

Substituted for SF 2466  
4-18-96  
(P.1440)

APR 10 1996  
WAYS & MEANS CALENDAR

HOUSE FILE 2498  
BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO HSB 754)

Passed House, Date 4/12/98

Passed Senate, <sup>(P.1440)</sup> Date 4/18/96

Vote: Ayes 90 Nays 0

Vote: Ayes 50 Nays 0

Approved 4/24/96

**A BILL FOR**

1 An Act relating to entities and subject matter under the  
2 regulatory authority of the division of insurance, including  
3 prearranged funeral contracts, cemeteries, residential service  
4 contracts, and business opportunities, and establishing fees.

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

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HF 2498

1 Section 1. Section 523A.2, subsection 1, paragraph c, Code  
2 Supplement 1995, is amended by adding the following new  
3 unnumbered paragraph:

4 NEW UNNUMBERED PARAGRAPH. The commissioner, by rule, may  
5 waive receipt of any or all of the information listed in this  
6 lettered paragraph and adopt a shorter form of annual report.  
7 The shorter form may be used for all establishments or for  
8 establishments meeting specified criteria. If the  
9 commissioner does adopt a shorter form of annual report, the  
10 commissioner shall retain the authority to require all of the  
11 information listed above for audit purposes or otherwise. The  
12 commissioner may accept annual reports submitted in an  
13 electronic format, such as computer diskettes.

14 Sec. 2. Section 523A.2, subsection 1, paragraph d, Code  
15 Supplement 1995, is amended to read as follows:

16 d. A financial institution referred to in paragraph "a"  
17 shall file notice with the commissioner of all funds deposited  
18 under the trust agreement. The notice shall be on forms  
19 prescribed by the commissioner and shall be filed not later  
20 than March 1 of each year. Each notice shall contain the  
21 required information for all deposits made during the previous  
22 calendar year. Forms may be obtained from the commissioner.  
23 The commissioner may accept annual reports submitted in an  
24 electronic format, such as computer diskettes.

25 Sec. 3. Section 523A.10, subsections 4 and 5, Code 1995,  
26 are amended to read as follows:

27 4. The permit shall be deemed effective upon filing the  
28 application with the commissioner. The permit shall disclose  
29 on its face the permit holder's employer or the establishment  
30 on whose behalf the applicant will be making or attempting to  
31 make sales, the permit number, and the expiration date. A An  
32 initial permit under this section shall expire one year from  
33 the date the application is filed. The permit may be renewed  
34 for a period of four years.

35 5. The initial application fee shall be five dollars. The

1 renewal fee shall be twenty dollars.

2 Sec. 4. Section 523A.11, Code 1995, is amended by adding  
3 the following new subsection:

4 NEW SUBSECTION. 1A. Notwithstanding chapter 22, keep  
5 confidential the information obtained in the course of an  
6 investigation. However, if the commissioner determines that  
7 it is necessary or appropriate in the public interest or for  
8 the protection of the public, the commissioner may share  
9 information with other regulatory authorities or governmental  
10 agencies, or may publish information concerning a violation of  
11 this chapter or a rule or order under this chapter.

12 Sec. 5. Section 523A.12, subsection 1, Code 1995, is  
13 amended by adding the following new paragraph:

14 NEW PARAGRAPH. f. The permit holder is found to have sold  
15 the establishment and has not filed notice of the sale with  
16 the commissioner prior to the sale. The permit shall be  
17 revoked thirty days following such sale.

18 Sec. 6. Section 523A.14, Code 1995, is amended to read as  
19 follows:

20 523A.14 INJUNCTIONS.

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

33 Sec. 7. Section 523A.19, subsection 2, Code 1995, is  
34 amended to read as follows:

35 2. The attorney general or the commissioner may apply to

1 the district court in any county of the state for a  
2 receivership. Upon proof of any of the grounds for a  
3 receivership described in this section, the court may grant a  
4 receivership.

5 Sec. 8. Section 523B.8, subsections 1 and 4, Code 1995,  
6 are amended to read as follows:

7 1. If it appears to the administrator that a person has  
8 engaged, is engaging, or is about to engage in any act or  
9 practice constituting a violation of this chapter or a rule or  
10 order adopted or issued under this chapter, the administrator  
11 may issue an order directed at the person requiring the person  
12 to cease and desist from engaging in the act or practice. The  
13 person named in the order may, within fourteen days after  
14 receipt of the date of the order, file a written request for a  
15 hearing. The hearing shall be held in accordance with chapter  
16 17A.

17 Any consent agreement between the administrator and the  
18 seller may be filed in the miscellaneous docket of the clerk  
19 of the district court.

20 4. If it appears to the administrator that a person has  
21 engaged, is engaged, or is about to engage in any act or  
22 practice constituting a violation of this chapter, or of a  
23 rule or order adopted or issued under this chapter, the  
24 administrator may take either or both of the following  
25 actions:

26 a. Notify the attorney general who shall bring an action  
27 in the district court to enjoin the acts or practices  
28 constituting the violation and to enforce compliance with this  
29 chapter or any rule or order adopted or issued pursuant to  
30 this chapter. Upon a proper showing a permanent or temporary  
31 injunction shall be granted and a receiver or conservator may  
32 be appointed for the defendant or the defendant's assets.

33 ~~b. Sue-on-behalf-of-a-purchaser-to-enforce-the-purchaser's~~  
34 ~~rights.~~ Bring an action in district court. Upon proper  
35 showing by the administrator, the court may enter an order of

1 rescission, restitution, or disgorgement, as well as  
2 prejudgment and postjudgment interest, directed at any person  
3 who has engaged in an act constituting a violation of this  
4 chapter. The administrator shall not be required to post  
5 bond.

6 Sec. 9. Section 523B.8, Code 1995, is amended by adding  
7 the following new subsection:

8 NEW SUBSECTION. 2A. Notwithstanding chapter 22, keep  
9 confidential the information obtained in the course of an  
10 investigation. However, if the administrator determines that  
11 it is necessary or appropriate in the public interest or for  
12 the protection of the public, the administrator shall share  
13 information with other regulatory authorities or governmental  
14 agencies, or may publish information concerning a violation of  
15 this chapter or a rule or order under this chapter.

16 Sec. 10. Section 523C.16, Code 1995, is amended by adding  
17 the following new subsection:

18 NEW SUBSECTION. 5. A service contract, guarantee or  
19 warranty issued by a manufacturer, third party or retail  
20 company, covering the repair, maintenance or replacement of  
21 individual appliances and other individual items of  
22 merchandise marketed and sold by a retail company, in the  
23 ordinary course of business.

24 Sec. 11. Section 523E.2, subsection 1, paragraph c, Code  
25 Supplement 1995, is amended by adding the following new  
26 unnumbered paragraph:

27 NEW UNNUMBERED PARAGRAPH. The commissioner, by rule, may  
28 waive receipt of any or all of the information listed in this  
29 lettered paragraph and adopt a shorter form of annual report.  
30 The shorter form may be used for all establishments or for  
31 establishments meeting specified criteria. If the  
32 commissioner does adopt a shorter form of annual report, the  
33 commissioner shall retain the authority to require all of the  
34 information listed above for audit purposes or otherwise. The  
35 commissioner may accept annual reports submitted in an

1 electronic format, such as computer diskettes.

2 Sec. 12. Section 523E.2, subsection 1, paragraph d, Code  
3 Supplement 1995, is amended to read as follows:

4 d. A financial institution referred to in paragraph "a"  
5 shall file notice with the commissioner of all funds deposited  
6 under the trust agreement. The notice shall be on forms  
7 prescribed by the commissioner and shall be filed not later  
8 than March 1 of each year. Each notice shall contain the  
9 required information for all deposits made during the previous  
10 calendar year. Forms may be obtained from the commissioner.  
11 The commissioner may accept annual reports submitted in an  
12 electronic format, such as computer diskettes.

13 Sec. 13. Section 523E.10, subsections 3 and 4, Code 1995,  
14 are amended to read as follows:

15 3. The permit shall be deemed effective upon filing the  
16 application with the commissioner. The permit shall disclose  
17 on its face the permit holder's employer or the establishment  
18 on whose behalf the applicant will be making or attempting to  
19 make sales, the permit number, and the expiration date. A An  
20 initial permit under this section shall expire one year from  
21 the date the application is filed. The permit may be renewed  
22 for a period of four years.

23 4. The initial application fee shall be five dollars and  
24 the renewal fee shall be twenty dollars; provided, however,  
25 that if an applicant also applies for or has a permit under  
26 section 523A.10, no additional fee shall be required under  
27 this subsection.

28 Sec. 14. Section 523E.11, Code 1995, is amended by adding  
29 the following new subsection:

30 NEW SUBSECTION. 1A. Notwithstanding chapter 22, keep  
31 confidential the information obtained in the course of an  
32 investigation. However, if the commissioner determines that  
33 it is necessary or appropriate in the public interest or for  
34 the protection of the public, the commissioner may share  
35 information with other regulatory authorities or governmental

1 agencies, or may publish information concerning a violation of  
2 this chapter or a rule or order under this chapter.

3 Sec. 15. Section 523E.12, subsection 1, Code 1995, is  
4 amended by adding the following new paragraph:

5 NEW PARAGRAPH. f. The permit holder is found to have sold  
6 the establishment and has not filed notice of the sale with  
7 the commissioner prior to the sale. The permit shall be  
8 revoked thirty days following such sale.

9 Sec. 16. Section 523E.14, Code 1995, is amended to read as  
10 follows:

11 523E.14 INJUNCTIONS.

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

24 Sec. 17. Section 523E.19, subsection 2, Code 1995, is  
25 amended to read as follows:

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

31 Sec. 18. Section 523I.3, subsections 2 and 3, Code  
32 Supplement 1995, are amended to read as follows:

33 2. Applications for a permit shall be made to and filed  
34 with the commissioner on forms approved by the commissioner  
35 ~~and accompanied by a filing fee of twenty dollars.~~ If the

1 application contains the following information, the  
2 commissioner shall issue the license:

- 3 a. The name and principal address of the applicant.
- 4 b. The identity of the applicant's owner or owners.
- 5 c. Evidence of a trust fund for cemetery maintenance and  
6 care in compliance with section 566A.3 or 566A.4.

7 3. Each permit issued under this chapter shall expire on  
8 June 30 of the fourth year following the date of issuance.

9 Sec. 19. Section 566A.3, unnumbered paragraph 1, Code  
10 Supplement 1995, is amended to read as follows:

11 Any Except for political subdivisions of the state, any  
12 such organization subject to the provisions of this chapter  
13 which is organized or commences business in the state of Iowa  
14 after July 4, 1953 and desires to operate as a perpetual care  
15 cemetery shall, before selling or disposing of any interment  
16 space or lots, establish a minimum perpetual care and  
17 maintenance guarantee fund of twenty-five thousand dollars in  
18 cash. The perpetual care and maintenance guarantee fund shall  
19 be permanently set aside in trust to be administered under the  
20 jurisdiction of the district court of the county wherein the  
21 cemetery is located. Notwithstanding chapter 633, annual  
22 reports shall not be required unless specifically required by  
23 the district court. Reports shall be filed as necessary to  
24 approve trustees, trust agreements and amendments, changes in  
25 fees or expenses, and other matters within the district  
26 court's jurisdiction. The district court so having  
27 jurisdiction shall have full jurisdiction over the approval of  
28 trustees, reports and accounting of trustees, amount of surety  
29 bond required, and investment of funds. Only the income from  
30 such fund shall be used for the care and maintenance of the  
31 cemetery for which it was established.

32 Sec. 20. Sections 523A.23 and 523E.22, Code Supplement  
33 1995, are repealed.

34

#### EXPLANATION

35 This bill amends provisions relating to the regulatory



1 authority of the division of insurance over prearranged  
2 funeral contracts, cemeteries, and business opportunities.

3 Section 523A.2 is amended to provide that the commissioner  
4 may waive the receipt of information identified in that  
5 section to be included in the annual report of a person  
6 selling funeral services and merchandise under an agreement.  
7 The section is also amended to allow the annual report to be  
8 submitted in an electronic format as approved by the  
9 commissioner.

10 Section 523A.10 is amended to provide that the renewal time  
11 period for a sales permit required for a person to enter into  
12 an agreement to furnish upon the death of a person funeral  
13 services or merchandise is four years. The time period for  
14 the initial sales permit is one year. The renewal permit fee  
15 is established at \$20.

16 Section 523A.11 is amended to provide that the attorney  
17 general or commissioner may keep confidential the information  
18 obtained in the course of an investigation under chapter 523A.  
19 The commissioner may share such information with other  
20 regulatory authorities or governmental agencies, or publish  
21 such information if the commissioner determines that such  
22 disclosure is in the public interest.

23 Section 523A.12 is amended to provide that a permit issued  
24 under chapter 523A is revoked 30 days following a sale of the  
25 establishment providing funeral services or funeral  
26 merchandise, if prior notice of the sale is not filed with the  
27 commissioner.

28 Section 523A.14 is amended to authorize the commissioner to  
29 seek an injunction or subpoena under chapter 523A.

30 Section 523A.19 is amended to authorize the commissioner to  
31 apply to the district court for a receivership.

32 Section 523B.8, relating to the powers of the administrator  
33 with respect to business opportunity promotions, is amended to  
34 permit a person receiving a cease and desist order from the  
35 administrator to file a written request for a hearing within

1 14 days of the date of the order rather than 14 days after  
2 receipt of the order. The section is amended to provide that  
3 the administrator may bring an action in district court and  
4 seek an order of rescission, or disgorgement, including  
5 prejudgment and postjudgment interest. The section is also  
6 amended to provide that the attorney general or commissioner  
7 may keep confidential the information obtained in the course  
8 of an investigation under chapter 523B. The commissioner may  
9 share such information with other regulatory authorities or  
10 governmental agencies, or publish such information if the  
11 commissioner determines that such disclosure is in the public  
12 interest.

13 Section 523C.16 is amended to exclude from the provisions  
14 of chapter 523C, a service contract, guarantee, or warranty  
15 issued by a manufacturer, third party, or retail company,  
16 which covers the repair, maintenance, or replacement of  
17 individual appliances or items of merchandise, which is sold  
18 in the ordinary course of a business.

19 Section 523E.2 is amended to provide that the commissioner  
20 may waive the receipt of information identified in that  
21 section to be included in the annual report of a person  
22 selling cemetery merchandise under an agreement. The section  
23 is also amended to allow the annual report to be submitted in  
24 an electronic format as approved by the commissioner.

25 Section 523E.10 is amended to provide that the renewal time  
26 period for a sales permit required for a person to enter into  
27 an agreement to furnish upon the death of a person funeral  
28 services or merchandise is four years. The time period for  
29 the initial sales permit is one year. The renewal permit fee  
30 is established at \$20.

31 Section 523E.11 is amended to provide that the attorney  
32 general or commissioner may keep confidential the information  
33 obtained in the course of an investigation under chapter 523E.  
34 The commissioner may share such information with other  
35 regulatory authorities or governmental agencies, or publish

1 such information if the commissioner determines that such  
2 disclosure is in the public interest.

3 Section 523E.12 is amended to provide that a permit issued  
4 under chapter 523E is revoked 30 days following a sale of the  
5 establishment providing cemetery merchandise, if prior notice  
6 of the sale is not filed with the commissioner.

7 Section 523E.14 is amended to authorize the commissioner to  
8 seek an injunction or subpoena under chapter 523E.

9 Section 523E.19 is amended to authorize the commissioner to  
10 apply to the district court for a receivership.

11 Section 523I.3, which relates to the permit requirements  
12 for perpetual care cemeteries, is amended to strike the \$20  
13 permit fee and extend the period of validity of a permit from  
14 one to four years.

15 Sections 523A.23 and 523E.22 are repealed. These sections  
16 require that a seller of funeral services and merchandise and  
17 a seller of cemetery merchandise are to maintain a fidelity  
18 bond or insurance policy covering losses resulting from a  
19 dishonest or fraudulent acts committed by employees of the  
20 seller which cause a loss, theft, or misappropriation of cash,  
21 property, or a negotiable instrument submitted to the seller  
22 pursuant to an agreement for the purchase of such services and  
23 merchandise.

24 Section 566A.3 is amended to exclude political subdivisions  
25 which operate a perpetual care cemetery from the requirement  
26 of establishing a minimum perpetual care and maintenance  
27 guarantee fund of \$25,000. The section is also amended to  
28 provide that annual reports concerning the guarantee fund are  
29 not required unless specifically required by the district  
30 court.

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Van Fossen, Chair  
Dianey  
Weight

HSB 754

WAYS AND MEANS

Suc  
SF/HF 2498

HOUSE FILE

BY (PROPOSED COMMITTEE ON  
WAYS AND MEANS BILL BY  
BY CHAIRPERSON HALVORSON)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

A BILL FOR

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2/17/92  
Succeeded By

1 Section 1. Section 523A.2, subsection 1, paragraph c, Code  
2 Supplement 1995, is amended by adding the following new  
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4 NEW UNNUMBERED PARAGRAPH. The commissioner, by rule, may  
5 waive receipt of any or all of the information listed in this  
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18 under the trust agreement. The notice shall be on forms  
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21 required information for all deposits made during the previous  
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29 on its face the permit holder's employer or the establishment  
30 on whose behalf the applicant will be making or attempting to  
31 make sales, the permit number, and the expiration date. A An  
32 initial permit under this section shall expire one year from  
33 the date the application is filed. The permit may be renewed  
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12 Sec. 5. Section 523A.12, subsection 1, Code 1995, is  
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10 order adopted or issued under this chapter, the administrator  
11 may issue an order directed at the person requiring the person  
12 to cease and desist from engaging in the act or practice. The  
13 person named in the order may, within fourteen days after  
14 receipt of the date of the order, file a written request for a  
15 hearing. The hearing shall be held in accordance with chapter  
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18 seller may be filed in the miscellaneous docket of the clerk  
19 of the district court.

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12 the protection of the public, the administrator shall share  
13 information with other regulatory authorities or governmental  
14 agencies, or may publish information concerning a violation of  
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16 Sec. 10. Section 523C.16, Code 1995, is amended by adding  
17 the following new subsection:

18 NEW SUBSECTION. 5. A service contract, guarantee or  
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27 this subsection.

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29 the following new subsection:

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2 this chapter or a rule or order under this chapter.

3 Sec. 15. Section 523E.12, subsection 1, Code 1995, is  
4 amended by adding the following new paragraph:

5 NEW PARAGRAPH. f. The permit holder is found to have sold  
6 the establishment and has not filed notice of the sale with  
7 the commissioner prior to the sale. The permit shall be  
8 revoked thirty days following such sale.

9 Sec. 16. Section 523E.14, Code 1995, is amended to read as  
10 follows:

11 523E.14 INJUNCTIONS.

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

24 Sec. 17. Section 523E.19, subsection 2, Code 1995, is  
25 amended to read as follows:

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

31 Sec. 18. Section 523I.3, subsections 2 and 3, Code  
32 Supplement 1995, are amended to read as follows:

33 2. Applications for a permit shall be made to and filed  
34 with the commissioner on forms approved by the commissioner  
35 ~~and accompanied by a filing fee of twenty dollars.~~ If the

1 application contains the following information, the  
2 commissioner shall issue the license:

- 3 a. The name and principal address of the applicant.
- 4 b. The identity of the applicant's owner or owners.
- 5 c. Evidence of a trust fund for cemetery maintenance and  
6 care in compliance with section 566A.3 or 566A.4.

7 3. Each permit issued under this chapter shall expire on  
8 June 30 of the fourth year following the date of issuance.

9 Sec. 19. Section 566A.3, unnumbered paragraph 1, Code  
10 Supplement 1995, is amended to read as follows:

11 Any Except for political subdivisions of the state, any  
12 such organization subject to the provisions of this chapter  
13 which is organized or commences business in the state of Iowa  
14 after July 4, 1953 and desires to operate as a perpetual care  
15 cemetery shall, before selling or disposing of any interment  
16 space or lots, establish a minimum perpetual care and  
17 maintenance guarantee fund of twenty-five thousand dollars in  
18 cash. The perpetual care and maintenance guarantee fund shall  
19 be permanently set aside in trust to be administered under the  
20 jurisdiction of the district court of the county wherein the  
21 cemetery is located. Notwithstanding chapter 633, annual  
22 reports shall not be required unless specifically required by  
23 the district court. Reports shall be filed as necessary to  
24 approve trustees, trust agreements and amendments, changes in  
25 fees or expenses, and other matters within the district  
26 court's jurisdiction. The district court so having  
27 jurisdiction shall have full jurisdiction over the approval of  
28 trustees, reports and accounting of trustees, amount of surety  
29 bond required, and investment of funds. Only the income from  
30 such fund shall be used for the care and maintenance of the  
31 cemetery for which it was established.

32 Sec. 20. Sections 523A.23 and 523E.22, Code Supplement  
33 1995, are repealed.

34

#### EXPLANATION

35 This bill amends provisions relating to the regulatory

1 authority of the division of insurance over prearranged  
2 funeral contracts, cemeteries, and business opportunities.

3 Section 523A.2 is amended to provide that the commissioner  
4 may waive the receipt of information identified in that  
5 section to be included in the annual report of a person  
6 selling funeral services and merchandise under an agreement.  
7 The section is also amended to allow the annual report to be  
8 submitted in an electronic format as approved by the  
9 commissioner.

10 Section 523A.10 is amended to provide that the renewal time  
11 period for a sales permit required for a person to enter into  
12 an agreement to furnish upon the death of a person funeral  
13 services or merchandise is four years. The time period for  
14 the initial sales permit is one year. The renewal permit fee  
15 is established at \$20.

16 Section 523A.11 is amended to provide that the attorney  
17 general or commissioner may keep confidential the information  
18 obtained in the course of an investigation under chapter 523A.  
19 The commissioner may share such information with other  
20 regulatory authorities or governmental agencies, or publish  
21 such information if the commissioner determines that such  
22 disclosure is in the public interest.

23 Section 523A.12 is amended to provide that a permit issued  
24 under chapter 523A is revoked 30 days following a sale of the  
25 establishment providing funeral services or funeral  
26 merchandise, if prior notice of the sale is not filed with the  
27 commissioner.

28 Section 523A.14 is amended to authorize the commissioner to  
29 seek an injunction or subpoena under chapter 523A.

30 Section 523A.19 is amended to authorize the commissioner to  
31 apply to the district court for a receivership.

32 Section 523B.8, relating to the powers of the administrator  
33 with respect to business opportunity promotions, is amended to  
34 permit a person receiving a cease and desist order from the  
35 administrator to file a written request for a hearing within

1 14 days of the date of the order rather than 14 days after  
2 receipt of the order. The section is amended to provide that  
3 the administrator may bring an action in district court and  
4 seek an order of rescission, or disgorgement, including  
5 prejudgment and postjudgment interest. The section is also  
6 amended to provide that the attorney general or commissioner  
7 may keep confidential the information obtained in the course  
8 of an investigation under chapter 523B. The commissioner may  
9 share such information with other regulatory authorities or  
10 governmental agencies, or publish such information if the  
11 commissioner determines that such disclosure is in the public  
12 interest.

13 Section 523C.16 is amended to exclude from the provisions  
14 of chapter 523C, a service contract, guarantee, or warranty  
15 issued by a manufacturer, third party, or retail company,  
16 which covers the repair, maintenance, or replacement of  
17 individual appliances or items of merchandise, which is sold  
18 in the ordinary course of a business.

19 Section 523E.2 is amended to provide that the commissioner  
20 may waive the receipt of information identified in that  
21 section to be included in the annual report of a person  
22 selling cemetery merchandise under an agreement. The section  
23 is also amended to allow the annual report to be submitted in  
24 an electronic format as approved by the commissioner.

25 Section 523E.10 is amended to provide that the renewal time  
26 period for a sales permit required for a person to enter into  
27 an agreement to furnish upon the death of a person funeral  
28 services or merchandise is four years. The time period for  
29 the initial sales permit is one year. The renewal permit fee  
30 is established at \$20.

31 Section 523E.11 is amended to provide that the attorney  
32 general or commissioner may keep confidential the information  
33 obtained in the course of an investigation under chapter 523E.  
34 The commissioner may share such information with other  
35 regulatory authorities or governmental agencies, or publish

1 such information if the commissioner determines that such  
2 disclosure is in the public interest.

3 Section 523E.12 is amended to provide that a permit issued  
4 under chapter 523E is revoked 30 days following a sale of the  
5 establishment providing cemetery merchandise, if prior notice  
6 of the sale is not filed with the commissioner.

7 Section 523E.14 is amended to authorize the commissioner to  
8 seek an injunction or subpoena under chapter 523E.

9 Section 523E.19 is amended to authorize the commissioner to  
10 apply to the district court for a receivership.

11 Section 523I.3, which relates to the permit requirements  
12 for perpetual care cemeteries, is amended to strike the \$20  
13 permit fee and extend the period of validity of a permit from  
14 one to four years.

15 Sections 523A.23 and 523E.22 are repealed. These sections  
16 require that a seller of funeral services and merchandise and  
17 a seller of cemetery merchandise are to maintain a fidelity  
18 bond or insurance policy covering losses resulting from a  
19 dishonest or fraudulent acts committed by employees of the  
20 seller which cause a loss, theft, or misappropriation of cash,  
21 property, or a negotiable instrument submitted to the seller  
22 pursuant to an agreement for the purchase of such services and  
23 merchandise.

24 Section 566A.3 is amended to exclude political subdivisions  
25 which operate a perpetual care cemetery from the requirement  
26 of establishing a minimum perpetual care and maintenance  
27 guarantee fund of \$25,000. The section is also amended to  
28 provide that annual reports concerning the guarantee fund are  
29 not required unless specifically required by the district  
30 court.

31  
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35

HOUSE FILE 2498

AN ACT

RELATING TO ENTITIES AND SUBJECT MATTER UNDER THE REGULATORY AUTHORITY OF THE DIVISION OF INSURANCE, INCLUDING PREARRANGED FUNERAL CONTRACTS, CEMETERIES, RESIDENTIAL SERVICE CONTRACTS, AND BUSINESS OPPORTUNITIES, AND ESTABLISHING FEES.

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

Section 1. Section 523A.2, subsection 1, paragraph c, Code Supplement 1995, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The commissioner, by rule, may waive receipt of any or all of the information listed in this lettered paragraph and adopt a shorter form of annual report. The shorter form may be used for all establishments or for establishments meeting specified criteria. If the commissioner does adopt a shorter form of annual report, the commissioner shall retain the authority to require all of the information listed above for audit purposes or otherwise. The commissioner may accept annual reports submitted in an electronic format, such as computer diskettes.

Sec. 2. Section 523A.2, subsection 1, paragraph d, Code Supplement 1995, is amended to read as follows:

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. The commissioner may accept annual reports submitted in an electronic format, such as computer diskettes.

Sec. 3. Section 523A.10, subsections 4 and 5, Code 1995, are amended to read as follows:

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

5. The initial application fee shall be five dollars. The renewal fee shall be twenty dollars.

Sec. 4. Section 523A.11, Code 1995, is amended by adding the following new subsection:

NEW SUBSECTION. 1A. Notwithstanding chapter 22, keep confidential the information obtained in the course of an investigation. However, if the commissioner determines that it is necessary or appropriate in the public interest or for the protection of the public, the commissioner may share information with other regulatory authorities or governmental agencies, or may publish information concerning a violation of this chapter or a rule or order under this chapter.

Sec. 5. Section 523A.12, subsection 1, Code 1995, is amended by adding the following new paragraph:

NEW PARAGRAPH. f. The permit holder is found to have sold the establishment and has not filed notice of the sale with the commissioner prior to the sale. The permit shall be revoked thirty days following such sale.

Sec. 6. Section 523A.14, Code 1995, is amended to read as follows:

523A.14 INJUNCTIONS.

The attorney general or the commissioner 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 or the commissioner 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. 7. Section 523A.19, subsection 2, Code 1995, is amended to read as follows:

2. The attorney general or the commissioner 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. 8. Section 523B.8, subsections 1 and 4, Code 1995, are amended to read as follows:

1. If it appears to the administrator that a person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of this chapter or a rule or order adopted or issued under this chapter, the administrator may issue an order directed at the person requiring the person to cease and desist from engaging in the act or practice. The person named in the order may, within fourteen days after receipt of the date of the order, file a written request for a hearing. The hearing shall be held in accordance with chapter 17A.

Any consent agreement between the administrator and the seller may be filed in the miscellaneous docket of the clerk of the district court.

4. If it appears to the administrator that a person has engaged, is engaged, or is about to engage in any act or practice constituting a violation of this chapter, or of a rule or order adopted or issued under this chapter, the administrator may take either or both of the following actions:

a. Notify the attorney general who shall bring an action in the district court to enjoin the acts or practices constituting the violation and to enforce compliance with this chapter or any rule or order adopted or issued pursuant to this chapter. Upon a proper showing a permanent or temporary injunction shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets.

b. ~~Sue-on-behalf-of-a-purchaser-to-enforce-the-purchaser's rights-~~ Bring an action in district court. Upon proper showing by the administrator, the court may enter an order of rescission, restitution, or disgorgement, as well as prejudgment and postjudgment interest, directed at any person who has engaged in an act constituting a violation of this chapter. The administrator shall not be required to post bond.

Sec. 9. Section 523B.8, Code 1995, is amended by adding the following new subsection:

NEW SUBSECTION. 2A. Notwithstanding chapter 22, keep confidential the information obtained in the course of an investigation. However, if the administrator determines that it is necessary or appropriate in the public interest or for the protection of the public, the administrator shall share information with other regulatory authorities or governmental agencies, or may publish information concerning a violation of this chapter or a rule or order under this chapter.

Sec. 10. Section 523C.16, Code 1995, is amended by adding the following new subsection:

NEW SUBSECTION. 5. A service contract, guarantee or warranty issued by a manufacturer, third party or retail company, covering the repair, maintenance or replacement of individual appliances and other individual items of merchandise marketed and sold by a retail company, in the ordinary course of business.

Sec. 11. Section 523E.2, subsection 1, paragraph c, Code Supplement 1995, is amended by adding the following new unnumbered paragraph:



NEW UNNUMBERED PARAGRAPH. The commissioner, by rule, may waive receipt of any or all of the information listed in this lettered paragraph and adopt a shorter form of annual report. The shorter form may be used for all establishments or for establishments meeting specified criteria. If the commissioner does adopt a shorter form of annual report, the commissioner shall retain the authority to require all of the information listed above for audit purposes or otherwise. The commissioner may accept annual reports submitted in an electronic format, such as computer diskettes.

Sec. 12. Section 523E.2, subsection 1, paragraph d, Code Supplement 1995, is amended to read as follows:

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. The commissioner may accept annual reports submitted in an electronic format, such as computer diskettes.

Sec. 13. Section 523E.10, subsections 3 and 4, Code 1995, are amended to read as follows:

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 An initial permit under this section shall expire one year from the date the application is filed. The permit may be renewed for a period of four years.

4. The initial application fee shall be five dollars and the renewal fee shall be twenty 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.

Sec. 14. Section 523E.11, Code 1995, is amended by adding the following new subsection:

NEW SUBSECTION. 1A. Notwithstanding chapter 22, keep confidential the information obtained in the course of an investigation. However, if the commissioner determines that it is necessary or appropriate in the public interest or for the protection of the public, the commissioner may share information with other regulatory authorities or governmental agencies, or may publish information concerning a violation of this chapter or a rule or order under this chapter.

Sec. 15. Section 523E.12, subsection 1, Code 1995, is amended by adding the following new paragraph:

NEW PARAGRAPH. f. The permit holder is found to have sold the establishment and has not filed notice of the sale with the commissioner prior to the sale. The permit shall be revoked thirty days following such sale.

Sec. 16. Section 523E.14, Code 1995, is amended to read as follows:

523E.14 INJUNCTIONS.

The attorney general or the commissioner 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 or the commissioner 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. 17. Section 523E.19, subsection 2, Code 1995, is amended to read as follows:

2. The attorney general or the commissioner 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. 18. Section 523I.3, subsections 2 and 3, Code Supplement 1995, are amended to read as follows:

2. Applications for a permit shall be made to and filed with the commissioner on forms approved by the commissioner ~~and accompanied by a filing fee of twenty dollars~~. If the application contains the following information, the commissioner shall issue the license:

- a. The name and principal address of the applicant.
- b. The identity of the applicant's owner or owners.
- c. Evidence of a trust fund for cemetery maintenance and care in compliance with section 566A.3 or 566A.4.

3. Each permit issued under this chapter shall expire on June 30 of the fourth year following the date of issuance.

Sec. 19. Section 566A.3, unnumbered paragraph 1, Code Supplement 1995, is amended to read as follows:

Any Except for political subdivisions of the state, any such organization subject to the provisions of this chapter which is organized or commences business in the state of Iowa after July 4, 1953 and desires to operate as a perpetual care cemetery shall, before selling or disposing of any interment space or lots, establish a minimum perpetual care and maintenance guarantee fund of twenty-five thousand dollars in cash. The perpetual care and maintenance guarantee fund shall be permanently set aside in trust to be administered under the jurisdiction of the district court of the county wherein the cemetery is located. Notwithstanding chapter 633, annual reports shall not be required unless specifically required by the district court. Reports shall be filed as necessary to approve trustees, trust agreements and amendments, changes in fees or expenses, and other matters within the district court's jurisdiction. The district court so having jurisdiction shall have full jurisdiction over the approval of

trustees, reports and accounting of trustees, amount of surety bond required, and investment of funds. Only the income from such fund shall be used for the care and maintenance of the cemetery for which it was established.

Sec. 20. Sections 523A.23 and 523E.22, Code Supplement 1995, are repealed.

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RON J. CORBETT  
Speaker of the House

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LEONARD L. BOSWELL  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2498, Seventy-sixth General Assembly.

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ELIZABETH ISAACSON  
Chief Clerk of the House

Approved 4/24, 1996

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TERRY E. BRANSTAD  
Governor