in a financial institution.

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

37 4. If a seller under an agreement referred to in
38 section 523E.1 ceases to do business, whether
39 voluntarily or involuntarily, and the obligation to
40 provide the merchandise and services has not been
41 assumed by another funeral home or cemetery holding an
42 establishment permit issued under this chapter, all
43 funds held in trust under section 523E.1, including
44 accrued interest or earnings, shall be repaid to the
45 purchaser under the agreement.

46 5. The commissioner may require the performance of
47 an audit of the seller's business by a certified
48 public accountant if the commissioner receives
49 reasonable evidence that the seller is not complying
50 with this chapter. The audit shall be paid for by the

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1 seller, and a copy of the report of audit shall be
2 delivered to the commissioner and to the seller.

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

12 Sec. ____ . NEW SECTION. 523E.5 SCOPE OF CHAPTER -
13 -DEFINITIONS.

14 1. This chapter applies only to the sale of
15 cemetery merchandise.

16 2. As used in this chapter:

17 a. "Cemetery merchandise" means grave markers,
18 tombstones, ornamental merchandise, and monuments if
19 the agreement does not require installation within
20 twelve months of the purchase.

21 b. "Commissioner" means the commissioner of
22 insurance or the deputy appointed under section
23 502.601.

24 Sec. ____ . NEW SECTION. 523E.6 COMPLIANCE WITH
25 OTHER LAWS.

26 The seller of cemetery merchandise shall comply
27 with chapter 82 with respect to all contracts that are
28 subject to regulation under this chapter. A failure
29 to comply is subject to the remedies and penalties
30 provided in that chapter.

31 Sec. ____ . NEW SECTION. 523E.7 BOND IN LIEU OF
32 TRUST FUND.

33 1. In lieu of the trust fund required by sections
34 523E.1 and 523E.2, a seller may file with the
35 commissioner a surety bond that is issued by a surety
36 company authorized to do business in this state and
37 that is conditioned on the faithful performance by the
38 seller of agreements subject to this chapter. The
39 liability of the surety extends to each agreement that
40 is subject to this chapter and that is executed during
41 the time the bond is in force and until performance of
42 the agreement or rescission of the agreement by mutual
43 consent of the parties; and, to the extent expressly
44 agreed to in writing by the surety company under
45 subsection 3, paragraph "b", the liability of the
46 surety extends to each agreement that is subject to
47 this chapter and that was executed prior to the time
48 the bond was in force and until performance of the
49 agreement or rescission of the agreement by mutual
50 consent of the parties. A buyer who is aggrieved by a

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

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

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

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

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1 effect.

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

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

41 5. Upon receiving a notice of cancellation of a
42 surety bond, the commissioner shall notify the seller
43 of the requirements of this chapter resulting from
44 cancellation of the bond. The notice may be in the
45 form of a copy of this section and sections 523E.1 and
46 523E.2.

47 6. Upon receiving a notice of cancellation, unless
48 the seller has complied with the requirements of this
49 section, the attorney general shall seek an injunction
50 to prohibit the seller from making further agreements

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1 subject to this chapter and shall commence an action
2 to attach and levy execution upon property of the
3 seller when the seller fails to perform an agreement
4 subject to this chapter, to the extent necessary to
5 secure compliance with this chapter, and the county
6 attorney may bring criminal charges under section
7 523E.15.

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

10 Sec. ____ . NEW SECTION. 523E.8 DISCLOSURES.

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

15 a. Identify the seller, the salesperson's permit
16 and establishment name and permit number, the
17 expiration date of the salesperson's permit, the
18 purchaser, and the person for whom the cemetery
19 merchandise is purchased if other than the purchaser.

20 b. Specify the cemetery merchandise to be
21 provided, and the cost of each merchandise item.

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

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

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

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

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

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

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

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

40 2. Every agreement shall be signed by the
41 purchaser and the seller.

42 Sec. ____ . NEW SECTION. 523E.9 ESTABLISHMENT
43 PERMITS.

44 1. A person, as defined in section 4.1, subsection
45 13, shall not engage in the business of selling,
46 promoting, or otherwise entering into agreements to
47 furnish, upon the future death of a person named or
48 implied in the agreement, cemetery merchandise without
49 an establishment permit as provided for in this
50 section. An establishment doing business shall obtain

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1 a permit for each location.

2 2. An applicant for a permit under this section
3 shall submit to the commissioner an application on a
4 form provided by the commissioner. The commissioner
5 shall permit application for a permit under section
6 523A.9 on the same form as for this section provided
7 the scope of sales by the establishment is clearly
8 indicated to include funeral services, funeral
9 merchandise, or cemetery merchandise, or a combination
10 of any of these. The application shall include at a
11 minimum the following information:

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

14 b. The name and location of the provider who will
15 provide the cemetery merchandise.

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

21 d. The types of cemetery merchandise to be sold.

22 An application for a permit pursuant to this
23 section shall be accompanied by a copy of each sales
24 agreement the permit holder will use for sales of
25 cemetery merchandise under section 523E.1.

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

29 3. The applicant for a permit shall submit a fee
30 in the amount of fifty dollars; provided, however,
31 that if an applicant also applies for or has a permit
32 under section 523A.9, no additional fee shall be
33 required under this subsection.

34 4. Permits granted under this section are not
35 assignable.

36 5. Upon the filing of an application for a permit,
37 the commissioner shall issue the permit unless the
38 commissioner finds any of the following:

39 a. The applicant is insolvent.

40 b. The applicant has failed to comply with any
41 terms or conditions of this chapter and that failure
42 is deemed by the commissioner to substantially impede
43 the applicant's ability to abide by this chapter.

44 c. The applicant has been convicted of a criminal
45 offense involving dishonesty or false statement.

46 d. The applicant cannot provide the cemetery
47 merchandise the applicant purports to sell.

48 6. If the commissioner does not grant the permit,
49 the commissioner shall notify the applicant in writing
50 of the denial and the reasons for the denial. The

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1 commissioner shall approve or deny every application
2 for a license within ninety days after the filing
3 thereof, but any failure of the commissioner to act
4 within that time period shall not be deemed to be an
5 approval of the application.

6 Sec. ____ . NEW SECTION. 523E.10 SALES PERMITS.

7 1. An individual shall not sell, promote, or
8 otherwise enter into an agreement to furnish, upon the
9 future death of a person named or implied in the
10 agreement, cemetery merchandise without a permit as
11 provided for in this section. An individual permit
12 holder must be an employee or agent of an
13 establishment which holds a permit pursuant to section
14 523E.9 and which can deliver the cemetery merchandise
15 being sold. The establishment is liable for the acts
16 of its employees and agents, independent or otherwise,
17 performed in the course of obtaining or attempting to
18 obtain an agreement for the sale of cemetery
19 merchandise under section 523E.1.

20 2. An applicant for a permit under this section
21 shall submit to the commissioner an application on a
22 form provided by the commissioner. The commissioner
23 shall permit application for a permit under section
24 523A.10 on the same form as for this section provided
25 the scope of sales by the individual is clearly
26 indicated to include funeral services, funeral
merchandise, or cemetery merchandise, or a combination
of any of these. The application shall include at a
29 minimum the following information:

30 a. The name and address of the applicant.
31 b. The name and address of the applicant's
32 employer or the establishment on whose behalf the
33 applicant will be making or attempting to make sales,
34 and, if different, the name and address of the
35 provider who will provide the cemetery merchandise.

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

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

47 4. The application fee shall be five dollars;
48 provided, however, that if an applicant also applies
49 for or has a permit under section 523A.10, no
50 additional fee shall be required under this

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1 subsection.

2 5. Permits granted under this section are not
3 assignable.

4 6. The commissioner may revoke a permit if the
5 commissioner determines that the permit holder has
6 been convicted of a criminal offense involving
7 dishonesty or false statement or that the
8 establishment cannot provide the cemetery merchandise
9 the establishment purports to sell.

10 Sec. ____ . NEW SECTION. 523E.11 INVESTIGATIONS.

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

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

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

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

31 Sec. ____ . NEW SECTION. 523E.12 SUSPENSION OR
32 REVOCATION OF PERMITS.

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

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

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

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

48 d. The permit holder, for the purpose of avoiding
49 a trusting requirement under section 523A.1 or 523E.1,
50 attributes amounts paid pursuant to the agreement to

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

14 e. The permit holder is found upon investigation
 15 to have engaged in a deceptive act or practice or has
 16 deliberately misrepresented or omitted a material fact
 17 relative to the sale of funeral services, funeral
 18 merchandise, or cemetery merchandise under this
 19 chapter.

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

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

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

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

35 Sec. ____ . NEW SECTION. 523E.13 PROSECUTION FOR
 36 VIOLATIONS OF LAW.

37 If the commissioner believes that grounds exist for
 38 the criminal prosecution of persons subject to this
 39 chapter for violations of this chapter or any other
 40 law of this state, the commissioner may forward to the
 41 attorney general or the county attorney the grounds
 42 for the belief, including all evidence in the
 43 commissioner's possession, in order that the attorney
 44 general or the county attorney may proceed with the
 45 matter as deemed appropriate. At the request of the
 46 attorney general, the county attorney shall appear and
 47 prosecute the action when brought in the county
 48 attorney's county.

49 Sec. ____ . NEW SECTION. 523E.14 INJUNCTIONS.
 50 The attorney general may apply to the district

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

13 Sec. ____ . NEW SECTION. 523E.15 FRAUDULENT
14 PRACTICES.

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

18 1. Knowingly fails to comply with any requirement
19 of this chapter.

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

26 3. Conspires to defraud in connection with the
27 sale of cemetery merchandise under this chapter.

28 4. Fails to deposit funds in compliance with
29 section 523E.1, or withdraws funds in a manner
30 inconsistent with this chapter.

31 5. Knowingly sells or offers cemetery merchandise
32 without an establishment permit.

33 6. Deliberately misrepresents or omits a material
34 fact relative to the sale of cemetery merchandise
35 under this chapter.

36 Sec. ____ . NEW SECTION. 523E.16 RULES.

37 The commissioner may adopt rules necessary to
38 administer this chapter, in accordance with chapter
39 17A.

40 Sec. ____ . NEW SECTION. 523E.17 CEASE AND DESIST
41 ORDERS.

42 If an audit or investigation provides reasonable
43 evidence that a seller has violated any provisions of
44 this chapter or any rule adopted under this chapter,
45 the commissioner may issue an order directed at the
46 seller to cease and desist from engaging in such act
47 or practice.

48 Sec. ____ . NEW SECTION. 523E.18 VIOLATIONS AND
49 PENALTIES.

50 A violation of this chapter or rules adopted by the

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1 commissioner pursuant to this chapter is a violation
2 of section 714.16, subsection 2, paragraph "a". The
3 remedies and penalties provided by section 714.16,
4 including but not limited to, provisions relating to
5 injunctive relief and penalties, apply to violations
6 of this chapter.

7 Sec. ____ . NEW SECTION. 523E.19 RECEIVERSHIPS.

8 1. The commissioner shall notify the attorney
9 general if the commissioner finds that any seller
10 engaged in the business subject to this chapter meets
11 one or more of the following conditions:

12 a. Is insolvent.

13 b. Has utilized trust funds for personal or
14 business purposes in a manner inconsistent with this
15 chapter and the amount of funds currently held in
16 trust is less than fifty percent of all payments made
17 under the agreements referred to in section 523E.1.

18 c. Has refused to pay any just claim or demand
19 based on an agreement referred to in section 523E.1.

20 d. The commissioner finds upon investigation that
21 a seller is unable to pay any just claim or demand
22 based on such agreements which have been legally
23 determined to be just and outstanding.

24 2. The attorney general may apply to the district
25 court in any county of the state for a receivership.

26 Upon proof of any of the grounds for a receivership
27 described in this section, the court may grant a
28 receivership.

29 Sec. ____ . NEW SECTION. 523E.20 INSURANCE
30 DIVISION'S REGULATORY FUND.

31 The insurance division may authorize the creation
32 of a special revenue fund in the state treasury, to be
33 known as the insurance division regulatory fund.
34 Commencing July 1, 1990, and annually thereafter, the
35 commissioner shall allocate from the fees paid
36 pursuant to section 523E.2, one dollar for each
37 agreement reported on an establishment permit holder's
38 annual report for deposit to the regulatory fund. The
39 remainder of the fees collected pursuant to section
40 523E.2 shall be deposited into the insurance revolving
41 fund; provided, however, that if the balance of the
42 regulatory fund on that July 1 exceeds two hundred
43 thousand dollars, the allocation to the regulatory
44 fund shall not be made and the total sum of the fees
45 paid pursuant to section 523E.2 shall be deposited in
46 the insurance revolving fund. The moneys in the
47 regulatory fund shall be retained in the fund together
48 with any interest or earnings that are earned on the
49 balance. The moneys are appropriated and, subject to
50 authorization by the commissioner, may be used to pay

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1 investigative expenses and the expenses of
2 receiverships established pursuant to section 523E.19.
3 An annual assessment shall not be imposed if the
4 current balance of the fund exceeds two hundred
5 thousand dollars.

6 Sec. ____ . NEW SECTION. 566A.12 RECORDS.

7 A cemetery subject to any trust requirement under
8 this chapter shall file a copy of its report to the
9 district court with the consumer protection division
10 of the department of justice within seven days of
11 filing the report with the district court, but in any
12 event, not later than March 1 of each year. The
13 cemetery shall maintain accurate records of all
14 receipts, expenditures, interest or earnings, and
15 disbursements relating to funds held in trust.

16 Sec. ____ . NEW SECTION. 566A.13 VIOLATIONS AND
17 PENALTIES.

18 A violation of this chapter or rules adopted by the
19 attorney general pursuant to this chapter is a
20 violation of section 714.16, subsection 2, paragraph
21 "a". The remedies and penalties provided by section
22 714.16, including but not limited to, provisions
23 relating to injunctive relief and penalties, apply to
24 a violation of this chapter.

25 Sec. ____ . CODIFICATION.

26 The Code editor shall entitle new chapter 523E, as
27 enacted in this Act, as "Sales of Cemetery
28 Merchandise". Sections 523E.3 and 523E.4 shall be
29 reserved."

30 6. By renumbering, relettering, or redesignating
31 and correcting internal references as necessary.

RECEIVED FROM THE SENATE

H-6130 FILED APRIL 5, 1990

House concurred 4/6 (p. 2154)

HOUSE FILE 2537
BY (PROPOSED DEPARTMENT OF
COMMERCE/INSURANCE
DIVISION BILL)

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

A BILL FOR

1 An Act relating to the sale of funeral services and merchandise.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 523A.1, Code 1989, is amended to read
2 as follows:

3 523A.1 TRUST FUND ESTABLISHED.

4 1. Whenever an agreement is made by any person, firm, or
5 corporation to furnish, upon the future death of a person
6 named or implied in the agreement, funeral services or funeral
7 merchandise, a minimum of eighty percent of all payments made
8 under the agreement shall be and remain trust funds until
9 occurrence of the death of the person for whose benefit the
10 funds were paid, unless the funds are sooner released to the
11 person making the payment by mutual consent of the parties.
12 Payments otherwise subject to this section are not exempt
13 merely because they are held in certificates of deposit.

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

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

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

6 4. This section does not apply to payments for merchandise
7 delivered to the purchaser. Delivery includes storage in a
8 warehouse under the control of the seller when a receipt of
9 ownership in the name of the purchaser is delivered to the
10 purchaser, the merchandise is insured against loss, the
11 merchandise is protected against damage, and the annual
12 reporting requirements of section 523A.2, subsection 1, are
13 satisfied.

14 Sec. 2. Section 523A.2, subsection 1, Code Supplement
15 1989, is amended to read as follows:

16 1. a. All funds held in trust under section 523A.1 shall
17 be deposited in a state or federally insured bank, savings and
18 loan association, or credit union authorized to conduct
19 business in this state, or trust department thereof, or in a
20 trust company authorized to conduct business in this state,
21 within thirty days after the receipt of the funds and shall be
22 held in a separate account or in one common trust fund ~~under a~~
23 ~~trust agreement in the name of the depositor,~~ to be held,
24 invested and administered as a trust fund for the benefit and
25 protection of the person for whose benefit the funds were
26 paid. The depositor shall furnish to the depository the name
27 of each party to the agreement and the name and address of the
28 designated beneficiary. All trust funds shall be deposited in
29 the name of the depositor or the trustee or trustees, in trust
30 for the designated beneficiary. The account shall identify
31 the funds as trust funds and shall identify the trustee or
32 trustees and the designated beneficiary. The account may
33 identify the depositor or the establishment and may be made
34 payable to the establishment upon the death of the designated
35 beneficiary. In any event, the funds shall be held in trust

1 for the designated beneficiary until released pursuant to
2 section 523A.1.

3 b. The seller under an agreement referred to in section
4 523A.1 shall maintain accurate records of all receipts,
5 expenditures, interest or earnings, and disbursements relating
6 to funds held in trust, and shall make these records available
7 to the commissioner for examination at any reasonable time
8 upon request.

9 c. The seller under an agreement referred to in section
10 523A.1 shall file with the commissioner not later than March 1
11 of each year a report including the following information:

12 (1) The name and address of the seller and the name and
13 address of the establishment that will provide the funeral
14 services or funeral merchandise.

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

18 (3) The total value of agreements subject to section
19 523A.1 entered into, the total amount paid pursuant to those
20 agreements, and the total amount deposited in trust as
21 required under section 523A.1, during the preceding year.

22 (4) The amount of any payments received pursuant to
23 agreements reported in previous years in accordance with
24 subparagraphs (2) and (3) and the amount of those payments
25 deposited in trust for each purchaser.

26 (5) The change in status of any trust account, including
27 total amount of interest or income withdrawn from each trust
28 account in the preceding year, and for each purchaser, any
29 other amounts withdrawn from trust and the reason for each
30 withdrawal. However, regular increments of interest or income
31 need not be reported on a yearly basis.

32 (6) The name and address of the financial institution in
33 which trust funds were deposited, ~~and the name and address of~~
34 ~~each insurance company which funds agreements under section~~
35 523A.1.

1 (7) The name and address of each insurance company and an
2 application or policy number for any insurance policy which
3 funds an agreement made in the preceding year under section
4 523A.1.

5 (7 8) The name and address of each purchaser of funeral
6 merchandise delivered in lieu of trusting pursuant to section
7 523A.1, and a description of that merchandise for each
8 purchaser.

9 (8 9) The complete inventory of funeral merchandise and
10 its location in the seller's possession that has been
11 delivered in lieu of trusting pursuant to section 523A.1.

12 (10) The name and address of the financial institution
13 establishing a burial account during the preceding year and
14 the name and address of the person or persons whose death or
15 deaths will cause the termination of the burial account.

16 (9 11) Other information reasonably required by the com-
17 missioner for purposes of administration of this chapter.

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

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

28 d. A financial institution referred to in paragraph "a"
29 shall file notice with the commissioner of all funds deposited
30 under the trust agreement. The notice shall be on forms
31 prescribed by the commissioner and shall be filed not later
32 than March 1 of each year. Each notice shall contain the
33 required information for all deposits made during the previous
34 calendar year. Forms may be obtained from the commissioner.

35 e. Notwithstanding chapter 22, all records maintained by

1 the commissioner under this subsection shall be confidential
2 and shall not be made available for inspection or copying
3 except upon approval of the commissioner or the attorney
4 general.

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

13 g. The ~~bank,-savings-and-loan,-credit-union,-or-trust~~
14 ~~department-thereof,~~ financial institution in which trust funds
15 are held shall may serve as trustee to the extent that
16 organization has been granted those powers under the laws of
17 this state or the United States and may invest, reinvest,
18 exchange, retain, sell, and otherwise manage the trust fund.
19 The seller, or any agent, employee, or affiliate of the
20 seller, or any family member of such persons, shall not serve
21 as trustee. The trustee may combine trust accounts
22 established pursuant to this chapter as long as a separate
23 accounting of each purchaser's principal, interest, and income
24 is maintained. The seller may appoint an independent
25 investment advisor to act in an advisory capacity with the
26 trustee relative to the investment of the trust funds. The
27 trust shall pay the cost of the operation of the trust and any
28 annual audit fees.

29 Sec. 3. Section 523A.5, Code 1989, is amended to read as
30 follows:

31 523A.5 SCOPE OF CHAPTER -- DEFINITIONS.

32 1. This chapter applies only to the sale of funeral
33 services, funeral merchandise, or a combination of these,
34 which includes burial accounts if the account records or
35 related agreements identify the provider of the funeral

1 services or funeral merchandise.

2 2. As used in this chapter:

3 a. "Burial account" means an account established at a
4 financial institution for the purpose of funding the future
5 purchase of funeral services, funeral merchandise, or a
6 combination of funeral services and merchandise.

7 b. "Commissioner" means the commissioner of insurance or
8 the deputy appointed under section 502.601.

9 c. "Funds" means money paid pursuant to a prearranged
10 funeral agreement.

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

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

26 ~~c. -- "Commissioner" means the commissioner of insurance or~~
27 ~~the deputy appointed under section 502.601.~~

28 f. "Insolvent" means unable to pay debts, as they become
29 due, in the usual course of business.

30 g. "Seller" means any person residing in or doing business
31 in the state of Iowa (which includes issuing or performing
32 wholly or in part in the state of Iowa any incident of a
33 prearranged funeral contract), who sells, promotes, or offers
34 funeral services, funeral merchandise, or a combination of
35 funeral services or merchandise on a preneed basis and

1 includes any person identified under a burial account as the
2 provider of funeral services, funeral merchandise, or a
3 combination of funeral services or merchandise.

4 h. "Trustee" means the financial institution holding trust
5 funds to the extent that the financial institution has been
6 granted trust powers under the laws of this state or the
7 United States, who holds funds pursuant to the agreement or
8 another person identified by the agreement.

9 Sec. 4. Section 523A.8, subsection 1, Code 1989, is
10 amended by adding the following new paragraphs:

11 NEW PARAGRAPH. k. State the name and address of the
12 initial financial institution in which trust funds will be
13 deposited, specify any provisions for transferring trust funds
14 to another financial institution and describe the terms under
15 which the purchaser will be notified of any such change, if
16 applicable.

17 NEW PARAGRAPH. l. If the agreement is to be funded by
18 insurance proceeds derived from a policy issued by an
19 insurance company, state the name and address of that
20 insurance company and the application or policy number.

21 NEW PARAGRAPH. m. State the name or names and respective
22 addresses of any initial trustee and indicate the method of
23 selecting successor trustees.

24 Sec. 5. Section 523A.11, subsection 1, Code 1989, is
25 amended to read as follows:

26 1. Investigate the business and examine the books,
27 accounts, records, and files used by every permit holder under
28 this chapter. If the examination provides reasonable evidence
29 that the seller has violated this chapter or any rule adopted
30 under this chapter, the costs of the examination shall be
31 borne by the seller.

32 Sec. 6. Section 523A.12, subsection 1, Code 1989, is
33 amended by adding the following new paragraph:

34 NEW PARAGRAPH. e. The permit holder is found upon
35 investigation to have engaged in a deceptive act or practice

1 or has deliberately misrepresented or omitted a material fact
2 relative to the sale of funeral services or funeral
3 merchandise under this chapter.

4 Sec. 7. NEW SECTION. 523A.17 CEASE AND DESIST ORDERS.

5 When it appears to the commissioner that a person has
6 engaged or is about to engage in an act or practice
7 constituting a violation of this chapter or a rule or order
8 issued under this chapter, the commissioner may issue an order
9 directed at the person to cease and desist from engaging in
10 the act or practice.

11 EXPLANATION

12 This bill alters the provisions regulating the sale of
13 prearranged funeral contracts, by adding additional
14 administrative powers for the commissioner of insurance to
15 conduct investigations and to enforce the law. The bill
16 alters the requirements for trust accounts securing
17 prearranged funeral contracts and adds new disclosure
18 requirements for such contracts. The bill authorizes the
19 suspension or revocation of a permit or the issuance of cease
20 and desist orders in certain circumstances.

21 BACKGROUND STATEMENT

22 SUBMITTED BY THE AGENCY

23 This bill is intended to provide better administrative
24 oversight, enhance consumer protection, and provide additional
25 enforcement powers over the sale of funeral services and
26 merchandise. This bill relates especially to prearranged
27 funeral contracts. The bill modifies and creates additional
28 provisions governing the deposit of trust funds, establishes
29 additional disclosure requirements for contracts, establishes
30 additional statutory definitions, provides for suspension or
31 revocation of a permit in the event of deceptive acts or
32 practices or deliberate misrepresentations or omissions or a
33 material fact relative to the sale of preneed funeral services
34 or funeral merchandise, and authorizes issuance of cease and
35 desist orders.

HOUSE FILE 2537

AN ACT

RELATING TO THE SALE OF FUNERAL SERVICES AND MERCHANDISE.

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

Section 1. Section 523A.1, unnumbered paragraphs 3 and 4, Code 1989, are amended to read as follows:

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 fifteen days after the close of the month of receipt of the funds 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 or any other warehouse or storage facility approved by the commissioner when a receipt of ownership in the name of the purchaser is delivered to the purchaser, the merchandise is insured against loss, the merchandise is protected against damage, title has been transferred to the purchaser, the merchandise is appropriately identified and described in a manner that it can be distinguished from other similar items of merchandise, the method of storage allows for visual audits of the merchandise, and the annual reporting requirements of section 523A.2, subsection 1, are satisfied.

Sec. 2. Section 523A.2, subsection 1, paragraphs a, f, and g, Code Supplement 1989, are amended to read as follows:

a. All funds held in trust under section 523A.1 shall be deposited in a state or federally insured bank, savings and

loan association, or credit union authorized to conduct business in this state, or trust department thereof, or in a trust company authorized to conduct business in this state, within thirty fifteen days after the close of the month of 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 as provided in paragraph "g" for the designated beneficiary until released pursuant to section 523A.1.

f. The state or federally insured bank, savings and loan association, or credit union financial institution 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 All funds required to be deposited for a purpose described in section 523A.1 shall be deposited in a manner consistent with one of the following:

(1) The payments will be deposited directly by the purchaser in an irrevocable interest-bearing burial account in the name of the purchaser.

(2) The payments will be deposited directly by the purchaser in a separate account in the name of the purchaser. The account may be made payable to the seller on the death of the purchaser or the designated beneficiary, provided that, until death, the purchaser retains the exclusive power to hold, manage, pledge, and invest the funds in the account and may revoke the trust and withdraw the funds, in whole or in part, at any time.

(3) The payments will be deposited by the purchaser or the seller in a separate burial trust account in the name of the purchaser, as trustee, in trust for the named beneficiary, to be held, invested, and administered as a trust account for the benefit and protection of the person for whose benefit the funds were paid. The depositor shall notify the financial institution of the existence and terms of the trust, including at a minimum the name of each party to the agreement, the name and address of the trustee, and the name and address of the beneficiary. The account may be made payable to the seller upon the death of the designated beneficiary.

(4) The payments will be deposited in the name of the trustee, as trustee, under the terms of a master trust agreement and the trustee may invest, reinvest, exchange, retain, sell, and otherwise manage the trust fund for the benefit and protection of the person for whose benefit the funds were paid. The trustee may combine trust accounts established pursuant to this chapter

PARAGRAPH DIVIDED. In addition to the methods provided for above, the commissioner may by rule authorize other methods of deposit upon a finding that the other method provides equivalent safety of the principal and interest or income and the seller does not have the ability to utilize any of the proceeds prior to performance. Moneys deposited under the master trust agreement may be commingled for investment purposes as long as each deposit includes a detailed listing of the amount deposited in trust for each beneficiary and a separate accounting of each purchaser's principal, interest, and income is maintained. The subject to the master trust agreement, 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.

The financial institution, or the trust department of the financial institution in which trust funds are held, may serve as trustee to the extent the institution or department has been granted those powers under the laws of this state or the United States. The seller or any officer, director, agent, employee, or affiliate of the seller shall not serve as trustee.

Sec. 3. Section 523A.2, subsection 4, Code Supplement 1989, is amended to read as follows:

4. If a seller under an agreement referred to in section 523A.1 ceases to do business, whether voluntarily or involuntarily, and the obligation to provide the merchandise and services has not been assumed by another funeral home or cemetery holding an establishment permit issued under this chapter, all funds held in trust under section 523A.1, including accrued interest or earnings, shall be repaid to the purchaser under the agreement.

Sec. 4. Section 523A.9, subsection 5, Code 1989, is amended to read as follows:

5. Upon the filing of an application for a permit, if the commissioner shall issue the permit, unless the commissioner finds that the any of the following apply:

a. The applicant is insolvent,
b. The applicant has failed to comply with any terms or conditions of this chapter and such failure is deemed by the commissioner to substantially impede the applicant's ability to abide by the provisions of this chapter.

c. The applicant has not been convicted of a criminal offense involving dishonesty or false statement, and can

d. The applicant cannot provide the funeral services or funeral merchandise the applicant purports to sell; the commissioner shall issue the permit.

Sec. 5. Section 523A.12, subsection 1, paragraph a, Code 1989, is amended to read as follows:

a. The permit holder has committed a fraudulent act, engaged in a fraudulent practice, or 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.

Sec. 6. Section 523A.12, subsection 1, Code 1989, is amended by adding the following new paragraph:

NEW PARAGRAPH. e. The permit holder is found upon investigation to have engaged in a deceptive act or practice or has deliberately misrepresented or omitted a material fact relative to the sale of funeral services or funeral merchandise under this chapter.

Sec. 7. Section 523A.13, Code 1989, is amended to read as follows:

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 or the county attorney the grounds for the belief, including all evidence in the commissioner's possession, in order that the attorney general or the county attorney may proceed with the matter as the attorney general ~~deems~~ deemed 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. 8. Section 523A.15, Code 1989, is amended to read as follows:

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 fails to comply with any requirement of this chapter.

2. 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.

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

4. Fails to deposit funds in compliance with section 523A.1 or withdraws any funds in a manner inconsistent with this chapter.

5. Knowingly sells or offers funeral merchandise or funeral services without an establishment permit.

6. Deliberately misrepresents or omits a material fact relative to the sale of funeral services or funeral merchandise under this chapter.

Sec. 9. NEW SECTION. 523A.17 CEASE AND DESIST ORDERS.

If an audit or investigation provides reasonable evidence that a seller has violated any provisions of this chapter or any rule adopted under this chapter, the commissioner may issue an order directed at the seller to cease and desist from engaging in such act or practice.

Sec. 10. NEW SECTION. 523A.18 VIOLATIONS AND PENALTIES.

A violation of this chapter or rules adopted by the commissioner pursuant to this chapter is a violation of section 714.16, subsection 2, paragraph "a". The remedies and penalties provided by section 714.16, including but not limited to, provisions relating to injunctive relief and penalties, apply to violations of this chapter.

Sec. 11. NEW SECTION. 523A.19 RECEIVERSHIPS.

1. The commissioner shall notify the attorney general if the commissioner finds that any seller engaged in the business subject to this chapter meets one or more of the following conditions:

a. Is insolvent.

b. Has utilized trust funds for personal or business purposes in a manner inconsistent with this chapter and the amount of funds currently held in trust is less than eighty percent of all payments made under the agreements referred to in section 523A.1.

c. Has refused to pay any just claim or demand based on an agreement referred to in section 523A.1.

d. The commissioner finds upon investigation that a seller is unable to pay any just claim or demand based on such agreements which have been legally determined to be just and outstanding.

2. The attorney general may apply to the district court in any county of the state for a receivership. Upon proof of any of the grounds for a receivership described in this section, the court may grant a receivership.

Sec. 12. NEW SECTION. 523A.20 INSURANCE DIVISION'S REGULATORY FUND.

The insurance division may authorize the creation of a special revenue fund in the state treasury, to be known as the insurance division regulatory fund. Commencing July 1, 1990, and annually thereafter, the commissioner shall allocate from the fees paid pursuant to section 523A.2, one dollar for each agreement reported on an establishment permit holder's annual report for deposit to the regulatory fund. The remainder of the fees collected pursuant to section 523A.2 shall be deposited into the insurance revolving fund; provided, however, that if the balance of the regulatory fund on that July 1 exceeds two hundred thousand dollars, the allocation to the regulatory fund shall not be made and the total sum of the fees paid pursuant to section 523A.2 shall be deposited in the insurance revolving fund. The moneys in the regulatory fund shall be retained in the fund together with any interest or earnings that are earned on the balance. The moneys are appropriated and, subject to authorization by the commissioner, may be used to pay investigative expenses and

the expenses of receiverships established pursuant to section 523A.19. An annual assessment shall not be imposed if the current balance of the fund exceeds two hundred thousand dollars.

Sec. 13. NEW SECTION. 523E.1 TRUST FUND ESTABLISHED.

1. If an agreement is made by a person to furnish, upon the future death of a person named or implied in the agreement, cemetery merchandise, a minimum of one hundred twenty-five percent of the wholesale cost of the cemetery merchandise, based upon the current advertised prices available from a manufacturer or wholesaler who has delivered the same or substantially the same type of merchandise to the seller during the last twelve months, shall be and remain trust funds until purchase of the merchandise or the occurrence of the death of the person for whose benefit the funds were paid, unless the funds are sooner released to the person making 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.

2. The seller shall keep copies of all price advertisements upon which the seller relies to determine the wholesale cost. The copies of price advertisements so maintained shall be made available to the commissioner upon request. The seller shall review wholesale costs no less than annually and make additional deposits as necessary to assure that the amount held in trust is always equal to or in excess of one hundred twenty-five percent of the wholesale cost of the merchandise. The seller and the manufacturer or wholesaler upon whose price the seller relies to determine the wholesale cost shall not be commonly owned or affiliated.

3. Interest or income earned on amounts deposited in trust under this subsection shall remain in trust under the same terms and conditions as the payments made under the agreement and purchasers shall have a right to a total refund of principal and interest or income in the event of nonperformance.

4. If an agreement subject to this subsection is to be paid in installment payments, the seller shall deposit fifty 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, the agreement shall be considered paid in full and the deposit requirements of this section shall be satisfied within fifteen days after the close of the month of receipt of the funds 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 or any other warehouse or storage facility approved by the commissioner when a receipt of ownership in the name of the purchaser is delivered to the purchaser, the merchandise is insured against loss, the merchandise is protected against damage, title has been transferred to the purchaser, the merchandise is appropriately identified and described in a manner that it can be distinguished from other similar items of merchandise, the method of storage allows for visual audits of the merchandise, and the annual reporting requirements of section 523E.2, subsection 1, are satisfied.

Sec. 14. NEW SECTION. 523E.2 DEPOSIT OF FUNDS -- RECORDS -- EXAMINATIONS -- REPORTS.

1. a. All funds held in trust under section 523E.1 shall be deposited in a state or federally insured bank, savings and loan association, or credit union authorized to conduct business in this state, or trust department thereof, or in a trust company authorized to conduct business in this state, within fifteen days after the close of the month of receipt of the funds and shall be held as provided in paragraph "g" for the designated beneficiary until released pursuant to section 523E.1.

b. The seller under an agreement referred to in section 523E.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 commissioner for examination at any reasonable time upon request.

c. The seller under an agreement referred to in section 523E.1 shall file 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 cemetery merchandise.

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

(3) The total value of agreements subject to section 523E.1 entered into, the total amount paid pursuant to those agreements, and the total amount deposited in trust as required under section 523E.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, 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 523E.1.

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

(8) The complete inventory of cemetery merchandise and its location in the seller's possession that has been delivered in lieu of trusting pursuant to section 523E.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 cemetery 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 commissioner shall permit the filing of a unified annual report by a seller subject to both chapter 523A and this chapter.

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.

d. A financial institution referred to in paragraph "a" shall file notice with the commissioner of all funds deposited under the trust agreement. The notice shall be on forms prescribed by the 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. Forms may be obtained from the commissioner.

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

f. The financial institution 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. All funds required to be deposited for a purpose described in section 523E.1 shall be deposited in a manner consistent with one of the following:

(1) The payments shall be deposited directly by the purchaser in an irrevocable interest-bearing burial account in the name of the purchaser.

(2) The payments shall be deposited directly by the purchaser in a separate account in the name of the purchaser. The account may be made payable to the seller on the death of the purchaser or the designated beneficiary, provided that, until death, the purchaser retains the exclusive power to hold, manage, pledge, and invest the funds in the account and may revoke the trust and withdraw the funds, in whole or in part, at any time.

(3) The payments shall be deposited by the purchaser or the seller in a separate burial trust account in the name of the purchaser, as trustee, in trust for the named beneficiary, to be held, invested, and administered as a trust account for the benefit and protection of the person for whose benefit the funds were paid. The depositor shall notify the financial institution of the existence and terms of the trust, including at a minimum the name of each party to the agreement, the name and address of the trustee, and the name and address of the beneficiary. The account may be made payable to the seller upon death of the designated beneficiary.

(4) The payments shall be deposited in the name of the trustee, as trustee, under the terms of a master trust agreement and the trustee may invest, reinvest, exchange, retain, sell, and otherwise manage the trust fund for the benefit and protection of the person for whose benefit the funds were paid.

In addition to the methods provided for in this section, the commissioner may by rule authorize other methods of deposit upon a finding that that method provides equivalent safety of the principal and interest or income and the seller

does not have the ability to utilize any of the proceeds prior to performance. Money deposited under the master trust agreement may be commingled for investment purposes as long as each deposit includes a detailed listing of the amount deposited in trust for each beneficiary and a separate accounting of each purchaser's principal, interest, and income is maintained. Subject to the master trust agreement, 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.

The financial institution, or the trust department of the financial institution, in which trust funds are held may serve as trustee to the extent that the organization has been granted those powers under the laws of this state or the United States. The seller or any officer, director, agent, employee, or affiliate of the seller shall not serve as trustee.

2. In addition to complying with subsection 1, each seller under an agreement referred to in section 523E.1 shall file annually with the 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.

3. The 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 523E.1 ceases to do business, whether voluntarily or involuntarily, and the obligation to provide the merchandise and services has not been assumed by another funeral home or cemetery holding an establishment permit issued under this chapter, all funds held in trust under section 523E.1, including accrued interest or earnings, shall be repaid to the purchaser under the agreement.

5. The commissioner may require the performance of an audit of the seller's business by a certified public accountant if the 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 commissioner and to the seller.

6. This chapter does not prohibit the funding of an agreement otherwise subject to section 523E.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. 15. NEW SECTION. 523E.5 SCOPE OF CHAPTER -- DEFINITIONS.

1. This chapter applies only to the sale of cemetery merchandise.

2. As used in this chapter:

a. "Cemetery merchandise" means grave markers, tombstones, ornamental merchandise, and monuments if the agreement does not require installation within twelve months of the purchase.

b. "Commissioner" means the commissioner of insurance or the deputy appointed under section 502.601.

Sec. 16. NEW SECTION. 523E.6 COMPLIANCE WITH OTHER LAWS.

The seller of cemetery merchandise shall comply with chapter 82 with respect to all contracts that are subject to regulation under this chapter. A failure to comply is subject to the remedies and penalties provided in that chapter.

Sec. 17. NEW SECTION. 523E.7 BOND IN LIEU OF TRUST FUND.

1. In lieu of the trust fund required by sections 523E.1 and 523E.2, a seller may file with the commissioner a surety bond 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 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 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 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 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":

a. The seller shall comply with the trust requirements of sections 523E.1 and 523E.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, but the seller must comply with sections 523E.1 and 523E.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 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 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 523E.1 and 523E.2 of either the amount specified in

sections 523E.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, where applicable, that delivery of merchandise has been made in compliance with section 523E.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 523E.2, subsection 1, paragraphs "b", "c", and "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 523E.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 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 523E.1 and 523E.2.

6. Upon receiving a notice of cancellation, unless the seller has complied with the requirements of this section, the 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 523E.15.

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

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

1. Every agreement for cemetery merchandise 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 cemetery merchandise is purchased if other than the purchaser.

b. Specify the cemetery merchandise to be provided, and the cost of each 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.

1. 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 and the seller.

Sec. 19. NEW SECTION. 523E.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, cemetery 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 commissioner shall permit application for a permit under section 523A.9 on the same form as for this section provided the scope of sales by the establishment is clearly indicated to include funeral services, funeral merchandise, or cemetery merchandise, or a combination of any of these. 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 cemetery 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 cemetery 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 cemetery merchandise under section 523E.1.

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

3. The applicant for a permit shall submit a fee in the amount of fifty dollars; provided, however, that if an applicant also applies for or has a permit under section 523A.9, no additional fee shall be required under this subsection.

4. Permits granted under this section are not assignable.

5. Upon the filing of an application for a permit, the commissioner shall issue the permit unless the commissioner finds any of the following:

- a. The applicant is insolvent.

b. The applicant has failed to comply with any terms or conditions of this chapter and that failure is deemed by the commissioner to substantially impede the applicant's ability to abide by this chapter.

c. The applicant has been convicted of a criminal offense involving dishonesty or false statement.

d. The applicant cannot provide the cemetery merchandise the applicant purports to sell.

6. 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. 20. NEW SECTION. 523E.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, cemetery 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 523E.9 and which can deliver the cemetery 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 cemetery merchandise under section 523E.1.

2. An applicant for a permit under this section shall submit to the commissioner an application on a form provided by the commissioner. The commissioner shall permit application for a permit under section 523A.10 on the same form as for this section provided the scope of sales by the individual is clearly indicated to include funeral services, funeral merchandise, or cemetery merchandise, or a combination of any of these. 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 cemetery merchandise.

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

3. 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.

4. The application fee shall be five dollars; provided, however, that if an applicant also applies for or has a permit under section 523A.10, no additional fee shall be required under this subsection.

5. Permits granted under this section are not assignable.

6. 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 cemetery merchandise the establishment purports to sell.

Sec. 21. NEW SECTION. 523E.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. 22. NEW SECTION. 523E.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 a trusting requirement under section 523A.1 or 523E.1, attributes amounts paid pursuant to the agreement to funeral merchandise or cemetery merchandise that is delivered under section 523A.1 or to cemetery merchandise 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 or cemetery 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 or cemetery merchandise

is evidence that the permit holder is acting with the purpose of avoiding a trusting requirement under section 523A.1 or 523E.1.

e. The permit holder is found upon investigation to have engaged in a deceptive act or practice or has deliberately misrepresented or omitted a material fact relative to the sale of funeral services, funeral merchandise, or cemetery merchandise under this chapter.

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. 23. NEW SECTION. 523E.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 or the county attorney the grounds for the belief, including all evidence in the commissioner's possession, in order that the attorney general or the county attorney may proceed with the matter as deemed 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. 24. NEW SECTION. 523E.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. 25. NEW SECTION. 523E.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 fails to comply with any requirement of this chapter.
2. 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.
3. Conspires to defraud in connection with the sale of cemetery merchandise under this chapter.
4. Fails to deposit funds in compliance with section 523E.1, or withdraws funds in a manner inconsistent with this chapter.
5. Knowingly sells or offers cemetery merchandise without an establishment permit.
6. Deliberately misrepresents or omits a material fact relative to the sale of cemetery merchandise under this chapter.

Sec. 26. NEW SECTION. 523E.16 RULES.

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

Sec. 27. NEW SECTION. 523E.17 CEASE AND DESIST ORDERS.

If an audit or investigation provides reasonable evidence that a seller has violated any provisions of this chapter or any rule adopted under this chapter, the commissioner may issue an order directed at the seller to cease and desist from engaging in such act or practice.

Sec. 28. NEW SECTION. 523E.18 VIOLATIONS AND PENALTIES.

A violation of this chapter or rules adopted by the commissioner pursuant to this chapter is a violation of section 714.16, subsection 2, paragraph "a". The remedies and penalties provided by section 714.16, including but not limited to, provisions relating to injunctive relief and penalties, apply to violations of this chapter.

Sec. 29. NEW SECTION. 523E.19 RECEIVERSHIPS.

1. The commissioner shall notify the attorney general if the commissioner finds that any seller engaged in the business subject to this chapter meets one or more of the following conditions:

- a. Is insolvent.
- b. Has utilized trust funds for personal or business purposes in a manner inconsistent with this chapter and the amount of funds currently held in trust is less than fifty percent of all payments made under the agreements referred to in section 523E.1.
- c. Has refused to pay any just claim or demand based on an agreement referred to in section 523E.1.
- d. The commissioner finds upon investigation that a seller is unable to pay any just claim or demand based on such agreements which have been legally determined to be just and outstanding.

2. The attorney general may apply to the district court in any county of the state for a receivership. Upon proof of any of the grounds for a receivership described in this section, the court may grant a receivership.

Sec. 30. NEW SECTION. 523E.20 INSURANCE DIVISION'S REGULATORY FUND.

The insurance division may authorize the creation of a special revenue fund in the state treasury, to be known as the insurance division regulatory fund. Commencing July 1, 1990, and annually thereafter, the commissioner shall allocate from the fees paid pursuant to section 523E.2, one dollar for each agreement reported on an establishment permit holder's annual report for deposit to the regulatory fund. The remainder of the fees collected pursuant to section 523E.2 shall be deposited into the insurance revolving fund; provided, however, that if the balance of the regulatory fund on that July 1 exceeds two hundred thousand dollars, the allocation to the regulatory fund shall not be made and the total sum of the fees paid pursuant to section 523E.2 shall be deposited in the insurance revolving fund. The moneys in the regulatory fund shall be retained in the fund together with any interest or earnings that are earned on the balance. The moneys are appropriated and, subject to authorization by the commissioner, may be used to pay investigative expenses and the expenses of receiverships established pursuant to section 523E.19. An annual assessment shall not be imposed if the current balance of the fund exceeds two hundred thousand dollars.

Sec. 31. NEW SECTION. 566A.12 RECORDS.

A cemetery subject to any trust requirement under this chapter shall file a copy of its report to the district court with the consumer protection division of the department of justice within seven days of filing the report with the district court, but in any event, not later than March 1 of each year. The cemetery shall maintain accurate records of all receipts, expenditures, interest or earnings, and disbursements relating to funds held in trust.

Sec. 32. NEW SECTION. 566A.13 VIOLATIONS AND PENALTIES.

A violation of this chapter or rules adopted by the attorney general pursuant to this chapter is a violation of section 714.16, subsection 2, paragraph "a". The remedies and penalties provided by section 714.16, including but not limited to, provisions relating to injunctive relief and penalties, apply to a violation of this chapter.

Sec. 33. CODIFICATION.

The Code editor shall entitle new chapter 523E, as enacted in this Act, as "Sales of Cemetery Merchandise". Sections 523E.3 and 523E.4 shall be reserved.

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 2537, Seventy-third General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved April 27, 1990

TERRY E. BRANSTAD
Governor