Reported

MAR 17 1995

Place On Calendar

HOUSE FILE 486

BY COMMITTEE ON COMMERCE AND REGULATION

(SUCCESSOR TO HSB 261)

Passed House (p. 1301), Date 4-6-95 Passed Senate (p. 1306), Date 4/19/95

Vote: Ayes 91 Nays 0 Vote: Ayes 48 Nays 0

Approved May 3, 1995

A BILL FOR

1 An Act relating to the regulation of cemetery operators and the
2 regulation of perpetual care cemeteries and nonperpetual care
3 cemeteries, establishing fees and use of those fees, and
4 providing penalties.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

HF 486

TLSB 1712HV 76
mj/cf/24

S.F. _____ H.F. 486

1 Section 1. Section 523A.1, unnumbered paragraphs 1 and 4,
2 Code 1995, are amended to read as follows:
3 1. Whenever an agreement is made by any person, firm, or
4 corporation to furnish, upon the future death of a person
5 named or implied in the agreement, funeral services or funeral
6 merchandise, a minimum of eighty percent of all payments made
7 under the agreement shall be and remain trust funds until
8 occurrence of the death of the person for whose benefit the
9 funds were paid, unless the funds are sooner released to the
10 person making the payment by mutual consent of the parties.
11 Payments otherwise subject to this section are not exempt
12 merely because they are held in certificates of deposit. The
13 commissioner may adopt rules to prohibit the commingling of
14 trust funds with other funds of the seller.
15 This section does not apply to payments for merchandise de-
16 livered to the purchaser. ~~Delivery~~ Except for caskets and
17 other types of inner burial containers or concrete burial
18 vaults sold after July 1, 1995, delivery includes storage in a
19 warehouse under the control of the seller or any other
20 warehouse or storage facility approved by the commissioner
21 when a receipt of ownership in the name of the purchaser is
22 delivered to the purchaser, the merchandise is insured against
23 loss, the merchandise is protected against damage, title has
24 been transferred to the purchaser, the merchandise is
25 appropriately identified and described in a manner that it can
26 be distinguished from other similar items of merchandise, the
27 method of storage allows for visual audits of the merchandise,
28 and the annual reporting requirements of section 523A.2,
29 subsection 1, are satisfied.
30 Sec. 2. Section 523A.1, Code 1995, is amended by adding
31 the following new subsection:
32 NEW SUBSECTION. 2. An agreement may be funded by
33 insurance proceeds derived from a policy issued by an
34 insurance company authorized to conduct business in this
35 state. Such funding may be in lieu of a trust fund if the

payments are made directly to the insurance company by the purchaser of the agreement.

Sec. 3. Section 523A.2, subsection 1, paragraphs a and c, Code 1995, 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~~ of such bank, savings and loan association, or credit union, 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 523A.1.

c. The seller under an agreement referred to in section 523A.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 funeral services or funeral merchandise.

(2) ~~The name of the purchaser, beneficiary, and the amount of each agreement under section 523A.1 made in the preceding year and the date on which it was made.~~ The balance of each trust account as of the end of the preceding calendar year, identified by the name of the purchaser or the beneficiary, and a report of any amounts withdrawn from trust and the reason for each withdrawal.

(3) ~~The total value of agreements subject to section 523A.1 entered into, the total amount paid pursuant to those agreements, and the total amount deposited in trust as required under section 523A.1, during the preceding year.~~ A description of insurance funding outstanding at the end of the preceding calendar year, identified by the name of the purchaser or the beneficiary, and a report of any insurance payments received by the seller.

1 ~~(4)--The amount of any payments received pursuant to~~
2 ~~agreements reported in previous years in accordance with~~
3 ~~subparagraphs (2) and (3) and the amount of those payments~~
4 ~~deposited in trust for each purchaser.~~
5 ~~(5)--The change in status of any trust account, including~~
6 ~~total amount of interest or income withdrawn from each trust~~
7 ~~account in the preceding year, and for each purchaser, any~~
8 ~~other amounts withdrawn from trust and the reason for each~~
9 ~~withdrawal.--However, regular increments of interest or income~~
10 ~~need not be reported on a yearly basis.~~
11 ~~(6)--The name and address of the financial institution in~~
12 ~~which trust funds were deposited, and the name and address of~~
13 ~~each insurance company which funds agreements under section~~
14 ~~523A.1.~~
15 ~~(7)--The name and address of each purchaser of funeral~~
16 ~~merchandise delivered in lieu of trusting pursuant to section~~
17 ~~523A.1, and a description of that merchandise for each~~
18 ~~purchaser.~~
19 ~~(8)~~ (4) ~~The~~ A complete inventory of funeral merchandise
20 ~~and its location in the seller's possession that has been~~
21 delivered in lieu of trusting pursuant to section 523A.1~~.~~
22 ~~(9)--Other information reasonably required by the com-~~
23 ~~missioner for purposes of administration of this chapter.~~
24 ~~The information required by subparagraphs (7) and (8) shall~~
25 ~~include~~, including the location of the merchandise, serial
26 numbers or warehouse receipt numbers, identified by the name
27 of the purchaser or the beneficiary, and a verified statement
28 of a certified public accountant that the certified public
29 accountant has conducted a physical inventory of the funeral
30 merchandise ~~specified in subparagraph (8)~~ and that each item
31 of that merchandise is in the seller's possession at the
32 specified location. The statement shall be on a form
33 prescribed by the commissioner.
34 The report shall be accompanied by a filing fee determined
35 by the commissioner which shall be sufficient to defray the

1 costs of administering this chapter.
2 Sec. 4. Section 523A.2, subsection 7, Code 1995, is
3 amended to read as follows:
4 7. This chapter does not prohibit the funding of an
5 agreement ~~otherwise subject to section 523A.1~~ by insurance
6 proceeds derived from a policy issued by an insurance company
7 authorized to conduct business in this state. The seller of
8 an agreement subject to this chapter which is to be funded by
9 insurance proceeds shall obtain all permits required to be
10 obtained under this chapter and comply with the reporting
11 requirements of this section.
12 Sec. 5. Section 523A.8, subsection 1, paragraphs e, h, and
13 j, Code 1995, are amended to read as follows:
14 e. State clearly whether the agreement is a guaranteed
15 price contract or a nonguaranteed price contract. Each
16 nonguaranteed price contract shall contain in twelve point
17 bold type, an explanation of the consequences in substantially
18 the following language:
19 THE PRICES OF MERCHANDISE AND SERVICES UNDER THIS AGREEMENT
20 ARE SUBJECT TO CHANGE IN THE FUTURE. ANY FUNDS PAID UNDER
21 THIS CONTRACT ARE ONLY A DEPOSIT TO BE APPLIED, TOGETHER WITH
22 ACCRUED INCOME, TOWARD THE FINAL COSTS OF THE MERCHANDISE OR
23 SERVICES CONTRACTED FOR. ADDITIONAL CHARGES MAY BE REQUIRED.
24 h. Explain the disposition of the ~~interest and disclose~~
25 ~~what fees and expenses may be charged if incurred~~ income
26 generated from investments, include a statement of fees,
27 expenses, and taxes which may be deducted, and include a
28 statement of the buyer's responsibility for income taxes owed
29 on the income, if applicable.
30 j. ~~State the name and address of the commissioner.~~
31 Include an explanation of regulatory oversight by the
32 insurance division in twelve point bold type, in substantially
33 the following language:
34 THIS CONTRACT MUST BE REPORTED TO THE IOWA INSURANCE
35 DIVISION BY THE FIRST DAY OF MARCH OF THE FOLLOWING YEAR. YOU

1 MAY CALL THE INSURANCE DIVISION AT (INSERT TELEPHONE NUMBER)
2 TO CONFIRM THAT YOUR CONTRACT HAS BEEN REPORTED. WRITTEN
3 INQUIRIES OR COMPLAINTS SHOULD BE MAILED TO THE FOLLOWING
4 ADDRESS: IOWA SECURITIES BUREAU, (INSERT ADDRESS).
5 Sec. 6. Section 523A.8, Code 1995, is amended by adding
6 the following new subsection:
7 NEW SUBSECTION. 1A. The commissioner may adopt rules
8 establishing disclosure and format requirements to promote
9 consumers' understanding of the merchandise and services
10 purchased and the available funding mechanisms under an
11 agreement pursuant to this chapter.
12 Sec. 7. Section 523A.8, Code 1995, is amended by adding
13 the following new subsection:
14 NEW SUBSECTION. 3. The seller shall disclose at the time
15 an application is made by an individual and prior to accepting
16 the applicant's initial premium or deposit for a preneed
17 funeral contract or prearrangement subject to section 523A.1
18 which is funded by a life insurance policy, the following
19 information:
20 a. That a life insurance policy is involved or being used
21 to fund an agreement.
22 b. The nature of the relationship among the soliciting
23 agent or agents, the provider of the funeral or cemetery
24 merchandise or services, the administrator, and any other
25 person.
26 c. The relationship of the life insurance policy to the
27 funding of the prearrangement and the nature and existence of
28 any guarantees relating to the prearrangement.
29 d. The impact on the prearrangement of the following:
30 (1) Changes in the life insurance policy including, but
31 not limited to, changes in the assignment, beneficiary
32 designation, or use of proceeds.
33 (2) Any penalties to be incurred by the policyholder as a
34 result of the failure to make premium payments.
35 (3) Penalties to be incurred or cash to be received as a

result of the cancellation or surrender of the life insurance policy.

e. A list of merchandise and services which are applied or contracted for in the prearrangement and all relevant information concerning the price of the funeral services, including an indication that the purchase price is either guaranteed at the time of purchase or to be determined at the time of need.

f. All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the proceeds of the life insurance policy and the amount actually needed to fund the agreement.

g. Any penalties or restrictions, including but not limited to, geographic restrictions or the inability of the provider to perform, on the delivery of merchandise, services, or the prearrangement guarantee.

h. That a sales commission or other form of compensation is being paid and, if so, the identity of the individuals or entities to whom it is paid.

Sec. 8. Section 523A.20, Code 1995, is amended to read as follows:

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~~ The commissioner shall allocate annually from the fees paid pursuant to section 523A.2, ~~one dollar~~ two dollars 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 general fund of the state. ~~However,-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~~

1 ~~deposited in the general fund of the state.~~ In addition, on
2 May 1 of ~~1994~~ 1996 and ~~1995~~ 1997, the commissioner, to the
3 extent necessary to fund consumer education, audits,
4 investigations, payments under contract with licensed
5 establishments to provide funeral merchandise or services in
6 the event of statutory noncompliance by the initial seller,
7 liquidations, and receiverships, shall assess establishment
8 permit holders ~~five~~ two dollars for each agreement reported on
9 the establishment permit holder's annual report of sales
10 executed during the preceding year, which shall be deposited
11 in the insurance division regulatory fund. The moneys in the
12 regulatory fund shall be retained in the fund. The moneys are
13 appropriated and, subject to authorization by the
14 commissioner, may be used to pay auditors, audit expenses,
15 investigative expenses, and the expenses of receiverships
16 established pursuant to section 523A.19. An annual assessment
17 shall not be imposed if the current balance of the fund
18 exceeds two hundred thousand dollars.
19 Sec. 9. NEW SECTION. 523A.21 LICENSE REVOCATION --
20 RECOMMENDATION BY COMMISSIONER TO BOARD OF MORTUARY SCIENCE
21 EXAMINERS.
22 Upon a determination by the commissioner that grounds exist
23 for an administrative license revocation or suspension action
24 by the board of mortuary science examiners under chapter 156,
25 the commissioner may forward to the board the grounds for the
26 determination, including all evidence in the possession of the
27 commissioner, so that the board may proceed with the matter as
28 deemed appropriate.
29 Sec. 10. NEW SECTION. 523A.22 LIQUIDATION.
30 1. GROUNDS FOR LIQUIDATION. Upon receipt of a written
31 request from the board of mortuary science examiners, the
32 commissioner may petition the district court for an order
33 directing the commissioner to liquidate a funeral
34 establishment on any of the following grounds:
35 a. The funeral establishment did not deposit funds

1 pursuant to section 523A.1 or withdrew funds in a manner
2 inconsistent with this chapter and is insolvent.
3 b. The funeral establishment did not deposit funds
4 pursuant to section 523A.1 or withdrew funds in a manner
5 inconsistent with this chapter and the condition of the
6 funeral establishment is such that the further transaction of
7 business would be hazardous, financially or otherwise, to its
8 preneed funeral customers or the public.
9 2. LIQUIDATION ORDER.
10 a. An order to liquidate the business of a funeral
11 establishment shall appoint the commissioner as liquidator and
12 shall direct the liquidator to immediately take possession of
13 the assets of the funeral establishment and to administer them
14 under the general supervision of the court. The liquidator is
15 vested with the title to the property, contracts, and rights
16 of action and the books and records of the funeral
17 establishment ordered liquidated, wherever located, as of the
18 entry of the final order of liquidation. The filing or
19 recording of the order with the clerk of court and the
20 recorder of deeds of the county in which its principal office
21 or place of business is located, or, in the case of real
22 estate with the recorder of deeds of the county where the
23 property is located, is notice as a deed, bill of sale, or
24 other evidence of title duly filed or recorded with the
25 recorder of deeds.
26 b. Upon issuance of an order, the rights and liabilities
27 of a funeral establishment and of the funeral establishment's
28 creditors, preneed and at-need funeral customers, owners, and
29 other persons interested in the funeral establishment's estate
30 shall become fixed as of the date of the entry of the order of
31 liquidation, except as provided in subsection 14.
32 c. At the time of petitioning for an order of liquidation,
33 or at any time after the time of petitioning, the
34 commissioner, after making appropriate findings of a funeral
35 establishment's insolvency, may petition the court for a

1 declaration of insolvency. After providing notice and hearing
2 as it deems proper, the court may make the declaration.
3 d. An order issued under this section shall require
4 accounting to the court by the liquidator. Accountings, at a
5 minimum, must include all funds received or disbursed by the
6 liquidator during the current period. An accounting shall be
7 filed within one year of the liquidation order and at such
8 other times as the court may require.
9 e. Within five days after the initiation of an appeal of
10 an order of liquidation, which order has not been stayed, the
11 commissioner shall present for the court's approval a plan for
12 the continued performance of the funeral establishment's
13 obligations during the pendency of an appeal. The plan shall
14 provide for the continued performance of preneed and at-need
15 funeral contracts in the normal course of events,
16 notwithstanding the grounds alleged in support of the order of
17 liquidation including the ground of insolvency. If the
18 defendant funeral establishment's financial condition, in the
19 judgment of the commissioner, will not support the full
20 performance of all obligations during the appeal pendency
21 period, the plan may prefer the claims of certain at-need and
22 preneed funeral customers and claimants over creditors and
23 interested parties as well as other at-need and preneed
24 funeral customers and claimants, as the commissioner finds to
25 be fair and equitable considering the relative circumstances
26 of such at-need and preneed funeral customers and claimants.
27 The court shall examine the plan submitted by the commissioner
28 and if it finds the plan to be in the best interests of the
29 parties, the court shall approve the plan. An action shall
30 not lie against the commissioner or any of the commissioner's
31 deputies, agents, clerks, assistants, or attorneys by any
32 party based on preference in an appeal pendency plan approved
33 by the court.
34 3. POWERS OF LIQUIDATOR.
35 a. The liquidator may do any of the following:

1 (1) Appoint a special deputy to act for the liquidator
2 under this chapter, and determine the special deputy's
3 reasonable compensation. The special deputy shall have all
4 the powers of the liquidator granted by this section. The
5 special deputy shall serve at the pleasure of the liquidator.
6 (2) Hire employees and agents, legal counsel, accountants,
7 appraisers, consultants, and other personnel as the
8 commissioner may deem necessary to assist in the liquidation.
9 (3) With the approval of the court fix reasonable
10 compensation of employees and agents, legal counsel,
11 accountants, appraisers, and consultants.
12 (4) Pay reasonable compensation to persons appointed and
13 defray from the funds or assets of the funeral establishment
14 all expenses of taking possession of, conserving, conducting,
15 liquidating, disposing of, or otherwise dealing with the
16 business and property of the funeral establishment. If the
17 property of the funeral establishment does not contain
18 sufficient cash or liquid assets to defray the costs incurred,
19 the commissioner may advance the costs so incurred out of the
20 insurance division regulatory fund. Amounts so advanced for
21 expenses of administration shall be repaid to the insurance
22 division regulatory fund for the use of the division out of
23 the first available moneys of the funeral establishment.
24 (5) Hold hearings, subpoena witnesses, and compel their
25 attendance, administer oaths, examine a person under oath, and
26 compel a person to subscribe to the person's testimony after
27 it has been correctly reduced to writing, and in connection to
28 the proceedings require the production of books, papers,
29 records, or other documents which the liquidator deems
30 relevant to the inquiry.
31 (6) Collect debts and moneys due and claims belonging to
32 the funeral establishment, wherever located. Pursuant to this
33 subparagraph, the liquidator may do any of the following:
34 (a) Institute timely action in other jurisdictions to
35 forestall garnishment and attachment proceedings against

1 debts.
2 (b) Perform acts as are necessary or expedient to collect,
3 conserve, or protect its assets or property, including the
4 power to sell, compound, compromise, or assign debts for
5 purposes of collection upon terms and conditions as the
6 liquidator deems best.
7 (c) Pursue any creditor's remedies available to enforce
8 claims.
9 (7) Conduct public and private sales of the property of
10 the funeral establishment.
11 (8) Use assets of the funeral establishment under a
12 liquidation order to transfer obligations of preneed funeral
13 contracts to a solvent funeral establishment, if the transfer
14 can be accomplished without prejudice to applicable priorities
15 under subsection 18.
16 (9) Acquire, hypothecate, encumber, lease, improve, sell,
17 transfer, abandon, or otherwise dispose of or deal with
18 property of the funeral establishment at its market value or
19 upon terms and conditions as are fair and reasonable. The
20 liquidator shall also have power to execute, acknowledge, and
21 deliver deeds, assignments, releases, and other instruments
22 necessary to effectuate a sale of property or other
23 transaction in connection with the liquidation.
24 (10) Borrow money on the security of the funeral
25 establishment's assets or without security and execute and
26 deliver documents necessary to that transaction for the
27 purpose of facilitating the liquidation. Money borrowed
28 pursuant to this subparagraph shall be repaid as an
29 administrative expense and shall have priority over any other
30 class 1 claims under the priority of distribution established
31 in subsection 18.
32 (11) Enter into contracts as necessary to carry out the
33 order to liquidate and affirm or disavow contracts to which
34 the funeral establishment is a party.
35 (12) Continue to prosecute and to institute in the name of

1 the funeral establishment or in the liquidator's own name any
2 and all suits and other legal proceedings, in this state or
3 elsewhere, and to abandon the prosecution of claims the
4 liquidator deems unprofitable to pursue further.
5 (13) Prosecute an action on behalf of the creditors, at-
6 need funeral customers, preneed funeral customers, or owners
7 against an officer of the funeral establishment or any other
8 person.
9 (14) Remove records and property of the funeral
10 establishment to the offices of the commissioner or to other
11 places as may be convenient for the purposes of efficient and
12 orderly execution of the liquidation.
13 (15) Deposit in one or more banks in this state sums as
14 are required for meeting current administration expenses and
15 distributions.
16 (16) Unless the court orders otherwise, invest funds not
17 currently needed.
18 (17) File necessary documents for recording in the office
19 of a recorder of deeds or record office in this state or
20 elsewhere where property of the funeral establishment is
21 located.
22 (18) Assert defenses available to the funeral
23 establishment as against third persons including statutes of
24 limitations, statutes of fraud, and the defense of usury. A
25 waiver of a defense by the funeral establishment after a
26 petition in liquidation has been filed shall not bind the
27 liquidator.
28 (19) Exercise and enforce the rights, remedies, and powers
29 of a creditor, at-need funeral customer, preneed funeral
30 customer, or owner, including the power to avoid transfer or
31 lien that may be given by the general law and that is not
32 included within subsections 7 through 9.
33 (20) Intervene in a proceeding wherever instituted that
34 might lead to the appointment of a receiver or trustee, and
35 act as the receiver or trustee whenever the appointment is

1 offered.
2 (21) Exercise powers now held or later conferred upon
3 receivers by the laws of this state which are not inconsistent
4 with this chapter.
5 b. This section does not limit the liquidator or exclude
6 the liquidator from exercising a power not listed in paragraph
7 "a" that may be necessary or appropriate to accomplish the
8 purposes of this chapter.
9 4. NOTICE TO CREDITORS AND OTHERS.
10 a. Unless the court otherwise directs, the liquidator
11 shall give notice of the liquidation order as soon as possible
12 by doing all of the following:
13 (1) By first class mail to all persons known or reasonably
14 expected to have claims against the funeral establishment,
15 including at-need and preneed funeral customers, by mailing a
16 notice to their last known address as indicated by the records
17 of the funeral establishment.
18 (2) By publication in a newspaper of general circulation
19 in the county in which the funeral establishment has its
20 principal place of business and in other locations as the
21 liquidator deems appropriate.
22 b. Notice to potential claimants under paragraph "a" shall
23 require claimants to file with the liquidator their claims
24 together with proper proofs of the claim under subsection 13
25 on or before a date the liquidator shall specify in the
26 notice. Claimants shall keep the liquidator informed of their
27 changes of address, if any.
28 c. If notice is given pursuant to this section, the
29 distribution of assets of the funeral establishment under this
30 chapter shall be conclusive with respect to claimants, whether
31 or not a claimant actually received notice.
32 5. ACTIONS BY AND AGAINST LIQUIDATOR.
33 a. After the issuance of an order appointing a liquidator
34 of a funeral establishment, an action at law or equity shall
35 not be brought against the funeral establishment in this state

1 or elsewhere, and existing actions shall not be maintained or
2 further presented after issuance of the order. Whenever in
3 the liquidator's judgment, protection of the estate of the
4 funeral establishment necessitates intervention in an action
5 against the funeral establishment that is pending outside this
6 state, the liquidator may intervene in the action. The
7 liquidator may defend, at the expense of the estate of the
8 funeral establishment, an action in which the liquidator
9 intervenes under this section.
10 b. Within two years or such additional time as applicable
11 law may permit, the liquidator, after the issuance of an order
12 for liquidation, may institute an action or proceeding on
13 behalf of the estate of the funeral establishment upon any
14 cause of action against which the period of limitation fixed
15 by applicable law has not expired at the time of the filing of
16 the petition upon which the order is entered. If a period of
17 limitation is fixed by agreement for instituting a suit or
18 proceeding upon a claim, or for filing a claim, proof of
19 claim, proof of loss, demand, notice, or the like, or if in a
20 proceeding, judicial or otherwise, a period of limitation is
21 fixed in the proceeding or pursuant to applicable law for
22 taking an action, filing a claim or pleading, or doing an act,
23 and if the period had not expired at the date of the filing of
24 the petition, the liquidator may, for the benefit of the
25 estate, take any action or do any act, required of or
26 permitted to the funeral establishment, within a period of one
27 hundred eighty days subsequent to the entry of an order for
28 liquidation, or within a further period as is shown to the
29 satisfaction of the court not to be unfairly prejudicial to
30 the other party.
31 c. A statute of limitation or defense of laches shall not
32 run with respect to an action against a funeral establishment
33 between the filing of a petition for liquidation against the
34 funeral establishment and the denial of the petition. An
35 action against the funeral establishment that might have been

1 commenced when the petition was filed may be commenced for at
2 least sixty days after the petition is denied.
3 6. COLLECTION AND LIST OF ASSETS.
4 a. As soon as practicable after the liquidation order but
5 not later than one hundred twenty days after such order, the
6 liquidator shall prepare in duplicate a list of the funeral
7 establishment's assets. The list shall be amended or
8 supplemented as the liquidator may determine. One copy shall
9 be filed in the office of the clerk of court and one copy
10 shall be retained for the liquidator's files. Amendments and
11 supplements shall be similarly filed.
12 b. The liquidator shall reduce the assets to a degree of
13 liquidity that is consistent with the effective execution of
14 the liquidation.
15 c. A submission to the court for distribution of assets in
16 accordance with subsection 11 fulfills the requirements of
17 paragraph "a".
18 7. FRAUDULENT TRANSFERS PRIOR TO PETITION.
19 a. A transfer made and an obligation incurred by a funeral
20 establishment within one year prior to the filing of a
21 successful petition for liquidation under this chapter is
22 fraudulent as to then existing and future creditors if made or
23 incurred without fair consideration, or with actual intent to
24 hinder, delay, or defraud either existing or future creditors.
25 A fraudulent transfer made or an obligation incurred by a
26 funeral establishment ordered to be liquidated under this
27 chapter may be avoided by the receiver, except as to a person
28 who in good faith is a purchaser, lienor, or obligee for a
29 present fair equivalent value. A purchaser, lienor, or
30 obligee, who in good faith has given a consideration less than
31 fair for such transfer, lien, or obligation, may retain the
32 property, lien, or obligation as security for repayment. The
33 court may, on due notice, order any such transfer or
34 obligation to be preserved for the benefit of the estate, and
35 in that event, the receiver shall succeed to and may enforce

1 the rights of the purchaser, lienor, or obligee.
2 b. (1) A transfer of property other than real property is
3 made when it becomes perfected so that a subsequent lien
4 obtainable by legal or equitable proceedings on a simple
5 contract could not become superior to the rights of the
6 transferee under subsection 9, paragraph "c".
7 (2) A transfer of real property is made when it becomes
8 perfected so that a subsequent bona fide purchaser from the
9 funeral establishment could not obtain rights superior to the
10 rights of the transferee.
11 (3) A transfer which creates an equitable lien is not
12 perfected if there are available means by which a legal lien
13 could be created.
14 (4) A transfer not perfected prior to the filing of a
15 petition for liquidation is deemed to be made immediately
16 before the filing of the successful petition.
17 (5) This subsection applies whether or not there are or
18 were creditors who might have obtained a lien or persons who
19 might have become bona fide purchasers.
20 8. FRAUDULENT TRANSFER AFTER PETITION.
21 a. After a petition for liquidation has been filed a
22 transfer of real property of the funeral establishment made to
23 a person acting in good faith is valid against the liquidator
24 if made for a present fair equivalent value. If the transfer
25 was not made for a present fair equivalent value, then the
26 transfer is valid to the extent of the present consideration
27 actually paid for which amount the transferee shall have a
28 lien on the property transferred. The commencement of a
29 proceeding in liquidation is constructive notice upon the
30 recording of a copy of the petition for or order of
31 liquidation with the recorder of deeds in the county where any
32 real property in question is located. The exercise by a court
33 of the United States or a state or jurisdiction to authorize a
34 judicial sale of real property of the funeral establishment
35 within a county in a state shall not be impaired by the

1 pendency of a proceeding unless the copy is recorded in the
2 county prior to the consummation of the judicial sale.
3 b. After a petition for liquidation has been filed and
4 before either the receiver takes possession of the property of
5 the funeral establishment or an order of liquidation is
6 granted:
7 (1) A transfer of the property, other than real property,
8 of the funeral establishment made to a person acting in good
9 faith is valid against the receiver if made for a present fair
10 equivalent value. If the transfer was not made for a present
11 fair equivalent value, then the transfer is valid to the
12 extent of the present consideration actually paid for which
13 amount the transferee shall have a lien on the property
14 transferred.
15 (2) If acting in good faith, a person indebted to the
16 funeral establishment or holding property of the funeral
17 establishment may pay the debt or deliver the property, or any
18 part of the property, to the funeral establishment or upon the
19 funeral establishment's order as if the petition were not
20 pending.
21 (3) A person having actual knowledge of the pending
22 liquidation is not acting in good faith.
23 (4) A person asserting the validity of a transfer under
24 this subsection has the burden of proof. Except as provided
25 in this subsection, a transfer by or on behalf of the funeral
26 establishment after the date of the petition for liquidation
27 by any person other than the liquidator is not valid against
28 the liquidator.
29 c. A person receiving any property from the funeral
30 establishment or any benefit of the property of the funeral
31 establishment which is a fraudulent transfer under paragraph
32 "a" is personally liable for the property or benefit and shall
33 account to the liquidator.
34 d. This chapter does not impair the negotiability of
35 currency or negotiable instruments.

1 9. VOIDABLE PREFERENCES AND LIENS.
2 a. (1) A preference is a transfer of the property of a
3 funeral establishment to or for the benefit of a creditor for
4 an antecedent debt made or suffered by the funeral
5 establishment within one year before the filing of a
6 successful petition for liquidation under this chapter, the
7 effect of which transfer may be to enable the creditor to
8 obtain a greater percentage of this debt than another creditor
9 of the same class would receive. If a liquidation order is
10 entered while the funeral establishment is already subject to
11 a receivership, then the transfers are preferences if made or
12 suffered within one year before the filing of the successful
13 petition for the receivership, or within two years before the
14 filing of the successful petition for liquidation, whichever
15 time is shorter.
16 (2) A preference may be avoided by the liquidator if any
17 of the following exist:
18 (a) The funeral establishment was insolvent at the time of
19 the transfer.
20 (b) The transfer was made within four months before the
21 filing of the petition.
22 (c) At the time the transfer was made, the creditor
23 receiving it or to be benefited by the transfer or the
24 creditor's agent acting with reference to the transfer had
25 reasonable cause to believe that the funeral establishment was
26 insolvent or was about to become insolvent.
27 (d) The creditor receiving the transfer was an officer, or
28 an employee, attorney, or other person who was in fact in a
29 position of comparable influence in the funeral establishment
30 to an officer whether or not the person held the position of
31 an officer, owner, or other person, firm, corporation,
32 association, or aggregation of persons with whom the funeral
33 establishment did not deal at arm's length.
34 (3) Where the preference is voidable, the liquidator may
35 recover the property. If the property has been converted, the

1 liquidator may recover its value from a person who has
2 received or converted the property. However, if a bona fide
3 purchaser or lienor has given less than fair equivalent value,
4 the purchaser or lienor shall have a lien upon the property to
5 the extent of the consideration actually given. Where a
6 preference by way of lien or security interest is voidable,
7 the court may on due notice order the lien or security
8 interest to be preserved for the benefit of the estate, in
9 which event the lien or title shall pass to the liquidator.
10 b. (1) A transfer of property other than real property is
11 made when it becomes perfected so that a subsequent lien
12 obtainable by legal or equitable proceedings on a simple
13 contract could not become superior to the rights of the
14 transferee.
15 (2) A transfer of real property is made when it becomes
16 perfected so that a subsequent bona fide purchaser from the
17 funeral establishment could not obtain rights superior to the
18 rights of the transferee.
19 (3) A transfer which creates an equitable lien is not
20 perfected if there are available means by which a legal lien
21 could be created.
22 (4) A transfer not perfected prior to the filing of a
23 petition for liquidation is deemed to be made immediately
24 before the filing of the successful petition.
25 (5) This subsection applies whether or not there are or
26 were creditors who might have obtained liens or persons who
27 might have become bona fide purchasers.
28 c. (1) A lien obtainable by legal or equitable
29 proceedings upon a simple contract is one arising in the
30 ordinary course of the proceedings upon the entry or docketing
31 of a judgment or decree, or upon attachment, garnishment,
32 execution, or like process, whether before, upon, or after
33 judgment or decree and whether before or upon levy. It does
34 not include liens which under applicable law are given a
35 special priority over other liens which are prior in time.

1 (2) A lien obtainable by legal or equitable proceedings
2 could become superior to the rights of a transferee, or a
3 purchaser could obtain rights superior to the rights of a
4 transferee within the meaning of paragraph "b", if such
5 consequences would follow only from the lien or purchase
6 itself, or from the lien or purchase followed by a step wholly
7 within the control of the respective lienholder or purchaser,
8 with or without the aid of ministerial action by public
9 officials. However, a lien could not become superior and a
10 purchase could not create superior rights for the purpose of
11 paragraph "b" through an act subsequent to the obtaining of a
12 lien or subsequent to a purchase which requires the agreement
13 or concurrence of any third party or which requires further
14 judicial action or ruling.
15 d. A transfer of property for or on account of a new and
16 contemporaneous consideration, which is under paragraph "b"
17 made or suffered after the transfer because of delay in
18 perfecting it, does not become a transfer for or on account of
19 an antecedent debt if any acts required by the applicable law
20 to be performed in order to perfect the transfer as against
21 liens or a bona fide purchaser's rights are performed within
22 twenty-one days or any period expressly allowed by the law,
23 whichever is less. A transfer to secure a future loan, if a
24 loan is actually made, or a transfer which becomes security
25 for a future loan, shall have the same effect as a transfer
26 for or on account of a new and contemporaneous consideration.
27 e. If a lien voidable under paragraph "a", subparagraph
28 (2), has been dissolved by the furnishing of a bond or other
29 obligation, the surety on which has been indemnified directly
30 or indirectly by the transfer or the creation of a lien upon
31 property of a funeral establishment before the filing of a
32 petition under this chapter which results in a liquidation
33 order, the indemnifying transfer or lien is also voidable.
34 f. The property affected by a lien voidable under
35 paragraphs "a" and "e" is discharged from the lien. The

1 property and any of the indemnifying property transferred to
2 or for the benefit of a surety shall pass to the liquidator.
3 However, the court may on due notice order a lien to be
4 preserved for the benefit of the estate and the court may
5 direct that the conveyance be executed to evidence the title
6 of the liquidator.
7 g. The court shall have summary jurisdiction of a
8 proceeding by the liquidator to hear and determine the rights
9 of the parties under this section. Reasonable notice of
10 hearing in the proceeding shall be given to all parties in
11 interest, including the obligee of a releasing bond or other
12 like obligation. Where an order is entered for the recovery
13 of indemnifying property in kind or for the avoidance of an
14 indemnifying lien, upon application of any party in interest,
15 the court shall in the same proceeding ascertain the value of
16 the property or lien. If the value is less than the amount
17 for which the property is indemnified or less than the amount
18 of the lien, the transferee or lienholder may elect to retain
19 the property or lien upon payment of its value, as ascertained
20 by the court, to the liquidator within the time as fixed by
21 the court.
22 h. The liability of a surety under a releasing bond or
23 other like obligation is discharged to the extent of the value
24 of the indemnifying property recovered or the indemnifying
25 lien nullified and avoided by the liquidator. Where the
26 property is retained under paragraph "g", the liability of the
27 surety is discharged to the extent of the amount paid to the
28 liquidator.
29 i. If a creditor has been preferred for property which
30 becomes a part of the funeral establishment's estate, and
31 afterward in good faith gives the funeral establishment
32 further credit without security of any kind, the amount of the
33 new credit remaining unpaid at the time of the petition may be
34 set off against the preference which would otherwise be
35 recoverable from the creditor.

1 j. If within four months before the filing of a successful
2 petition for liquidation under this chapter, or at any time in
3 contemplation of a proceeding to liquidate, a funeral
4 establishment, directly or indirectly, pays money or transfers
5 property to an attorney for services rendered or to be
6 rendered, the transaction may be examined by the court on its
7 own motion or shall be examined by the court on petition of
8 the liquidator. The payment or transfer shall be held valid
9 only to the extent of a reasonable amount to be determined by
10 the court. The excess may be recovered by the liquidator for
11 the benefit of the estate. However, where the attorney is in
12 a position of influence in the funeral establishment or an
13 affiliate, payment of any money or the transfer of any
14 property to the attorney for services rendered or to be
15 rendered shall be governed by the provision of paragraph "a",
16 subparagraph (2), subparagraph subdivision (d).
17 k. (1) An officer, manager, employee, shareholder,
18 subscriber, attorney, or any other person acting on behalf of
19 the funeral establishment who knowingly participates in giving
20 any preference when the person has reasonable cause to believe
21 the funeral establishment is or is about to become insolvent
22 at the time of the preference is personally liable to the
23 liquidator for the amount of the preference. There is an
24 inference that reasonable cause exists if the transfer was
25 made within four months before the date of filing of this
26 successful petition for liquidation.
27 (2) A person receiving property from the funeral
28 establishment or the benefit of the property of the funeral
29 establishment as a preference voidable under paragraph "a" is
30 personally liable for the property and shall account to the
31 liquidator.
32 (3) This subsection shall not prejudice any other claim by
33 the liquidator against any person.
34 10. CLAIMS OF HOLDER OF VOID OR VOIDABLE RIGHTS.
35 a. A claim of a creditor who has received or acquired a

1 preference, lien, conveyance, transfer, assignment, or
2 encumbrance, voidable under this chapter, shall not be allowed
3 unless the creditor surrenders the preference, lien,
4 conveyance, transfer, assignment, or encumbrance. If the
5 avoidance is effected by a proceeding in which a final
6 judgment has been entered, the claim shall not be allowed
7 unless the money is paid or the property is delivered to the
8 liquidator within thirty days from the date of the entering of
9 the final judgment. However, the court having jurisdiction
10 over the liquidation may allow further time if there is an
11 appeal or other continuation of the proceeding.
12 b. A claim allowable under paragraph "a" by reason of a
13 voluntary or involuntary avoidance, preference, lien,
14 conveyance, transfer, assignment, or encumbrance may be filed
15 as an excused late filing under subsection 12, if filed within
16 thirty days from the date of the avoidance or within the
17 further time allowed by the court under paragraph "a".
18 11. LIQUIDATOR'S PROPOSAL TO DISTRIBUTE ASSETS.
19 a. From time to time as assets become available, the
20 liquidator shall make application to the court for approval of
21 a proposal to disburse assets out of marshaled assets.
22 b. The proposal shall at least include provisions for all
23 of the following:
24 (1) Reserving amounts for the payment of all the
25 following:
26 (a) Expenses of administration.
27 (b) To the extent of the value of the security held, the
28 payment of claims of secured creditors.
29 (c) Claims falling within the priorities established in
30 subsection 18, paragraphs "a" and "b".
31 (2) Disbursement of the assets marshaled to date and
32 subsequent disbursement of assets as they become available.
33 c. Action on the application may be taken by the court
34 provided that the liquidator's proposal complies with
35 paragraph "b".

1 12. FILING OF CLAIMS.
2 a. Proof of all claims shall be filed with the liquidator
3 in the form required by subsection 13 on or before the last
4 day for filing specified in the notice required under
5 subsection 4.
6 b. The liquidator may permit a claimant making a late
7 filing to share in distributions, whether past or future, as
8 if the claimant were not late, to the extent that the payment
9 will not prejudice the orderly administration of the
10 liquidation under any of the following circumstances:
11 (1) The existence of the claim was not known to the
12 claimant and that the claimant filed the claim as promptly as
13 reasonably possible after learning of it.
14 (2) A transfer to a creditor was avoided under subsections
15 7 through 9, or was voluntarily surrendered under subsection
16 10, and that the filing satisfies the conditions of subsection
17 10.
18 (3) The valuation under subsection 17 of security held by
19 a secured creditor shows a deficiency, which is filed within
20 thirty days after the valuation.
21 c. The liquidator may consider any claim filed late and
22 permit the claimant to receive distributions which are
23 subsequently declared on any claims of the same or lower
24 priority if the payment does not prejudice the orderly
25 administration of the liquidation. The late-filing claimant
26 shall receive at each distribution the same percentage of the
27 amount allowed on the claim as is then being paid to claimants
28 of any lower priority. This shall continue until the claim
29 has been paid in full.
30 13. PROOF OF CLAIM.
31 a. Proof of claim shall consist of a statement signed by
32 the claimant that includes all of the following that are
33 applicable:
34 (1) The particulars of the claim, including the
35 consideration given for it.

1 (2) The identity and amount of the security on the claim.
2 (3) The payments, if any, made on the debt.
3 (4) A statement that the sum claimed is justly owing and
4 that there is no setoff, counterclaim, or defense to the
5 claim.
6 (5) Any right of priority of payment or other specific
7 right asserted by the claimant.
8 (6) A copy of the written instrument which is the
9 foundation of the claim.
10 (7) The name and address of the claimant and the attorney
11 who represents the claimant, if any.
12 b. A claim need not be considered or allowed if it does
13 not contain all the information identified in paragraph "a"
14 which is applicable. The liquidator may require that a
15 prescribed form be used and may require that other information
16 and documents be included.
17 c. At any time the liquidator may request the claimant to
18 present information or evidence supplementary to that required
19 under paragraph "a", and may take testimony under oath,
20 require production of affidavits or depositions, or otherwise
21 obtain additional information or evidence.
22 d. A judgment or order against a funeral establishment
23 entered after the date of filing of a successful petition for
24 liquidation, or a judgment or order against the funeral
25 establishment entered at any time by default or by collusion
26 need not be considered as evidence of liability or of the
27 amount of damages. A judgment or order against a funeral
28 establishment before the filing of the petition need not be
29 considered as evidence of liability or of the amount of
30 damages.
31 14. SPECIAL CLAIMS.
32 a. A claim may be allowed even if contingent, if it is
33 filed pursuant to subsection 12. The claim may be allowed and
34 the claimant may participate in all distributions declared
35 after it is filed to the extent that it does not prejudice the

1 orderly administration of the liquidation.
2 b. Claims that are due except for the passage of time
3 shall be treated as absolute claims are treated. However, the
4 claims may be discounted at the legal rate of interest.
5 c. Claims made under employment contracts by directors,
6 principal officers, or persons in fact performing similar
7 functions or having similar powers are limited to payment for
8 services rendered prior to the issuance of an order of
9 liquidation under subsection 2.
10 15. DISPUTED CLAIMS.
11 a. If a claim is denied in whole or in part by the
12 liquidator, written notice of the determination shall be given
13 to the claimant or the claimant's attorney by first class mail
14 at the address shown in the proof of claim. Within sixty days
15 from the mailing of the notice, the claimant may file
16 objections with the liquidator. Unless a filing is made, the
17 claimant shall not further object to the determination.
18 b. If objections are filed with the liquidator and the
19 liquidator does not alter the denial of the claim as a result
20 of the objections, the liquidator shall ask the court for a
21 hearing as soon as practicable and give notice of the hearing
22 by first class mail to the claimant or the claimant's attorney
23 and to any other persons directly affected. The notice shall
24 be given not less than ten nor more than thirty days before
25 the date of the hearing. The matter shall be heard by the
26 court or by a court-appointed referee. The referee shall
27 submit findings of fact along with a recommendation.
28 16. CLAIMS OF OTHER PERSON. If a creditor, whose claim
29 against a funeral establishment is secured in whole or in part
30 by the undertaking of another person, fails to prove and file
31 that claim, then the other person may do so in the creditor's
32 name and shall be subrogated to the rights of the creditor,
33 whether the claim has been filed by the creditor or by the
34 other person in the creditor's name to the extent that the
35 other person discharges the undertaking. However, in the

1 absence of an agreement with the creditor to the contrary, the
2 other person is not entitled to any distribution until the
3 amount paid to the creditor on the undertaking plus the
4 distributions paid on the claim from the funeral
5 establishment's estate to the creditor equal the amount of the
6 entire claim of the creditor. An excess received by the
7 creditor shall be held by the creditor in trust for the other
8 person.
9 17. SECURED CREDITOR'S CLAIMS.
10 a. The value of security held by a secured creditor shall
11 be determined in one of the following ways, as the court may
12 direct:
13 (1) By converting the security into money according to the
14 terms of the agreement pursuant to which the security was
15 delivered to the creditors.
16 (2) By agreement, arbitration, compromise, or litigation
17 between the creditor and the liquidator.
18 b. The determination shall be under the supervision and
19 control of the court with due regard for the recommendation of
20 the liquidator. The amount so determined shall be credited
21 upon the secured claim. A deficiency shall be treated as an
22 unsecured claim. If the claimant surrenders the security to
23 the liquidator, the entire claim shall be allowed as if
24 unsecured.
25 18. PRIORITY OF DISTRIBUTION. The priority of
26 distribution of claims from the funeral establishment's estate
27 shall be in accordance with the order in which each class of
28 claims is set forth. Claims in each class shall be paid in
29 full or adequate funds retained for the payment before the
30 members of the next class receive any payment. Subclasses
31 shall not be established within a class. The order of
32 distribution of claims is as follows:
33 a. CLASS 1. The costs and expenses of administration,
34 including but not limited to the following:
35 (1) The actual and necessary costs of preserving or

1 recovering the assets of the funeral establishment.
2 (2) Compensation for all authorized services rendered in
3 the liquidation.
4 (3) Necessary filing fees.
5 (4) The fees and mileage payable to witnesses.
6 (5) Authorized reasonable attorney's fees and other
7 professional services rendered in the liquidation.
8 b. CLASS 2. Reasonable compensation to employees for
9 services performed to the extent that they do not exceed two
10 months of monetary compensation and represent payment for
11 services performed within one year before the filing of the
12 petition for liquidation. Officers and directors are not
13 entitled to the benefit of this priority. The priority is in
14 lieu of other similar priority which may be authorized by law
15 as to wages or compensation of employees.
16 c. CLASS 3. Claims under at-need and preneed funeral
17 contracts.
18 d. CLASS 4. Claims of general creditors.
19 e. CLASS 5. Claims of the federal or any state or local
20 government. Claims, including those of a governmental body
21 for a penalty or forfeiture, are allowed in this class only to
22 the extent of the pecuniary loss sustained from the act,
23 transaction, or proceeding out of which the penalty or
24 forfeiture arose, with reasonable and actual costs incurred.
25 The remainder of such claims shall be postponed to the class
26 of claims under paragraph "g".
27 f. CLASS 6. Claims filed late or any other claims other
28 than claims under paragraph "g".
29 g. CLASS 7. The claims of shareholders or other owners.
30 19. LIQUIDATOR'S RECOMMENDATIONS TO THE COURT.
31 a. The liquidator shall review claims duly filed in the
32 liquidation and shall make further investigation as necessary.
33 The liquidator may compound, compromise, or in any other
34 manner negotiate the amount for which claims will be
35 recommended to the court except where the liquidator is

1 required by law to accept claims as settled by a person or
2 organization. Unresolved disputes shall be determined under
3 subsection 15. As soon as practicable, the liquidator shall
4 present to the court a report of the claims against the
5 funeral establishment with the liquidator's recommendations.
6 The report shall include the name and address of each claimant
7 and the amount of the claim finally recommended.
8 b. The court may approve, disapprove, or modify the report
9 on claims by the liquidator. Reports not modified by the
10 court within sixty days following submission by the liquidator
11 shall be treated by the liquidator as allowed claims, subject
12 to later modification or to rulings made by the court pursuant
13 to subsection 15. A claim under a policy of insurance shall
14 not be allowed for an amount in excess of the applicable
15 policy limits.
16 20. DISTRIBUTION OF ASSETS. Under the direction of the
17 court, the liquidator shall pay distributions in a manner that
18 will assure the proper recognition of priorities and a
19 reasonable balance between the expeditious completion of the
20 liquidation and the protection of unliquidated and
21 undetermined claims, including third-party claims.
22 Distribution of assets in kind may be made at valuations set
23 by agreement between the liquidator and the creditor and
24 approved by the court.
25 21. UNCLAIMED AND WITHHELD FUNDS.
26 a. Unclaimed funds subject to distribution remaining in
27 the liquidator's hands when the liquidator is ready to apply
28 to the court for discharge, including the amount distributable
29 to a creditor, owner, or other person who is unknown or cannot
30 be found, shall be deposited with the treasurer of state, and
31 shall be paid without interest, except as provided in
32 subsection 18, to the person entitled or the person's legal
33 representative upon proof satisfactory to the treasurer of
34 state of the right to the funds. An amount on deposit not
35 claimed within six years from the discharge of the liquidator

1 is deemed to have been abandoned and shall become the property
2 of the state without formal escheat proceedings and be
3 transferred to the insurance division regulatory fund.
4 b. Funds withheld under subsection 14 and not distributed
5 shall upon discharge of the liquidator be deposited with the
6 treasurer of state and paid pursuant to subsection 18. Sums
7 remaining which under subsection 18 would revert to the
8 undistributed assets of the funeral establishment shall be
9 transferred to the insurance division regulatory fund and
10 become the property of the state as provided under paragraph
11 "a", unless the commissioner in the commissioner's discretion
12 petitions the court to reopen the liquidation pursuant to
13 subsection 23.
14 c. Notwithstanding any other provision of this chapter,
15 funds as identified in paragraph "a", with the approval of the
16 court, shall be made available to the commissioner for use in
17 the detection and prevention of future insolvencies. The
18 commissioner shall hold these funds in the insurance division
19 regulatory fund and shall pay without interest, except as
20 provided in subsection 18, to the person entitled to the funds
21 or the person's legal representative upon proof satisfactory
22 to the commissioner of the person's right to the funds. The
23 funds shall be held by the commissioner for a period of two
24 years at which time the rights and duties to the unclaimed
25 funds shall vest in the commissioner.
26 22. TERMINATION OF PROCEEDINGS.
27 a. When all assets justifying the expense of collection
28 and distribution have been collected and distributed under
29 this chapter, the liquidator shall apply to the court for
30 discharge. The court may grant the discharge and make any
31 other orders, including an order to transfer remaining funds
32 that are uneconomical to distribute, as appropriate.
33 b. Any other person may apply to the court at any time for
34 an order under paragraph "a". If the application is denied,
35 the applicant shall pay the costs and expenses of the

1 liquidator in resisting the application, including a
2 reasonable attorney's fee.
3 23. REOPENING LIQUIDATION. At any time after the
4 liquidation proceeding has been terminated and the liquidator
5 discharged, the commissioner or other interested party may
6 petition the court to reopen the proceedings for good cause
7 including the discovery of additional assets. The court shall
8 order the proceeding reopened if it is satisfied that there is
9 justification for the reopening.
10 24. DISPOSITION OF RECORDS DURING AND AFTER TERMINATION OF
11 LIQUIDATION. If it appears to the commissioner that the
12 records of a funeral establishment in process of liquidation
13 or completely liquidated are no longer useful, the
14 commissioner may recommend to the court and the court shall
15 direct what records shall be retained for future reference and
16 what records shall be destroyed.
17 25. EXTERNAL AUDIT OF RECEIVER'S BOOKS. The court may
18 order audits to be made of the books of the commissioner
19 relating to a receivership established under this chapter, and
20 a report of each audit shall be filed with the commissioner
21 and with the court. The books, records, and other documents
22 of the receivership shall be made available to the auditor at
23 any time without notice. The expense of an audit shall be
24 considered a cost of administration of the receivership.
25 Sec. 11. Section 523E.1, subsection 1, Code 1995, is
26 amended to read as follows:
27 1. If an agreement is made by a person to furnish, upon
28 the future death of a person named or implied in the
29 agreement, cemetery merchandise, a minimum of one hundred
30 twenty-five percent of the wholesale cost of the cemetery
31 merchandise, based upon the current advertised prices
32 available from a manufacturer or wholesaler who has delivered
33 the same or substantially the same type of merchandise to the
34 seller during the last twelve months, shall be and remain
35 trust funds until purchase of the merchandise or the

1 occurrence of the death of the person for whose benefit the
2 funds were paid, unless the funds are sooner released to the
3 person making the payment by mutual consent of the parties.
4 Payments otherwise subject to this section are not exempt
5 merely because they are held in certificates of deposit. The
6 commissioner may adopt rules to prohibit the commingling of
7 trust funds with other funds of the seller.
8 Sec. 12. Section 523E.1, Code 1995, is amended by adding
9 the following new subsection:
10 NEW SUBSECTION. 5. An agreement may be funded by
11 insurance proceeds derived from a policy issued by an
12 insurance company authorized to conduct business in this
13 state. Such funding may be in lieu of a trust fund if the
14 payments are made directly to the insurance company by the
15 purchaser of the agreement.
16 Sec. 13. Section 523E.2, subsection 1, paragraphs a and c,
17 Code 1995, are amended to read as follows:
18 a. All funds held in trust under section 523E.1 shall be
19 deposited in a state or federally insured bank, savings and
20 loan association, or credit union authorized to conduct
21 business in this state, or trust department ~~thereof~~ of such
22 bank, savings and loan association, or credit union, or in a
23 trust company authorized to conduct business in this state,
24 within fifteen days after the close of the month of receipt of
25 the funds and shall be held as provided in paragraph "g" for
26 the designated beneficiary until released pursuant to section
27 523E.1.
28 c. The seller under an agreement referred to in section
29 523E.1 shall file with the commissioner not later than March 1
30 of each year a report including the following information:
31 (1) The name and address of the seller and the name and
32 address of the establishment that will provide the cemetery
33 merchandise.
34 (2) ~~The name of the purchaser, beneficiary, and the amount~~
35 ~~of each agreement under section 523E.1 made in the preceding~~

1 ~~year-and-the-date-on-which-it-was-made.~~ The balance of each
2 trust account as of the end of the immediately preceding
3 calendar year, identified by the name of the purchaser or the
4 beneficiary, and a report of any amounts withdrawn from trust
5 and the reason for each withdrawal.
6 (3) ~~The-total-value-of-agreements-subject-to-section~~
7 ~~523E.1-entered-into,-the-total-amount-paid-pursuant-to-those~~
8 ~~agreements,-and-the-total-amount-deposited-in-trust-as~~
9 ~~required-under-section-523E.1,-during-the-preceding-year.~~ A
10 description of insurance funding outstanding at the end of the
11 immediately preceding calendar year, identified by the name of
12 the purchaser or the beneficiary, and a report of any
13 insurance payments received by the seller.
14 ~~(4)--The-amount-of-any-payments-received-pursuant-to~~
15 ~~agreements-reported-in-previous-years-in-accordance-with~~
16 ~~subparagraphs-(2)-and-(3)-and-the-amount-of-those-payments~~
17 ~~deposited-in-trust-for-each-purchaser.~~
18 ~~(5)--The-change-in-status-of-any-trust-account,-for-each~~
19 ~~purchaser,-any-other-amounts-withdrawn-from-trust-and-the~~
20 ~~reason-for-each-withdrawal.--However,-regular-increments-of~~
21 ~~interest-or-income-need-not-be-reported-on-a-yearly-basis.~~
22 ~~(6)--The-name-and-address-of-the-financial-institution-in~~
23 ~~which-trust-funds-were-deposited,-and-the-name-and-address-of~~
24 ~~each-insurance-company-which-funds-agreements-under-section~~
25 ~~523E.1.~~
26 ~~(7)--The-name-and-address-of-each-purchaser-of-cemetery~~
27 ~~merchandise-delivered-in-lieu-of-trusting-pursuant-to-section~~
28 ~~523E.1,-and-a-description-of-that-merchandise-for-each~~
29 ~~purchaser.~~
30 ~~(8)~~ (4) ~~The~~ A complete inventory of cemetery merchandise
31 ~~and-its-location-in-the-seller's-possession-that-has-been~~
32 delivered in lieu of trusting pursuant to section 523E.1.
33 ~~(9)--Other-information-reasonably-required-by-the~~
34 ~~commissioner-for-purposes-of-administration-of-this-chapter.~~
35 ~~The-information-required-by-subparagraphs-(7)-and-(8)-shall~~

1 ~~include~~, including the location of the merchandise, serial
2 numbers or warehouse receipt numbers, identified by the name
3 of the purchaser or the beneficiary, and a verified statement
4 of a certified public accountant that the certified public
5 accountant has conducted a physical inventory of the cemetery
6 merchandise ~~specified in subparagraph (8)~~ and that each item
7 of that merchandise is in the seller's possession at the
8 specified location. The statement shall be on a form
9 prescribed by the commissioner. ~~The commissioner shall permit~~
10 ~~the filing of a unified annual report by a seller subject to~~
11 ~~both chapter 523A and this chapter.~~
12 The report shall be accompanied by a filing fee determined
13 by the commissioner which shall be sufficient to defray the
14 costs of administering this chapter.
15 Sec. 14. Section 523E.2, subsection 6, Code 1995, is
16 amended to read as follows:
17 6. This chapter does not prohibit the funding of an
18 agreement ~~otherwise subject to section 523E.1~~ by insurance
19 proceeds derived from a policy issued by an insurance company
20 authorized to conduct business in this state. The seller of
21 an agreement subject to this chapter which is to be funded by
22 insurance proceeds shall obtain all permits required to be
23 obtained under this chapter and comply with the reporting
24 requirements of this section.
25 Sec. 15. Section 523E.8, subsection 1, paragraphs e, h,
26 and j, Code 1995, are amended to read as follows:
27 e. State clearly whether the agreement is a guaranteed
28 price contract or a nonguaranteed price contract. Each
29 nonguaranteed price contract shall contain in twelve point
30 bold type, an explanation of the consequences in substantially
31 the following language:
32 THE PRICES OF MERCHANDISE AND SERVICES UNDER THIS CONTRACT
33 ARE SUBJECT TO CHANGE IN THE FUTURE. ANY FUNDS PAID UNDER
34 THIS CONTRACT ARE ONLY A DEPOSIT TO BE APPLIED, TOGETHER WITH
35 ACCRUED INCOME, TOWARD THE FINAL COSTS OF THE MERCHANDISE OR

1 SERVICES CONTRACTED FOR. ADDITIONAL CHARGES MAY BE REQUIRED.
2 h. Explain the disposition of the ~~interest-and-disclose~~
3 ~~what-fees-and-expenses-may-be-charged-if-incurred~~ income
4 generated from investments, include a statement of fees,
5 expenses, and taxes which may be deducted, and include a
6 statement of the buyer's responsibility for income taxes owed
7 on the income, if applicable.
8 j. ~~State-the-name-and-address-of-the-commissioner.~~
9 Include an explanation of regulatory oversight by the
10 insurance division in twelve point bold type, in substantially
11 the following language:
12 THIS CONTRACT MUST BE REPORTED TO THE IOWA INSURANCE
13 DIVISION BY THE FIRST DAY OF MARCH OF THE FOLLOWING YEAR. YOU
14 MAY CALL THE INSURANCE DIVISION AT (INSERT TELEPHONE NUMBER)
15 TO CONFIRM THAT YOUR CONTRACT HAS BEEN REPORTED. WRITTEN
16 INQUIRIES OR COMPLAINTS SHOULD BE MAILED TO THE FOLLOWING
17 ADDRESS: IOWA SECURITIES BUREAU (INSERT ADDRESS).
18 Sec. 16. Section 523E.8, subsection 1, Code 1995, is
19 amended by adding the following new subsection:
20 NEW SUBSECTION. 1A. The commissioner may adopt rules
21 establishing disclosure and format requirements to promote
22 consumers' understanding of the cemetery merchandise purchased
23 and the available funding mechanisms under an agreement for
24 cemetery merchandise under this chapter.
25 Sec. 17. Section 523E.8, Code 1995, is amended by adding
26 the following new subsection:
27 NEW SUBSECTION. 3. The seller shall disclose at the time
28 an application is made by an individual and prior to accepting
29 the applicant's initial premium or deposit for a preneed
30 funeral contract or prearrangement subject to section 523E.1
31 which is funded by a life insurance policy, the following
32 information:
33 a. That a life insurance policy is involved or being used
34 to fund an agreement.
35 b. The nature of the relationship among the soliciting

1 agent or agents, the provider of the funeral or cemetery
2 merchandise or services, the administrator, and any other
3 person.
4 c. The relationship of the life insurance policy to the
5 funding of the prearrangement and the nature and existence of
6 any guarantees relating to the prearrangement.
7 d. The impact on the prearrangement of the following:
8 (1) Changes in the life insurance policy including, but
9 not limited to, changes in the assignment, beneficiary
10 designation, or use of proceeds.
11 (2) Any penalties to be incurred by the policyholder as a
12 result of the failure to make premium payments.
13 (3) Penalties to be incurred or cash to be received as a
14 result of the cancellation or surrender of the life insurance
15 policy.
16 e. A list of merchandise and services which are applied or
17 contracted for in the prearrangement and all relevant
18 information concerning the price of the merchandise and
19 services, including an indication that the purchase price is
20 either guaranteed at the time of purchase or to be determined
21 at the time of need.
22 f. All relevant information concerning what occurs and
23 whether any entitlements or obligations arise if there is a
24 difference between the proceeds of the life insurance policy
25 and the amount actually needed to fund the agreement.
26 g. Any penalties or restrictions, including but not
27 limited to, geographic restrictions or the inability of the
28 provider to perform, on the delivery of merchandise, services,
29 or the prearrangement guarantee.
30 h. That a sales commission or other form of compensation
31 is being paid and, if so, the identity of the individuals or
32 entities to whom it is paid.
33 Sec. 18. Section 523E.20, Code 1995, is amended to read as
34 follows:
35 523E.20 INSURANCE DIVISION'S REGULATORY FUND.

1 The insurance division may authorize the creation of a
2 special revenue fund in the state treasury, to be known as the
3 insurance division regulatory fund. ~~Commencing July 1, 1990,~~
4 ~~and annually thereafter, the~~ The commissioner shall allocate
5 annually from the fees paid pursuant to section 523E.2, ~~one~~
6 ~~dollar~~ two dollars for each agreement reported on an
7 establishment permit holder's annual report for deposit to the
8 regulatory fund. The remainder of the fees collected pursuant
9 to section 523E.2 shall be deposited into the general fund of
10 the state. In addition, on May 1 of ~~1994~~ 1996 and ~~1995~~ 1997,
11 the commissioner, to the extent necessary to fund consumer
12 education, audits, investigations, payments under contract
13 with licensed establishments to provide funeral and cemetery
14 merchandise or services in the event of statutory
15 noncompliance by the initial seller, liquidations, and
16 receiverships, shall assess establishment permit holders ~~five~~
17 two dollars for each agreement reported on the establishment
18 permit holder's annual report of sales executed during the
19 preceding year, which shall be deposited in the insurance
20 division regulatory fund. ~~However, if the balance of the~~
21 ~~regulatory fund on that July 1 exceeds two hundred thousand~~
22 ~~dollars, the allocation to the regulatory fund shall not be~~
23 ~~made and the total sum of the fees paid pursuant to section~~
24 ~~523E.2 shall be deposited in the general fund of the state.~~
25 The moneys in the regulatory fund shall be retained in the
26 fund. The moneys are appropriated and, subject to
27 authorization by the commissioner, may be used to pay
28 auditors, audit expenses, investigative expenses, and the
29 expenses of receiverships established pursuant to section
30 523E.19. An annual assessment shall not be imposed if the
31 current balance of the fund exceeds two hundred thousand
32 dollars.
33 Sec. 19. NEW SECTION. 523E.21 LICENSE REVOCATION --
34 RECOMMENDATION BY COMMISSIONER TO BOARD OF MORTUARY SCIENCE
35 EXAMINERS.

1 Upon a determination by the commissioner that grounds exist
2 for an administrative license revocation action by the board
3 of mortuary science examiners under chapter 156, the
4 commissioner may forward to the board the grounds for the
5 determination, including all evidence in the possession of the
6 commissioner, so that the board may proceed with the matter as
7 deemed appropriate.
8 Sec. 20. NEW SECTION. 523J.1 DEFINITIONS.
9 As used in this chapter, unless the context otherwise
10 requires:
11 1. "Abandoned cemetery" means any cemetery where there has
12 been a failure to cut grass or weeds or care for graves, grave
13 markers, walls, fences, driveways, and buildings, or for which
14 proper records have not been maintained.
15 2. "Cemetery" means a cemetery, mausoleum, columbarium, or
16 other space held for the purpose of burial, entombment, or
17 inurnment of human remains, and which is subject to this
18 chapter.
19 3. "Commissioner" means the commissioner of insurance or
20 the deputy appointed under section 502.601.
21 4. "Interment rights" means a right of use conveyed by
22 contract or property ownership to inter human rights in a
23 columbarium, grave, mausoleum, lawn crypt, or undeveloped
24 space.
25 5. "Perpetual care cemetery" means a cemetery which has
26 established a perpetual care fund for the maintenance, repair,
27 and care of all interment spaces subject to perpetual care
28 within the cemetery in compliance with section 566A.3 or
29 566A.4.
30 Sec. 21. NEW SECTION. 523J.2 CEMETERIES COMMENCING
31 BUSINESS AFTER JULY 1, 1995.
32 A cemetery which is organized or commences business in this
33 state on or after July 1, 1995, shall operate as a perpetual
34 care cemetery and is subject to this chapter and other
35 applicable law.

1 Sec. 22. NEW SECTION. 523J.3 PERMIT REQUIREMENTS.
2 1. A perpetual care cemetery shall not sell or offer
3 interment rights to the public without a permit as provided
4 for in this section.
5 2. Applications for a permit shall be made to and filed
6 with the commissioner on forms approved by the commissioner
7 and accompanied by a filing fee of twenty dollars. If the
8 application contains the following information, the
9 commissioner shall issue the license:
10 (a) The name and principal address of the applicant.
11 (b) The identity of the applicant's owner or owners.
12 (c) Evidence of a trust fund for cemetery maintenance and
13 care in compliance with section 566A.3 or 566A.4.
14 3. Each permit issued under this chapter shall expire on
15 June 30 of the year following the date of issuance.
16 Sec. 23. NEW SECTION. 523J.4 DENIAL, SUSPENSION, OR
17 REVOCATION OF PERMIT.
18 The commissioner, pursuant to chapter 17A, may deny,
19 suspend, or revoke any permit to operate a cemetery if the
20 commissioner finds any of the following:
21 1. The cemetery has committed a fraudulent practice, or
22 the cemetery's trust assets, warehoused merchandise, surety
23 bonds, or insurance funding are in material noncompliance with
24 chapter 523A or 523E or section 566A.3 or 566A.4.
25 2. An owner or officer of the cemetery has been convicted
26 of a felony related to the sale of interment rights or the
27 sale of funeral services, funeral merchandise, or cemetery
28 merchandise, as defined in section 523A.5, subsection 2,
29 paragraphs "a" and "b", and section 523E.5, subsection 2,
30 paragraph "a".
31 Sec. 24. NEW SECTION. 523J.5 LIQUIDATION.
32 1. GROUNDS FOR LIQUIDATION. The commissioner may petition
33 the district court for an order directing the commissioner to
34 liquidate a perpetual care cemetery on any of the following
35 grounds:

1 a. The cemetery's trust fund is in material noncompliance
2 with the requirements of section 566A.3 or 566A.4 and is
3 insolvent.
4 b. The cemetery's trust fund is in material noncompliance
5 with the requirements of section 566A.3 or 566A.4 and the
6 condition of the cemetery is such that the further transaction
7 of business would be hazardous, financially or otherwise, to
8 its customers or the public.
9 c. The cemetery has been abandoned.
10 2. LIQUIDATION ORDER.
11 a. An order to liquidate the business of a perpetual care
12 cemetery shall appoint the commissioner as liquidator and
13 shall direct the liquidator to immediately take possession of
14 the assets of the cemetery and to administer them under the
15 general supervision of the court. The liquidator is vested
16 with the title to the property, contracts, and rights of
17 action and the books and records of the cemetery ordered
18 liquidated, wherever located, as of the entry of the final
19 order of liquidation. The filing or recording of the order
20 with the clerk of court and the recorder of deeds of the
21 county in which its principal office or place of business is
22 located, or, in the case of real estate with the recorder of
23 deeds of the county where the property is located, is notice
24 as a deed, bill of sale, or other evidence of title duly filed
25 or recorded with the recorder of deeds.
26 b. Upon issuance of an order, the rights and liabilities
27 of a cemetery and of the cemetery's creditors, customers,
28 owners, and other persons interested in the cemetery's estate
29 shall become fixed as of the date of the entry of the order of
30 liquidation, except as provided in subsection 14.
31 c. At the time of petitioning for an order of liquidation,
32 or at any time after the time of petitioning, the
33 commissioner, after making appropriate findings of a
34 cemetery's insolvency, may petition the court for a
35 declaration of insolvency. After providing notice and hearing

1 as it deems proper, the court may make the declaration.
2 d. An order issued under this section shall require
3 accounting to the court by the liquidator. Accountings, at a
4 minimum, must include all funds received or disbursed by the
5 liquidator during the current period. An accounting shall be
6 filed within one year of the liquidation order and at such
7 other times as the court may require.
8 e. Within five days after the initiation of an appeal of
9 an order of liquidation, which order has not been stayed, the
10 commissioner shall present for the court's approval a plan for
11 the continued performance of the cemetery's obligations during
12 the pendency of an appeal. The plan shall provide for the
13 continued performance of interment rights contracts in the
14 normal course of events, notwithstanding the grounds alleged
15 in support of the order of liquidation including the ground of
16 insolvency. If the defendant cemetery's financial condition,
17 in the judgment of the commissioner, will not support the full
18 performance of all obligations during the appeal pendency
19 period, the plan may prefer the claims of certain customers
20 and claimants over creditors and interested parties as well as
21 other customers and claimants, as the commissioner finds to be
22 fair and equitable considering the relative circumstances of
23 such customers and claimants. The court shall examine the
24 plan submitted by the commissioner and if it finds the plan to
25 be in the best interests of the parties, the court shall
26 approve the plan. An action shall not lie against the
27 commissioner or any of the commissioner's deputies, agents,
28 clerks, assistants, or attorneys by any party based on
29 preference in an appeal pendency plan approved by the court.
30 3. POWERS OF LIQUIDATOR.
31 a. The liquidator may do any of the following:
32 (1) Appoint a special deputy to act for the liquidator
33 under this chapter, and determine the special deputy's
34 reasonable compensation. The special deputy shall have all
35 the powers of the liquidator granted by this section. The

1 special deputy shall serve at the pleasure of the liquidator.
2 (2) Hire employees and agents, legal counsel, accountants,
3 appraisers, consultants, and other personnel as the
4 commissioner may deem necessary to assist in the liquidation.
5 (3) With the approval of the court fix reasonable
6 compensation of employees and agents, legal counsel,
7 accountants, appraisers and consultants.
8 (4) Pay reasonable compensation to persons appointed and
9 defray from the funds or assets of the cemetery all expenses
10 of taking possession of, conserving, conducting, liquidating,
11 disposing of, or otherwise dealing with the business and
12 property of the cemetery. If the property of the cemetery
13 does not contain sufficient cash or liquid assets to defray
14 the costs incurred, the commissioner may advance the costs so
15 incurred out of the insurance division cemetery fund. Amounts
16 so advanced for expenses of administration shall be repaid to
17 the insurance division cemetery fund for the use of the
18 division out of the first available moneys of the cemetery.
19 (5) Hold hearings, subpoena witnesses, and compel their
20 attendance, administer oaths, examine a person under oath, and
21 compel a person to subscribe to the person's testimony after
22 it has been correctly reduced to writing, and in connection to
23 the proceedings require the production of books, papers,
24 records, or other documents which the liquidator deems
25 relevant to the inquiry.
26 (6) Collect debts and moneys due and claims belonging to
27 the cemetery, wherever located. Pursuant to this
28 subparagraph, the liquidator may do any of the following:
29 (a) Institute timely action in other jurisdictions to
30 forestall garnishment and attachment proceedings against
31 debts.
32 (b) Perform acts as are necessary or expedient to collect,
33 conserve, or protect its assets or property, including the
34 power to sell, compound, compromise, or assign debts for
35 purposes of collection upon terms and conditions as the

1 liquidator deems best.
2 (c) Pursue any creditor's remedies available to enforce
3 claims.
4 (7) Conduct public and private sales of the property of
5 the cemetery.
6 (8) Use assets of the cemetery under a liquidation order
7 to transfer obligations of preneed funeral contracts to a
8 solvent cemetery, if the transfer can be accomplished without
9 prejudice to applicable priorities under subsection 18.
10 (9) Acquire, hypothecate, encumber, lease, improve, sell,
11 transfer, abandon, or otherwise dispose of or deal with
12 property of the cemetery at its market value or upon terms and
13 conditions as are fair and reasonable. The liquidator shall
14 also have power to execute, acknowledge, and deliver deeds,
15 assignments, releases, and other instruments necessary to
16 effectuate a sale of property or other transaction in
17 connection with the liquidation.
18 (10) Borrow money on the security of the cemetery's assets
19 or without security and execute and deliver documents
20 necessary to that transaction for the purpose of facilitating
21 the liquidation. Money borrowed pursuant to this subparagraph
22 shall be repaid as an administrative expense and have priority
23 over any other class 1 claims under the priority of
24 distribution established in subsection 18.
25 (11) Enter into contracts as necessary to carry out the
26 order to liquidate and affirm or disavow contracts to which
27 the cemetery is a party.
28 (12) Continue to prosecute and to institute in the name of
29 the cemetery or in the liquidator's own name any and all suits
30 and other legal proceedings, in this state or elsewhere, and
31 to abandon the prosecution of claims the liquidator deems
32 unprofitable to pursue further.
33 (13) Prosecute an action on behalf of the creditors,
34 customers, or owners against an officer of the cemetery or any
35 other person.

1 (14) Remove records and property of the cemetery to the
2 offices of the commissioner or to other places as may be
3 convenient for the purposes of efficient and orderly execution
4 of the liquidation.
5 (15) Deposit in one or more banks in this state sums as
6 are required for meeting current administration expenses and
7 distributions.
8 (16) Unless the court orders otherwise, invest funds not
9 currently needed.
10 (17) File necessary documents for recording in the office
11 of a recorder of deeds or record office in this state or
12 elsewhere where property of the cemetery is located.
13 (18) Assert defenses available to the cemetery as against
14 third persons including statutes of limitations, statutes of
15 fraud, and the defense of usury. A waiver of a defense by the
16 cemetery after a petition in liquidation has been filed shall
17 not bind the liquidator.
18 (19) Exercise and enforce the rights, remedies, and powers
19 of a creditor, customer, or owner, including the power to
20 avoid transfer or lien that may be given by the general law
21 and that is not included within subsections 7 through 9.
22 (20) Intervene in a proceeding wherever instituted that
23 might lead to the appointment of a receiver or trustee, and
24 act as the receiver or trustee whenever the appointment is
25 offered.
26 (21) Exercise powers now held or later conferred upon
27 receivers by the laws of this state which are not inconsistent
28 with this chapter.
29 b. This section does not limit the liquidator or exclude
30 the liquidator from exercising a power not listed in paragraph
31 "a" that may be necessary or appropriate to accomplish the
32 purposes of this chapter.
33 4. NOTICE TO CREDITORS AND OTHERS.
34 a. Unless the court otherwise directs, the liquidator
35 shall give notice of the liquidation order as soon as possible

1 by doing all of the following:
2 (1) By first class mail to all persons known or reasonably
3 expected to have claims against the cemetery, including
4 customers who purchased interment rights, by mailing a notice
5 to their last known address as indicated by the records of the
6 cemetery.
7 (2) By publication in a newspaper of general circulation
8 in the county in which the cemetery has its principal place of
9 business and in other locations as the liquidator deems
10 appropriate.
11 b. Notice to potential claimants under paragraph "a" shall
12 require claimants to file with the liquidator their claims
13 together with proper proofs of the claim under subsection 13
14 on or before a date the liquidator shall specify in the
15 notice. Claimants shall keep the liquidator informed of their
16 changes of address, if any.
17 c. If notice is given pursuant to this section, the
18 distribution of assets of the cemetery under this chapter
19 shall be conclusive with respect to claimants, whether or not
20 a claimant actually received notice.
21 5. ACTIONS BY AND AGAINST LIQUIDATOR.
22 a. After the issuance of an order appointing a liquidator
23 of a cemetery, an action at law or equity shall not be brought
24 against the cemetery in this state or elsewhere, and existing
25 actions shall not be maintained or further presented after
26 issuance of the order. Whenever in the liquidator's judgment,
27 protection of the estate of the cemetery necessitates
28 intervention in an action against the cemetery that is pending
29 outside this state, the liquidator may intervene in the
30 action. The liquidator may defend, at the expense of the
31 estate of the cemetery, an action in which the liquidator
32 intervenes under this section.
33 b. Within two years or such additional time as applicable
34 law may permit, the liquidator, after the issuance of an order
35 for liquidation, may institute an action or proceeding on

1 behalf of the estate of the cemetery upon any cause of action
2 against which the period of limitation fixed by applicable law
3 has not expired at the time of the filing of the petition upon
4 which the order is entered. If a period of limitation is
5 fixed by agreement for instituting a suit or proceeding upon a
6 claim, or for filing a claim, proof of claim, proof of loss,
7 demand, notice, or the like, or if in a proceeding, judicial
8 or otherwise, a period of limitation is fixed in the
9 proceeding or pursuant to applicable law for taking an action,
10 filing a claim or pleading, or doing an act, and if the period
11 had not expired at the date of the filing of the petition, the
12 liquidator, for the benefit of the estate, may take any action
13 or do any act, required of or permitted to the cemetery,
14 within a period of one hundred eighty days subsequent to the
15 entry of an order for liquidation, or within a further period
16 as is shown to the satisfaction of the court not to be
17 unfairly prejudicial to the other party.
18 c. A statute of limitation or defense of laches shall not
19 run with respect to an action against a cemetery between the
20 filing of a petition for liquidation against the cemetery and
21 the denial of the petition. An action against the cemetery
22 that might have been commenced when the petition was filed may
23 be commenced for at least sixty days after the petition is
24 denied.
25 6. COLLECTION AND LIST OF ASSETS.
26 a. As soon as practicable after the liquidation order but
27 not later than one hundred twenty days after such order, the
28 liquidator shall prepare in duplicate a list of the cemetery's
29 assets. The list shall be amended or supplemented as the
30 liquidator may determine. One copy shall be filed in the
31 office of the clerk of court and one copy shall be retained
32 for the liquidator's files. Amendments and supplements shall
33 be similarly filed.
34 b. The liquidator shall reduce the assets to a degree of
35 liquidity that is consistent with the effective execution of

1 the liquidation.
2 c. A submission to the court for distribution of assets in
3 accordance with subsection 11 fulfills the requirements of
4 paragraph "a".
5 7. FRAUDULENT TRANSFERS PRIOR TO PETITION.
6 a. A transfer made and an obligation incurred by a
7 cemetery within one year prior to the filing of a successful
8 petition for liquidation under this chapter is fraudulent as
9 to then existing and future creditors if made or incurred
10 without fair consideration, or with actual intent to hinder,
11 delay, or defraud either existing or future creditors. A
12 fraudulent transfer made or an obligation incurred by a
13 cemetery ordered to be liquidated under this chapter may be
14 avoided by the receiver, except as to a person who in good
15 faith is a purchaser, lienor, or obligee for a present fair
16 equivalent value. A purchaser, lienor, or obligee, who in
17 good faith has given a consideration less than fair for such
18 transfer, lien, or obligation, may retain the property, lien,
19 or obligation as security for repayment. The court, on due
20 notice, may order any such transfer or obligation to be
21 preserved for the benefit of the estate, and in that event,
22 the receiver shall succeed to and may enforce the rights of
23 the purchaser, lienor, or obligee.
24 b. (1) A transfer of property other than real property is
25 made when it becomes perfected so that a subsequent lien
26 obtainable by legal or equitable proceedings on a simple
27 contract could not become superior to the rights of the
28 transferee under subsection 9, paragraph "c".
29 (2) A transfer of real property is made when it becomes
30 perfected so that a subsequent bona fide purchaser from the
31 cemetery could not obtain rights superior to the rights of the
32 transferee.
33 (3) A transfer which creates an equitable lien is not
34 perfected if there are available means by which a legal lien
35 could be created.

1 (4) A transfer not perfected prior to the filing of a
2 petition for liquidation is deemed to be made immediately
3 before the filing of the successful petition.
4 (5) This subsection applies whether or not there are or
5 were creditors who might have obtained a lien or persons who
6 might have become bona fide purchasers.
7 8. FRAUDULENT TRANSFER AFTER PETITION.
8 a. After a petition for liquidation has been filed a
9 transfer of real property of the cemetery made to a person
10 acting in good faith is valid against the receiver if made for
11 a present fair equivalent value. If the transfer was not made
12 for a present fair equivalent value, then the transfer is
13 valid to the extent of the present consideration actually paid
14 for which amount the transferee shall have a lien on the
15 property transferred. The commencement of a proceeding in
16 liquidation is constructive notice upon the recording of a
17 copy of the petition for or order of liquidation with the
18 recorder of deeds in the county where any real property in
19 question is located. The exercise by a court of the United
20 States or a state or jurisdiction to authorize a judicial sale
21 of real property of the cemetery within a county in a state
22 shall not be impaired by the pendency of a proceeding unless
23 the copy is recorded in the county prior to the consummation
24 of the judicial sale.
25 b. After a petition for liquidation has been filed and
26 before either the receiver takes possession of the property of
27 the cemetery or an order of liquidation is granted:
28 (1) A transfer of the property, other than real property,
29 of the cemetery made to a person acting in good faith is valid
30 against the receiver if made for a present fair equivalent
31 value. If the transfer was not made for a present fair
32 equivalent value, then the transfer is valid to the extent of
33 the present consideration actually paid for which amount the
34 transferee shall have a lien on the property transferred.
35 (2) If acting in good faith, a person indebted to the

1 cemetery or holding property of the cemetery may pay the debt
2 or deliver the property, or any part of the property, to the
3 cemetery or upon the cemetery's order as if the petition were
4 not pending.
5 (3) A person having actual knowledge of the pending
6 liquidation is not acting in good faith.
7 (4) A person asserting the validity of a transfer under
8 this subsection has the burden of proof. Except as provided
9 in this subsection, a transfer by or on behalf of the cemetery
10 after the date of the petition for liquidation by any person
11 other than the liquidator is not valid against the liquidator.
12 c. A person receiving any property from the cemetery or
13 any benefit of the property of the cemetery which is a
14 fraudulent transfer under paragraph "a" is personally liable
15 for the property or benefit and shall account to the
16 liquidator.
17 d. This chapter does not impair the negotiability of
18 currency or negotiable instruments.
19 9. VOIDABLE PREFERENCES AND LIENS.
20 a. (1) A preference is a transfer of the property of a
21 cemetery to or for the benefit of a creditor for an antecedent
22 debt made or suffered by the cemetery within one year before
23 the filing of a successful petition for liquidation under this
24 chapter, the effect of which transfer may be to enable the
25 creditor to obtain a greater percentage of this debt than
26 another creditor of the same class would receive. If a
27 liquidation order is entered while the cemetery is already
28 subject to a receivership, then the transfers are preferences
29 if made or suffered within one year before the filing of the
30 successful petition for the receivership, or within two years
31 before the filing of the successful petition for liquidation,
32 whichever time is shorter.
33 (2) A preference may be avoided by the liquidator if any
34 of the following exist:
35 (a) The cemetery was insolvent at the time of the

1 transfer.
2 (b) The transfer was made within four months before the
3 filing of the petition.
4 (c) At the time the transfer was made, the creditor
5 receiving it or to be benefited by the transfer or the
6 creditor's agent acting with reference to the transfer had
7 reasonable cause to believe that the cemetery was insolvent or
8 was about to become insolvent.
9 (d) The creditor receiving the transfer was an officer, or
10 an employee, attorney, or other person who was in fact in a
11 position of comparable influence in the cemetery to an officer
12 whether or not the person held the position of an officer,
13 owner, or other person, firm, corporation, association, or
14 aggregation of persons with whom the cemetery did not deal at
15 arm's length.
16 (3) Where the preference is voidable, the liquidator may
17 recover the property. If the property has been converted, the
18 liquidator may recover its value from a person who has
19 received or converted the property. However, if a bona fide
20 purchaser or lienor has given less than fair equivalent value,
21 the purchaser or lienor shall have a lien upon the property to
22 the extent of the consideration actually given. Where a
23 preference by way of lien or security interest is voidable,
24 the court may on due notice order the lien or security
25 interest to be preserved for the benefit of the estate, in
26 which event the lien or title shall pass to the liquidator.
27 b. (1) A transfer of property other than real property is
28 made when it becomes perfected so that a subsequent lien
29 obtainable by legal or equitable proceedings on a simple
30 contract could not become superior to the rights of the
31 transferee.
32 (2) A transfer of real property is made when it becomes
33 perfected so that a subsequent bona fide purchaser from the
34 cemetery could not obtain rights superior to the rights of the
35 transferee.

1 (3) A transfer which creates an equitable lien is not
2 perfected if there are available means by which a legal lien
3 could be created.
4 (4) A transfer not perfected prior to the filing of a
5 petition for liquidation is deemed to be made immediately
6 before the filing of the successful petition.
7 (5) This subsection applies whether or not there are or
8 were creditors who might have obtained liens or persons who
9 might have become bona fide purchasers.
10 c. (1) A lien obtainable by legal or equitable
11 proceedings upon a simple contract is one arising in the
12 ordinary course of the proceedings upon the entry or docketing
13 of a judgment or decree, or upon attachment, garnishment,
14 execution, or like process, whether before, upon, or after
15 judgment or decree and whether before or upon levy. It does
16 not include liens which under applicable law are given a
17 special priority over other liens which are prior in time.
18 (2) A lien obtainable by legal or equitable proceedings
19 could become superior to the rights of a transferee, or a
20 purchaser could obtain rights superior to the rights of a
21 transferee within the meaning of paragraph "b", if such
22 consequences would follow only from the lien or purchase
23 itself, or from the lien or purchase followed by a step wholly
24 within the control of the respective lienholder or purchaser,
25 with or without the aid of ministerial action by public
26 officials. However, a lien could not become superior and a
27 purchase could not create superior rights for the purpose of
28 paragraph "b" through an act subsequent to the obtaining of a
29 lien or subsequent to a purchase which requires the agreement
30 or concurrence of any third party or which requires further
31 judicial action or ruling.
32 d. A transfer of property for or on account of a new and
33 contemporaneous consideration, which is under paragraph "b"
34 made or suffered after the transfer because of delay in
35 perfecting it, does not become a transfer for or on account of

1 an antecedent debt if any acts required by the applicable law
2 to be performed in order to perfect the transfer as against
3 liens or a bona fide purchaser's rights are performed within
4 twenty-one days or any period expressly allowed by the law,
5 whichever is less. A transfer to secure a future loan, if a
6 loan is actually made, or a transfer which becomes security
7 for a future loan, shall have the same effect as a transfer
8 for or on account of a new and contemporaneous consideration.
9 e. If a lien voidable under paragraph "a", subparagraph
10 (2) has been dissolved by the furnishing of a bond or other
11 obligation, the surety on which has been indemnified directly
12 or indirectly by the transfer or the creation of a lien upon
13 property of a cemetery before the filing of a petition under
14 this chapter which results in a liquidation order, the
15 indemnifying transfer or lien is also voidable.
16 f. The property affected by a lien voidable under
17 paragraphs "a" and "e" is discharged from the lien. The
18 property and any of the indemnifying property transferred to
19 or for the benefit of a surety shall pass to the liquidator.
20 However, the court may on due notice order a lien to be
21 preserved for the benefit of the estate and the court may
22 direct that the conveyance be executed to evidence the title
23 of the liquidator.
24 g. The court shall have summary jurisdiction of a
25 proceeding by the liquidator to hear and determine the rights
26 of the parties under this section. Reasonable notice of
27 hearing in the proceeding shall be given to all parties in
28 interest, including the obligee of a releasing bond or other
29 like obligation. Where an order is entered for the recovery
30 of indemnifying property in kind or for the avoidance of an
31 indemnifying lien, upon application of any party in interest,
32 the court shall in the same proceeding ascertain the value of
33 the property or lien. If the value is less than the amount
34 for which the property is indemnified or less than the amount
35 of the lien, the transferee or lienholder may elect to retain

1 the property or lien upon payment of its value, as ascertained
2 by the court, to the liquidator within the time as fixed by
3 the court.
4 h. The liability of a surety under a releasing bond or
5 other like obligation is discharged to the extent of the value
6 of the indemnifying property recovered or the indemnifying
7 lien nullified and avoided by the liquidator. Where the
8 property is retained under paragraph "g", the liability of the
9 surety is discharged to the extent of the amount paid to the
10 liquidator.
11 i. If a creditor has been preferred for property which
12 becomes a part of the cemetery's estate, and afterward in good
13 faith gives the cemetery further credit without security of
14 any kind, the amount of the new credit remaining unpaid at the
15 time of the petition may be set off against the preference
16 which would otherwise be recoverable from the creditor.
17 j. If within four months before the filing of a successful
18 petition for liquidation under this chapter, or at any time in
19 contemplation of a proceeding to liquidate, a cemetery,
20 directly or indirectly, pays money or transfers property to an
21 attorney for services rendered or to be rendered, the
22 transaction may be examined by the court on its own motion or
23 shall be examined by the court on petition of the liquidator.
24 The payment or transfer shall be held valid only to the extent
25 of a reasonable amount to be determined by the court. The
26 excess may be recovered by the liquidator for the benefit of
27 the estate. However, where the attorney is in a position of
28 influence in the cemetery or an affiliate, payment of any
29 money or the transfer of any property to the attorney for
30 services rendered or to be rendered is governed by the
31 provision of paragraph "a", subparagraph (2), subparagraph
32 subdivision (d).
33 k. (1) An officer, manager, employee, shareholder,
34 subscriber, attorney, or any other person acting on behalf of
35 the cemetery who knowingly participates in giving any

1 preference when the person has reasonable cause to believe the
2 cemetery is or is about to become insolvent at the time of the
3 preference is personally liable to the liquidator for the
4 amount of the preference. There is an inference that
5 reasonable cause exists if the transfer was made within four
6 months before the date of filing of this successful petition
7 for liquidation.
8 (2) A person receiving property from the cemetery or the
9 benefit of the property of the cemetery as a preference
10 voidable under paragraph "a" is personally liable for the
11 property and shall account to the liquidator.
12 (3) This subsection shall not prejudice any other claim by
13 the liquidator against any person.
14 10. CLAIMS OF HOLDER OF VOID OR VOIDABLE RIGHTS.
15 a. A claim of a creditor who has received or acquired a
16 preference, lien, conveyance, transfer, assignment, or
17 encumbrance, voidable under this chapter shall not be allowed
18 unless the creditor surrenders the preference, lien,
19 conveyance, transfer, assignment, or encumbrance. If the
20 avoidance is effected by a proceeding in which a final
21 judgment has been entered, the claim shall not be allowed
22 unless the money is paid or the property is delivered to the
23 liquidator within thirty days from the date of the entering of
24 the final judgment. However, the court having jurisdiction
25 over the liquidation may allow further time if there is an
26 appeal or other continuation of the proceeding.
27 b. A claim allowable under paragraph "a" by reason of a
28 voluntary or involuntary avoidance, preference, lien,
29 conveyance, transfer, assignment, or encumbrance may be filed
30 as an excused late filing under subsection 12, if filed within
31 thirty days from the date of the avoidance or within the
32 further time allowed by the court under paragraph "a".
33 11. LIQUIDATOR'S PROPOSAL TO DISTRIBUTE ASSETS.
34 a. From time to time as assets become available, the
35 liquidator shall make application to the court for approval of

1 a proposal to disburse assets out of marshaled assets.
2 b. The proposal shall at least include provisions for all
3 of the following:
4 (1) Reserving amounts for the payment of all the
5 following:
6 (a) Expenses of administration.
7 (b) To the extent of the value of the security held, the
8 payment of claims of secured creditors.
9 (c) Claims falling within the priorities established in
10 subsection 18, paragraphs "a" and "b".
11 (2) Disbursement of the assets marshaled to date and
12 subsequent disbursement of assets as they become available.
13 c. Action on the application may be taken by the court
14 provided that the liquidator's proposal complies with
15 paragraph "b".
16 12. FILING OF CLAIMS.
17 a. Proof of all claims shall be filed with the liquidator
18 in the form required by subsection 13 on or before the last
19 day for filing specified in the notice required under
20 subsection 4.
21 b. The liquidator may permit a claimant making a late
22 filing to share in distributions, whether past or future, as
23 if the claimant were not late, to the extent that the payment
24 will not prejudice the orderly administration of the
25 liquidation under any of the following circumstances:
26 (1) The existence of the claim was not known to the
27 claimant and that the claimant filed the claim as promptly as
28 reasonably possible after learning of it.
29 (2) A transfer to a creditor was avoided under subsections
30 7 through 9, or was voluntarily surrendered under subsection
31 10, and that the filing satisfies the conditions of subsection
32 10.
33 (3) The valuation under subsection 17 of security held by
34 a secured creditor shows a deficiency, which is filed within
35 thirty days after the valuation.

1 c. The liquidator may consider any claim filed late and
2 permit the claimant to receive distributions which are
3 subsequently declared on any claims of the same or lower
4 priority if the payment does not prejudice the orderly
5 administration of the liquidation. The late-filing claimant
6 shall receive at each distribution the same percentage of the
7 amount allowed on the claim as is then being paid to claimants
8 of any lower priority. This shall continue until the claim
9 has been paid in full.
10 13. PROOF OF CLAIM.
11 a. Proof of claim shall consist of a statement signed by
12 the claimant that includes all of the following that are
13 applicable:
14 (1) The particulars of the claim including the
15 consideration given for it.
16 (2) The identity and amount of the security on the claim.
17 (3) The payments, if any, made on the debt.
18 (4) A statement that the sum claimed is justly owing and
19 that there is no setoff, counterclaim, or defense to the
20 claim.
21 (5) Any right of priority of payment or other specific
22 right asserted by the claimant.
23 (6) A copy of the written instrument which is the
24 foundation of the claim.
25 (7) The name and address of the claimant and the attorney
26 who represents the claimant, if any.
27 b. A claim need not be considered or allowed if it does
28 not contain all the information identified in paragraph "a"
29 which is applicable. The liquidator may require that a
30 prescribed form be used and may require that other information
31 and documents be included.
32 c. At any time the liquidator may request the claimant to
33 present information or evidence supplementary to that required
34 under paragraph "a" and may take testimony under oath, require
35 production of affidavits or depositions, or otherwise obtain

1 additional information or evidence.
2 d. A judgment or order against a cemetery entered after
3 the date of filing of a successful petition for liquidation,
4 or a judgment or order against the cemetery entered at any
5 time by default or by collusion need not be considered as
6 evidence of liability or of the amount of damages. A judgment
7 or order against a cemetery before the filing of the petition
8 need not be considered as evidence of liability or of the
9 amount of damages.
10 14. SPECIAL CLAIMS.
11 a. A claim may be allowed even if contingent, if it is
12 filed pursuant to subsection 12. The claim may be allowed and
13 the claimant may participate in all distributions declared
14 after it is filed to the extent that it does not prejudice the
15 orderly administration of the liquidation.
16 b. Claims that are due except for the passage of time
17 shall be treated as absolute claims are treated. However, the
18 claims may be discounted at the legal rate of interest.
19 c. Claims made under employment contracts by directors,
20 principal officers, or persons in fact performing similar
21 functions or having similar powers are limited to payment for
22 services rendered prior to the issuance of an order of
23 liquidation under subsection 2.
24 15. DISPUTED CLAIMS.
25 a. If a claim is denied in whole or in part by the
26 liquidator, written notice of the determination shall be given
27 to the claimant or the claimant's attorney by first class mail
28 at the address shown in the proof of claim. Within sixty days
29 from the mailing of the notice, the claimant may file
30 objections with the liquidator. Unless a filing is made, the
31 claimant shall not further object to the determination.
32 b. If objections are filed with the liquidator and the
33 liquidator does not alter the denial of the claim as a result
34 of the objections, the liquidator shall ask the court for a
35 hearing as soon as practicable and give notice of the hearing

1 by first class mail to the claimant or the claimant's attorney
2 and to any other persons directly affected. The notice shall
3 be given not less than ten nor more than thirty days before
4 the date of the hearing. The matter shall be heard by the
5 court or by a court-appointed referee. The referee shall
6 submit findings of fact along with a recommendation.
7 16. CLAIMS OF OTHER PERSON. If a creditor, whose claim
8 against a cemetery is secured in whole or in part by the
9 undertaking of another person, fails to prove and file that
10 claim, then the other person may do so in the creditor's name
11 and shall be subrogated to the rights of the creditor, whether
12 the claim has been filed by the creditor or by the other
13 person in the creditor's name to the extent that the other
14 person discharges the undertaking. However, in the absence of
15 an agreement with the creditor to the contrary, the other
16 person is not entitled to any distribution until the amount
17 paid to the creditor on the undertaking plus the distributions
18 paid on the claim from the cemetery's estate to the creditor
19 equal the amount of the entire claim of the creditor. An
20 excess received by the creditor shall be held by the creditor
21 in trust for the other person.
22 17. SECURED CREDITOR'S CLAIMS.
23 a. The value of security held by a secured creditor shall
24 be determined in one of the following ways, as the court may
25 direct:
26 (1) By converting the security into money according to the
27 terms of the agreement pursuant to which the security was
28 delivered to the creditors.
29 (2) By agreement, arbitration, compromise, or litigation
30 between the creditor and the liquidator.
31 b. The determination shall be under the supervision and
32 control of the court with due regard for the recommendation of
33 the liquidator. The amount determined shall be credited upon
34 the secured claim. A deficiency shall be treated as an
35 unsecured claim. If the claimant surrenders the security to

1 the liquidator, the entire claim shall be allowed as if
2 unsecured.
3 18. PRIORITY OF DISTRIBUTION.
4 The priority of distribution of claims from the cemetery's
5 estate shall be in accordance with the order in which each
6 class of claims is set forth. Claims in each class shall be
7 paid in full or adequate funds retained for the payment before
8 the members of the next class receive any payment. Subclasses
9 shall not be established within a class. The order of
10 distribution of claims is as follows:
11 a. CLASS 1. The costs and expenses of administration,
12 including but not limited to the following:
13 (1) The actual and necessary costs of preserving or
14 recovering the assets of the cemetery.
15 (2) Compensation for all authorized services rendered in
16 the liquidation.
17 (3) Necessary filing fees.
18 (4) The fees and mileage payable to witnesses.
19 (5) Authorized reasonable attorney's fees and other
20 professional services rendered in the liquidation.
21 b. CLASS 2. Reasonable compensation to employees for
22 services performed to the extent that they do not exceed two
23 months of monetary compensation and represent payment for
24 services performed within one year before the filing of the
25 petition for liquidation. Officers and directors are not
26 entitled to the benefit of this priority. The priority is in
27 lieu of other similar priority which may be authorized by law
28 as to wages or compensation of employees.
29 c. CLASS 3. Claims under interment rights contracts.
30 d. CLASS 4. Claims of general creditors.
31 e. CLASS 5. Claims of the federal or any state or local
32 government. Claims, including those of a governmental body
33 for a penalty or forfeiture, are allowed in this class only to
34 the extent of the pecuniary loss sustained from the act,
35 transaction, or proceeding out of which the penalty or

1 forfeiture arose, with reasonable and actual costs incurred.
2 The remainder of such claims shall be postponed to the class
3 of claims under paragraph "g".
4 f. CLASS 6. Claims filed late or any other claims other
5 than claims under paragraph "g".
6 g. CLASS 7. The claims of shareholders or other owners.
7 19. LIQUIDATOR'S RECOMMENDATIONS TO THE COURT.
8 a. The liquidator shall review claims duly filed in the
9 liquidation and shall make further investigation as necessary.
10 The liquidator may compound, compromise or in any other manner
11 negotiate the amount for which claims will be recommended to
12 the court except where the liquidator is required by law to
13 accept claims as settled by a person or organization.
14 Unresolved disputes shall be determined under subsection 15.
15 As soon as practicable, the liquidator shall present to the
16 court a report of the claims against the cemetery with the
17 liquidator's recommendations. The report shall include the
18 name and address of each claimant and the amount of the claim
19 finally recommended.
20 b. The court may approve, disapprove, or modify the report
21 on claims by the liquidator. Reports not modified by the
22 court within sixty days following submission by the liquidator
23 shall be treated by the liquidator as allowed claims, subject
24 to later modification or to rulings made by the court pursuant
25 to subsection 15. A claim under a policy of insurance shall
26 not be allowed for an amount in excess of the applicable
27 policy limits.
28 20. DISTRIBUTION OF ASSETS. Under the direction of the
29 court, the liquidator shall pay distributions in a manner that
30 will assure the proper recognition of priorities and a
31 reasonable balance between the expeditious completion of the
32 liquidation and the protection of unliquidated and
33 undetermined claims, including third-party claims.
34 Distribution of assets in kind may be made at valuations set
35 by agreement between the liquidator and the creditor and

1 approved by the court.
2 21. UNCLAIMED AND WITHHELD FUNDS.
3 a. Unclaimed funds subject to distribution remaining in
4 the liquidator's hands when the liquidator is ready to apply
5 to the court for discharge, including the amount distributable
6 to a creditor, owner, or other person who is unknown or cannot
7 be found, shall be deposited with the treasurer of state, and
8 shall be paid without interest, except as provided in
9 subsection 18, to the person entitled or the person's legal
10 representative upon proof satisfactory to the treasurer of
11 state of the right to the funds. An amount on deposit not
12 claimed within six years from the discharge of the liquidator
13 is deemed to have been abandoned and shall become the property
14 of the state without formal escheat proceedings and be
15 transferred to the insurance division regulatory fund.
16 b. Funds withheld under subsection 14 and not distributed
17 shall upon discharge of the liquidator be deposited with the
18 treasurer of state and paid pursuant to subsection 18. Sums
19 remaining which under subsection 18 would revert to the
20 undistributed assets of the cemetery shall be transferred to
21 the insurance division regulatory fund and become the property
22 of the state as provided under paragraph "a", unless the
23 commissioner in the commissioner's discretion petitions the
24 court to reopen the liquidation pursuant to subsection 23.
25 c. Notwithstanding any other provision of this chapter,
26 funds as identified in paragraph "a", with the approval of the
27 court, shall be made available to the commissioner for use in
28 the detection and prevention of future insolvencies. The
29 commissioner shall hold these funds in the insurance division
30 regulatory fund and shall pay without interest, except as
31 provided in subsection 18, to the person entitled to the funds
32 or the person's legal representative upon proof satisfactory
33 to the commissioner of the person's right to the funds. The
34 funds shall be held by the commissioner for a period of two
35 years at which time the rights and duties to the unclaimed

1 funds shall vest in the commissioner.
2 22. TERMINATION OF PROCEEDINGS.
3 a. When all assets justifying the expense of collection
4 and distribution have been collected and distributed under
5 this chapter, the liquidator shall apply to the court for
6 discharge. The court may grant the discharge and make any
7 other orders, including an order to transfer remaining funds
8 that are uneconomical to distribute, as appropriate.
9 b. Any other person may apply to the court at any time for
10 an order under paragraph "a". If the application is denied,
11 the applicant shall pay the costs and expenses of the
12 liquidator in resisting the application, including a
13 reasonable attorney's fee.
14 23. REOPENING LIQUIDATION. At any time after the
15 liquidation proceeding has been terminated and the liquidator
16 discharged, the commissioner or other interested party may
17 petition the court to reopen the proceedings for good cause
18 including the discovery of additional assets. The court shall
19 order the proceeding reopened if it is satisfied that there is
20 justification for the reopening.
21 24. DISPOSITION OF RECORDS DURING AND AFTER TERMINATION OF
22 LIQUIDATION. If it appears to the commissioner that the
23 records of a cemetery in process of liquidation or completely
24 liquidated are no longer useful, the commissioner may
25 recommend to the court and the court shall direct what records
26 shall be retained for future reference and what records shall
27 be destroyed.
28 25. EXTERNAL AUDIT OF RECEIVER'S BOOKS. The court may
29 order audits to be made of the books of the commissioner
30 relating to a receivership established under this chapter, and
31 a report of each audit shall be filed with the commissioner
32 and with the court. The books, records, and other documents
33 of the receivership shall be made available to the auditor at
34 any time without notice. The expense of an audit shall be
35 considered a cost of administration of the receivership.

1 26. TRANSFER TO GOVERNMENTAL SUBDIVISION. If the
2 liquidator is unable to sell the cemetery after one year, the
3 liquidator may vest title in an appropriate governmental
4 subdivision. The perpetual care guarantee fund, together with
5 all investments then outstanding, and all books, records, and
6 papers of the cemetery shall be transferred to the treasurer
7 of the governmental subdivision. The principal and interest
8 of the fund shall be used exclusively for the care and
9 maintenance of the cemetery.
10 Sec. 25. NEW SECTION. 523J.6 POWERS AND DUTIES OF
11 PERPETUAL CARE CEMETERIES.
12 1. Within the boundaries of the cemetery lands that the
13 cemetery owns, a cemetery may perform the following functions:
14 a. The exclusive care and maintenance of the cemetery.
15 b. The exclusive interment, entombment, or inurnment of
16 human remains, including the exclusive right to open, prepare
17 for interment, and close all ground, mausoleum, and urn
18 burials. Each preneed contract for burial rights or services
19 shall disclose, pursuant to the cemetery's bylaws, rules, and
20 regulations, whether opening and closing of the burial space
21 is included in the contract, and, if not, the current prices
22 for opening and closing and a statement that these prices are
23 subject to change. Each cemetery which sells preneed
24 contracts must offer opening and closing as part of a preneed
25 contract.
26 c. The exclusive initial preneed and at-need sale of
27 interment or burial rights in earth, mausoleum, crypt, niche,
28 or columbarium interment. However, this chapter does not
29 limit the right of a person owning interment or burial rights
30 to sell those rights to third parties subject to transfer of
31 title by the cemetery.
32 d. The adoption of bylaws regulating the activities
33 conducted within the cemetery's boundaries, provided that a
34 licensed funeral director shall not be denied access by any
35 cemetery to conduct a funeral for or supervise a disinterment

1 of human remains. The cemetery shall not approve any bylaw
2 which unreasonably restricts competition, or which
3 unreasonably increases the cost to the owner of interment or
4 burial rights in utilizing these rights.
5 e. The nonexclusive preneed and at-need sale of monuments,
6 memorials, markers, burial vaults, urns, flower vases, floral
7 arrangements, and other similar merchandise for use within the
8 cemetery.
9 f. The entry into sales or management contracts with other
10 persons. The cemetery shall be responsible for the deposit of
11 all moneys required to be placed in a trust fund.
12 2. A full disclosure shall be made of all fees required
13 for interment, entombment, or inurnment of human remains.
14 3. A cemetery may adopt bylaws establishing minimum
15 standards for burial merchandise or the installation of such
16 merchandise.
17 Sec. 26. NEW SECTION. 523J.7 INVESTIGATIONS.
18 The commissioner or the attorney general, for the purpose
19 of discovering violations of this chapter, may do any of the
20 following:
21 1. Investigate the cemetery and examine records as
22 necessary to verify compliance with this chapter.
23 2. Administer oaths and affirmations, subpoena witnesses,
24 receive evidence, and require the production of documents and
25 records in connection with an investigation or proceeding
26 being conducted pursuant to this chapter.
27 3. Apply to the district court for issuance of an order
28 requiring a person's appearance before the commissioner or
29 attorney general, or a designee of either or both, in cases
30 where the person has refused to obey a subpoena issued by the
31 commissioner or attorney general. The person may also be
32 required to produce documentary evidence germane to the
33 subject of the investigation. Failure to obey a court order
34 under this subsection constitutes contempt of court.
35 Sec. 27. Section 566A.1, subsection 1, Code 1995, is

1 amended to read as follows:
2 1. A corporation or other form of organization engaging in
3 the business of the ownership, maintenance, or operation of a
4 cemetery, which provides lots or other interment space for the
5 remains of human bodies is subject to this chapter. However,
6 a ~~church,~~ religious ~~organization,-or-established-fraternal~~
7 ~~society~~ cemetery is subject only to subsection 2 ~~of-this~~
8 ~~section~~, and sections 566A.2A, 566A.2B, and 566A.2C.
9 Political subdivisions of the state are exempt from ~~this~~
10 ~~chapter~~ sections 566A.3 and 566A.6.
11 Sec. 28. NEW SECTION. 566A.1A DEFINITIONS.
12 As used in this chapter, unless the context otherwise
13 requires:
14 1. "Agent" means a person authorized by a cemetery or a
15 cemetery operator to represent the cemetery in dealing with
16 the public.
17 2. "Cemetery" means a cemetery, mausoleum, columbarium, or
18 other space held for the purpose of burial, entombment, or
19 inurnment of human remains and where such space is offered for
20 sale to the public.
21 3. "Cemetery operator" means a person who owns, controls,
22 operates, or manages a cemetery, who is responsible for the
23 cemetery's care and maintenance, and who controls the opening
24 and closing of all graves, crypts, and niches.
25 4. "Columbarium" means a structure or room or other space
26 in a building or structure used or intended to be used for the
27 inurnment or deposit of cremated human remains.
28 5. "Commissioner" means the commissioner of insurance or
29 the deputy appointed under section 502.601.
30 6. "Deed" means the assignment or conveyance of interment
31 rights.
32 7. "Grave" means a piece of land that is used or intended
33 to be used for the underground burial of human remains, other
34 than an underground mausoleum or columbarium space.
35 8. "Human remains" means the body of a deceased individual

1 that is in any stage of decomposition or has been cremated.
2 9. "Interment" means the disposition of human remains by
3 earth burial, entombment, or inurnment.
4 10. "Interment rights" means a right of use conveyed by
5 contract or property ownership to inter human remains in a
6 columbarium, grave, mausoleum, lawn crypt, or undeveloped
7 space.
8 11. "Lawn crypt" means an outer enclosure, for a casket or
9 similar inner burial container which is permanently installed
10 below ground prior to the time of actual interment. A lawn
11 crypt may permit single or multiple interments in a grave
12 space.
13 12. "Mausoleum" means a building, structure, or part of a
14 building or structure that is used or intended to be used for
15 the entombment of human remains.
16 13. "Mausoleum space" means a niche, crypt, or specific
17 place in a mausoleum that contains or is intended to contain
18 human remains.
19 14. "Niche" means a recess in the wall of a mausoleum or
20 columbarium for the deposit of human remains.
21 15. "Perpetual care" means maintenance, repair, and care
22 of all interment spaces, features, buildings, roadways,
23 parking lots, water supply, and other existing cemetery
24 structures subject to the provisions of section 566A.3 and
25 includes the general overhead expenses needed to accomplish
26 such maintenance, repair, and care.
27 16. "Perpetual care cemetery" means a cemetery which has
28 established a perpetual care fund for the maintenance, repair,
29 and care of all interment spaces subject to perpetual care
30 within the cemetery in compliance with section 566A.3.
31 17. "Religious cemetery" means a cemetery that is owned,
32 operated, or controlled by a recognized church, religious
33 society, association, or denomination.
34 18. "Sale" means a transfer for consideration of any
35 interest in ownership, title, or right of use.

1 19. "Undeveloped space" means a mausoleum, columbarium
2 space, or lawn crypt that is not ready for the burial of human
3 remains on the date of the sale of the space.
4 Sec. 29. NEW SECTION. 566A.2A PERPETUAL CARE CEMETERY
5 REGISTRY.
6 A perpetual care cemetery shall maintain a registry of
7 individuals who have purchased items subject to the perpetual
8 care requirements of this chapter including the amount
9 deposited in trust for each individual. The registry shall
10 include all transactions entered into on or after July 1,
11 1995.
12 Sec. 30. NEW SECTION. 566A.2B INTERMENT RIGHTS AGREEMENT
13 -- REQUIREMENTS -- CONTENTS.
14 1. An agreement for interment rights under this chapter
15 must be written in clear, understandable language and do all
16 of the following:
17 a. Identify the seller and purchaser.
18 b. Identify the salesperson.
19 c. Specify the interment rights to be provided and the
20 cost of each item.
21 d. State clearly the conditions on which substitution will
22 be allowed.
23 e. Set forth the total purchase price and the terms under
24 which it is to be paid.
25 f. State clearly whether the agreement is a revocable or
26 irrevocable contract, and, if revocable, which parties have
27 the authority to revoke the agreement.
28 g. State the amount or percentage of money to be placed in
29 the cemetery's perpetual care and maintenance guarantee fund.
30 h. Set forth an explanation that the perpetual care and
31 maintenance guarantee fund is an irrevocable trust, that
32 deposits cannot be withdrawn even in the event of
33 cancellation, and that the trust's income shall be used by the
34 cemetery for its maintenance, repair, and care.
35 i. Set forth an explanation of any fees or expenses that

1 may be charged.
2 j. Set forth an explanation of whether amounts for
3 perpetual care will be deposited in trust upon payment in full
4 or on an allocable basis as payments are made.
5 k. Set forth an explanation of whether initial payments on
6 agreements for multiple items of funeral and cemetery
7 merchandise or services, or both, will be allocated first to
8 the purchase of a grave, niche, columbarium space, or
9 mausoleum space. If such an allocation is to be made, the
10 agreement shall provide for the immediate transfer of such
11 interment rights upon payment in full and prominently state
12 that any applicable trust deposits under chapters 523A and
13 523E will not be made until the cemetery has received payment
14 in full for the interment rights. The transfer of an
15 undeveloped space may be deferred until such space is ready
16 for burial.
17 l. If the transfer of an undeveloped space will be
18 deferred until the space is ready for burial as permitted in
19 paragraph "k", the agreement shall provide for some form of
20 written acknowledgment upon payment in full, specify a
21 reasonable time period for development of the space, describe
22 what happens in the event of a death prior to development of
23 the space, and provide for the immediate transfer of the
24 interment rights when development of the space is complete.
25 m. Specify the purchaser's right to cancel and the damages
26 payable for cancellation, if any.
27 n. State the name and address of the commissioner.
28 Sec. 31. NEW SECTION. 566A.2C ANNUAL REPORT BY RELIGIOUS
29 CEMETERIES.
30 1. A religious cemetery shall file a written report with
31 the insurance division annually within four months following
32 the end of the cemetery's fiscal year. The report shall
33 include all of the following:
34 a. The name and address of the cemetery.
35 b. An affidavit that the cemetery is a religious cemetery.

1 c. Copies of all sales agreement forms used by the
2 cemetery.
3 2. The commissioner shall permit the filing of a unified
4 annual report in the event of commonly owned or affiliated
5 cemeteries. A religious organization may commingle perpetual
6 care funds for purposes of investment and administration and
7 may file a single report by diocese or similar region, if each
8 cemetery is appropriately identified and separate records are
9 maintained for each cemetery.
10 3. The report shall be made under oath and shall be
11 accompanied by a filing fee of one hundred dollars. The fee
12 shall be waived for a cemetery with less than two thousand
13 five hundred dollars average annual retail sales for the
14 previous three calendar years.
15 4. Notwithstanding chapter 22, all records maintained by
16 the commissioner under this section are confidential and shall
17 not be made available for inspection or copying except upon
18 the approval of the commissioner or attorney general.
19 Sec. 32. NEW SECTION. 566A.2D ANNUAL REPORT BY
20 NONPERPETUAL CARE CEMETERIES.
21 1. A nonperpetual care cemetery shall file a written
22 report with the insurance division within four months
23 following the end of the cemetery's fiscal year. The report
24 shall include all of the following:
25 a. The name and address of the cemetery.
26 b. An affidavit that the cemetery is a nonperpetual care
27 cemetery in compliance with section 566A.5.
28 c. Copies of all sales agreement forms used by the
29 cemetery.
30 2. The commissioner shall permit the filing of a unified
31 annual report in the event of commonly owned or affiliated
32 cemeteries. A political subdivision may commingle perpetual
33 care funds for purposes of investment and administration and
34 may file a single report, if each cemetery is appropriately
35 identified and separate records are maintained for each

1 cemetery.
2 3. The report shall be made under oath and shall be
3 accompanied by a filing fee of one hundred dollars for a
4 cemetery with average retail sales equal to or greater than
5 two thousand five hundred dollars for the previous three
6 calendar years. The fee shall be waived for a cemetery with
7 less than two thousand five hundred dollars average annual
8 retail sales for the previous three calendar years.
9 4. Notwithstanding chapter 22, all records maintained by
10 the commissioner under this section are confidential and shall
11 not be made available for inspection or copying except upon
12 the approval of the commissioner or attorney general.
13 Sec. 33. NEW SECTION. 566A.2E ANNUAL REPORT BY PERPETUAL
14 CARE CEMETERIES.
15 1. A perpetual care cemetery shall file a written report
16 as of the end of each fiscal year of the cemetery including
17 the following:
18 a. The name and address of the cemetery.
19 b. The name and address of any trustee holding perpetual
20 care and maintenance guarantee fund moneys.
21 c. The name and address of any depository holding
22 perpetual care and maintenance guarantee fund moneys.
23 d. An affidavit that the cemetery is a perpetual care
24 cemetery in compliance with section 566A.3.
25 e. Copies of all sales agreement forms used by the
26 cemetery.
27 f. The amount of the principal of the cemetery's perpetual
28 care funds at the end of the fiscal year.
29 g. The number of interments made and the number of deeds
30 issued during the cemetery's preceding fiscal year.
31 2. The report shall be filed with the insurance division
32 within four months following the end of the cemetery's fiscal
33 year in the form required by the commissioner.
34 3. The commissioner shall permit the filing of a unified
35 annual report in the event of commonly owned or affiliated

1 cemeteries. A political subdivision may commingle perpetual
2 care funds for purposes of investment and administration and
3 may file a single report, if each cemetery is appropriately
4 identified and separate records are maintained for each
5 cemetery.
6 4. The commissioner shall establish by rule an audit fee
7 to be filed with the annual report. The audit report fee
8 shall be based on the number of deeds issued by the cemetery
9 during the reporting period. The audit fee shall apply only
10 to perpetual care cemeteries and shall be based on the
11 approximate cost of regulation.
12 5. Notwithstanding chapter 22, all records maintained by
13 the commissioner under this subsection are confidential and
14 shall not be made available for inspection or copying except
15 upon approval of the commissioner or attorney general.
16 Sec. 34. Section 566A.3, Code 1995, is amended by adding
17 the following new unnumbered paragraph:
18 NEW UNNUMBERED PARAGRAPH. A perpetual care cemetery may
19 require a contribution to the cemetery's perpetual care
20 guarantee fund for each grave marker, tombstone, monument, or
21 item of ornamental merchandise installed in the cemetery from
22 the purchaser of such merchandise. A cemetery may establish a
23 separate perpetual care fund for this purpose. The
24 contribution, if required by the cemetery, shall be uniformly
25 charged on every installation and shall be set aside and
26 deposited in the perpetual care trust fund. The contributions
27 shall be nonrefundable and shall not be withdrawn from the
28 trust fund once deposited.
29 Sec. 35. Section 566A.5, Code 1995, is amended by striking
30 the section and inserting in lieu thereof the following:
31 566A.5 NONPERPETUAL CARE CEMETERIES.
32 1. All other organizations subject to the provisions of
33 this chapter shall be nonperpetual care cemeteries.
34 2. Each nonperpetual care cemetery shall post a legible
35 sign in a conspicuous place in the office or offices where

1 sales are conducted, and at or near the entrance of the
2 cemetery or its administration building and readily accessible
3 to the public stating: "This is a nonperpetual care
4 cemetery". The lettering of these signs shall be of a size
5 and style as approved by the commissioner by rule or order so
6 that the signs can be read at a reasonable distance.
7 3. Each nonperpetual care cemetery shall also have printed
8 or stamped at the head of all of its contracts, deeds,
9 statements, letterheads, and advertising material, the legend:
10 "This is a nonperpetual care cemetery", and shall not sell any
11 lot or interment space in the cemetery unless the purchaser of
12 the lot or interment space is informed that the cemetery is a
13 nonperpetual care cemetery.
14 4. A nonperpetual care cemetery or cemetery operator or
15 employee or agent of a nonperpetual care cemetery shall not
16 advertise or represent that the cemetery is a perpetual care
17 cemetery or use any similar title, description, or term
18 indicating that the cemetery provides guaranteed or permanent
19 maintenance and care or that the cemetery has a trust fund or
20 endowment fund to pay for the expenses of such care.
21 Sec. 36. Section 566A.12, Code 1995, is amended by
22 striking the section and inserting in lieu thereof the
23 following:
24 566A.12 ANNUAL REPORTS AND ADMINISTRATION.
25 1. CEMETERY REGISTRY. The commissioner shall establish
26 and maintain a public registry of cemeteries that indicates
27 whether a cemetery is a perpetual care cemetery or a
28 nonperpetual care cemetery.
29 2. INVESTIGATIONS AND AUDITS. The commissioner or the
30 attorney general, for the purpose of discovering violations of
31 this chapter or rules adopted pursuant to this chapter, may do
32 any of the following:
33 a. Audit any cemetery, for cause or on a random basis, to
34 determine compliance with this chapter. A cemetery shall make
35 available to the commissioner or attorney general the

1 cemetery's deed registry and those books, accounts, records,
2 and files related to the sale of interment rights.
3 Notwithstanding chapter 22, all business records and files
4 acquired by the commissioner or attorney general pursuant to
5 an audit under this subsection are confidential and shall not
6 be made available for inspection or copying unless ordered by
7 a court for good cause shown. If it is determined pursuant to
8 an audit that a material violation of this chapter or rules
9 adopted pursuant to this chapter has occurred, the cost of the
10 audit may be assessed to the cemetery.
11 b. Administer oaths and affirmations, subpoena witnesses,
12 receive evidence, and require the production of documents and
13 records in connection with an investigation or proceeding
14 being conducted pursuant to this chapter.
15 c. Apply to the district court for issuance of an order
16 requiring a person's appearance before the commissioner or
17 attorney general, or a designee of either or both, where the
18 person has refused to obey a subpoena issued by the
19 commissioner or attorney general. The person may also be
20 required to produce documentary evidence germane to the
21 subject of the investigation. Failure to obey a court order
22 under this subsection constitutes contempt of court.
23 3. CEASE AND DESIST ORDERS. If an audit or investigation
24 provides reasonable evidence that a person has violated this
25 chapter, or any rule adopted pursuant to this chapter, the
26 commissioner may issue an order directed at the person to
27 cease and desist from engaging in such act or practice.
28 4. RECEIVERSHIPS.
29 a. The commissioner shall notify the attorney general if
30 the commissioner finds that a perpetual care cemetery subject
31 to regulation under this chapter meets one or more of the
32 following grounds for the establishment of a receivership:
33 (1) Is insolvent.
34 (2) Has utilized trust funds for personal or business
35 purposes in a manner inconsistent with the requirements of

1 this chapter, and the amount of funds currently held in the
2 trust is less than the amount required by this chapter.
3 b. The attorney general may apply to the district court in
4 any county of the state for a receivership. Upon proof of any
5 of the grounds for a receivership described in this section
6 the court may grant a receivership.
7 5. INJUNCTIONS. The attorney general may apply to the
8 district court for an injunction to restrain any cemetery
9 subject to this chapter and any agents, employees, trustees,
10 or associates of the cemetery from engaging in conduct or
11 practices deemed a violation of this chapter or rules adopted
12 pursuant to this chapter. Upon proof of any violation of this
13 chapter described in the petition for injunction, the court
14 may grant the injunction. Failure to obey a court order under
15 this subsection constitutes contempt of court.
16 Sec. 37. Section 566A.13, Code 1995, is amended to read as
17 follows:
18 566A.13 VIOLATIONS AND PENALTIES.
19 A violation of this chapter or rules adopted by the
20 ~~attorney-general~~ commissioner pursuant to this chapter is a
21 violation of section 714.16, subsection 2, paragraph "a". The
22 remedies and penalties provided by section 714.16, including
23 but not limited to, provisions relating to injunctive relief
24 and penalties, apply to a violation of this chapter.
25 Sec. 38. NEW SECTION. 566A.14 RULES.
26 The division of insurance may adopt rules pursuant to
27 chapter 17A as necessary and appropriate to administer this
28 chapter.
29 Sec. 39. NEW SECTION. 566A.15 CEMETERY FUND.
30 A special revenue fund is created in the state treasury,
31 under the control of the commissioner, to be known as the
32 insurance division cemetery fund. Commencing July 1, 1995,
33 filing fees received pursuant to sections 566A.2C and 566A.2D
34 and one dollar from the audit fee for each deed reported on
35 the annual report required by section 566A.2E, executed during

1 the preceding fiscal year, shall be deposited in the insurance
2 division cemetery fund by the commissioner. However, if the
3 balance of the fund on July 1 of any year exceeds two hundred
4 thousand dollars, the allocation to the fund shall not be
5 made, and the total sum of the fees paid pursuant to sections
6 566A.2C, 566A.2D, and 566A.2E shall be deposited in the
7 general fund of the state. Notwithstanding section 8.33,
8 moneys in the fund shall not revert to the general fund but
9 shall remain in the cemetery fund. Moneys in the cemetery
10 fund are appropriated to the insurance division and, subject
11 to authorization by the commissioner, may be used to pay the
12 expenses of that office incurred in the administration of the
13 audit, investigative, and enforcement duties and obligations
14 imposed under this chapter, and the expenses of receiverships
15 established pursuant to section 566A.12.
16 Sec. 40. CONDITION TO ENACTMENT OF CERTAIN PROVISIONS.
17 The section of this Act which amends Code section 566A.12
18 shall only be implemented if the general assembly makes an
19 appropriation of at least fifty thousand dollars and provides
20 for the employment of one full-time employee devoted to the
21 insurance division for the implementation of this Act.
22 EXPLANATION
23 This bill amends chapter 523A, which applies to funeral
24 services and merchandise, and chapter 523E, which applies to
25 cemetery merchandise, and creates a new chapter 523J, which
26 applies to cemeteries.
27 Section 523A.1 is amended to except caskets and other types
28 of inner burial containers or concrete burial vaults sold
29 after July 1, 1995, from language in that section which
30 defines when a delivery to a purchaser is made. The section
31 is amended to authorize the commissioner to adopt rules to
32 prohibit the commingling of trust funds with other funds of
33 the seller. The section is is also amended to provide that an
34 agreement may be funded by insurance proceeds in lieu of a
35 trust fund if the payments are made directly to the insurance

1 company by the purchaser of the agreement.
2 Section 523A.2, subsection 1, is amended to require that
3 the balance of each trust account of the seller be reported
4 annually to the insurance commissioner, along with the
5 identity of the purchaser or beneficiary.
6 Section 523A.2, subsection 7 is amended to provide that
7 chapter 523A does not prohibit generally the funding of
8 agreements by insurance proceeds. Currently the section is
9 limited to agreements.
10 Section 523A.8, subsection 1, is amended to require certain
11 disclosures in an agreement for the sale of funeral services
12 and merchandise.
13 Section 523A.8 is amended by adding two new subsections
14 which authorize the insurance commissioner to adopt rules
15 establishing disclosure and format requirements to promote
16 consumer understanding of the merchandise and services
17 purchased under an agreement, and which identify certain
18 information to be disclosed by an individual prior to
19 accepting an applicant's initial premium or deposit for a
20 preneed funeral contract or prearrangement.
21 Section 523A.20 is amended to increase the amount allocated
22 from fees paid by sellers of funeral services and merchandise
23 to the insurance division regulatory fund from $1 to $2. The
24 section is also amended to decrease the fee to be assessed
25 establishment permit holders for each agreement reported on
26 the permit holder's annual report from $5 to $2. The $5 fee
27 on establishment holders is authorized for assessment on May 1
28 of 1994 and 1995. The $2 fee is to be assessed on May 1 of
29 1996 and 1997. The fee is to be used to fund consumer
30 education, audits, investigations, payments under contract
31 with licensed establishments to provide funeral and cemetery
32 merchandise or services in the event of statutory
33 noncompliance by the initial seller, liquidations, and
34 receiverships.
35 New section 523A.21 is created and provides that upon a

1 determination by the commissioner that grounds exist for an
2 administrative license revocation or suspension action by the
3 board of mortuary science examiners, the commissioner may
4 forward the grounds for the determination to that board.
5 New section 523A.22 establishes the process for the
6 liquidation of a funeral establishment which is found to be
7 insolvent or in such condition that the further transaction of
8 business would be hazardous, financially or otherwise, to its
9 preneed funeral customers or the public. The procedure
10 established is similar to the procedure established for the
11 liquidation of insurance companies.
12 Section 523E.1 is amended to authorize the commissioner to
13 adopt rules to prohibit the commingling of trust funds with
14 other funds of the seller of cemetery merchandise. The
15 section is also amended to provide that an agreement may be
16 funded by insurance proceeds in lieu of a trust fund if the
17 payments are made directly to the insurance company by the
18 purchaser of the agreement.
19 Section 523E.2, subsection 1, is amended to require that
20 the balance of each trust account of the seller be reported
21 annually to the insurance commissioner, along with the
22 identity of the purchaser or beneficiary.
23 Section 523E.8, subsection 1, is amended to require certain
24 disclosures in an agreement for the sale of funeral services
25 and merchandise.
26 Section 523E.8 is amended by adding two new subsections
27 which authorize the insurance commissioner to adopt rules
28 establishing disclosure and format requirements to promote
29 consumer understanding of the cemetery merchandise purchased
30 under an agreement, and which identify certain information to
31 be disclosed by an individual prior to accepting an
32 applicant's initial premium or deposit for a preneed funeral
33 contract or prearrangement.
34 Section 523E.20 is amended to increase the amount allocated
35 from fees paid by sellers of funeral services and merchandise

1 to the insurance division regulatory fund from one dollar to
2 two dollars. The section is also amended to decrease the fee
3 to be assessed establishment permit holders for each agreement
4 reported on the permit holder's annual report from $5 to $2.
5 The $5 fee on establishment holders is authorized for
6 assessment on May 1 of 1994 and 1995. The $2 fee is to be
7 assessed on May 1 of 1996 and 1997. The fee is to be used to
8 fund consumer education, audits, investigations, payments
9 under contract with licensed establishments to provide funeral
10 and cemetery merchandise or services in the event of statutory
11 noncompliance by the initial seller, liquidations, and
12 receiverships.
13 New section 523E.21 is created and provides that upon a
14 determination by the commissioner that grounds exist for an
15 administrative license revocation or suspension action by the
16 board of mortuary science examiners, the commissioner may
17 forward the grounds for the determination to that board.
18 New section 523J.1 is created and establishes the
19 definitions of terms used in the chapter including "abandoned
20 cemetery", "cemetery", "commissioner", "interment rights", and
21 "perpetual care cemetery".
22 New section 523J.2 is created and provides that cemeteries
23 organized or commencing business in this state on or after
24 July 1, 1995, are to operate as perpetual care cemeteries.
25 New section 523J.3 is created and provides that a perpetual
26 care cemetery is not to offer interment rights to the public
27 without a permit pursuant to chapter 523J.
28 New section 523J.4 is created and provides that the
29 commissioner may deny, suspend, or revoke a permit issued
30 under chapter 523J upon a finding that the owner of a cemetery
31 has committed a fraudulent practice or been convicted of a
32 felony related to the sale of interment rights or the sale of
33 funeral services, funeral merchandise, or cemetery
34 merchandise, or the cemetery's trust assets, warehoused
35 merchandise, surety bonds, or insurance funding are in

1 material noncompliance with applicable statutory provisions.
2 New section 523J.5 is created and establishes the process
3 for the liquidation of a funeral establishment which is found
4 to be insolvent or in such condition that the further
5 transaction of business would be hazardous, financially or
6 otherwise, to its customers or the public. The procedure
7 established is similar to the procedure established for the
8 liquidation of insurance companies.
9 New section 523J.6 is created and establishes the powers
10 and duties of a perpetual care cemetery.
11 New section 523J.7 is created and provides that the
12 insurance commissioner or the attorney general may investigate
13 a perpetual care cemetery to verify compliance with chapter
14 523J.
15 Section 566A.1 is amended to provide that a fraternal
16 society is subject to the provisions of chapter 566A and that
17 a political subdivision is subject to the chapter except for
18 sections 566A.3 and 566A.6.
19 New section 566A.1A is created establishing the definitions
20 for chapter 566A.
21 New section 566A.2A is created which requires perpetual
22 care cemeteries to maintain a registry of individuals
23 purchasing items subject to perpetual care.
24 New section 566A.2B is created and requires an agreement
25 for interment rights to be written in clear, understandable
26 language. The section also sets forth the contents of the
27 agreement.
28 New section 566A.2C is created and requires a religious
29 cemetery to file a written report with the insurance division
30 annually. The report is to be accompanied by a filing fee of
31 $100.
32 New section 566A.2D is created and requires a nonperpetual
33 care cemetery to file a written report with the insurance
34 division annually. The report is to be accompanied by a
35 filing fee of $100.

1 New section 566A.2E is created and requires a perpetual
2 care cemetery to file a written report with the insurance
3 division annually. The commissioner is to establish an audit
4 fee by rule to be filed with the annual report.
5 Section 566A.3 is amended to permit a perpetual care
6 cemetery to require a contribution to the cemetery's perpetual
7 care guarantee fund for each grave marker, tombstone,
8 monument, or item of ornamental merchandise installed or
9 placed in the cemetery.
10 Section 566A.5, which relates to nonperpetual care
11 cemeteries, is substantially rewritten and provides that a
12 legible sign must be posted indicating that the cemetery is a
13 nonperpetual care cemetery; requires such indication to be
14 included on the cemetery's contracts, deeds, statements,
15 letterhead, and advertising material; and prohibits the
16 cemetery from advertising as a perpetual care cemetery.
17 Section 566A.12, relating to perpetual care cemetery
18 records, is struck, is rewritten, and provides for a cemetery
19 registry to be established by the insurance commissioner,
20 annual reports to be filed concerning the number of interments
21 made and the amount of the principal of the cemetery's
22 perpetual care funds, investigations and audits of cemeteries
23 by the insurance commissioner or the attorney general, and
24 certain regulatory powers.
25 Section 566A.13, relating to penalties, reflects that rules
26 will be adopted pursuant to the chapter by the insurance
27 commissioner and not the attorney general.
28 New section 566A.14 is created and authorizes the division
29 of insurance to adopt rules as necessary for the
30 administration of chapter 566A.
31 New section 566A.15 is created and establishes the
32 insurance division cemetery fund.
33 Section 33 of the bill conditions the implementation of
34 566A.12, as rewritten, upon an appropriation to the insurance
35 division of $50,000 and one full-time equivalent position.

This bill may create a state mandate as defined in chapter 25B.

HOUSE FILE 486

H-3533

1 Amend House File 486 as follows:
2 1. Page 1, by inserting before line 1 the
3 following:
4 "Section 1. Section 359.33, Code 1995, is amended
5 to read as follows:
6 359.33 TAX FOR NONOWNED CEMETERY.
7 ~~They~~ For each cemetery not owned by the township,
8 the board of trustees may levy a tax not to exceed six
9 and three-fourths cents per thousand dollars of
10 assessed value of taxable property to improve and
11 maintain ~~any cemetery not owned by the township~~ the
12 cemeteries, ~~provided~~ if the ~~same~~ cemetery is devoted
13 to general public use."
14 2. By renumbering as necessary.

By VANDE HOEF of Osceola

H-3533 FILED MARCH 28, 1995

Not Germane 4/6/95 (P. 1300)

HOUSE FILE 486

H-3746

1 Amend House File 486 as follows:
2 1. Page 13, line 5, by striking the word
3 "section" and inserting the following: "subsection".
4 2. Page 44, line 29, by striking the word
5 "section" and inserting the following: "subsection".
6 3. Page 63, line 4, by striking the word
7 "subdivision." and inserting the following:
8 "subdivision, with the consent of such governmental
9 subdivision. The governmental subdivision shall be
10 subject to any existing deeds, licenses, and easements
11 associated with the real estate of the cemetery. The
12 governmental subdivision shall not be liable for any
13 existing liabilities of the cemetery, except for
14 existing duties under contracts in effect at the time
15 of issuance of a liquidation order with members of the
16 public concerning interment or burial rights."
17 4. Page 65, line 8, by inserting after the figure
18 "566A.2C." the following: "A cemetery with average
19 retail sales equal to or less than five thousand
20 dollars for the previous three calendar years is
21 exempt from sections 566A.2B, 566A.2C, and 566A.2D."
22 5. Page 69, by striking lines 10 through 14 and
23 inserting the following:
24 "3. The report shall be made under oath."
25 6. Page 70, by striking lines 2 through 8 and
26 inserting the following:
27 "3. The report shall be made under oath."
28 7. Page 71, by striking lines 32 and 33.
29 8. Page 72, by striking lines 26 through 28 and
30 inserting the following: "and maintain a public
31 registry of perpetual care cemeteries."
32 9. Title page, line 3, by inserting after the
33 word "cemeteries," the following: "establishing
34 requirements related to the sale of preneed funeral
35 contracts and the sale of funeral and cemetery
36 merchandise,".
37 10. By renumbering and correcting internal
38 numbering and references as necessary.

By VAN FOSSEN of Scott

H-3746 FILED APRIL 4, 1995

WITHDRAWN
4-6-95
(p. 1300)

HOUSE FILE 486

H-3772

1 Amend House File 486 as follows:
2 1. Page 13, line 5, by striking the word
3 "section" and inserting the following: "subsection".
4 2. Page 44, line 29, by striking the word
5 "section" and inserting the following: "subsection".
6 3. Page 45, lines 3 and 4, by striking the words
7 ", including customers who purchased interment
8 rights,".
9 4. Page 63, by striking lines 1 through 9.
10 5. Page 65, line 8, by inserting after the figure
11 "566A.2C." the following: "A cemetery with average
12 retail sales equal to or less than five thousand
13 dollars for the previous three calendar years is
14 exempt from sections 566A.2C and 566A.2D."
15 6. Page 69, by striking lines 10 through 14 and
16 inserting the following:
17 "3. The report shall be made under oath."
18 7. Page 70, by striking lines 2 through 8 and
19 inserting the following:
20 "3. The report shall be made under oath."
21 8. Page 71, by striking lines 32 and 33.
22 9. Page 72, by striking lines 26 through 28 and
23 inserting the following: "and maintain a public
24 registry of perpetual care cemeteries."
25 10. Title page, line 3, by inserting after the
26 word "cemeteries," the following: "establishing
27 requirements related to the sale of preneed funeral
28 contracts and the sale of funeral and cemetery
29 merchandise,".
30 11. By renumbering and correcting internal
31 numbering and references as necessary.

By VAN FOSSEN of Scott

H-3772 FILED APRIL 5, 1995

adopted
4-6-95

(P. 1301)

HOUSE FILE 486

H-3763

1 Amend House File 486 as follows:
2 1. Page 5, by inserting after line 4 the
3 following:
4 "Sec. ___. Section 523A.8, subsection 1, Code
5 1995, is amended by adding the following new
6 paragraph:
7 NEW PARAGRAPH. k. State that any financial
8 instrument which is used to make a payment under the
9 agreement is to be made payable to the financial
10 institution or entity where the money is to be
11 deposited in trust."
12 2. Page 35, by inserting after line 17 the
13 following:
14 "Sec. ___. Section 523E.8, subsection 1, Code
15 1995, is amended by adding the following new
16 paragraph:
17 NEW PARAGRAPH. k. State that any financial
18 instrument which is used to make a payment under the
19 agreement is to be made payable to the financial
20 institution or entity where the money is to be
21 deposited in trust."
22 3. Page 67, by inserting after line 24 the
23 following:
24 "___. State that any financial instrument which is
25 used to make a payment under the agreement is to be
26 made payable to the financial institution or entity
27 where the money is to be deposited in the cemetery's
28 perpetual care and maintenance guarantee fund."
29 4. By renumbering as necessary.

By BRADLEY of Clinton
OLLIE of Clinton

H-3763 FILED APRIL 5, 1995

adopted
4-6-95
(P. 1300)

S-4/10/95 amend + Do Pass
S. 4/13/95 Unfinished Business Calendar

HOUSE FILE 486
BY COMMITTEE ON COMMERCE AND REGULATION

(SUCCESSOR TO HSB 261)

(As Amended and Passed by the House April 6, 1995)

Re-Passed House, Date 4/20/95 (p.1788) Passed Senate, (P.1306) Date 4/19/95
Vote: Ayes 95 Nays 0 Vote: Ayes 48 Nays 0
Approved May 3, 1995 Passed 4/24/95 Vote 50-0 (p. 1362)

A BILL FOR

1 An Act relating to the regulation of cemetery operators and the
2 regulation of perpetual care cemeteries and nonperpetual care
3 cemeteries, establishing requirements related to the sale of
4 preneed funeral contracts and the sale of funeral and cemetery
5 merchandise, establishing fees and use of those fees, and
6 providing penalties.
7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
8
9 House Amendments ————
10 Deleted Language *
11
12
13
14
15
16
17
18
19

HF 486
mj/pk/25

S.F. _____ H.F. 486

1 Section 1. Section 523A.1, unnumbered paragraphs 1 and 4,
2 Code 1995, are amended to read as follows:
3 1. Whenever an agreement is made by any person, firm, or
4 corporation to furnish, upon the future death of a person
5 named or implied in the agreement, funeral services or funeral
6 merchandise, a minimum of eighty percent of all payments made
7 under the agreement shall be and remain trust funds until
8 occurrence of the death of the person for whose benefit the
9 funds were paid, unless the funds are sooner released to the
10 person making the payment by mutual consent of the parties.
11 Payments otherwise subject to this section are not exempt
12 merely because they are held in certificates of deposit. The
13 commissioner may adopt rules to prohibit the commingling of
14 trust funds with other funds of the seller.
15 This section does not apply to payments for merchandise de-
16 livered to the purchaser. ~~Delivery~~ Except for caskets and
17 other types of inner burial containers or concrete burial
18 vaults sold after July 1, 1995, delivery includes storage in a
19 warehouse under the control of the seller or any other
20 warehouse or storage facility approved by the commissioner
21 when a receipt of ownership in the name of the purchaser is
22 delivered to the purchaser, the merchandise is insured against
23 loss, the merchandise is protected against damage, title has
24 been transferred to the purchaser, the merchandise is
25 appropriately identified and described in a manner that it can
26 be distinguished from other similar items of merchandise, the
27 method of storage allows for visual audits of the merchandise,
28 and the annual reporting requirements of section 523A.2,
29 subsection 1, are satisfied.
30 Sec. 2. Section 523A.1, Code 1995, is amended by adding
31 the following new subsection:
32 NEW SUBSECTION. 2. An agreement may be funded by
33 insurance proceeds derived from a policy issued by an
34 insurance company authorized to conduct business in this
35 state. Such funding may be in lieu of a trust fund if the

payments are made directly to the insurance company by the purchaser of the agreement.

Sec. 3. Section 523A.2, subsection 1, paragraphs a and c, Code 1995, 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~~ of such bank, savings and loan association, or credit union, 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 523A.1.

c. The seller under an agreement referred to in section 523A.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 funeral services or funeral merchandise.

(2) ~~The name of the purchaser, beneficiary, and the amount of each agreement under section 523A.1 made in the preceding year and the date on which it was made.~~ The balance of each trust account as of the end of the preceding calendar year, identified by the name of the purchaser or the beneficiary, and a report of any amounts withdrawn from trust and the reason for each withdrawal.

(3) ~~The total value of agreements subject to section 523A.1 entered into, the total amount paid pursuant to those agreements, and the total amount deposited in trust as required under section 523A.1, during the preceding year.~~ A description of insurance funding outstanding at the end of the preceding calendar year, identified by the name of the purchaser or the beneficiary, and a report of any insurance payments received by the seller.

1 ~~(4)--The amount of any payments received pursuant to~~
2 ~~agreements reported in previous years in accordance with~~
3 ~~subparagraphs (2) and (3) and the amount of those payments~~
4 ~~deposited in trust for each purchaser.~~
5 ~~(5)--The change in status of any trust account, including~~
6 ~~total amount of interest or income withdrawn from each trust~~
7 ~~account in the preceding year, and for each purchaser, any~~
8 ~~other amounts withdrawn from trust and the reason for each~~
9 ~~withdrawal.--However, regular increments of interest or income~~
10 ~~need not be reported on a yearly basis.~~
11 ~~(6)--The name and address of the financial institution in~~
12 ~~which trust funds were deposited, and the name and address of~~
13 ~~each insurance company which funds agreements under section~~
14 ~~523A.1.~~
15 ~~(7)--The name and address of each purchaser of funeral~~
16 ~~merchandise delivered in lieu of trusting pursuant to section~~
17 ~~523A.1, and a description of that merchandise for each~~
18 ~~purchaser.~~
19 ~~(8)~~ (4) ~~The~~ A complete inventory of funeral merchandise
20 ~~and its location in the seller's possession that has been~~
21 delivered in lieu of trusting pursuant to section 523A.1.
22 ~~(9)--Other information reasonably required by the com-~~
23 ~~missioner for purposes of administration of this chapter.~~
24 ~~The information required by subparagraphs (7) and (8) shall~~
25 ~~include~~, including the location of the merchandise, serial
26 numbers or warehouse receipt numbers, identified by the name
27 of the purchaser or the beneficiary, and a verified statement
28 of a certified public accountant that the certified public
29 accountant has conducted a physical inventory of the funeral
30 merchandise ~~specified in subparagraph (8)~~ and that each item
31 of that merchandise is in the seller's possession at the
32 specified location. The statement shall be on a form
33 prescribed by the commissioner.
34 The report shall be accompanied by a filing fee determined
35 by the commissioner which shall be sufficient to defray the

1 costs of administering this chapter.
2 Sec. 4. Section 523A.2, subsection 7, Code 1995, is
3 amended to read as follows:
4 7. This chapter does not prohibit the funding of an
5 agreement ~~otherwise subject to section 523A.1~~ by insurance
6 proceeds derived from a policy issued by an insurance company
7 authorized to conduct business in this state. The seller of
8 an agreement subject to this chapter which is to be funded by
9 insurance proceeds shall obtain all permits required to be
10 obtained under this chapter and comply with the reporting
11 requirements of this section.
12 Sec. 5. Section 523A.8, subsection 1, paragraphs e, h, and
13 j, Code 1995, are amended to read as follows:
14 e. State clearly whether the agreement is a guaranteed
15 price contract or a nonguaranteed price contract. Each
16 nonguaranteed price contract shall contain in twelve point
17 bold type, an explanation of the consequences in substantially
18 the following language:
19 THE PRICES OF MERCHANDISE AND SERVICES UNDER THIS AGREEMENT
20 ARE SUBJECT TO CHANGE IN THE FUTURE. ANY FUNDS PAID UNDER
21 THIS CONTRACT ARE ONLY A DEPOSIT TO BE APPLIED, TOGETHER WITH
22 ACCRUED INCOME, TOWARD THE FINAL COSTS OF THE MERCHANDISE OR
23 SERVICES CONTRACTED FOR. ADDITIONAL CHARGES MAY BE REQUIRED.
24 h. Explain the disposition of the ~~interest and disclose~~
25 ~~what fees and expenses may be charged if incurred~~ income
26 generated from investments, include a statement of fees,
27 expenses, and taxes which may be deducted, and include a
28 statement of the buyer's responsibility for income taxes owed
29 on the income, if applicable.
30 j. ~~State the name and address of the commissioner.~~
31 Include an explanation of regulatory oversight by the
32 insurance division in twelve point bold type, in substantially
33 the following language:
34 THIS CONTRACT MUST BE REPORTED TO THE IOWA INSURANCE
35 DIVISION BY THE FIRST DAY OF MARCH OF THE FOLLOWING YEAR. YOU

1 MAY CALL THE INSURANCE DIVISION AT (INSERT TELEPHONE NUMBER)
2 TO CONFIRM THAT YOUR CONTRACT HAS BEEN REPORTED. WRITTEN
3 INQUIRIES OR COMPLAINTS SHOULD BE MAILED TO THE FOLLOWING
4 ADDRESS: IOWA SECURITIES BUREAU, (INSERT ADDRESS).
5 Sec. 6. Section 523A.8, subsection 1, Code 1995, is
6 amended by adding the following new paragraph:
7 NEW PARAGRAPH. k. State that any financial instrument
8 which is used to make a payment under the agreement is to be
9 made payable to the financial institution or entity where the
10 money is to be deposited in trust.
11 Sec. 7. Section 523A.8, Code 1995, is amended by adding
12 the following new subsection:
13 NEW SUBSECTION. 1A. The commissioner may adopt rules
14 establishing disclosure and format requirements to promote
15 consumers' understanding of the merchandise and services
16 purchased and the available funding mechanisms under an
17 agreement pursuant to this chapter.
18 Sec. 8. Section 523A.8, Code 1995, is amended by adding
19 the following new subsection:
20 NEW SUBSECTION. 3. The seller shall disclose at the time
21 an application is made by an individual and prior to accepting
22 the applicant's initial premium or deposit for a preneed
23 funeral contract or prearrangement subject to section 523A.1
24 which is funded by a life insurance policy, the following
25 information:
26 a. That a life insurance policy is involved or being used
27 to fund an agreement.
28 b. The nature of the relationship among the soliciting
29 agent or agents, the provider of the funeral or cemetery
30 merchandise or services, the administrator, and any other
31 person.
32 c. The relationship of the life insurance policy to the
33 funding of the prearrangement and the nature and existence of
34 any guarantees relating to the prearrangement.
35 d. The impact on the prearrangement of the following:

1 (1) Changes in the life insurance policy including, but
2 not limited to, changes in the assignment, beneficiary
3 designation, or use of proceeds.
4 (2) Any penalties to be incurred by the policyholder as a
5 result of the failure to make premium payments.
6 (3) Penalties to be incurred or cash to be received as a
7 result of the cancellation or surrender of the life insurance
8 policy.
9 e. A list of merchandise and services which are applied or
10 contracted for in the prearrangement and all relevant
11 information concerning the price of the funeral services,
12 including an indication that the purchase price is either
13 guaranteed at the time of purchase or to be determined at the
14 time of need.
15 f. All relevant information concerning what occurs and
16 whether any entitlements or obligations arise if there is a
17 difference between the proceeds of the life insurance policy
18 and the amount actually needed to fund the agreement.
19 g. Any penalties or restrictions, including but not
20 limited to, geographic restrictions or the inability of the
21 provider to perform, on the delivery of merchandise, services,
22 or the prearrangement guarantee.
23 h. That a sales commission or other form of compensation
24 is being paid and, if so, the identity of the individuals or
25 entities to whom it is paid.
26 Sec. 9. Section 523A.20, Code 1995, is amended to read as
27 follows:
28 523A.20 INSURANCE DIVISION'S REGULATORY FUND.
29 The insurance division may authorize the creation of a
30 special revenue fund in the state treasury, to be known as the
31 insurance division regulatory fund. ~~Commencing July 1, 1990,~~
32 ~~and annually thereafter, the~~ The commissioner shall allocate
33 annually from the fees paid pursuant to section 523A.2, ~~one~~
34 ~~dollar~~ two dollars for each agreement reported on an
35 establishment permit holder's annual report for deposit to the

1 regulatory fund. The remainder of the fees collected pursuant
2 to section 523A.2 shall be deposited into the general fund of
3 the state. ~~However, if the balance of the regulatory fund on~~
4 ~~that July 1 exceeds two hundred thousand dollars, the~~
5 ~~allocation to the regulatory fund shall not be made and the~~
6 ~~total sum of the fees paid pursuant to section 523A.2 shall be~~
7 ~~deposited in the general fund of the state.~~ In addition, on
8 May 1 of ~~1994~~ 1996 and ~~1995~~ 1997, the commissioner, to the
9 extent necessary to fund consumer education, audits,
10 investigations, payments under contract with licensed
11 establishments to provide funeral merchandise or services in
12 the event of statutory noncompliance by the initial seller,
13 liquidations, and receiverships, shall assess establishment
14 permit holders ~~five~~ two dollars for each agreement reported on
15 the establishment permit holder's annual report of sales
16 executed during the preceding year, which shall be deposited
17 in the insurance division regulatory fund. The moneys in the
18 regulatory fund shall be retained in the fund. The moneys are
19 appropriated and, subject to authorization by the
20 commissioner, may be used to pay auditors, audit expenses,
21 investigative expenses, and the expenses of receiverships
22 established pursuant to section 523A.19. An annual assessment
23 shall not be imposed if the current balance of the fund
24 exceeds two hundred thousand dollars.
25 Sec. 10. NEW SECTION. 523A.21 LICENSE REVOCATION --
26 RECOMMENDATION BY COMMISSIONER TO BOARD OF MORTUARY SCIENCE
27 EXAMINERS.
28 Upon a determination by the commissioner that grounds exist
29 for an administrative license revocation or suspension action
30 by the board of mortuary science examiners under chapter 156,
31 the commissioner may forward to the board the grounds for the
32 determination, including all evidence in the possession of the
33 commissioner, so that the board may proceed with the matter as
34 deemed appropriate.
35 Sec. 11. NEW SECTION. 523A.22 LIQUIDATION.

1 1. GROUNDS FOR LIQUIDATION. Upon receipt of a written
2 request from the board of mortuary science examiners, the
3 commissioner may petition the district court for an order
4 directing the commissioner to liquidate a funeral
5 establishment on any of the following grounds:
6 a. The funeral establishment did not deposit funds
7 pursuant to section 523A.1 or withdrew funds in a manner
8 inconsistent with this chapter and is insolvent.
9 b. The funeral establishment did not deposit funds
10 pursuant to section 523A.1 or withdrew funds in a manner
11 inconsistent with this chapter and the condition of the
12 funeral establishment is such that the further transaction of
13 business would be hazardous, financially or otherwise, to its
14 preneed funeral customers or the public.
15 2. LIQUIDATION ORDER.
16 a. An order to liquidate the business of a funeral
17 establishment shall appoint the commissioner as liquidator and
18 shall direct the liquidator to immediately take possession of
19 the assets of the funeral establishment and to administer them
20 under the general supervision of the court. The liquidator is
21 vested with the title to the property, contracts, and rights
22 of action and the books and records of the funeral
23 establishment ordered liquidated, wherever located, as of the
24 entry of the final order of liquidation. The filing or
25 recording of the order with the clerk of court and the
26 recorder of deeds of the county in which its principal office
27 or place of business is located, or, in the case of real
28 estate with the recorder of deeds of the county where the
29 property is located, is notice as a deed, bill of sale, or
30 other evidence of title duly filed or recorded with the
31 recorder of deeds.
32 b. Upon issuance of an order, the rights and liabilities
33 of a funeral establishment and of the funeral establishment's
34 creditors, preneed and at-need funeral customers, owners, and
35 other persons interested in the funeral establishment's estate

1 shall become fixed as of the date of the entry of the order of
2 liquidation, except as provided in subsection 14.
3 c. At the time of petitioning for an order of liquidation,
4 or at any time after the time of petitioning, the
5 commissioner, after making appropriate findings of a funeral
6 establishment's insolvency, may petition the court for a
7 declaration of insolvency. After providing notice and hearing
8 as it deems proper, the court may make the declaration.
9 d. An order issued under this section shall require
10 accounting to the court by the liquidator. Accountings, at a
11 minimum, must include all funds received or disbursed by the
12 liquidator during the current period. An accounting shall be
13 filed within one year of the liquidation order and at such
14 other times as the court may require.
15 e. Within five days after the initiation of an appeal of
16 an order of liquidation, which order has not been stayed, the
17 commissioner shall present for the court's approval a plan for
18 the continued performance of the funeral establishment's
19 obligations during the pendency of an appeal. The plan shall
20 provide for the continued performance of preneed and at-need
21 funeral contracts in the normal course of events,
22 notwithstanding the grounds alleged in support of the order of
23 liquidation including the ground of insolvency. If the
24 defendant funeral establishment's financial condition, in the
25 judgment of the commissioner, will not support the full
26 performance of all obligations during the appeal pendency
27 period, the plan may prefer the claims of certain at-need and
28 preneed funeral customers and claimants over creditors and
29 interested parties as well as other at-need and preneed
30 funeral customers and claimants, as the commissioner finds to
31 be fair and equitable considering the relative circumstances
32 of such at-need and preneed funeral customers and claimants.
33 The court shall examine the plan submitted by the commissioner
34 and if it finds the plan to be in the best interests of the
35 parties, the court shall approve the plan. An action shall

1 not lie against the commissioner or any of the commissioner's
2 deputies, agents, clerks, assistants, or attorneys by any
3 party based on preference in an appeal pendency plan approved
4 by the court.
5 3. POWERS OF LIQUIDATOR.
6 a. The liquidator may do any of the following:
7 (1) Appoint a special deputy to act for the liquidator
8 under this chapter, and determine the special deputy's
9 reasonable compensation. The special deputy shall have all
10 the powers of the liquidator granted by this section. The
11 special deputy shall serve at the pleasure of the liquidator.
12 (2) Hire employees and agents, legal counsel, accountants,
13 appraisers, consultants, and other personnel as the
14 commissioner may deem necessary to assist in the liquidation.
15 (3) With the approval of the court fix reasonable
16 compensation of employees and agents, legal counsel,
17 accountants, appraisers, and consultants.
18 (4) Pay reasonable compensation to persons appointed and
19 defray from the funds or assets of the funeral establishment
20 all expenses of taking possession of, conserving, conducting,
21 liquidating, disposing of, or otherwise dealing with the
22 business and property of the funeral establishment. If the
23 property of the funeral establishment does not contain
24 sufficient cash or liquid assets to defray the costs incurred,
25 the commissioner may advance the costs so incurred out of the
26 insurance division regulatory fund. Amounts so advanced for
27 expenses of administration shall be repaid to the insurance
28 division regulatory fund for the use of the division out of
29 the first available moneys of the funeral establishment.
30 (5) Hold hearings, subpoena witnesses, and compel their
31 attendance, administer oaths, examine a person under oath, and
32 compel a person to subscribe to the person's testimony after
33 it has been correctly reduced to writing, and in connection to
34 the proceedings require the production of books, papers,
35 records, or other documents which the liquidator deems

1 relevant to the inquiry.
2 (6) Collect debts and moneys due and claims belonging to
3 the funeral establishment, wherever located. Pursuant to this
4 subparagraph, the liquidator may do any of the following:
5 (a) Institute timely action in other jurisdictions to
6 forestall garnishment and attachment proceedings against
7 debts.
8 (b) Perform acts as are necessary or expedient to collect,
9 conserve, or protect its assets or property, including the
10 power to sell, compound, compromise, or assign debts for
11 purposes of collection upon terms and conditions as the
12 liquidator deems best.
13 (c) Pursue any creditor's remedies available to enforce
14 claims.
15 (7) Conduct public and private sales of the property of
16 the funeral establishment.
17 (8) Use assets of the funeral establishment under a
18 liquidation order to transfer obligations of preneed funeral
19 contracts to a solvent funeral establishment, if the transfer
20 can be accomplished without prejudice to applicable priorities
21 under subsection 18.
22 (9) Acquire, hypothecate, encumber, lease, improve, sell,
23 transfer, abandon, or otherwise dispose of or deal with
24 property of the funeral establishment at its market value or
25 upon terms and conditions as are fair and reasonable. The
26 liquidator shall also have power to execute, acknowledge, and
27 deliver deeds, assignments, releases, and other instruments
28 necessary to effectuate a sale of property or other
29 transaction in connection with the liquidation.
30 (10) Borrow money on the security of the funeral
31 establishment's assets or without security and execute and
32 deliver documents necessary to that transaction for the
33 purpose of facilitating the liquidation. Money borrowed
34 pursuant to this subparagraph shall be repaid as an
35 administrative expense and shall have priority over any other

1 class 1 claims under the priority of distribution established
2 in subsection 18.
3 (11) Enter into contracts as necessary to carry out the
4 order to liquidate and affirm or disavow contracts to which
5 the funeral establishment is a party.
6 (12) Continue to prosecute and to institute in the name of
7 the funeral establishment or in the liquidator's own name any
8 and all suits and other legal proceedings, in this state or
9 elsewhere, and to abandon the prosecution of claims the
10 liquidator deems unprofitable to pursue further.
11 (13) Prosecute an action on behalf of the creditors, at-
12 need funeral customers, preneed funeral customers, or owners
13 against an officer of the funeral establishment or any other
14 person.
15 (14) Remove records and property of the funeral
16 establishment to the offices of the commissioner or to other
17 places as may be convenient for the purposes of efficient and
18 orderly execution of the liquidation.
19 (15) Deposit in one or more banks in this state sums as
20 are required for meeting current administration expenses and
21 distributions.
22 (16) Unless the court orders otherwise, invest funds not
23 currently needed.
24 (17) File necessary documents for recording in the office
25 of a recorder of deeds or record office in this state or
26 elsewhere where property of the funeral establishment is
27 located.
28 (18) Assert defenses available to the funeral
29 establishment as against third persons including statutes of
30 limitations, statutes of fraud, and the defense of usury. A
31 waiver of a defense by the funeral establishment after a
32 petition in liquidation has been filed shall not bind the
33 liquidator.
34 (19) Exercise and enforce the rights, remedies, and powers
35 of a creditor, at-need funeral customer, preneed funeral

1 customer, or owner, including the power to avoid transfer or
2 lien that may be given by the general law and that is not
3 included within subsections 7 through 9.
4 (20) Intervene in a proceeding wherever instituted that
5 might lead to the appointment of a receiver or trustee, and
6 act as the receiver or trustee whenever the appointment is
7 offered.
8 (21) Exercise powers now held or later conferred upon
9 receivers by the laws of this state which are not inconsistent
10 with this chapter.
11 b. This subsection does not limit the liquidator or
12 exclude the liquidator from exercising a power not listed in
13 paragraph "a" that may be necessary or appropriate to
14 accomplish the purposes of this chapter.
15 4. NOTICE TO CREDITORS AND OTHERS.
16 a. Unless the court otherwise directs, the liquidator
17 shall give notice of the liquidation order as soon as possible
18 by doing all of the following:
19 (1) By first class mail to all persons known or reasonably
20 expected to have claims against the funeral establishment,
21 including at-need and preneed funeral customers, by mailing a
22 notice to their last known address as indicated by the records
23 of the funeral establishment.
24 (2) By publication in a newspaper of general circulation
25 in the county in which the funeral establishment has its
26 principal place of business and in other locations as the
27 liquidator deems appropriate.
28 b. Notice to potential claimants under paragraph "a" shall
29 require claimants to file with the liquidator their claims
30 together with proper proofs of the claim under subsection 13
31 on or before a date the liquidator shall specify in the
32 notice. Claimants shall keep the liquidator informed of their
33 changes of address, if any.
34 c. If notice is given pursuant to this section, the
35 distribution of assets of the funeral establishment under this

1 chapter shall be conclusive with respect to claimants, whether
2 or not a claimant actually received notice.
3 5. ACTIONS BY AND AGAINST LIQUIDATOR.
4 a. After the issuance of an order appointing a liquidator
5 of a funeral establishment, an action at law or equity shall
6 not be brought against the funeral establishment in this state
7 or elsewhere, and existing actions shall not be maintained or
8 further presented after issuance of the order. Whenever in
9 the liquidator's judgment, protection of the estate of the
10 funeral establishment necessitates intervention in an action
11 against the funeral establishment that is pending outside this
12 state, the liquidator may intervene in the action. The
13 liquidator may defend, at the expense of the estate of the
14 funeral establishment, an action in which the liquidator
15 intervenes under this section.
16 b. Within two years or such additional time as applicable
17 law may permit, the liquidator, after the issuance of an order
18 for liquidation, may institute an action or proceeding on
19 behalf of the estate of the funeral establishment upon any
20 cause of action against which the period of limitation fixed
21 by applicable law has not expired at the time of the filing of
22 the petition upon which the order is entered. If a period of
23 limitation is fixed by agreement for instituting a suit or
24 proceeding upon a claim, or for filing a claim, proof of
25 claim, proof of loss, demand, notice, or the like, or if in a
26 proceeding, judicial or otherwise, a period of limitation is
27 fixed in the proceeding or pursuant to applicable law for
28 taking an action, filing a claim or pleading, or doing an act,
29 and if the period had not expired at the date of the filing of
30 the petition, the liquidator may, for the benefit of the
31 estate, take any action or do any act, required of or
32 permitted to the funeral establishment, within a period of one
33 hundred eighty days subsequent to the entry of an order for
34 liquidation, or within a further period as is shown to the
35 satisfaction of the court not to be unfairly prejudicial to

1 the other party.
2 c. A statute of limitation or defense of laches shall not
3 run with respect to an action against a funeral establishment
4 between the filing of a petition for liquidation against the
5 funeral establishment and the denial of the petition. An
6 action against the funeral establishment that might have been
7 commenced when the petition was filed may be commenced for at
8 least sixty days after the petition is denied.
9 6. COLLECTION AND LIST OF ASSETS.
10 a. As soon as practicable after the liquidation order but
11 not later than one hundred twenty days after such order, the
12 liquidator shall prepare in duplicate a list of the funeral
13 establishment's assets. The list shall be amended or
14 supplemented as the liquidator may determine. One copy shall
15 be filed in the office of the clerk of court and one copy
16 shall be retained for the liquidator's files. Amendments and
17 supplements shall be similarly filed.
18 b. The liquidator shall reduce the assets to a degree of
19 liquidity that is consistent with the effective execution of
20 the liquidation.
21 c. A submission to the court for distribution of assets in
22 accordance with subsection 11 fulfills the requirements of
23 paragraph "a".
24 7. FRAUDULENT TRANSFERS PRIOR TO PETITION.
25 a. A transfer made and an obligation incurred by a funeral
26 establishment within one year prior to the filing of a
27 successful petition for liquidation under this chapter is
28 fraudulent as to then existing and future creditors if made or
29 incurred without fair consideration, or with actual intent to
30 hinder, delay, or defraud either existing or future creditors.
31 A fraudulent transfer made or an obligation incurred by a
32 funeral establishment ordered to be liquidated under this
33 chapter may be avoided by the receiver, except as to a person
34 who in good faith is a purchaser, lienor, or obligee for a
35 present fair equivalent value. A purchaser, lienor, or

1 obligee, who in good faith has given a consideration less than
2 fair for such transfer, lien, or obligation, may retain the
3 property, lien, or obligation as security for repayment. The
4 court may, on due notice, order any such transfer or
5 obligation to be preserved for the benefit of the estate, and
6 in that event, the receiver shall succeed to and may enforce
7 the rights of the purchaser, lienor, or obligee.
8 b. (1) A transfer of property other than real property is
9 made when it becomes perfected so that a subsequent lien
10 obtainable by legal or equitable proceedings on a simple
11 contract could not become superior to the rights of the
12 transferee under subsection 9, paragraph "c".
13 (2) A transfer of real property is made when it becomes
14 perfected so that a subsequent bona fide purchaser from the
15 funeral establishment could not obtain rights superior to the
16 rights of the transferee.
17 (3) A transfer which creates an equitable lien is not
18 perfected if there are available means by which a legal lien
19 could be created.
20 (4) A transfer not perfected prior to the filing of a
21 petition for liquidation is deemed to be made immediately
22 before the filing of the successful petition.
23 (5) This subsection applies whether or not there are or
24 were creditors who might have obtained a lien or persons who
25 might have become bona fide purchasers.
26 8. FRAUDULENT TRANSFER AFTER PETITION.
27 a. After a petition for liquidation has been filed a
28 transfer of real property of the funeral establishment made to
29 a person acting in good faith is valid against the liquidator
30 if made for a present fair equivalent value. If the transfer
31 was not made for a present fair equivalent value, then the
32 transfer is valid to the extent of the present consideration
33 actually paid for which amount the transferee shall have a
34 lien on the property transferred. The commencement of a
35 proceeding in liquidation is constructive notice upon the

1 recording of a copy of the petition for or order of
2 liquidation with the recorder of deeds in the county where any
3 real property in question is located. The exercise by a court
4 of the United States or a state or jurisdiction to authorize a
5 judicial sale of real property of the funeral establishment
6 within a county in a state shall not be impaired by the
7 pendency of a proceeding unless the copy is recorded in the
8 county prior to the consummation of the judicial sale.
9 b. After a petition for liquidation has been filed and
10 before either the receiver takes possession of the property of
11 the funeral establishment or an order of liquidation is
12 granted:
13 (1) A transfer of the property, other than real property,
14 of the funeral establishment made to a person acting in good
15 faith is valid against the receiver if made for a present fair
16 equivalent value. If the transfer was not made for a present
17 fair equivalent value, then the transfer is valid to the
18 extent of the present consideration actually paid for which
19 amount the transferee shall have a lien on the property
20 transferred.
21 (2) If acting in good faith, a person indebted to the
22 funeral establishment or holding property of the funeral
23 establishment may pay the debt or deliver the property, or any
24 part of the property, to the funeral establishment or upon the
25 funeral establishment's order as if the petition were not
26 pending.
27 (3) A person having actual knowledge of the pending
28 liquidation is not acting in good faith.
29 (4) A person asserting the validity of a transfer under
30 this subsection has the burden of proof. Except as provided
31 in this subsection, a transfer by or on behalf of the funeral
32 establishment after the date of the petition for liquidation
33 by any person other than the liquidator is not valid against
34 the liquidator.
35 c. A person receiving any property from the funeral

1 establishment or any benefit of the property of the funeral
2 establishment which is a fraudulent transfer under paragraph
3 "a" is personally liable for the property or benefit and shall
4 account to the liquidator.
5 d. This chapter does not impair the negotiability of
6 currency or negotiable instruments.
7 9. VOIDABLE PREFERENCES AND LIENS.
8 a. (1) A preference is a transfer of the property of a
9 funeral establishment to or for the benefit of a creditor for
10 an antecedent debt made or suffered by the funeral
11 establishment within one year before the filing of a
12 successful petition for liquidation under this chapter, the
13 effect of which transfer may be to enable the creditor to
14 obtain a greater percentage of this debt than another creditor
15 of the same class would receive. If a liquidation order is
16 entered while the funeral establishment is already subject to
17 a receivership, then the transfers are preferences if made or
18 suffered within one year before the filing of the successful
19 petition for the receivership, or within two years before the
20 filing of the successful petition for liquidation, whichever
21 time is shorter.
22 (2) A preference may be avoided by the liquidator if any
23 of the following exist:
24 (a) The funeral establishment was insolvent at the time of
25 the transfer.
26 (b) The transfer was made within four months before the
27 filing of the petition.
28 (c) At the time the transfer was made, the creditor
29 receiving it or to be benefited by the transfer or the
30 creditor's agent acting with reference to the transfer had
31 reasonable cause to believe that the funeral establishment was
32 insolvent or was about to become insolvent.
33 (d) The creditor receiving the transfer was an officer, or
34 an employee, attorney, or other person who was in fact in a
35 position of comparable influence in the funeral establishment

1 to an officer whether or not the person held the position of
2 an officer, owner, or other person, firm, corporation,
3 association, or aggregation of persons with whom the funeral
4 establishment did not deal at arm's length.
5 (3) Where the preference is voidable, the liquidator may
6 recover the property. If the property has been converted, the
7 liquidator may recover its value from a person who has
8 received or converted the property. However, if a bona fide
9 purchaser or lienor has given less than fair equivalent value,
10 the purchaser or lienor shall have a lien upon the property to
11 the extent of the consideration actually given. Where a
12 preference by way of lien or security interest is voidable,
13 the court may on due notice order the lien or security
14 interest to be preserved for the benefit of the estate, in
15 which event the lien or title shall pass to the liquidator.
16 b. (1) A transfer of property other than real property is
17 made when it becomes perfected so that a subsequent lien
18 obtainable by legal or equitable proceedings on a simple
19 contract could not become superior to the rights of the
20 transferee.
21 (2) A transfer of real property is made when it becomes
22 perfected so that a subsequent bona fide purchaser from the
23 funeral establishment could not obtain rights superior to the
24 rights of the transferee.
25 (3) A transfer which creates an equitable lien is not
26 perfected if there are available means by which a legal lien
27 could be created.
28 (4) A transfer not perfected prior to the filing of a
29 petition for liquidation is deemed to be made immediately
30 before the filing of the successful petition.
31 (5) This subsection applies whether or not there are or
32 were creditors who might have obtained liens or persons who
33 might have become bona fide purchasers.
34 c. (1) A lien obtainable by legal or equitable
35 proceedings upon a simple contract is one arising in the

1 ordinary course of the proceedings upon the entry or docketing
2 of a judgment or decree, or upon attachment, garnishment,
3 execution, or like process, whether before, upon, or after
4 judgment or decree and whether before or upon levy. It does
5 not include liens which under applicable law are given a
6 special priority over other liens which are prior in time.
7 (2) A lien obtainable by legal or equitable proceedings
8 could become superior to the rights of a transferee, or a
9 purchaser could obtain rights superior to the rights of a
10 transferee within the meaning of paragraph "b", if such
11 consequences would follow only from the lien or purchase
12 itself, or from the lien or purchase followed by a step wholly
13 within the control of the respective lienholder or purchaser,
14 with or without the aid of ministerial action by public
15 officials. However, a lien could not become superior and a
16 purchase could not create superior rights for the purpose of
17 paragraph "b" through an act subsequent to the obtaining of a
18 lien or subsequent to a purchase which requires the agreement
19 or concurrence of any third party or which requires further
20 judicial action or ruling.
21 d. A transfer of property for or on account of a new and
22 contemporaneous consideration, which is under paragraph "b"
23 made or suffered after the transfer because of delay in
24 perfecting it, does not become a transfer for or on account of
25 an antecedent debt if any acts required by the applicable law
26 to be performed in order to perfect the transfer as against
27 liens or a bona fide purchaser's rights are performed within
28 twenty-one days or any period expressly allowed by the law,
29 whichever is less. A transfer to secure a future loan, if a
30 loan is actually made, or a transfer which becomes security
31 for a future loan, shall have the same effect as a transfer
32 for or on account of a new and contemporaneous consideration.
33 e. If a lien voidable under paragraph "a", subparagraph
34 (2), has been dissolved by the furnishing of a bond or other
35 obligation, the surety on which has been indemnified directly

1 or indirectly by the transfer or the creation of a lien upon
2 property of a funeral establishment before the filing of a
3 petition under this chapter which results in a liquidation
4 order, the indemnifying transfer or lien is also voidable.
5 f. The property affected by a lien voidable under
6 paragraphs "a" and "e" is discharged from the lien. The
7 property and any of the indemnifying property transferred to
8 or for the benefit of a surety shall pass to the liquidator.
9 However, the court may on due notice order a lien to be
10 preserved for the benefit of the estate and the court may
11 direct that the conveyance be executed to evidence the title
12 of the liquidator.
13 g. The court shall have summary jurisdiction of a
14 proceeding by the liquidator to hear and determine the rights
15 of the parties under this section. Reasonable notice of
16 hearing in the proceeding shall be given to all parties in
17 interest, including the obligee of a releasing bond or other
18 like obligation. Where an order is entered for the recovery
19 of indemnifying property in kind or for the avoidance of an
20 indemnifying lien, upon application of any party in interest,
21 the court shall in the same proceeding ascertain the value of
22 the property or lien. If the value is less than the amount
23 for which the property is indemnified or less than the amount
24 of the lien, the transferee or lienholder may elect to retain
25 the property or lien upon payment of its value, as ascertained
26 by the court, to the liquidator within the time as fixed by
27 the court.
28 h. The liability of a surety under a releasing bond or
29 other like obligation is discharged to the extent of the value
30 of the indemnifying property recovered or the indemnifying
31 lien nullified and avoided by the liquidator. Where the
32 property is retained under paragraph "g", the liability of the
33 surety is discharged to the extent of the amount paid to the
34 liquidator.
35 i. If a creditor has been preferred for property which

1 becomes a part of the funeral establishment's estate, and
2 afterward in good faith gives the funeral establishment
3 further credit without security of any kind, the amount of the
4 new credit remaining unpaid at the time of the petition may be
5 set off against the preference which would otherwise be
6 recoverable from the creditor.
7 j. If within four months before the filing of a successful
8 petition for liquidation under this chapter, or at any time in
9 contemplation of a proceeding to liquidate, a funeral
10 establishment, directly or indirectly, pays money or transfers
11 property to an attorney for services rendered or to be
12 rendered, the transaction may be examined by the court on its
13 own motion or shall be examined by the court on petition of
14 the liquidator. The payment or transfer shall be held valid
15 only to the extent of a reasonable amount to be determined by
16 the court. The excess may be recovered by the liquidator for
17 the benefit of the estate. However, where the attorney is in
18 a position of influence in the funeral establishment or an
19 affiliate, payment of any money or the transfer of any
20 property to the attorney for services rendered or to be
21 rendered shall be governed by the provision of paragraph "a",
22 subparagraph (2), subparagraph subdivision (d).
23 k. (1) An officer, manager, employee, shareholder,
24 subscriber, attorney, or any other person acting on behalf of
25 the funeral establishment who knowingly participates in giving
26 any preference when the person has reasonable cause to believe
27 the funeral establishment is or is about to become insolvent
28 at the time of the preference is personally liable to the
29 liquidator for the amount of the preference. There is an
30 inference that reasonable cause exists if the transfer was
31 made within four months before the date of filing of this
32 successful petition for liquidation.
33 (2) A person receiving property from the funeral
34 establishment or the benefit of the property of the funeral
35 establishment as a preference voidable under paragraph "a" is

1 personally liable for the property and shall account to the
2 liquidator.
3 (3) This subsection shall not prejudice any other claim by
4 the liquidator against any person.
5 10. CLAIMS OF HOLDER OF VOID OR VOIDABLE RIGHTS.
6 a. A claim of a creditor who has received or acquired a
7 preference, lien, conveyance, transfer, assignment, or
8 encumbrance, voidable under this chapter, shall not be allowed
9 unless the creditor surrenders the preference, lien,
10 conveyance, transfer, assignment, or encumbrance. If the
11 avoidance is effected by a proceeding in which a final
12 judgment has been entered, the claim shall not be allowed
13 unless the money is paid or the property is delivered to the
14 liquidator within thirty days from the date of the entering of
15 the final judgment. However, the court having jurisdiction
16 over the liquidation may allow further time if there is an
17 appeal or other continuation of the proceeding.
18 b. A claim allowable under paragraph "a" by reason of a
19 voluntary or involuntary avoidance, preference, lien,
20 conveyance, transfer, assignment, or encumbrance may be filed
21 as an excused late filing under subsection 12, if filed within
22 thirty days from the date of the avoidance or within the
23 further time allowed by the court under paragraph "a".
24 11. LIQUIDATOR'S PROPOSAL TO DISTRIBUTE ASSETS.
25 a. From time to time as assets become available, the
26 liquidator shall make application to the court for approval of
27 a proposal to disburse assets out of marshaled assets.
28 b. The proposal shall at least include provisions for all
29 of the following:
30 (1) Reserving amounts for the payment of all the
31 following:
32 (a) Expenses of administration.
33 (b) To the extent of the value of the security held, the
34 payment of claims of secured creditors.
35 (c) Claims falling within the priorities established in

1 subsection 18, paragraphs "a" and "b".
2 (2) Disbursement of the assets marshaled to date and
3 subsequent disbursement of assets as they become available.
4 c. Action on the application may be taken by the court
5 provided that the liquidator's proposal complies with
6 paragraph "b".
7 12. FILING OF CLAIMS.
8 a. Proof of all claims shall be filed with the liquidator
9 in the form required by subsection 13 on or before the last
10 day for filing specified in the notice required under
11 subsection 4.
12 b. The liquidator may permit a claimant making a late
13 filing to share in distributions, whether past or future, as
14 if the claimant were not late, to the extent that the payment
15 will not prejudice the orderly administration of the
16 liquidation under any of the following circumstances:
17 (1) The existence of the claim was not known to the
18 claimant and that the claimant filed the claim as promptly as
19 reasonably possible after learning of it.
20 (2) A transfer to a creditor was avoided under subsections
21 7 through 9, or was voluntarily surrendered under subsection
22 10, and that the filing satisfies the conditions of subsection
23 10.
24 (3) The valuation under subsection 17 of security held by
25 a secured creditor shows a deficiency, which is filed within
26 thirty days after the valuation.
27 c. The liquidator may consider any claim filed late and
28 permit the claimant to receive distributions which are
29 subsequently declared on any claims of the same or lower
30 priority if the payment does not prejudice the orderly
31 administration of the liquidation. The late-filing claimant
32 shall receive at each distribution the same percentage of the
33 amount allowed on the claim as is then being paid to claimants
34 of any lower priority. This shall continue until the claim
35 has been paid in full.

1 13. PROOF OF CLAIM.
2 a. Proof of claim shall consist of a statement signed by
3 the claimant that includes all of the following that are
4 applicable:
5 (1) The particulars of the claim, including the
6 consideration given for it.
7 (2) The identity and amount of the security on the claim.
8 (3) The payments, if any, made on the debt.
9 (4) A statement that the sum claimed is justly owing and
10 that there is no setoff, counterclaim, or defense to the
11 claim.
12 (5) Any right of priority of payment or other specific
13 right asserted by the claimant.
14 (6) A copy of the written instrument which is the
15 foundation of the claim.
16 (7) The name and address of the claimant and the attorney
17 who represents the claimant, if any.
18 b. A claim need not be considered or allowed if it does
19 not contain all the information identified in paragraph "a"
20 which is applicable. The liquidator may require that a
21 prescribed form be used and may require that other information
22 and documents be included.
23 c. At any time the liquidator may request the claimant to
24 present information or evidence supplementary to that required
25 under paragraph "a", and may take testimony under oath,
26 require production of affidavits or depositions, or otherwise
27 obtain additional information or evidence.
28 d. A judgment or order against a funeral establishment
29 entered after the date of filing of a successful petition for
30 liquidation, or a judgment or order against the funeral
31 establishment entered at any time by default or by collusion
32 need not be considered as evidence of liability or of the
33 amount of damages. A judgment or order against a funeral
34 establishment before the filing of the petition need not be
35 considered as evidence of liability or of the amount of

1 damages.
2 14. SPECIAL CLAIMS.
3 a. A claim may be allowed even if contingent, if it is
4 filed pursuant to subsection 12. The claim may be allowed and
5 the claimant may participate in all distributions declared
6 after it is filed to the extent that it does not prejudice the
7 orderly administration of the liquidation.
8 b. Claims that are due except for the passage of time
9 shall be treated as absolute claims are treated. However, the
10 claims may be discounted at the legal rate of interest.
11 c. Claims made under employment contracts by directors,
12 principal officers, or persons in fact performing similar
13 functions or having similar powers are limited to payment for
14 services rendered prior to the issuance of an order of
15 liquidation under subsection 2.
16 15. DISPUTED CLAIMS.
17 a. If a claim is denied in whole or in part by the
18 liquidator, written notice of the determination shall be given
19 to the claimant or the claimant's attorney by first class mail
20 at the address shown in the proof of claim. Within sixty days
21 from the mailing of the notice, the claimant may file
22 objections with the liquidator. Unless a filing is made, the
23 claimant shall not further object to the determination.
24 b. If objections are filed with the liquidator and the
25 liquidator does not alter the denial of the claim as a result
26 of the objections, the liquidator shall ask the court for a
27 hearing as soon as practicable and give notice of the hearing
28 by first class mail to the claimant or the claimant's attorney
29 and to any other persons directly affected. The notice shall
30 be given not less than ten nor more than thirty days before
31 the date of the hearing. The matter shall be heard by the
32 court or by a court-appointed referee. The referee shall
33 submit findings of fact along with a recommendation.
34 16. CLAIMS OF OTHER PERSON. If a creditor, whose claim
35 against a funeral establishment is secured in whole or in part

1 by the undertaking of another person, fails to prove and file
2 that claim, then the other person may do so in the creditor's
3 name and shall be subrogated to the rights of the creditor,
4 whether the claim has been filed by the creditor or by the
5 other person in the creditor's name to the extent that the
6 other person discharges the undertaking. However, in the
7 absence of an agreement with the creditor to the contrary, the
8 other person is not entitled to any distribution until the
9 amount paid to the creditor on the undertaking plus the
10 distributions paid on the claim from the funeral
11 establishment's estate to the creditor equal the amount of the
12 entire claim of the creditor. An excess received by the
13 creditor shall be held by the creditor in trust for the other
14 person.
15 17. SECURED CREDITOR'S CLAIMS.
16 a. The value of security held by a secured creditor shall
17 be determined in one of the following ways, as the court may
18 direct:
19 (1) By converting the security into money according to the
20 terms of the agreement pursuant to which the security was
21 delivered to the creditors.
22 (2) By agreement, arbitration, compromise, or litigation
23 between the creditor and the liquidator.
24 b. The determination shall be under the supervision and
25 control of the court with due regard for the recommendation of
26 the liquidator. The amount so determined shall be credited
27 upon the secured claim. A deficiency shall be treated as an
28 unsecured claim. If the claimant surrenders the security to
29 the liquidator, the entire claim shall be allowed as if
30 unsecured.
31 18. PRIORITY OF DISTRIBUTION. The priority of
32 distribution of claims from the funeral establishment's estate
33 shall be in accordance with the order in which each class of
34 claims is set forth. Claims in each class shall be paid in
35 full or adequate funds retained for the payment before the

1 members of the next class receive any payment. Subclasses
2 shall not be established within a class. The order of
3 distribution of claims is as follows:
4 a. CLASS 1. The costs and expenses of administration,
5 including but not limited to the following:
6 (1) The actual and necessary costs of preserving or
7 recovering the assets of the funeral establishment.
8 (2) Compensation for all authorized services rendered in
9 the liquidation.
10 (3) Necessary filing fees.
11 (4) The fees and mileage payable to witnesses.
12 (5) Authorized reasonable attorney's fees and other
13 professional services rendered in the liquidation.
14 b. CLASS 2. Reasonable compensation to employees for
15 services performed to the extent that they do not exceed two
16 months of monetary compensation and represent payment for
17 services performed within one year before the filing of the
18 petition for liquidation. Officers and directors are not
19 entitled to the benefit of this priority. The priority is in
20 lieu of other similar priority which may be authorized by law
21 as to wages or compensation of employees.
22 c. CLASS 3. Claims under at-need and preneed funeral
23 contracts.
24 d. CLASS 4. Claims of general creditors.
25 e. CLASS 5. Claims of the federal or any state or local
26 government. Claims, including those of a governmental body
27 for a penalty or forfeiture, are allowed in this class only to
28 the extent of the pecuniary loss sustained from the act,
29 transaction, or proceeding out of which the penalty or
30 forfeiture arose, with reasonable and actual costs incurred.
31 The remainder of such claims shall be postponed to the class
32 of claims under paragraph "g".
33 f. CLASS 6. Claims filed late or any other claims other
34 than claims under paragraph "g".
35 g. CLASS 7. The claims of shareholders or other owners.

1 19. LIQUIDATOR'S RECOMMENDATIONS TO THE COURT.
2 a. The liquidator shall review claims duly filed in the
3 liquidation and shall make further investigation as necessary.
4 The liquidator may compound, compromise, or in any other
5 manner negotiate the amount for which claims will be
6 recommended to the court except where the liquidator is
7 required by law to accept claims as settled by a person or
8 organization. Unresolved disputes shall be determined under
9 subsection 15. As soon as practicable, the liquidator shall
10 present to the court a report of the claims against the
11 funeral establishment with the liquidator's recommendations.
12 The report shall include the name and address of each claimant
13 and the amount of the claim finally recommended.
14 b. The court may approve, disapprove, or modify the report
15 on claims by the liquidator. Reports not modified by the
16 court within sixty days following submission by the liquidator
17 shall be treated by the liquidator as allowed claims, subject
18 to later modification or to rulings made by the court pursuant
19 to subsection 15. A claim under a policy of insurance shall
20 not be allowed for an amount in excess of the applicable
21 policy limits.
22 20. DISTRIBUTION OF ASSETS. Under the direction of the
23 court, the liquidator shall pay distributions in a manner that
24 will assure the proper recognition of priorities and a
25 reasonable balance between the expeditious completion of the
26 liquidation and the protection of unliquidated and
27 undetermined claims, including third-party claims.
28 Distribution of assets in kind may be made at valuations set
29 by agreement between the liquidator and the creditor and
30 approved by the court.
31 21. UNCLAIMED AND WITHHELD FUNDS.
32 a. Unclaimed funds subject to distribution remaining in
33 the liquidator's hands when the liquidator is ready to apply
34 to the court for discharge, including the amount distributable
35 to a creditor, owner, or other person who is unknown or cannot

1 be found, shall be deposited with the treasurer of state, and
2 shall be paid without interest, except as provided in
3 subsection 18, to the person entitled or the person's legal
4 representative upon proof satisfactory to the treasurer of
5 state of the right to the funds. An amount on deposit not
6 claimed within six years from the discharge of the liquidator
7 is deemed to have been abandoned and shall become the property
8 of the state without formal escheat proceedings and be
9 transferred to the insurance division regulatory fund.
10 b. Funds withheld under subsection 14 and not distributed
11 shall upon discharge of the liquidator be deposited with the
12 treasurer of state and paid pursuant to subsection 18. Sums
13 remaining which under subsection 18 would revert to the
14 undistributed assets of the funeral establishment shall be
15 transferred to the insurance division regulatory fund and
16 become the property of the state as provided under paragraph
17 "a", unless the commissioner in the commissioner's discretion
18 petitions the court to reopen the liquidation pursuant to
19 subsection 23.
20 c. Notwithstanding any other provision of this chapter,
21 funds as identified in paragraph "a", with the approval of the
22 court, shall be made available to the commissioner for use in
23 the detection and prevention of future insolvencies. The
24 commissioner shall hold these funds in the insurance division
25 regulatory fund and shall pay without interest, except as
26 provided in subsection 18, to the person entitled to the funds
27 or the person's legal representative upon proof satisfactory
28 to the commissioner of the person's right to the funds. The
29 funds shall be held by the commissioner for a period of two
30 years at which time the rights and duties to the unclaimed
31 funds shall vest in the commissioner.
32 22. TERMINATION OF PROCEEDINGS.
33 a. When all assets justifying the expense of collection
34 and distribution have been collected and distributed under
35 this chapter, the liquidator shall apply to the court for

1 discharge. The court may grant the discharge and make any
2 other orders, including an order to transfer remaining funds
3 that are uneconomical to distribute, as appropriate.
4 b. Any other person may apply to the court at any time for
5 an order under paragraph "a". If the application is denied,
6 the applicant shall pay the costs and expenses of the
7 liquidator in resisting the application, including a
8 reasonable attorney's fee.
9 23. REOPENING LIQUIDATION. At any time after the
10 liquidation proceeding has been terminated and the liquidator
11 discharged, the commissioner or other interested party may
12 petition the court to reopen the proceedings for good cause
13 including the discovery of additional assets. The court shall
14 order the proceeding reopened if it is satisfied that there is
15 justification for the reopening.
16 24. DISPOSITION OF RECORDS DURING AND AFTER TERMINATION OF
17 LIQUIDATION. If it appears to the commissioner that the
18 records of a funeral establishment in process of liquidation
19 or completely liquidated are no longer useful, the
20 commissioner may recommend to the court and the court shall
21 direct what records shall be retained for future reference and
22 what records shall be destroyed.
23 25. EXTERNAL AUDIT OF RECEIVER'S BOOKS. The court may
24 order audits to be made of the books of the commissioner
25 relating to a receivership established under this chapter, and
26 a report of each audit shall be filed with the commissioner
27 and with the court. The books, records, and other documents
28 of the receivership shall be made available to the auditor at
29 any time without notice. The expense of an audit shall be
30 considered a cost of administration of the receivership.
31 Sec. 12. Section 523E.1, subsection 1, Code 1995, is
32 amended to read as follows:
33 1. If an agreement is made by a person to furnish, upon
34 the future death of a person named or implied in the
35 agreement, cemetery merchandise, a minimum of one hundred

1 twenty-five percent of the wholesale cost of the cemetery
2 merchandise, based upon the current advertised prices
3 available from a manufacturer or wholesaler who has delivered
4 the same or substantially the same type of merchandise to the
5 seller during the last twelve months, shall be and remain
6 trust funds until purchase of the merchandise or the
7 occurrence of the death of the person for whose benefit the
8 funds were paid, unless the funds are sooner released to the
9 person making the payment by mutual consent of the parties.
10 Payments otherwise subject to this section are not exempt
11 merely because they are held in certificates of deposit. The
12 commissioner may adopt rules to prohibit the commingling of
13 trust funds with other funds of the seller.
14 Sec. 13. Section 523E.1, Code 1995, is amended by adding
15 the following new subsection:
16 NEW SUBSECTION. 5. An agreement may be funded by
17 insurance proceeds derived from a policy issued by an
18 insurance company authorized to conduct business in this
19 state. Such funding may be in lieu of a trust fund if the
20 payments are made directly to the insurance company by the
21 purchaser of the agreement.
22 Sec. 14. Section 523E.2, subsection 1, paragraphs a and c,
23 Code 1995, are amended to read as follows:
24 a. All funds held in trust under section 523E.1 shall be
25 deposited in a state or federally insured bank, savings and
26 loan association, or credit union authorized to conduct
27 business in this state, or trust department ~~thereof~~ of such
28 bank, savings and loan association, or credit union, or in a
29 trust company authorized to conduct business in this state,
30 within fifteen days after the close of the month of receipt of
31 the funds and shall be held as provided in paragraph "g" for
32 the designated beneficiary until released pursuant to section
33 523E.1.
34 c. The seller under an agreement referred to in section
35 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.~~ The balance of each trust account as of the end of the immediately preceding calendar year, identified by the name of the purchaser or the beneficiary, and a report of any amounts withdrawn from trust and the reason for each withdrawal.

(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.~~ A description of insurance funding outstanding at the end of the immediately preceding calendar year, identified by the name of the purchaser or the beneficiary, and a report of any insurance payments received by the seller.

~~(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.~~

1 ~~(8)~~ (4) ~~The~~ A complete inventory of cemetery merchandise
2 ~~and-its-location-in-the-seller's-possession-that-has-been~~
3 delivered in lieu of trusting pursuant to section 523E.1~~.~~
4 ~~(9)--Other-information-reasonably-required-by-the~~
5 ~~commissioner-for-purposes-of-administration-of-this-chapter.~~
6 ~~The-information-required-by-subparagraphs-(7)-and-(8)-shall~~
7 ~~include~~, including the location of the merchandise, serial
8 numbers or warehouse receipt numbers, identified by the name
9 of the purchaser or the beneficiary, and a verified statement
10 of a certified public accountant that the certified public
11 accountant has conducted a physical inventory of the cemetery
12 merchandise ~~specified-in-subparagraph-(8)~~ and that each item
13 of that merchandise is in the seller's possession at the
14 specified location. The statement shall be on a form
15 prescribed by the commissioner. ~~The-commissioner-shall-permit~~
16 ~~the-filing-of-a-unified-annual-report-by-a-seller-subject-to~~
17 ~~both-chapter-523A-and-this-chapter.~~
18 The report shall be accompanied by a filing fee determined
19 by the commissioner which shall be sufficient to defray the
20 costs of administering this chapter.
21 Sec. 15. Section 523E.2, subsection 6, Code 1995, is
22 amended to read as follows:
23 6. This chapter does not prohibit the funding of an
24 agreement ~~otherwise-subject-to-section-523E.1~~ by insurance
25 proceeds derived from a policy issued by an insurance company
26 authorized to conduct business in this state. The seller of
27 an agreement subject to this chapter which is to be funded by
28 insurance proceeds shall obtain all permits required to be
29 obtained under this chapter and comply with the reporting
30 requirements of this section.
31 Sec. 16. Section 523E.8, subsection 1, paragraphs e, h,
32 and j, Code 1995, are amended to read as follows:
33 e. State clearly whether the agreement is a guaranteed
34 price contract or a nonguaranteed price contract. Each
35 nonguaranteed price contract shall contain in twelve point

1 bold type, an explanation of the consequences in substantially
2 the following language:
3 THE PRICES OF MERCHANDISE AND SERVICES UNDER THIS CONTRACT
4 ARE SUBJECT TO CHANGE IN THE FUTURE. ANY FUNDS PAID UNDER
5 THIS CONTRACT ARE ONLY A DEPOSIT TO BE APPLIED, TOGETHER WITH
6 ACCRUED INCOME, TOWARD THE FINAL COSTS OF THE MERCHANDISE OR
7 SERVICES CONTRACTED FOR. ADDITIONAL CHARGES MAY BE REQUIRED.
8 h. Explain the disposition of the ~~interest-and-disclose~~
9 ~~what-fees-and-expenses-may-be-charged-if-incurred~~ income
10 generated from investments, include a statement of fees,
11 expenses, and taxes which may be deducted, and include a
12 statement of the buyer's responsibility for income taxes owed
13 on the income, if applicable.
14 j. ~~State-the-name-and-address-of-the-commissioner.~~
15 Include an explanation of regulatory oversight by the
16 insurance division in twelve point bold type, in substantially
17 the following language:
18 THIS CONTRACT MUST BE REPORTED TO THE IOWA INSURANCE
19 DIVISION BY THE FIRST DAY OF MARCH OF THE FOLLOWING YEAR. YOU
20 MAY CALL THE INSURANCE DIVISION AT (INSERT TELEPHONE NUMBER)
21 TO CONFIRM THAT YOUR CONTRACT HAS BEEN REPORTED. WRITTEN
22 INQUIRIES OR COMPLAINTS SHOULD BE MAILED TO THE FOLLOWING
23 ADDRESS: IOWA SECURITIES BUREAU (INSERT ADDRESS).
24 Sec. 17. Section 523E.8, subsection 1, Code 1995, is
25 amended by adding the following new paragraph:
26 NEW PARAGRAPH. k. State that any financial instrument
27 which is used to make a payment under the agreement is to be
28 made payable to the financial institution or entity where the
29 money is to be deposited in trust.
30 Sec. 18. Section 523E.8, subsection 1, Code 1995, is
31 amended by adding the following new subsection:
32 NEW SUBSECTION. 1A. The commissioner may adopt rules
33 establishing disclosure and format requirements to promote
34 consumers' understanding of the cemetery merchandise purchased
35 and the available funding mechanisms under an agreement for

1 cemetery merchandise under this chapter.
2 Sec. 19. Section 523E.8, Code 1995, is amended by adding
3 the following new subsection:
4 NEW SUBSECTION. 3. The seller shall disclose at the time
5 an application is made by an individual and prior to accepting
6 the applicant's initial premium or deposit for a preneed
7 funeral contract or prearrangement subject to section 523E.1
8 which is funded by a life insurance policy, the following
9 information:
10 a. That a life insurance policy is involved or being used
11 to fund an agreement.
12 b. The nature of the relationship among the soliciting
13 agent or agents, the provider of the funeral or cemetery
14 merchandise or services, the administrator, and any other
15 person.
16 c. The relationship of the life insurance policy to the
17 funding of the prearrangement and the nature and existence of
18 any guarantees relating to the prearrangement.
19 d. The impact on the prearrangement of the following:
20 (1) Changes in the life insurance policy including, but
21 not limited to, changes in the assignment, beneficiary
22 designation, or use of proceeds.
23 (2) Any penalties to be incurred by the policyholder as a
24 result of the failure to make premium payments.
25 (3) Penalties to be incurred or cash to be received as a
26 result of the cancellation or surrender of the life insurance
27 policy.
28 e. A list of merchandise and services which are applied or
29 contracted for in the prearrangement and all relevant
30 information concerning the price of the merchandise and
31 services, including an indication that the purchase price is
32 either guaranteed at the time of purchase or to be determined
33 at the time of need.
34 f. All relevant information concerning what occurs and
35 whether any entitlements or obligations arise if there is a

difference between the proceeds of the life insurance policy and the amount actually needed to fund the agreement.

g. Any penalties or restrictions, including but not limited to, geographic restrictions or the inability of the provider to perform, on the delivery of merchandise, services, or the prearrangement guarantee.

h. That a sales commission or other form of compensation is being paid and, if so, the identity of the individuals or entities to whom it is paid.

Sec. 20. Section 523E.20, Code 1995, is amended to read as follows:

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~~ The commissioner shall allocate annually from the fees paid pursuant to section 523E.2, ~~one dollar~~ two dollars 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 general fund of the state. In addition, on May 1 of ~~1994~~ 1996 and ~~1995~~ 1997, the commissioner, to the extent necessary to fund consumer education, audits, investigations, payments under contract with licensed establishments to provide funeral and cemetery merchandise or services in the event of statutory noncompliance by the initial seller, liquidations, and receiverships, shall assess establishment permit holders ~~five~~ two dollars for each agreement reported on the establishment permit holder's annual report of sales executed during the preceding year, which shall be deposited in the insurance division regulatory fund. ~~However, 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~~

1 ~~523E.2 shall be deposited in the general fund of the state.~~
2 The moneys in the regulatory fund shall be retained in the
3 fund. The moneys are appropriated and, subject to
4 authorization by the commissioner, may be used to pay
5 auditors, audit expenses, investigative expenses, and the
6 expenses of receiverships established pursuant to section
7 523E.19. An annual assessment shall not be imposed if the
8 current balance of the fund exceeds two hundred thousand
9 dollars.
10 Sec. 21. NEW SECTION. 523E.21 LICENSE REVOCATION --
11 RECOMMENDATION BY COMMISSIONER TO BOARD OF MORTUARY SCIENCE
12 EXAMINERS.
13 Upon a determination by the commissioner that grounds exist
14 for an administrative license revocation action by the board
15 of mortuary science examiners under chapter 156, the
16 commissioner may forward to the board the grounds for the
17 determination, including all evidence in the possession of the
18 commissioner, so that the board may proceed with the matter as
19 deemed appropriate.
20 Sec. 22. NEW SECTION. 523J.1 DEFINITIONS.
21 As used in this chapter, unless the context otherwise
22 requires:
23 1. "Abandoned cemetery" means any cemetery where there has
24 been a failure to cut grass or weeds or care for graves, grave
25 markers, walls, fences, driveways, and buildings, or for which
26 proper records have not been maintained.
27 2. "Cemetery" means a cemetery, mausoleum, columbarium, or
28 other space held for the purpose of burial, entombment, or
29 inurnment of human remains, and which is subject to this
30 chapter.
31 3. "Commissioner" means the commissioner of insurance or
32 the deputy appointed under section 502.601.
33 4. "Interment rights" means a right of use conveyed by
34 contract or property ownership to inter human rights in a
35 columbarium, grave, mausoleum, lawn crypt, or undeveloped

1 space.
2 5. "Perpetual care cemetery" means a cemetery which has
3 established a perpetual care fund for the maintenance, repair,
4 and care of all interment spaces subject to perpetual care
5 within the cemetery in compliance with section 566A.3 or
6 566A.4.
7 Sec. 23. NEW SECTION. 523J.2 CEMETERIES COMMENCING
8 BUSINESS AFTER JULY 1, 1995.
9 A cemetery which is organized or commences business in this
10 state on or after July 1, 1995, shall operate as a perpetual
11 care cemetery and is subject to this chapter and other
12 applicable law.
13 Sec. 24. NEW SECTION. 523J.3 PERMIT REQUIREMENTS.
14 1. A perpetual care cemetery shall not sell or offer
15 interment rights to the public without a permit as provided
16 for in this section.
17 2. Applications for a permit shall be made to and filed
18 with the commissioner on forms approved by the commissioner
19 and accompanied by a filing fee of twenty dollars. If the
20 application contains the following information, the
21 commissioner shall issue the license:
22 (a) The name and principal address of the applicant.
23 (b) The identity of the applicant's owner or owners.
24 (c) Evidence of a trust fund for cemetery maintenance and
25 care in compliance with section 566A.3 or 566A.4.
26 3. Each permit issued under this chapter shall expire on
27 June 30 of the year following the date of issuance.
28 Sec. 25. NEW SECTION. 523J.4 DENIAL, SUSPENSION, OR
29 REVOCATION OF PERMIT.
30 The commissioner, pursuant to chapter 17A, may deny,
31 suspend, or revoke any permit to operate a cemetery if the
32 commissioner finds any of the following:
33 1. The cemetery has committed a fraudulent practice, or
34 the cemetery's trust assets, warehoused merchandise, surety
35 bonds, or insurance funding are in material noncompliance with

1 chapter 523A or 523E or section 566A.3 or 566A.4.
2 2. An owner or officer of the cemetery has been convicted
3 of a felony related to the sale of interment rights or the
4 sale of funeral services, funeral merchandise, or cemetery
5 merchandise, as defined in section 523A.5, subsection 2,
6 paragraphs "a" and "b", and section 523E.5, subsection 2,
7 paragraph "a".
8 Sec. 26. NEW SECTION. 523J.5 LIQUIDATION.
9 1. GROUNDS FOR LIQUIDATION. The commissioner may petition
10 the district court for an order directing the commissioner to
11 liquidate a perpetual care cemetery on any of the following
12 grounds:
13 a. The cemetery's trust fund is in material noncompliance
14 with the requirements of section 566A.3 or 566A.4 and is
15 insolvent.
16 b. The cemetery's trust fund is in material noncompliance
17 with the requirements of section 566A.3 or 566A.4 and the
18 condition of the cemetery is such that the further transaction
19 of business would be hazardous, financially or otherwise, to
20 its customers or the public.
21 c. The cemetery has been abandoned.
22 2. LIQUIDATION ORDER.
23 a. An order to liquidate the business of a perpetual care
24 cemetery shall appoint the commissioner as liquidator and
25 shall direct the liquidator to immediately take possession of
26 the assets of the cemetery and to administer them under the
27 general supervision of the court. The liquidator is vested
28 with the title to the property, contracts, and rights of
29 action and the books and records of the cemetery ordered
30 liquidated, wherever located, as of the entry of the final
31 order of liquidation. The filing or recording of the order
32 with the clerk of court and the recorder of deeds of the
33 county in which its principal office or place of business is
34 located, or, in the case of real estate with the recorder of
35 deeds of the county where the property is located, is notice

1 as a deed, bill of sale, or other evidence of title duly filed
2 or recorded with the recorder of deeds.
3 b. Upon issuance of an order, the rights and liabilities
4 of a cemetery and of the cemetery's creditors, customers,
5 owners, and other persons interested in the cemetery's estate
6 shall become fixed as of the date of the entry of the order of
7 liquidation, except as provided in subsection 14.
8 c. At the time of petitioning for an order of liquidation,
9 or at any time after the time of petitioning, the
10 commissioner, after making appropriate findings of a
11 cemetery's insolvency, may petition the court for a
12 declaration of insolvency. After providing notice and hearing
13 as it deems proper, the court may make the declaration.
14 d. An order issued under this section shall require
15 accounting to the court by the liquidator. Accountings, at a
16 minimum, must include all funds received or disbursed by the
17 liquidator during the current period. An accounting shall be
18 filed within one year of the liquidation order and at such
19 other times as the court may require.
20 e. Within five days after the initiation of an appeal of
21 an order of liquidation, which order has not been stayed, the
22 commissioner shall present for the court's approval a plan for
23 the continued performance of the cemetery's obligations during
24 the pendency of an appeal. The plan shall provide for the
25 continued performance of interment rights contracts in the
26 normal course of events, notwithstanding the grounds alleged
27 in support of the order of liquidation including the ground of
28 insolvency. If the defendant cemetery's financial condition,
29 in the judgment of the commissioner, will not support the full
30 performance of all obligations during the appeal pendency
31 period, the plan may prefer the claims of certain customers
32 and claimants over creditors and interested parties as well as
33 other customers and claimants, as the commissioner finds to be
34 fair and equitable considering the relative circumstances of
35 such customers and claimants. The court shall examine the

1 plan submitted by the commissioner and if it finds the plan to
2 be in the best interests of the parties, the court shall
3 approve the plan. An action shall not lie against the
4 commissioner or any of the commissioner's deputies, agents,
5 clerks, assistants, or attorneys by any party based on
6 preference in an appeal pendency plan approved by the court.
7 3. POWERS OF LIQUIDATOR.
8 a. The liquidator may do any of the following:
9 (1) Appoint a special deputy to act for the liquidator
10 under this chapter, and determine the special deputy's
11 reasonable compensation. The special deputy shall have all
12 the powers of the liquidator granted by this section. The
13 special deputy shall serve at the pleasure of the liquidator.
14 (2) Hire employees and agents, legal counsel, accountants,
15 appraisers, consultants, and other personnel as the
16 commissioner may deem necessary to assist in the liquidation.
17 (3) With the approval of the court fix reasonable
18 compensation of employees and agents, legal counsel,
19 accountants, appraisers and consultants.
20 (4) Pay reasonable compensation to persons appointed and
21 defray from the funds or assets of the cemetery all expenses
22 of taking possession of, conserving, conducting, liquidating,
23 disposing of, or otherwise dealing with the business and
24 property of the cemetery. If the property of the cemetery
25 does not contain sufficient cash or liquid assets to defray
26 the costs incurred, the commissioner may advance the costs so
27 incurred out of the insurance division cemetery fund. Amounts
28 so advanced for expenses of administration shall be repaid to
29 the insurance division cemetery fund for the use of the
30 division out of the first available moneys of the cemetery.
31 (5) Hold hearings, subpoena witnesses, and compel their
32 attendance, administer oaths, examine a person under oath, and
33 compel a person to subscribe to the person's testimony after
34 it has been correctly reduced to writing, and in connection to
35 the proceedings require the production of books, papers,

1 records, or other documents which the liquidator deems
2 relevant to the inquiry.
3 (6) Collect debts and moneys due and claims belonging to
4 the cemetery, wherever located. Pursuant to this
5 subparagraph, the liquidator may do any of the following:
6 (a) Institute timely action in other jurisdictions to
7 forestall garnishment and attachment proceedings against
8 debts.
9 (b) Perform acts as are necessary or expedient to collect,
10 conserve, or protect its assets or property, including the
11 power to sell, compound, compromise, or assign debts for
12 purposes of collection upon terms and conditions as the
13 liquidator deems best.
14 (c) Pursue any creditor's remedies available to enforce
15 claims.
16 (7) Conduct public and private sales of the property of
17 the cemetery.
18 (8) Use assets of the cemetery under a liquidation order
19 to transfer obligations of preneed funeral contracts to a
20 solvent cemetery, if the transfer can be accomplished without
21 prejudice to applicable priorities under subsection 18.
22 (9) Acquire, hypothecate, encumber, lease, improve, sell,
23 transfer, abandon, or otherwise dispose of or deal with
24 property of the cemetery at its market value or upon terms and
25 conditions as are fair and reasonable. The liquidator shall
26 also have power to execute, acknowledge, and deliver deeds,
27 assignments, releases, and other instruments necessary to
28 effectuate a sale of property or other transaction in
29 connection with the liquidation.
30 (10) Borrow money on the security of the cemetery's assets
31 or without security and execute and deliver documents
32 necessary to that transaction for the purpose of facilitating
33 the liquidation. Money borrowed pursuant to this subparagraph
34 shall be repaid as an administrative expense and have priority
35 over any other class 1 claims under the priority of

1 distribution established in subsection 18.
2 (11) Enter into contracts as necessary to carry out the
3 order to liquidate and affirm or disavow contracts to which
4 the cemetery is a party.
5 (12) Continue to prosecute and to institute in the name of
6 the cemetery or in the liquidator's own name any and all suits
7 and other legal proceedings, in this state or elsewhere, and
8 to abandon the prosecution of claims the liquidator deems
9 unprofitable to pursue further.
10 (13) Prosecute an action on behalf of the creditors,
11 customers, or owners against an officer of the cemetery or any
12 other person.
13 (14) Remove records and property of the cemetery to the
14 offices of the commissioner or to other places as may be
15 convenient for the purposes of efficient and orderly execution
16 of the liquidation.
17 (15) Deposit in one or more banks in this state sums as
18 are required for meeting current administration expenses and
19 distributions.
20 (16) Unless the court orders otherwise, invest funds not
21 currently needed.
22 (17) File necessary documents for recording in the office
23 of a recorder of deeds or record office in this state or
24 elsewhere where property of the cemetery is located.
25 (18) Assert defenses available to the cemetery as against
26 third persons including statutes of limitations, statutes of
27 fraud, and the defense of usury. A waiver of a defense by the
28 cemetery after a petition in liquidation has been filed shall
29 not bind the liquidator.
30 (19) Exercise and enforce the rights, remedies, and powers
31 of a creditor, customer, or owner, including the power to
32 avoid transfer or lien that may be given by the general law
33 and that is not included within subsections 7 through 9.
34 (20) Intervene in a proceeding wherever instituted that
35 might lead to the appointment of a receiver or trustee, and

1 act as the receiver or trustee whenever the appointment is
2 offered.
3 (21) Exercise powers now held or later conferred upon
4 receivers by the laws of this state which are not inconsistent
5 with this chapter.
6 b. This subsection does not limit the liquidator or
7 exclude the liquidator from exercising a power not listed in
8 paragraph "a" that may be necessary or appropriate to
9 accomplish the purposes of this chapter.
10 4. NOTICE TO CREDITORS AND OTHERS.
11 a. Unless the court otherwise directs, the liquidator
12 shall give notice of the liquidation order as soon as possible
13 by doing all of the following:
14 (1) By first class mail to all persons known or reasonably
* 15 expected to have claims against the cemetery by mailing a
16 notice to their last known address as indicated by the records
17 of the cemetery.
18 (2) By publication in a newspaper of general circulation
19 in the county in which the cemetery has its principal place of
20 business and in other locations as the liquidator deems
21 appropriate.
22 b. Notice to potential claimants under paragraph "a" shall
23 require claimants to file with the liquidator their claims
24 together with proper proofs of the claim under subsection 13
25 on or before a date the liquidator shall specify in the
26 notice. Claimants shall keep the liquidator informed of their
27 changes of address, if any.
28 c. If notice is given pursuant to this section, the
29 distribution of assets of the cemetery under this chapter
30 shall be conclusive with respect to claimants, whether or not
31 a claimant actually received notice.
32 5. ACTIONS BY AND AGAINST LIQUIDATOR.
33 a. After the issuance of an order appointing a liquidator
34 of a cemetery, an action at law or equity shall not be brought
35 against the cemetery in this state or elsewhere, and existing

1 actions shall not be maintained or further presented after
2 issuance of the order. Whenever in the liquidator's judgment,
3 protection of the estate of the cemetery necessitates
4 intervention in an action against the cemetery that is pending
5 outside this state, the liquidator may intervene in the
6 action. The liquidator may defend, at the expense of the
7 estate of the cemetery, an action in which the liquidator
8 intervenes under this section.
9 b. Within two years or such additional time as applicable
10 law may permit, the liquidator, after the issuance of an order
11 for liquidation, may institute an action or proceeding on
12 behalf of the estate of the cemetery upon any cause of action
13 against which the period of limitation fixed by applicable law
14 has not expired at the time of the filing of the petition upon
15 which the order is entered. If a period of limitation is
16 fixed by agreement for instituting a suit or proceeding upon a
17 claim, or for filing a claim, proof of claim, proof of loss,
18 demand, notice, or the like, or if in a proceeding, judicial
19 or otherwise, a period of limitation is fixed in the
20 proceeding or pursuant to applicable law for taking an action,
21 filing a claim or pleading, or doing an act, and if the period
22 had not expired at the date of the filing of the petition, the
23 liquidator, for the benefit of the estate, may take any action
24 or do any act, required of or permitted to the cemetery,
25 within a period of one hundred eighty days subsequent to the
26 entry of an order for liquidation, or within a further period
27 as is shown to the satisfaction of the court not to be
28 unfairly prejudicial to the other party.
29 c. A statute of limitation or defense of laches shall not
30 run with respect to an action against a cemetery between the
31 filing of a petition for liquidation against the cemetery and
32 the denial of the petition. An action against the cemetery
33 that might have been commenced when the petition was filed may
34 be commenced for at least sixty days after the petition is
35 denied.

1 6. COLLECTION AND LIST OF ASSETS.
2 a. As soon as practicable after the liquidation order but
3 not later than one hundred twenty days after such order, the
4 liquidator shall prepare in duplicate a list of the cemetery's
5 assets. The list shall be amended or supplemented as the
6 liquidator may determine. One copy shall be filed in the
7 office of the clerk of court and one copy shall be retained
8 for the liquidator's files. Amendments and supplements shall
9 be similarly filed.
10 b. The liquidator shall reduce the assets to a degree of
11 liquidity that is consistent with the effective execution of
12 the liquidation.
13 c. A submission to the court for distribution of assets in
14 accordance with subsection 11 fulfills the requirements of
15 paragraph "a".
16 7. FRAUDULENT TRANSFERS PRIOR TO PETITION.
17 a. A transfer made and an obligation incurred by a
18 cemetery within one year prior to the filing of a successful
19 petition for liquidation under this chapter is fraudulent as
20 to then existing and future creditors if made or incurred
21 without fair consideration, or with actual intent to hinder,
22 delay, or defraud either existing or future creditors. A
23 fraudulent transfer made or an obligation incurred by a
24 cemetery ordered to be liquidated under this chapter may be
25 avoided by the receiver, except as to a person who in good
26 faith is a purchaser, lienor, or obligee for a present fair
27 equivalent value. A purchaser, lienor, or obligee, who in
28 good faith has given a consideration less than fair for such
29 transfer, lien, or obligation, may retain the property, lien,
30 or obligation as security for repayment. The court, on due
31 notice, may order any such transfer or obligation to be
32 preserved for the benefit of the estate, and in that event,
33 the receiver shall succeed to and may enforce the rights of
34 the purchaser, lienor, or obligee.
35 b. (1) A transfer of property other than real property is

1 made when it becomes perfected so that a subsequent lien
2 obtainable by legal or equitable proceedings on a simple
3 contract could not become superior to the rights of the
4 transferee under subsection 9, paragraph "c".
5 (2) A transfer of real property is made when it becomes
6 perfected so that a subsequent bona fide purchaser from the
7 cemetery could not obtain rights superior to the rights of the
8 transferee.
9 (3) A transfer which creates an equitable lien is not
10 perfected if there are available means by which a legal lien
11 could be created.
12 (4) A transfer not perfected prior to the filing of a
13 petition for liquidation is deemed to be made immediately
14 before the filing of the successful petition.
15 (5) This subsection applies whether or not there are or
16 were creditors who might have obtained a lien or persons who
17 might have become bona fide purchasers.
18 8. FRAUDULENT TRANSFER AFTER PETITION.
19 a. After a petition for liquidation has been filed a
20 transfer of real property of the cemetery made to a person
21 acting in good faith is valid against the receiver if made for
22 a present fair equivalent value. If the transfer was not made
23 for a present fair equivalent value, then the transfer is
24 valid to the extent of the present consideration actually paid
25 for which amount the transferee shall have a lien on the
26 property transferred. The commencement of a proceeding in
27 liquidation is constructive notice upon the recording of a
28 copy of the petition for or order of liquidation with the
29 recorder of deeds in the county where any real property in
30 question is located. The exercise by a court of the United
31 States or a state or jurisdiction to authorize a judicial sale
32 of real property of the cemetery within a county in a state
33 shall not be impaired by the pendency of a proceeding unless
34 the copy is recorded in the county prior to the consummation
35 of the judicial sale.

1 b. After a petition for liquidation has been filed and
2 before either the receiver takes possession of the property of
3 the cemetery or an order of liquidation is granted:
4 (1) A transfer of the property, other than real property,
5 of the cemetery made to a person acting in good faith is valid
6 against the receiver if made for a present fair equivalent
7 value. If the transfer was not made for a present fair
8 equivalent value, then the transfer is valid to the extent of
9 the present consideration actually paid for which amount the
10 transferee shall have a lien on the property transferred.
11 (2) If acting in good faith, a person indebted to the
12 cemetery or holding property of the cemetery may pay the debt
13 or deliver the property, or any part of the property, to the
14 cemetery or upon the cemetery's order as if the petition were
15 not pending.
16 (3) A person having actual knowledge of the pending
17 liquidation is not acting in good faith.
18 (4) A person asserting the validity of a transfer under
19 this subsection has the burden of proof. Except as provided
20 in this subsection, a transfer by or on behalf of the cemetery
21 after the date of the petition for liquidation by any person
22 other than the liquidator is not valid against the liquidator.
23 c. A person receiving any property from the cemetery or
24 any benefit of the property of the cemetery which is a
25 fraudulent transfer under paragraph "a" is personally liable
26 for the property or benefit and shall account to the
27 liquidator.
28 d. This chapter does not impair the negotiability of
29 currency or negotiable instruments.
30 9. VOIDABLE PREFERENCES AND LIENS.
31 a. (1) A preference is a transfer of the property of a
32 cemetery to or for the benefit of a creditor for an antecedent
33 debt made or suffered by the cemetery within one year before
34 the filing of a successful petition for liquidation under this
35 chapter, the effect of which transfer may be to enable the

1 creditor to obtain a greater percentage of this debt than
2 another creditor of the same class would receive. If a
3 liquidation order is entered while the cemetery is already
4 subject to a receivership, then the transfers are preferences
5 if made or suffered within one year before the filing of the
6 successful petition for the receivership, or within two years
7 before the filing of the successful petition for liquidation,
8 whichever time is shorter.
9 (2) A preference may be avoided by the liquidator if any
10 of the following exist:
11 (a) The cemetery was insolvent at the time of the
12 transfer.
13 (b) The transfer was made within four months before the
14 filing of the petition.
15 (c) At the time the transfer was made, the creditor
16 receiving it or to be benefited by the transfer or the
17 creditor's agent acting with reference to the transfer had
18 reasonable cause to believe that the cemetery was insolvent or
19 was about to become insolvent.
20 (d) The creditor receiving the transfer was an officer, or
21 an employee, attorney, or other person who was in fact in a
22 position of comparable influence in the cemetery to an officer
23 whether or not the person held the position of an officer,
24 owner, or other person, firm, corporation, association, or
25 aggregation of persons with whom the cemetery did not deal at
26 arm's length.
27 (3) Where the preference is voidable, the liquidator may
28 recover the property. If the property has been converted, the
29 liquidator may recover its value from a person who has
30 received or converted the property. However, if a bona fide
31 purchaser or lienor has given less than fair equivalent value,
32 the purchaser or lienor shall have a lien upon the property to
33 the extent of the consideration actually given. Where a
34 preference by way of lien or security interest is voidable,
35 the court may on due notice order the lien or security

1 interest to be preserved for the benefit of the estate, in
2 which event the lien or title shall pass to the liquidator.
3 b. (1) A transfer of property other than real property is
4 made when it becomes perfected so that a subsequent lien
5 obtainable by legal or equitable proceedings on a simple
6 contract could not become superior to the rights of the
7 transferee.
8 (2) A transfer of real property is made when it becomes
9 perfected so that a subsequent bona fide purchaser from the
10 cemetery could not obtain rights superior to the rights of the
11 transferee.
12 (3) A transfer which creates an equitable lien is not
13 perfected if there are available means by which a legal lien
14 could be created.
15 (4) A transfer not perfected prior to the filing of a
16 petition for liquidation is deemed to be made immediately
17 before the filing of the successful petition.
18 (5) This subsection applies whether or not there are or
19 were creditors who might have obtained liens or persons who
20 might have become bona fide purchasers.
21 c. (1) A lien obtainable by legal or equitable
22 proceedings upon a simple contract is one arising in the
23 ordinary course of the proceedings upon the entry or docketing
24 of a judgment or decree, or upon attachment, garnishment,
25 execution, or like process, whether before, upon, or after
26 judgment or decree and whether before or upon levy. It does
27 not include liens which under applicable law are given a
28 special priority over other liens which are prior in time.
29 (2) A lien obtainable by legal or equitable proceedings
30 could become superior to the rights of a transferee, or a
31 purchaser could obtain rights superior to the rights of a
32 transferee within the meaning of paragraph "b", if such
33 consequences would follow only from the lien or purchase
34 itself, or from the lien or purchase followed by a step wholly
35 within the control of the respective lienholder or purchaser,

1 with or without the aid of ministerial action by public
2 officials. However, a lien could not become superior and a
3 purchase could not create superior rights for the purpose of
4 paragraph "b" through an act subsequent to the obtaining of a
5 lien or subsequent to a purchase which requires the agreement
6 or concurrence of any third party or which requires further
7 judicial action or ruling.
8 d. A transfer of property for or on account of a new and
9 contemporaneous consideration, which is under paragraph "b"
10 made or suffered after the transfer because of delay in
11 perfecting it, does not become a transfer for or on account of
12 an antecedent debt if any acts required by the applicable law
13 to be performed in order to perfect the transfer as against
14 liens or a bona fide purchaser's rights are performed within
15 twenty-one days or any period expressly allowed by the law,
16 whichever is less. A transfer to secure a future loan, if a
17 loan is actually made, or a transfer which becomes security
18 for a future loan, shall have the same effect as a transfer
19 for or on account of a new and contemporaneous consideration.
20 e. If a lien voidable under paragraph "a", subparagraph
21 (2) has been dissolved by the furnishing of a bond or other
22 obligation, the surety on which has been indemnified directly
23 or indirectly by the transfer or the creation of a lien upon
24 property of a cemetery before the filing of a petition under
25 this chapter which results in a liquidation order, the
26 indemnifying transfer or lien is also voidable.
27 f. The property affected by a lien voidable under
28 paragraphs "a" and "e" is discharged from the lien. The
29 property and any of the indemnifying property transferred to
30 or for the benefit of a surety shall pass to the liquidator.
31 However, the court may on due notice order a lien to be
32 preserved for the benefit of the estate and the court may
33 direct that the conveyance be executed to evidence the title
34 of the liquidator.
35 g. The court shall have summary jurisdiction of a

1 proceeding by the liquidator to hear and determine the rights
2 of the parties under this section. Reasonable notice of
3 hearing in the proceeding shall be given to all parties in
4 interest, including the obligee of a releasing bond or other
5 like obligation. Where an order is entered for the recovery
6 of indemnifying property in kind or for the avoidance of an
7 indemnifying lien, upon application of any party in interest,
8 the court shall in the same proceeding ascertain the value of
9 the property or lien. If the value is less than the amount
10 for which the property is indemnified or less than the amount
11 of the lien, the transferee or lienholder may elect to retain
12 the property or lien upon payment of its value, as ascertained
13 by the court, to the liquidator within the time as fixed by
14 the court.
15 h. The liability of a surety under a releasing bond or
16 other like obligation is discharged to the extent of the value
17 of the indemnifying property recovered or the indemnifying
18 lien nullified and avoided by the liquidator. Where the
19 property is retained under paragraph "g", the liability of the
20 surety is discharged to the extent of the amount paid to the
21 liquidator.
22 i. If a creditor has been preferred for property which
23 becomes a part of the cemetery's estate, and afterward in good
24 faith gives the cemetery further credit without security of
25 any kind, the amount of the new credit remaining unpaid at the
26 time of the petition may be set off against the preference
27 which would otherwise be recoverable from the creditor.
28 j. If within four months before the filing of a successful
29 petition for liquidation under this chapter, or at any time in
30 contemplation of a proceeding to liquidate, a cemetery,
31 directly or indirectly, pays money or transfers property to an
32 attorney for services rendered or to be rendered, the
33 transaction may be examined by the court on its own motion or
34 shall be examined by the court on petition of the liquidator.
35 The payment or transfer shall be held valid only to the extent

1 of a reasonable amount to be determined by the court. The
2 excess may be recovered by the liquidator for the benefit of
3 the estate. However, where the attorney is in a position of
4 influence in the cemetery or an affiliate, payment of any
5 money or the transfer of any property to the attorney for
6 services rendered or to be rendered is governed by the
7 provision of paragraph "a", subparagraph (2), subparagraph
8 subdivision (d).
9 k. (1) An officer, manager, employee, shareholder,
10 subscriber, attorney, or any other person acting on behalf of
11 the cemetery who knowingly participates in giving any
12 preference when the person has reasonable cause to believe the
13 cemetery is or is about to become insolvent at the time of the
14 preference is personally liable to the liquidator for the
15 amount of the preference. There is an inference that
16 reasonable cause exists if the transfer was made within four
17 months before the date of filing of this successful petition
18 for liquidation.
19 (2) A person receiving property from the cemetery or the
20 benefit of the property of the cemetery as a preference
21 voidable under paragraph "a" is personally liable for the
22 property and shall account to the liquidator.
23 (3) This subsection shall not prejudice any other claim by
24 the liquidator against any person.
25 10. CLAIMS OF HOLDER OF VOID OR VOIDABLE RIGHTS.
26 a. A claim of a creditor who has received or acquired a
27 preference, lien, conveyance, transfer, assignment, or
28 encumbrance, voidable under this chapter shall not be allowed
29 unless the creditor surrenders the preference, lien,
30 conveyance, transfer, assignment, or encumbrance. If the
31 avoidance is effected by a proceeding in which a final
32 judgment has been entered, the claim shall not be allowed
33 unless the money is paid or the property is delivered to the
34 liquidator within thirty days from the date of the entering of
35 the final judgment. However, the court having jurisdiction

1 over the liquidation may allow further time if there is an
2 appeal or other continuation of the proceeding.
3 b. A claim allowable under paragraph "a" by reason of a
4 voluntary or involuntary avoidance, preference, lien,
5 conveyance, transfer, assignment, or encumbrance may be filed
6 as an excused late filing under subsection 12, if filed within
7 thirty days from the date of the avoidance or within the
8 further time allowed by the court under paragraph "a".
9 11. LIQUIDATOR'S PROPOSAL TO DISTRIBUTE ASSETS.
10 a. From time to time as assets become available, the
11 liquidator shall make application to the court for approval of
12 a proposal to disburse assets out of marshaled assets.
13 b. The proposal shall at least include provisions for all
14 of the following:
15 (1) Reserving amounts for the payment of all the
16 following:
17 (a) Expenses of administration.
18 (b) To the extent of the value of the security held, the
19 payment of claims of secured creditors.
20 (c) Claims falling within the priorities established in
21 subsection 18, paragraphs "a" and "b".
22 (2) Disbursement of the assets marshaled to date and
23 subsequent disbursement of assets as they become available.
24 c. Action on the application may be taken by the court
25 provided that the liquidator's proposal complies with
26 paragraph "b".
27 12. FILING OF CLAIMS.
28 a. Proof of all claims shall be filed with the liquidator
29 in the form required by subsection 13 on or before the last
30 day for filing specified in the notice required under
31 subsection 4.
32 b. The liquidator may permit a claimant making a late
33 filing to share in distributions, whether past or future, as
34 if the claimant were not late, to the extent that the payment
35 will not prejudice the orderly administration of the

1 liquidation under any of the following circumstances:
2 (1) The existence of the claim was not known to the
3 claimant and that the claimant filed the claim as promptly as
4 reasonably possible after learning of it.
5 (2) A transfer to a creditor was avoided under subsections
6 7 through 9, or was voluntarily surrendered under subsection
7 10, and that the filing satisfies the conditions of subsection
8 10.
9 (3) The valuation under subsection 17 of security held by
10 a secured creditor shows a deficiency, which is filed within
11 thirty days after the valuation.
12 c. The liquidator may consider any claim filed late and
13 permit the claimant to receive distributions which are
14 subsequently declared on any claims of the same or lower
15 priority if the payment does not prejudice the orderly
16 administration of the liquidation. The late-filing claimant
17 shall receive at each distribution the same percentage of the
18 amount allowed on the claim as is then being paid to claimants
19 of any lower priority. This shall continue until the claim
20 has been paid in full.
21 13. PROOF OF CLAIM.
22 a. Proof of claim shall consist of a statement signed by
23 the claimant that includes all of the following that are
24 applicable:
25 (1) The particulars of the claim including the
26 consideration given for it.
27 (2) The identity and amount of the security on the claim.
28 (3) The payments, if any, made on the debt.
29 (4) A statement that the sum claimed is justly owing and
30 that there is no setoff, counterclaim, or defense to the
31 claim.
32 (5) Any right of priority of payment or other specific
33 right asserted by the claimant.
34 (6) A copy of the written instrument which is the
35 foundation of the claim.

1 (7) The name and address of the claimant and the attorney
2 who represents the claimant, if any.
3 b. A claim need not be considered or allowed if it does
4 not contain all the information identified in paragraph "a"
5 which is applicable. The liquidator may require that a
6 prescribed form be used and may require that other information
7 and documents be included.
8 c. At any time the liquidator may request the claimant to
9 present information or evidence supplementary to that required
10 under paragraph "a" and may take testimony under oath, require
11 production of affidavits or depositions, or otherwise obtain
12 additional information or evidence.
13 d. A judgment or order against a cemetery entered after
14 the date of filing of a successful petition for liquidation,
15 or a judgment or order against the cemetery entered at any
16 time by default or by collusion need not be considered as
17 evidence of liability or of the amount of damages. A judgment
18 or order against a cemetery before the filing of the petition
19 need not be considered as evidence of liability or of the
20 amount of damages.
21 14. SPECIAL CLAIMS.
22 a. A claim may be allowed even if contingent, if it is
23 filed pursuant to subsection 12. The claim may be allowed and
24 the claimant may participate in all distributions declared
25 after it is filed to the extent that it does not prejudice the
26 orderly administration of the liquidation.
27 b. Claims that are due except for the passage of time
28 shall be treated as absolute claims are treated. However, the
29 claims may be discounted at the legal rate of interest.
30 c. Claims made under employment contracts by directors,
31 principal officers, or persons in fact performing similar
32 functions or having similar powers are limited to payment for
33 services rendered prior to the issuance of an order of
34 liquidation under subsection 2.
35 15. DISPUTED CLAIMS.

1 a. If a claim is denied in whole or in part by the
2 liquidator, written notice of the determination shall be given
3 to the claimant or the claimant's attorney by first class mail
4 at the address shown in the proof of claim. Within sixty days
5 from the mailing of the notice, the claimant may file
6 objections with the liquidator. Unless a filing is made, the
7 claimant shall not further object to the determination.
8 b. If objections are filed with the liquidator and the
9 liquidator does not alter the denial of the claim as a result
10 of the objections, the liquidator shall ask the court for a
11 hearing as soon as practicable and give notice of the hearing
12 by first class mail to the claimant or the claimant's attorney
13 and to any other persons directly affected. The notice shall
14 be given not less than ten nor more than thirty days before
15 the date of the hearing. The matter shall be heard by the
16 court or by a court-appointed referee. The referee shall
17 submit findings of fact along with a recommendation.
18 16. CLAIMS OF OTHER PERSON. If a creditor, whose claim
19 against a cemetery is secured in whole or in part by the
20 undertaking of another person, fails to prove and file that
21 claim, then the other person may do so in the creditor's name
22 and shall be subrogated to the rights of the creditor, whether
23 the claim has been filed by the creditor or by the other
24 person in the creditor's name to the extent that the other
25 person discharges the undertaking. However, in the absence of
26 an agreement with the creditor to the contrary, the other
27 person is not entitled to any distribution until the amount
28 paid to the creditor on the undertaking plus the distributions
29 paid on the claim from the cemetery's estate to the creditor
30 equal the amount of the entire claim of the creditor. An
31 excess received by the creditor shall be held by the creditor
32 in trust for the other person.
33 17. SECURED CREDITOR'S CLAIMS.
34 a. The value of security held by a secured creditor shall
35 be determined in one of the following ways, as the court may

1 direct:
2 (1) By converting the security into money according to the
3 terms of the agreement pursuant to which the security was
4 delivered to the creditors.
5 (2) By agreement, arbitration, compromise, or litigation
6 between the creditor and the liquidator.
7 b. The determination shall be under the supervision and
8 control of the court with due regard for the recommendation of
9 the liquidator. The amount determined shall be credited upon
10 the secured claim. A deficiency shall be treated as an
11 unsecured claim. If the claimant surrenders the security to
12 the liquidator, the entire claim shall be allowed as if
13 unsecured.
14 18. PRIORITY OF DISTRIBUTION.
15 The priority of distribution of claims from the cemetery's
16 estate shall be in accordance with the order in which each
17 class of claims is set forth. Claims in each class shall be
18 paid in full or adequate funds retained for the payment before
19 the members of the next class receive any payment. Subclasses
20 shall not be established within a class. The order of
21 distribution of claims is as follows:
22 a. CLASS 1. The costs and expenses of administration,
23 including but not limited to the following:
24 (1) The actual and necessary costs of preserving or
25 recovering the assets of the cemetery.
26 (2) Compensation for all authorized services rendered in
27 the liquidation.
28 (3) Necessary filing fees.
29 (4) The fees and mileage payable to witnesses.
30 (5) Authorized reasonable attorney's fees and other
31 professional services rendered in the liquidation.
32 b. CLASS 2. Reasonable compensation to employees for
33 services performed to the extent that they do not exceed two
34 months of monetary compensation and represent payment for
35 services performed within one year before the filing of the

1 petition for liquidation. Officers and directors are not
2 entitled to the benefit of this priority. The priority is in
3 lieu of other similar priority which may be authorized by law
4 as to wages or compensation of employees.
5 c. CLASS 3. Claims under interment rights contracts.
6 d. CLASS 4. Claims of general creditors.
7 e. CLASS 5. Claims of the federal or any state or local
8 government. Claims, including those of a governmental body
9 for a penalty or forfeiture, are allowed in this class only to
10 the extent of the pecuniary loss sustained from the act,
11 transaction, or proceeding out of which the penalty or
12 forfeiture arose, with reasonable and actual costs incurred.
13 The remainder of such claims shall be postponed to the class
14 of claims under paragraph "g".
15 f. CLASS 6. Claims filed late or any other claims other
16 than claims under paragraph "g".
17 g. CLASS 7. The claims of shareholders or other owners.
18 19. LIQUIDATOR'S RECOMMENDATIONS TO THE COURT.
19 a. The liquidator shall review claims duly filed in the
20 liquidation and shall make further investigation as necessary.
21 The liquidator may compound, compromise or in any other manner
22 negotiate the amount for which claims will be recommended to
23 the court except where the liquidator is required by law to
24 accept claims as settled by a person or organization.
25 Unresolved disputes shall be determined under subsection 15.
26 As soon as practicable, the liquidator shall present to the
27 court a report of the claims against the cemetery with the
28 liquidator's recommendations. The report shall include the
29 name and address of each claimant and the amount of the claim
30 finally recommended.
31 b. The court may approve, disapprove, or modify the report
32 on claims by the liquidator. Reports not modified by the
33 court within sixty days following submission by the liquidator
34 shall be treated by the liquidator as allowed claims, subject
35 to later modification or to rulings made by the court pursuant

1 to subsection 15. A claim under a policy of insurance shall
2 not be allowed for an amount in excess of the applicable
3 policy limits.
4 20. DISTRIBUTION OF ASSETS. Under the direction of the
5 court, the liquidator shall pay distributions in a manner that
6 will assure the proper recognition of priorities and a
7 reasonable balance between the expeditious completion of the
8 liquidation and the protection of unliquidated and
9 undetermined claims, including third-party claims.
10 Distribution of assets in kind may be made at valuations set
11 by agreement between the liquidator and the creditor and
12 approved by the court.
13 21. UNCLAIMED AND WITHHELD FUNDS.
14 a. Unclaimed funds subject to distribution remaining in
15 the liquidator's hands when the liquidator is ready to apply
16 to the court for discharge, including the amount distributable
17 to a creditor, owner, or other person who is unknown or cannot
18 be found, shall be deposited with the treasurer of state, and
19 shall be paid without interest, except as provided in
20 subsection 18, to the person entitled or the person's legal
21 representative upon proof satisfactory to the treasurer of
22 state of the right to the funds. An amount on deposit not
23 claimed within six years from the discharge of the liquidator
24 is deemed to have been abandoned and shall become the property
25 of the state without formal escheat proceedings and be
26 transferred to the insurance division regulatory fund.
27 b. Funds withheld under subsection 14 and not distributed
28 shall upon discharge of the liquidator be deposited with the
29 treasurer of state and paid pursuant to subsection 18. Sums
30 remaining which under subsection 18 would revert to the
31 undistributed assets of the cemetery shall be transferred to
32 the insurance division regulatory fund and become the property
33 of the state as provided under paragraph "a", unless the
34 commissioner in the commissioner's discretion petitions the
35 court to reopen the liquidation pursuant to subsection 23.

1 c. Notwithstanding any other provision of this chapter,
2 funds as identified in paragraph "a", with the approval of the
3 court, shall be made available to the commissioner for use in
4 the detection and prevention of future insolvencies. The
5 commissioner shall hold these funds in the insurance division
6 regulatory fund and shall pay without interest, except as
7 provided in subsection 18, to the person entitled to the funds
8 or the person's legal representative upon proof satisfactory
9 to the commissioner of the person's right to the funds. The
10 funds shall be held by the commissioner for a period of two
11 years at which time the rights and duties to the unclaimed
12 funds shall vest in the commissioner.
13 22. TERMINATION OF PROCEEDINGS.
14 a. When all assets justifying the expense of collection
15 and distribution have been collected and distributed under
16 this chapter, the liquidator shall apply to the court for
17 discharge. The court may grant the discharge and make any
18 other orders, including an order to transfer remaining funds
19 that are uneconomical to distribute, as appropriate.
20 b. Any other person may apply to the court at any time for
21 an order under paragraph "a". If the application is denied,
22 the applicant shall pay the costs and expenses of the
23 liquidator in resisting the application, including a
24 reasonable attorney's fee.
25 23. REOPENING LIQUIDATION. At any time after the
26 liquidation proceeding has been terminated and the liquidator
27 discharged, the commissioner or other interested party may
28 petition the court to reopen the proceedings for good cause
29 including the discovery of additional assets. The court shall
30 order the proceeding reopened if it is satisfied that there is
31 justification for the reopening.
32 24. DISPOSITION OF RECORDS DURING AND AFTER TERMINATION OF
33 LIQUIDATION. If it appears to the commissioner that the
34 records of a cemetery in process of liquidation or completely
35 liquidated are no longer useful, the commissioner may

1 recommend to the court and the court shall direct what records
2 shall be retained for future reference and what records shall
3 be destroyed.
4 25. EXTERNAL AUDIT OF RECEIVER'S BOOKS. The court may
5 order audits to be made of the books of the commissioner
6 relating to a receivership established under this chapter, and
7 a report of each audit shall be filed with the commissioner
8 and with the court. The books, records, and other documents
9 of the receivership shall be made available to the auditor at
10 any time without notice. The expense of an audit shall be
11 considered a cost of administration of the receivership.
* 12 Sec. 27. NEW SECTION. 523J.6 POWERS AND DUTIES OF
13 PERPETUAL CARE CEMETERIES.
14 1. Within the boundaries of the cemetery lands that the
15 cemetery owns, a cemetery may perform the following functions:
16 a. The exclusive care and maintenance of the cemetery.
17 b. The exclusive interment, entombment, or inurnment of
18 human remains, including the exclusive right to open, prepare
19 for interment, and close all ground, mausoleum, and urn
20 burials. Each preneed contract for burial rights or services
21 shall disclose, pursuant to the cemetery's bylaws, rules, and
22 regulations, whether opening and closing of the burial space
23 is included in the contract, and, if not, the current prices
24 for opening and closing and a statement that these prices are
25 subject to change. Each cemetery which sells preneed
26 contracts must offer opening and closing as part of a preneed
27 contract.
28 c. The exclusive initial preneed and at-need sale of
29 interment or burial rights in earth, mausoleum, crypt, niche,
30 or columbarium interment. However, this chapter does not
31 limit the right of a person owning interment or burial rights
32 to sell those rights to third parties subject to transfer of
33 title by the cemetery.
34 d. The adoption of bylaws regulating the activities
35 conducted within the cemetery's boundaries, provided that a

1 licensed funeral director shall not be denied access by any
2 cemetery to conduct a funeral for or supervise a disinterment
3 of human remains. The cemetery shall not approve any bylaw
4 which unreasonably restricts competition, or which
5 unreasonably increases the cost to the owner of interment or
6 burial rights in utilizing these rights.
7 e. The nonexclusive preneed and at-need sale of monuments,
8 memorials, markers, burial vaults, urns, flower vases, floral
9 arrangements, and other similar merchandise for use within the
10 cemetery.
11 f. The entry into sales or management contracts with other
12 persons. The cemetery shall be responsible for the deposit of
13 all moneys required to be placed in a trust fund.
14 2. A full disclosure shall be made of all fees required
15 for interment, entombment, or inurnment of human remains.
16 3. A cemetery may adopt bylaws establishing minimum
17 standards for burial merchandise or the installation of such
18 merchandise.
19 Sec. 28. NEW SECTION. 523J.7 INVESTIGATIONS.
20 The commissioner or the attorney general, for the purpose
21 of discovering violations of this chapter, may do any of the
22 following:
23 1. Investigate the cemetery and examine records as
24 necessary to verify compliance with this chapter.
25 2. Administer oaths and affirmations, subpoena witnesses,
26 receive evidence, and require the production of documents and
27 records in connection with an investigation or proceeding
28 being conducted pursuant to this chapter.
29 3. Apply to the district court for issuance of an order
30 requiring a person's appearance before the commissioner or
31 attorney general, or a designee of either or both, in cases
32 where the person has refused to obey a subpoena issued by the
33 commissioner or attorney general. The person may also be
34 required to produce documentary evidence germane to the
35 subject of the investigation. Failure to obey a court order

1 under this subsection constitutes contempt of court.
2 Sec. 29. Section 566A.1, subsection 1, Code 1995, is
3 amended to read as follows:
4 1. A corporation or other form of organization engaging in
5 the business of the ownership, maintenance, or operation of a
6 cemetery, which provides lots or other interment space for the
7 remains of human bodies is subject to this chapter. However,
8 a ~~church,~~ religious ~~organization, or established fraternal~~
9 ~~society~~ cemetery is subject only to subsection 2 ~~of this~~
10 ~~section~~, and sections 566A.2A, 566A.2B, and 566A.2C. A
11 cemetery with average retail sales equal to or less than five
12 thousand dollars for the previous three calendar years is
13 exempt from sections 566A.2C and 566A.2D. Political
14 subdivisions of the state are exempt from ~~this chapter~~
15 sections 566A.3 and 566A.6.
16 Sec. 30. NEW SECTION. 566A.1A DEFINITIONS.
17 As used in this chapter, unless the context otherwise
18 requires:
19 1. "Agent" means a person authorized by a cemetery or a
20 cemetery operator to represent the cemetery in dealing with
21 the public.
22 2. "Cemetery" means a cemetery, mausoleum, columbarium, or
23 other space held for the purpose of burial, entombment, or
24 inurnment of human remains and where such space is offered for
25 sale to the public.
26 3. "Cemetery operator" means a person who owns, controls,
27 operates, or manages a cemetery, who is responsible for the
28 cemetery's care and maintenance, and who controls the opening
29 and closing of all graves, crypts, and niches.
30 4. "Columbarium" means a structure or room or other space
31 in a building or structure used or intended to be used for the
32 inurnment or deposit of cremated human remains.
33 5. "Commissioner" means the commissioner of insurance or
34 the deputy appointed under section 502.601.
35 6. "Deed" means the assignment or conveyance of interment

1 rights.
2 7. "Grave" means a piece of land that is used or intended
3 to be used for the underground burial of human remains, other
4 than an underground mausoleum or columbarium space.
5 8. "Human remains" means the body of a deceased individual
6 that is in any stage of decomposition or has been cremated.
7 9. "Interment" means the disposition of human remains by
8 earth burial, entombment, or inurnment.
9 10. "Interment rights" means a right of use conveyed by
10 contract or property ownership to inter human remains in a
11 columbarium, grave, mausoleum, lawn crypt, or undeveloped
12 space.
13 11. "Lawn crypt" means an outer enclosure, for a casket or
14 similar inner burial container which is permanently installed
15 below ground prior to the time of actual interment. A lawn
16 crypt may permit single or multiple interments in a grave
17 space.
18 12. "Mausoleum" means a building, structure, or part of a
19 building or structure that is used or intended to be used for
20 the entombment of human remains.
21 13. "Mausoleum space" means a niche, crypt, or specific
22 place in a mausoleum that contains or is intended to contain
23 human remains.
24 14. "Niche" means a recess in the wall of a mausoleum or
25 columbarium for the deposit of human remains.
26 15. "Perpetual care" means maintenance, repair, and care
27 of all interment spaces, features, buildings, roadways,
28 parking lots, water supply, and other existing cemetery
29 structures subject to the provisions of section 566A.3 and
30 includes the general overhead expenses needed to accomplish
31 such maintenance, repair, and care.
32 16. "Perpetual care cemetery" means a cemetery which has
33 established a perpetual care fund for the maintenance, repair,
34 and care of all interment spaces subject to perpetual care
35 within the cemetery in compliance with section 566A.3.

1 17. "Religious cemetery" means a cemetery that is owned,
2 operated, or controlled by a recognized church, religious
3 society, association, or denomination.
4 18. "Sale" means a transfer for consideration of any
5 interest in ownership, title, or right of use.
6 19. "Undeveloped space" means a mausoleum, columbarium
7 space, or lawn crypt that is not ready for the burial of human
8 remains on the date of the sale of the space.
9 Sec. 31. NEW SECTION. 566A.2A PERPETUAL CARE CEMETERY
10 REGISTRY.
11 A perpetual care cemetery shall maintain a registry of
12 individuals who have purchased items subject to the perpetual
13 care requirements of this chapter including the amount
14 deposited in trust for each individual. The registry shall
15 include all transactions entered into on or after July 1,
16 1995.
17 Sec. 32. NEW SECTION. 566A.2B INTERMENT RIGHTS AGREEMENT
18 -- REQUIREMENTS -- CONTENTS.
19 1. An agreement for interment rights under this chapter
20 must be written in clear, understandable language and do all
21 of the following:
22 a. Identify the seller and purchaser.
23 b. Identify the salesperson.
24 c. Specify the interment rights to be provided and the
25 cost of each item.
26 d. State clearly the conditions on which substitution will
27 be allowed.
28 e. Set forth the total purchase price and the terms under
29 which it is to be paid.
30 f. State that any financial instrument which is used to
31 make a payment under the agreement is to be made payable to
32 the financial institution or entity where the money is to be
33 deposited in the cemetery's perpetual care and maintenance
34 guarantee fund.
35 g. State clearly whether the agreement is a revocable or

1 irrevocable contract, and, if revocable, which parties have
2 the authority to revoke the agreement.
3 h. State the amount or percentage of money to be placed in
4 the cemetery's perpetual care and maintenance guarantee fund.
5 i. Set forth an explanation that the perpetual care and
6 maintenance guarantee fund is an irrevocable trust, that
7 deposits cannot be withdrawn even in the event of
8 cancellation, and that the trust's income shall be used by the
9 cemetery for its maintenance, repair, and care.
10 j. Set forth an explanation of any fees or expenses that
11 may be charged.
12 k. Set forth an explanation of whether amounts for
13 perpetual care will be deposited in trust upon payment in full
14 or on an allocable basis as payments are made.
15 l. Set forth an explanation of whether initial payments on
16 agreements for multiple items of funeral and cemetery
17 merchandise or services, or both, will be allocated first to
18 the purchase of a grave, niche, columbarium space, or
19 mausoleum space. If such an allocation is to be made, the
20 agreement shall provide for the immediate transfer of such
21 interment rights upon payment in full and prominently state
22 that any applicable trust deposits under chapters 523A and
23 523E will not be made until the cemetery has received payment
24 in full for the interment rights. The transfer of an
25 undeveloped space may be deferred until such space is ready
26 for burial.
27 m. If the transfer of an undeveloped space will be
28 deferred until the space is ready for burial as permitted in
29 paragraph "l", the agreement shall provide for some form of
30 written acknowledgment upon payment in full, specify a
31 reasonable time period for development of the space, describe
32 what happens in the event of a death prior to development of
33 the space, and provide for the immediate transfer of the
34 interment rights when development of the space is complete.
35 n. Specify the purchaser's right to cancel and the damages

1 payable for cancellation, if any.
2 o. State the name and address of the commissioner.
3 Sec. 33. NEW SECTION. 566A.2C ANNUAL REPORT BY RELIGIOUS
4 CEMETERIES.
5 1. A religious cemetery shall file a written report with
6 the insurance division annually within four months following
7 the end of the cemetery's fiscal year. The report shall
8 include all of the following:
9 a. The name and address of the cemetery.
10 b. An affidavit that the cemetery is a religious cemetery.
11 c. Copies of all sales agreement forms used by the
12 cemetery.
13 2. The commissioner shall permit the filing of a unified
14 annual report in the event of commonly owned or affiliated
15 cemeteries. A religious organization may commingle perpetual
16 care funds for purposes of investment and administration and
17 may file a single report by diocese or similar region, if each
18 cemetery is appropriately identified and separate records are
19 maintained for each cemetery.
20 3. The report shall be made under oath.
21 4. Notwithstanding chapter 22, all records maintained by
22 the commissioner under this section are confidential and shall
23 not be made available for inspection or copying except upon
24 the approval of the commissioner or attorney general.
25 Sec. 34. NEW SECTION. 566A.2D ANNUAL REPORT BY
26 NONPERPETUAL CARE CEMETERIES.
27 1. A nonperpetual care cemetery shall file a written
28 report with the insurance division within four months
29 following the end of the cemetery's fiscal year. The report
30 shall include all of the following:
31 a. The name and address of the cemetery.
32 b. An affidavit that the cemetery is a nonperpetual care
33 cemetery in compliance with section 566A.5.
34 c. Copies of all sales agreement forms used by the
35 cemetery.

1 2. The commissioner shall permit the filing of a unified
2 annual report in the event of commonly owned or affiliated
3 cemeteries. A political subdivision may commingle perpetual
4 care funds for purposes of investment and administration and
5 may file a single report, if each cemetery is appropriately
6 identified and separate records are maintained for each
7 cemetery.
8 3. The report shall be made under oath.
9 4. Notwithstanding chapter 22, all records maintained by
10 the commissioner under this section are confidential and shall
11 not be made available for inspection or copying except upon
12 the approval of the commissioner or attorney general.
13 Sec. 35. NEW SECTION. 566A.2E ANNUAL REPORT BY PERPETUAL
14 CARE CEMETERIES.
15 1. A perpetual care cemetery shall file a written report
16 as of the end of each fiscal year of the cemetery including
17 the following:
18 a. The name and address of the cemetery.
19 b. The name and address of any trustee holding perpetual
20 care and maintenance guarantee fund moneys.
21 c. The name and address of any depository holding
22 perpetual care and maintenance guarantee fund moneys.
23 d. An affidavit that the cemetery is a perpetual care
24 cemetery in compliance with section 566A.3.
25 e. Copies of all sales agreement forms used by the
26 cemetery.
27 f. The amount of the principal of the cemetery's perpetual
28 care funds at the end of the fiscal year.
29 g. The number of interments made and the number of deeds
30 issued during the cemetery's preceding fiscal year.
31 2. The report shall be filed with the insurance division
32 within four months following the end of the cemetery's fiscal
33 year in the form required by the commissioner.
34 3. The commissioner shall permit the filing of a unified
35 annual report in the event of commonly owned or affiliated

1 cemeteries. A political subdivision may commingle perpetual
2 care funds for purposes of investment and administration and
3 may file a single report, if each cemetery is appropriately
4 identified and separate records are maintained for each
5 cemetery.
6 4. The commissioner shall establish by rule an audit fee
7 to be filed with the annual report. The audit report fee
8 shall be based on the number of deeds issued by the cemetery
9 during the reporting period. The audit fee shall apply only
10 to perpetual care cemeteries and shall be based on the
11 approximate cost of regulation.
12 5. Notwithstanding chapter 22, all records maintained by
13 the commissioner under this subsection are confidential and
14 shall not be made available for inspection or copying except
15 upon approval of the commissioner or attorney general.
16 Sec. 36. Section 566A.3, Code 1995, is amended by adding
17 the following new unnumbered paragraph:
18 NEW UNNUMBERED PARAGRAPH. A perpetual care cemetery may
19 require a contribution to the cemetery's perpetual care
20 guarantee fund for each grave marker, tombstone, monument, or
21 item of ornamental merchandise installed in the cemetery from
22 the purchaser of such merchandise. A cemetery may establish a
23 separate perpetual care fund for this purpose. The
24 contribution, if required by the cemetery, shall be uniformly
25 charged on every installation and shall be set aside and
26 deposited in the perpetual care trust fund. The contributions
27 shall be nonrefundable and shall not be withdrawn from the
28 trust fund once deposited.
29 Sec. 37. Section 566A.5, Code 1995, is amended by striking
30 the section and inserting in lieu thereof the following:
31 566A.5 NONPERPETUAL CARE CEMETERIES.
* 32 1. Each nonperpetual care cemetery shall post a legible
33 sign in a conspicuous place in the office or offices where
34 sales are conducted, and at or near the entrance of the
35 cemetery or its administration building and readily accessible

1 to the public stating: "This is a nonperpetual care
2 cemetery". The lettering of these signs shall be of a size
3 and style as approved by the commissioner by rule or order so
4 that the signs can be read at a reasonable distance.
5 2. Each nonperpetual care cemetery shall also have printed
6 or stamped at the head of all of its contracts, deeds,
7 statements, letterheads, and advertising material, the legend:
8 "This is a nonperpetual care cemetery", and shall not sell any
9 lot or interment space in the cemetery unless the purchaser of
10 the lot or interment space is informed that the cemetery is a
11 nonperpetual care cemetery.
12 3. A nonperpetual care cemetery or cemetery operator or
13 employee or agent of a nonperpetual care cemetery shall not
14 advertise or represent that the cemetery is a perpetual care
15 cemetery or use any similar title, description, or term
16 indicating that the cemetery provides guaranteed or permanent
17 maintenance and care or that the cemetery has a trust fund or
18 endowment fund to pay for the expenses of such care.
19 Sec. 38. Section 566A.12, Code 1995, is amended by
20 striking the section and inserting in lieu thereof the
21 following:
22 566A.12 ANNUAL REPORTS AND ADMINISTRATION.
23 1. CEMETERY REGISTRY. The commissioner shall establish
24 and maintain a public registry of perpetual care cemeteries.
25 2. INVESTIGATIONS AND AUDITS. The commissioner or the
26 attorney general, for the purpose of discovering violations of
27 this chapter or rules adopted pursuant to this chapter, may do
28 any of the following:
29 a. Audit any cemetery, for cause or on a random basis, to
30 determine compliance with this chapter. A cemetery shall make
31 available to the commissioner or attorney general the
32 cemetery's deed registry and those books, accounts, records,
33 and files related to the sale of interment rights.
34 Notwithstanding chapter 22, all business records and files
35 acquired by the commissioner or attorney general pursuant to

1 an audit under this subsection are confidential and shall not
2 be made available for inspection or copying unless ordered by
3 a court for good cause shown. If it is determined pursuant to
4 an audit that a material violation of this chapter or rules
5 adopted pursuant to this chapter has occurred, the cost of the
6 audit may be assessed to the cemetery.
7 b. Administer oaths and affirmations, subpoena witnesses,
8 receive evidence, and require the production of documents and
9 records in connection with an investigation or proceeding
10 being conducted pursuant to this chapter.
11 c. Apply to the district court for issuance of an order
12 requiring a person's appearance before the commissioner or
13 attorney general, or a designee of either or both, where the
14 person has refused to obey a subpoena issued by the
15 commissioner or attorney general. The person may also be
16 required to produce documentary evidence germane to the
17 subject of the investigation. Failure to obey a court order
18 under this subsection constitutes contempt of court.
19 3. CEASE AND DESIST ORDERS. If an audit or investigation
20 provides reasonable evidence that a person has violated this
21 chapter, or any rule adopted pursuant to this chapter, the
22 commissioner may issue an order directed at the person to
23 cease and desist from engaging in such act or practice.
24 4. RECEIVERSHIPS.
25 a. The commissioner shall notify the attorney general if
26 the commissioner finds that a perpetual care cemetery subject
27 to regulation under this chapter meets one or more of the
28 following grounds for the establishment of a receivership:
29 (1) Is insolvent.
30 (2) Has utilized trust funds for personal or business
31 purposes in a manner inconsistent with the requirements of
32 this chapter, and the amount of funds currently held in the
33 trust is less than the amount required by this chapter.
34 b. The attorney general may apply to the district court in
35 any county of the state for a receivership. Upon proof of any

1 of the grounds for a receivership described in this section
2 the court may grant a receivership.
3 5. INJUNCTIONS. The attorney general may apply to the
4 district court for an injunction to restrain any cemetery
5 subject to this chapter and any agents, employees, trustees,
6 or associates of the cemetery from engaging in conduct or
7 practices deemed a violation of this chapter or rules adopted
8 pursuant to this chapter. Upon proof of any violation of this
9 chapter described in the petition for injunction, the court
10 may grant the injunction. Failure to obey a court order under
11 this subsection constitutes contempt of court.
12 Sec. 39. Section 566A.13, Code 1995, is amended to read as
13 follows:
14 566A.13 VIOLATIONS AND PENALTIES.
15 A violation of this chapter or rules adopted by the
16 ~~attorney general~~ commissioner pursuant to this chapter is a
17 violation of section 714.16, subsection 2, paragraph "a". The
18 remedies and penalties provided by section 714.16, including
19 but not limited to, provisions relating to injunctive relief
20 and penalties, apply to a violation of this chapter.
21 Sec. 40. NEW SECTION. 566A.14 RULES.
22 The division of insurance may adopt rules pursuant to
23 chapter 17A as necessary and appropriate to administer this
24 chapter.
25 Sec. 41. NEW SECTION. 566A.15 CEMETERY FUND.
26 A special revenue fund is created in the state treasury,
27 under the control of the commissioner, to be known as the
28 insurance division cemetery fund. Commencing July 1, 1995,
29 filing fees received pursuant to sections 566A.2C and 566A.2D
30 and one dollar from the audit fee for each deed reported on
31 the annual report required by section 566A.2E, executed during
32 the preceding fiscal year, shall be deposited in the insurance
33 division cemetery fund by the commissioner. However, if the
34 balance of the fund on July 1 of any year exceeds two hundred
35 thousand dollars, the allocation to the fund shall not be

1 made, and the total sum of the fees paid pursuant to sections
2 566A.2C, 566A.2D, and 566A.2E shall be deposited in the
3 general fund of the state. Notwithstanding section 8.33,
4 moneys in the fund shall not revert to the general fund but
5 shall remain in the cemetery fund. Moneys in the cemetery
6 fund are appropriated to the insurance division and, subject
7 to authorization by the commissioner, may be used to pay the
8 expenses of that office incurred in the administration of the
9 audit, investigative, and enforcement duties and obligations
10 imposed under this chapter, and the expenses of receiverships
11 established pursuant to section 566A.12.
12 Sec. 42. CONDITION TO ENACTMENT OF CERTAIN PROVISIONS.
13 The section of this Act which amends Code section 566A.12
14 shall only be implemented if the general assembly makes an
15 appropriation of at least fifty thousand dollars and provides
16 for the employment of one full-time employee devoted to the
17 insurance division for the implementation of this Act.
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

HOUSE FILE 486

S-3376

1 Amend House File 486, as amended, passed, and
2 reprinted by the House, as follows:
3 1. Page 65, line 10, by striking the word and
4 figures ", 566A.2B, and 566A.2C" and inserting the
5 following: "and 566A.2B".
6 2. Page 65, by striking lines 13 through 15 and
7 inserting the following: "exempt from section
8 566A.2D. Political subdivisions of the state which
9 are counties are exempt from this chapter. Political
10 subdivisions of the state other than counties are
11 exempt from sections 566A.3 and 566A.6."
12 3. Page 69, by striking lines 3 through 24.
13 4. Page 70, line 3, by inserting after the word
14 "subdivision" the following: "subject to this
15 section".
16 5. Page 71, line 1, by inserting after the word
17 "subdivision" the following: "subject to this
18 section".
19 6. Page 74, line 29, by striking the words and
20 figure "sections 566A.2C and" and inserting the
21 following: "section".
22 7. Page 75, lines 1 and 2, by striking the words
23 and figures "sections 566A.2C, 566A.2D, and 566A.2E"
24 and inserting the following: "section 566A.2E".
25 8. By renumbering as necessary.

By COMMITTEE ON COMMERCE
PATRICK J. DELUHERY, Chairperson

S-3376 FILED APRIL 10, 1995

adopted 4-19-95 (P.1298)

~~motion to Rk 4/19/95~~
Motion Prevailed
adopted as Amended 4-19-95 (P1306)

HOUSE FILE 486

S-3459

1 Amend House File 486, as amended, passed, and
2 reprinted by the House, as follows:
3 1. Page 3, by inserting after line 33 the
4 following:
5 "(5) The name of the purchaser, beneficiary, and
6 the amount of each agreement referred to in section
7 523A.1 made in the preceding year and the date on
8 which it was made.
9 (6) Other information reasonably required by the
10 commissioner for purposes of administration of this
11 chapter."
12 2. Page 34, by inserting after line 17 the
13 following:
14 "(5) The name of the purchaser, beneficiary, and
15 the amount of each agreement referred to in section
16 523E.1 made in the preceding year and the date on
17 which it was made.
18 (6) Other information reasonably required by the
19 commissioner for purposes of administration of this
20 chapter."

By SHELDON RITTMER

S-3459 FILED APRIL 18, 1995

adopted
4-19-95
(R1299)

HOUSE FILE 486

S-3460

1 Amend House File 486, as amended, passed, and
2 reprinted by the House, as follows:
3 1. Page 5, by striking lines 5 through 10.
4 2. Page 31, by inserting after line 30 the
5 following:
6 "Sec. ___. NEW SECTION. 523A.23 MINIMUM FIDELITY
7 BOND OR INSURANCE POLICY.
8 The seller, in connection with an offer or sale of
9 an agreement referred to in section 523A.1, shall
10 obtain and maintain at all times a fidelity bond or
11 insurance policy covering losses resulting from
12 dishonest or fraudulent acts committed by employees of
13 the seller which cause a loss, theft, or
14 misappropriation of cash, property, or a negotiable
15 instrument submitted to the seller pursuant to the
16 agreement. The fidelity bond or insurance policy must
17 be maintained in an amount not less than fifty
18 thousand dollars."
19 3. Page 35, by striking lines 24 through 29.
20 4. Page 38, by inserting after line 19 the
21 following:
22 "Sec. ___. NEW SECTION. 523E.22 MINIMUM FIDELITY
23 BOND OR INSURANCE POLICY.
24 The seller, in connection with an offer or sale of
25 an agreement referred to in section 523E.1, shall
26 obtain and maintain at all times a fidelity bond or
27 insurance policy covering losses resulting from
28 dishonest or fraudulent acts committed by employees of
29 the seller which cause a loss, theft, or
30 misappropriation of cash, property, or a negotiable
31 instrument submitted to the seller pursuant to the
32 agreement. The fidelity bond or insurance policy must
33 be maintained in an amount not less than fifty
34 thousand dollars."
35 5. Page 67, by striking lines 30 through 34.
36 6. Renumber as necessary.

By SHELDON RITTMER

S-3460 FILED APRIL 18, 1995

adopted
4-19-95
(p. 1299)

HOUSE FILE 486

S-3498

1 Amend the amendment, S-3376, to House File 486, as
2 amended, passed, and reprinted by the House, as
3 follows:
4 1. Page 1, line 9, by inserting after the word
5 "counties" the following: "or cities".
6 2. Page 1, line 10, by inserting after the word
7 "counties" the following: "or cities".

By O. GENE MADDOX

S-3498 FILED APRIL 19, 1995
ADOPTED
(P.1305)

SENATE AMENDMENT TO HOUSE FILE 486

H-3989

1 Amend House File 486, as amended, passed, and
2 reprinted by the House, as follows:
3 1. Page 3, by inserting after line 33 the
4 following:
5 "(5) The name of the purchaser, beneficiary, and
6 the amount of each agreement referred to in section
7 523A.1 made in the preceding year and the date on
8 which it was made.
9 (6) Other information reasonably required by the
10 commissioner for purposes of administration of this
11 chapter."
12 2. Page 5, by striking lines 5 through 10.
13 3. Page 31, by inserting after line 30 the
14 following:
15 "Sec. ___. NEW SECTION. 523A.23 MINIMUM FIDELITY
16 BOND OR INSURANCE POLICY.
17 The seller, in connection with an offer or sale of
18 an agreement referred to in section 523A.1, shall
19 obtain and maintain at all times a fidelity bond or
20 insurance policy covering losses resulting from
21 dishonest or fraudulent acts committed by employees of
22 the seller which cause a loss, theft, or
23 misappropriation of cash, property, or a negotiable
24 instrument submitted to the seller pursuant to the
25 agreement. The fidelity bond or insurance policy must
26 be maintained in an amount not less than fifty
27 thousand dollars."
28 4. Page 34, by inserting after line 17 the
29 following:
30 "(5) The name of the purchaser, beneficiary, and
31 the amount of each agreement referred to in section
32 523E.1 made in the preceding year and the date on
33 which it was made.
34 (6) Other information reasonably required by the
35 commissioner for purposes of administration of this
36 chapter."
37 5. Page 35, by striking lines 24 through 29.
38 6. Page 38, by inserting after line 19 the
39 following:
40 "Sec. ___. NEW SECTION. 523E.22 MINIMUM FIDELITY
41 BOND OR INSURANCE POLICY.
42 The seller, in connection with an offer or sale of
43 an agreement referred to in section 523E.1, shall
44 obtain and maintain at all times a fidelity bond or
45 insurance policy covering losses resulting from
46 dishonest or fraudulent acts committed by employees of
47 the seller which cause a loss, theft, or
48 misappropriation of cash, property, or a negotiable
49 instrument submitted to the seller pursuant to the
50 agreement. The fidelity bond or insurance policy must

H-3989
Page 2
be maintained in an amount not less than fifty thousand dollars."

7. Page 65, line 10, by striking the word and figures ", 566A.2B, and 566A.2C" and inserting the following: "and 566A.2B".

8. Page 65, by striking lines 13 through 15 and inserting the following: "exempt from section 566A.2D. Political subdivisions of the state which are counties or cities are exempt from this chapter. Political subdivisions of the state other than counties or cities are exempt from sections 566A.3 and 566A.6."

9. Page 67, by striking lines 30 through 34.

10. Page 69, by striking lines 3 through 24.

11. Page 70, line 3, by inserting after the word "subdivision" the following: "subject to this section".

12. Page 71, line 1, by inserting after the word "subdivision" the following: "subject to this section".

13. Page 74, line 29, by striking the words and figure "sections 566A.2C and" and inserting the following: "section".

14. Page 75, lines 1 and 2, by striking the words and figures "sections 566A.2C, 566A.2D, and 566A.2E" and inserting the following: "section 566A.2E".

15. By renumbering, relettering, or redesignating and correcting internal references as necessary.

RECEIVED FROM THE SENATE

H-3989 FILED APRIL 20, 1995

House concurred in as amended (p. 1787)

HOUSE FILE 486

H-4008

Amend the Senate amendment, H-3989, to House File 486, as amended, passed, and reprinted by the House, as follows:

1. Page 2, by striking lines 6 through 12 and inserting the following:

"___. Page 65, by striking lines 13 through 15 and inserting the following: "exempt from section 566A.2D. Political subdivisions of the state which are counties are exempt from this chapter. Political subdivisions of the state other than counties are subject only to sections 566A.1A, 566A.2A, 566A.2B, and 266A.2E."

By VAN FOSSEN of Scott

H-4008 FILED APRIL 20, 1995

WITHDRAWN

HOUSE FILE 486

H-4013

1 Amend the Senate amendment, H-3989, to House File
2 486, as amended, passed, and reprinted by the House,
3 as follows:
4 1. Page 2, by striking lines 6 through 12 and
5 inserting the following:
6 "___. Page 65, by striking lines 13 through 15
7 and inserting the following: "exempt from section
8 566A.2D. Political subdivisions of the state which
9 are counties are exempt from this chapter. Political
10 subdivisions of the state other than counties are
11 subject only to sections 566A.1A, 566A.2A, 566A.2B,
12 and 566A.2E."

By VAN FOSSEN of Scott

H-4013 FILED APRIL 20, 1995

Adopted (p. 1787)

HOUSE AMENDMENT TO SENATE AMENDMENT TO HOUSE FILE 486

S-3521

1 Amend the Senate amendment, H-3989, to House File
2 486, as amended, passed, and reprinted by the House,
3 as follows:
4 1. Page 2, by striking lines 6 through 12 and
5 inserting the following:
6 "___. Page 65, by striking lines 13 through 15
7 and inserting the following: "exempt from section
8 566A.2D. Political subdivisions of the state which
9 are counties are exempt from this chapter. Political
10 subdivisions of the state other than counties are
11 subject only to sections 566A.1A, 566A.2A, 566A.2B,
12 and 566A.2E."

RECEIVED FROM THE HOUSE

S-3521 FILED APRIL 20, 1995

Senate concurred 4/24/95 (p. 1362)

Van Fossen - chair
Sukup
Doderer

HSB 261

COMMERCE • REGULATION

HOUSE FILE 261
BY (PROPOSED COMMITTEE ON COMMERCE AND REGULATION BILL BY CHAIRPERSON METCALF)

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

A BILL FOR

1 An Act relating to the regulation of cemetery operators and the
2 regulation of perpetual care cemeteries and nonperpetual care
3 cemeteries, establishing fees and use of those fees, and
4 providing penalties.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

TLSB 1712HC 76
mj/cf/24

S.F. _____ H.F. _____

1 Section 1. Section 523A.1, unnumbered paragraph 4, Code
2 1995, is amended to read as follows:
3 This section does not apply to payments for merchandise de-
4 livered to the purchaser. ~~Delivery~~ Except for caskets and
5 other types of inner burial containers or concrete burial
6 vaults sold after July 1, 1995, delivery includes storage in a
7 warehouse under the control of the seller or any other
8 warehouse or storage facility approved by the commissioner
9 when a receipt of ownership in the name of the purchaser is
10 delivered to the purchaser, the merchandise is insured against
11 loss, the merchandise is protected against damage, title has
12 been transferred to the purchaser, the merchandise is
13 appropriately identified and described in a manner that it can
14 be distinguished from other similar items of merchandise, the
15 method of storage allows for visual audits of the merchandise,
16 and the annual reporting requirements of section 523A.2,
17 subsection 1, are satisfied.
18 Sec. 2. Section 523A.2, subsection 1, paragraphs a and c,
19 Code 1995, are amended to read as follows:
20 a. Until an agreement is funded by insurance, covered by a
21 bond in lieu of a trust fund, or an amount is transferred to
22 trust pursuant to section 523A.1, payments subject to section
23 523A.1 shall not be commingled with other funds of the seller.
24 (1) Unless directly deposited in a trust account in a
25 manner consistent with this section, one hundred percent of
26 the amount received shall be deposited and held in an escrow
27 account in a state or federally insured financial institution.
28 (2) All funds held in trust under section 523A.1 shall be
29 deposited in a state or federally insured bank, savings and
30 loan association, or credit union authorized to conduct
31 business in this state, or trust department ~~thereof~~ of such
32 bank, savings and loan association, or credit union, or in a
33 trust company authorized to conduct business in this state,
34 within fifteen days after the close of the month of receipt of
35 the funds and shall be held as provided in paragraph "g" for

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

c. The seller under an agreement referred to in section 523A.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 funeral services or funeral merchandise.

(2) ~~The name of the purchaser, beneficiary, and the amount of each agreement under section 523A.1 made in the preceding year and the date on which it was made.~~ The balance of each trust account as of the end of the preceding calendar year, identified by the name of the purchaser or the beneficiary, and a report of any amounts withdrawn from trust and the reason for each withdrawal.

(3) ~~The total value of agreements subject to section 523A.1 entered into, the total amount paid pursuant to those agreements, and the total amount deposited in trust as required under section 523A.1, during the preceding year.~~ A description of insurance funding outstanding at the end of the preceding calendar year, identified by the name of the purchaser or the beneficiary, and a report of any insurance payments received by the seller.

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

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

~~(6) The name and address of the financial institution in which trust funds were deposited, and the name and address of~~

~~each-insurance-company-which-funds-agreements-under-section 523A.1.~~

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

~~(8)~~ (4) ~~The~~ A complete inventory of funeral merchandise ~~and-its-location-in-the-seller's-possession-that-has-been~~ delivered in lieu of trusting pursuant to section 523A.1~~.~~

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

~~The-information-required-by-subparagraphs-(7)-and-(8)-shall include~~, including the location of the merchandise, serial numbers or warehouse receipt numbers, identified by the name of the purchaser or the beneficiary, and a verified statement of a certified public accountant that the certified public accountant has conducted a physical inventory of the funeral merchandise ~~specified-in-subparagraph-(8)~~ and that each item of that merchandise is in the seller's possession at the specified location. The statement shall be on a form prescribed by the commissioner.

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

Sec. 3. Section 523A.2, subsection 7, Code 1995, is amended to read as follows:

7. This chapter does not prohibit the funding of an agreement otherwise subject to section 523A.1 by insurance proceeds derived from a policy issued by an insurance company authorized to conduct business in this state. Payments may be made directly to the insurance company by the purchaser of the agreement, in any amount. If the payments are not made directly to the insurance company by the purchaser of the agreement, at least eighty percent of the payments received by the seller under an agreement otherwise subject to section

1 523A.1 shall be used to purchase the insurance until an
2 insurance policy has been issued and paid in full for the
3 amount of the agreement. Absent the written consent by the
4 purchaser of the agreement to the contrary, insurance policies
5 funding agreements otherwise subject to section 523A.1 shall
6 contain a formula designed to increase the face amount of the
7 policy to adjust for inflation in the price of the merchandise
8 and services purchased under the agreement. The seller of an
9 agreement subject to this chapter which is to be funded by
10 insurance proceeds shall obtain all permits required to be
11 obtained under this chapter and comply with the reporting
12 requirements of this section.
13 Sec. 4. Section 523A.8, subsection 1, paragraphs e, h, and
14 j, Code 1995, are amended to read as follows:
15 e. State clearly whether the agreement is a guaranteed
16 price contract or a nonguaranteed price contract. Each
17 nonguaranteed price contract shall contain in twelve point
18 bold type, an explanation of the consequences in substantially
19 the following language:
20 THE PRICES OF MERCHANDISE AND SERVICES UNDER THIS AGREEMENT
21 ARE SUBJECT TO CHANGE IN THE FUTURE. ANY FUNDS PAID UNDER
22 THIS CONTRACT ARE ONLY A DEPOSIT TO BE APPLIED, TOGETHER WITH
23 ACCRUED INCOME, TOWARD THE FINAL COSTS OF THE MERCHANDISE OR
24 SERVICES CONTRACTED FOR. ADDITIONAL CHARGES MAY BE REQUIRED.
25 h. Explain the disposition of the ~~interest and disclose~~
26 ~~what fees and expenses may be charged if incurred~~ income
27 generated from investments, include a statement of fees,
28 expenses, and taxes which may be deducted, and include a
29 statement of the buyer's responsibility for income taxes owed
30 on the income, if applicable.
31 j. ~~State the name and address of the commissioner.~~
32 Include an explanation of regulatory oversight by the
33 insurance division in twelve point bold type, in substantially
34 the following language:
35 THIS CONTRACT MUST BE REPORTED TO THE IOWA INSURANCE

1 DIVISION BY THE FIRST DAY OF MARCH OF THE FOLLOWING YEAR. YOU
2 MAY CALL THE INSURANCE DIVISION AT (INSERT TELEPHONE NUMBER)
3 TO CONFIRM THAT YOUR CONTRACT HAS BEEN REPORTED. WRITTEN
4 INQUIRIES OR COMPLAINTS SHOULD BE MAILED TO THE FOLLOWING
5 ADDRESS: IOWA SECURITIES BUREAU, (INSERT ADDRESS).
6 Sec. 5. Section 523A.20, Code 1995, is amended to read as
7 follows:
8 523A.20 INSURANCE DIVISION'S REGULATORY FUND.
9 The insurance division may authorize the creation of a
10 special revenue fund in the state treasury, to be known as the
11 insurance division regulatory fund. ~~Commencing-July-1,-1990,~~
12 ~~and-annually-thereafter,-the~~ The commissioner shall allocate
13 annually from the fees paid pursuant to section 523A.2, ~~one~~
14 ~~dollar~~ two dollars for each agreement reported on an
15 establishment permit holder's annual report for deposit to the
16 regulatory fund. The remainder of the fees collected pursuant
17 to section 523A.2 shall be deposited into the general fund of
18 the state. ~~However,-if-the-balance-of-the-regulatory-fund-on~~
19 ~~that-July-1-exceeds-two-hundred-thousand-dollars,-the~~
20 ~~allocation-to-the-regulatory-fund-shall-not-be-made-and-the~~
21 ~~total-sum-of-the-fees-paid-pursuant-to-section-523A.2-shall-be~~
22 ~~deposited-in-the-general-fund-of-the-state.~~ In addition, on
23 May 1 of ~~1994~~ 1996 and ~~1995~~ 1997, the commissioner, to the
24 extent necessary to fund consumer education, audits,
25 investigations, payments under contract with licensed
26 establishments to provide funeral and cemetery merchandise or
27 services in the event of statutory noncompliance by the
28 initial seller, liquidations, and receiverships, shall assess
29 establishment permit holders ~~five~~ two dollars for each
30 agreement reported on the establishment permit holder's annual
31 report of sales executed during the preceding year, which
32 shall be deposited in the insurance division regulatory fund.
33 The moneys in the regulatory fund shall be retained in the
34 fund. The moneys are appropriated and, subject to
35 authorization by the commissioner, may be used to pay

1 auditors, audit expenses, investigative expenses, and the
2 expenses of receiverships established pursuant to section
3 523A.19. An annual assessment shall not be imposed if the
4 current balance of the fund exceeds two hundred thousand
5 dollars.
6 Sec. 6. NEW SECTION. 523A.21 LICENSE REVOCATION --
7 RECOMMENDATION BY COMMISSIONER TO BOARD OF MORTUARY SCIENCE
8 EXAMINERS.
9 Upon a determination by the commissioner that grounds exist
10 for an administrative license revocation or suspension action
11 by the board of mortuary science examiners under chapter 156,
12 the commissioner may forward to the board the grounds for the
13 determination, including all evidence in the possession of the
14 commissioner, so that the board may proceed with the matter as
15 deemed appropriate.
16 Sec. 7. NEW SECTION. 523A.22 LIQUIDATION.
17 1. GROUNDS FOR LIQUIDATION. Upon receipt of a written
18 request from the board of mortuary science examiners, the
19 commissioner may petition the district court for an order
20 directing the commissioner to liquidate a funeral
21 establishment on any of the following grounds:
22 a. The funeral establishment did not deposit funds
23 pursuant to section 523A.1 or withdrew funds in a manner
24 inconsistent with this chapter and is insolvent.
25 b. The funeral establishment did not deposit funds
26 pursuant to section 523A.1 or withdrew funds in a manner
27 inconsistent with this chapter and the condition of the
28 funeral establishment is such that the further transaction of
29 business would be hazardous, financially or otherwise, to its
30 preneed funeral customers or the public.
31 2. LIQUIDATION ORDER.
32 a. An order to liquidate the business of a funeral
33 establishment shall appoint the commissioner as liquidator and
34 shall direct the liquidator to immediately take possession of
35 the assets of the funeral establishment and to administer them

1 under the general supervision of the court. The liquidator is
2 vested with the title to the property, contracts, and rights
3 of action and the books and records of the funeral
4 establishment ordered liquidated, wherever located, as of the
5 entry of the final order of liquidation. The filing or
6 recording of the order with the clerk of court and the
7 recorder of deeds of the county in which its principal office
8 or place of business is located, or, in the case of real
9 estate with the recorder of deeds of the county where the
10 property is located, is notice as a deed, bill of sale, or
11 other evidence of title duly filed or recorded with the
12 recorder of deeds.
13 b. Upon issuance of an order, the rights and liabilities
14 of a funeral establishment and of the funeral establishment's
15 creditors, preneed and at-need funeral customers, owners, and
16 other persons interested in the funeral establishment's estate
17 shall become fixed as of the date of the entry of the order of
18 liquidation, except as provided in subsection 14.
19 c. At the time of petitioning for an order of liquidation,
20 or at any time after the time of petitioning, the
21 commissioner, after making appropriate findings of a funeral
22 establishment's insolvency, may petition the court for a
23 declaration of insolvency. After providing notice and hearing
24 as it deems proper, the court may make the declaration.
25 d. An order issued under this section shall require
26 accounting to the court by the liquidator. Accountings, at a
27 minimum, must include all funds received or disbursed by the
28 liquidator during the current period. An accounting shall be
29 filed within one year of the liquidation order and at such
30 other times as the court may require.
31 e. Within five days after the initiation of an appeal of
32 an order of liquidation, which order has not been stayed, the
33 commissioner shall present for the court's approval a plan for
34 the continued performance of the funeral establishment's
35 obligations during the pendency of an appeal. The plan shall

1 provide for the continued performance of preneed and at-need
2 funeral contracts in the normal course of events,
3 notwithstanding the grounds alleged in support of the order of
4 liquidation including the ground of insolvency. If the
5 defendant funeral establishment's financial condition, in the
6 judgment of the commissioner, will not support the full
7 performance of all obligations during the appeal pendency
8 period, the plan may prefer the claims of certain at-need and
9 preneed funeral customers and claimants over creditors and
10 interested parties as well as other at-need and preneed
11 funeral customers and claimants, as the commissioner finds to
12 be fair and equitable considering the relative circumstances
13 of such at-need and preneed funeral customers and claimants.
14 The court shall examine the plan submitted by the commissioner
15 and if it finds the plan to be in the best interests of the
16 parties, the court shall approve the plan. An action shall
17 not lie against the commissioner or any of the commissioner's
18 deputies, agents, clerks, assistants, or attorneys by any
19 party based on preference in an appeal pendency plan approved
20 by the court.
21 3. POWERS OF LIQUIDATOR.
22 a. The liquidator may do any of the following:
23 (1) Appoint a special deputy to act for the liquidator
24 under this chapter, and determine the special deputy's
25 reasonable compensation. The special deputy shall have all
26 the powers of the liquidator granted by this section. The
27 special deputy shall serve at the pleasure of the liquidator.
28 (2) Hire employees and agents, legal counsel, accountants,
29 appraisers, consultants, and other personnel as the
30 commissioner may deem necessary to assist in the liquidation.
31 (3) With the approval of the court fix reasonable
32 compensation of employees and agents, legal counsel,
33 accountants, appraisers, and consultants.
34 (4) Pay reasonable compensation to persons appointed and
35 defray from the funds or assets of the funeral establishment

1 all expenses of taking possession of, conserving, conducting,
2 liquidating, disposing of, or otherwise dealing with the
3 business and property of the funeral establishment. If the
4 property of the funeral establishment does not contain
5 sufficient cash or liquid assets to defray the costs incurred,
6 the commissioner may advance the costs so incurred out of the
7 insurance division regulatory fund. Amounts so advanced for
8 expenses of administration shall be repaid to the insurance
9 division regulatory fund for the use of the division out of
10 the first available moneys of the funeral establishment.
11 (5) Hold hearings, subpoena witnesses, and compel their
12 attendance, administer oaths, examine a person under oath, and
13 compel a person to subscribe to the person's testimony after
14 it has been correctly reduced to writing, and in connection to
15 the proceedings require the production of books, papers,
16 records, or other documents which the liquidator deems
17 relevant to the inquiry.
18 (6) Collect debts and moneys due and claims belonging to
19 the funeral establishment, wherever located. Pursuant to this
20 subparagraph, the liquidator may do any of the following:
21 (a) Institute timely action in other jurisdictions to
22 forestall garnishment and attachment proceedings against
23 debts.
24 (b) Perform acts as are necessary or expedient to collect,
25 conserve, or protect its assets or property, including the
26 power to sell, compound, compromise, or assign debts for
27 purposes of collection upon terms and conditions as the
28 liquidator deems best.
29 (c) Pursue any creditor's remedies available to enforce
30 claims.
31 (7) Conduct public and private sales of the property of
32 the funeral establishment.
33 (8) Use assets of the funeral establishment under a
34 liquidation order to transfer obligations of preneed funeral
35 contracts to a solvent funeral establishment, if the transfer

1 can be accomplished without prejudice to applicable priorities
2 under subsection 18.
3 (9) Acquire, hypothecate, encumber, lease, improve, sell,
4 transfer, abandon, or otherwise dispose of or deal with
5 property of the funeral establishment at its market value or
6 upon terms and conditions as are fair and reasonable. The
7 liquidator shall also have power to execute, acknowledge, and
8 deliver deeds, assignments, releases, and other instruments
9 necessary to effectuate a sale of property or other
10 transaction in connection with the liquidation.
11 (10) Borrow money on the security of the funeral
12 establishment's assets or without security and execute and
13 deliver documents necessary to that transaction for the
14 purpose of facilitating the liquidation. Money borrowed
15 pursuant to this subparagraph shall be repaid as an
16 administrative expense and shall have priority over any other
17 class 1 claims under the priority of distribution established
18 in subsection 18.
19 (11) Enter into contracts as necessary to carry out the
20 order to liquidate and affirm or disavow contracts to which
21 the funeral establishment is a party.
22 (12) Continue to prosecute and to institute in the name of
23 the funeral establishment or in the liquidator's own name any
24 and all suits and other legal proceedings, in this state or
25 elsewhere, and to abandon the prosecution of claims the
26 liquidator deems unprofitable to pursue further.
27 (13) Prosecute an action on behalf of the creditors, at-
28 need funeral customers, preneed funeral customers, or owners
29 against an officer of the funeral establishment or any other
30 person.
31 (14) Remove records and property of the funeral
32 establishment to the offices of the commissioner or to other
33 places as may be convenient for the purposes of efficient and
34 orderly execution of the liquidation.
35 (15) Deposit in one or more banks in this state sums as

1 are required for meeting current administration expenses and
2 distributions.
3 (16) Unless the court orders otherwise, invest funds not
4 currently needed.
5 (17) File necessary documents for recording in the office
6 of a recorder of deeds or record office in this state or
7 elsewhere where property of the funeral establishment is
8 located.
9 (18) Assert defenses available to the funeral
10 establishment as against third persons including statutes of
11 limitations, statutes of fraud, and the defense of usury. A
12 waiver of a defense by the funeral establishment after a
13 petition in liquidation has been filed shall not bind the
14 liquidator.
15 (19) Exercise and enforce the rights, remedies, and powers
16 of a creditor, at-need funeral customer, preneed funeral
17 customer, or owner, including the power to avoid transfer or
18 lien that may be given by the general law and that is not
19 included within subsections 7 through 9.
20 (20) Intervene in a proceeding wherever instituted that
21 might lead to the appointment of a receiver or trustee, and
22 act as the receiver or trustee whenever the appointment is
23 offered.
24 (21) Exercise powers now held or later conferred upon
25 receivers by the laws of this state which are not inconsistent
26 with this chapter.
27 b. This section does not limit the liquidator or exclude
28 the liquidator from exercising a power not listed in paragraph
29 "a" that may be necessary or appropriate to accomplish the
30 purposes of this chapter.
31 4. NOTICE TO CREDITORS AND OTHERS.
32 a. Unless the court otherwise directs, the liquidator
33 shall give notice of the liquidation order as soon as possible
34 by doing all of the following:
35 (1) By first class mail to all persons known or reasonably

1 expected to have claims against the funeral establishment,
2 including at-need and preneed funeral customers, by mailing a
3 notice to their last known address as indicated by the records
4 of the funeral establishment.
5 (2) By publication in a newspaper of general circulation
6 in the county in which the funeral establishment has its
7 principal place of business and in other locations as the
8 liquidator deems appropriate.
9 b. Notice to potential claimants under paragraph "a" shall
10 require claimants to file with the liquidator their claims
11 together with proper proofs of the claim under subsection 13
12 on or before a date the liquidator shall specify in the
13 notice. Claimants shall keep the liquidator informed of their
14 changes of address, if any.
15 c. If notice is given pursuant to this section, the
16 distribution of assets of the funeral establishment under this
17 chapter shall be conclusive with respect to claimants, whether
18 or not a claimant actually received notice.
19 5. ACTIONS BY AND AGAINST LIQUIDATOR.
20 a. After the issuance of an order appointing a liquidator
21 of a funeral establishment, an action at law or equity shall
22 not be brought against the funeral establishment in this state
23 or elsewhere, and existing actions shall not be maintained or
24 further presented after issuance of the order. Whenever in
25 the liquidator's judgment, protection of the estate of the
26 funeral establishment necessitates intervention in an action
27 against the funeral establishment that is pending outside this
28 state, the liquidator may intervene in the action. The
29 liquidator may defend, at the expense of the estate of the
30 funeral establishment, an action in which the liquidator
31 intervenes under this section.
32 b. Within two years or such additional time as applicable
33 law may permit, the liquidator, after the issuance of an order
34 for liquidation, may institute an action or proceeding on
35 behalf of the estate of the funeral establishment upon any

1 cause of action against which the period of limitation fixed
2 by applicable law has not expired at the time of the filing of
3 the petition upon which the order is entered. If a period of
4 limitation is fixed by agreement for instituting a suit or
5 proceeding upon a claim, or for filing a claim, proof of
6 claim, proof of loss, demand, notice, or the like, or if in a
7 proceeding, judicial or otherwise, a period of limitation is
8 fixed in the proceeding or pursuant to applicable law for
9 taking an action, filing a claim or pleading, or doing an act,
10 and if the period had not expired at the date of the filing of
11 the petition, the liquidator may, for the benefit of the
12 estate, take any action or do any act, required of or
13 permitted to the funeral establishment, within a period of one
14 hundred eighty days subsequent to the entry of an order for
15 liquidation, or within a further period as is shown to the
16 satisfaction of the court not to be unfairly prejudicial to
17 the other party.
18 c. A statute of limitation or defense of laches shall not
19 run with respect to an action against a funeral establishment
20 between the filing of a petition for liquidation against the
21 funeral establishment and the denial of the petition. An
22 action against the funeral establishment that might have been
23 commenced when the petition was filed may be commenced for at
24 least sixty days after the petition is denied.
25 6. COLLECTION AND LIST OF ASSETS.
26 a. As soon as practicable after the liquidation order but
27 not later than one hundred twenty days after such order, the
28 liquidator shall prepare in duplicate a list of the funeral
29 establishment's assets. The list shall be amended or
30 supplemented as the liquidator may determine. One copy shall
31 be filed in the office of the clerk of court and one copy
32 shall be retained for the liquidator's files. Amendments and
33 supplements shall be similarly filed.
34 b. The liquidator shall reduce the assets to a degree of
35 liquidity that is consistent with the effective execution of

1 the liquidation.
2 c. A submission to the court for distribution of assets in
3 accordance with subsection 11 fulfills the requirements of
4 paragraph "a".
5 7. FRAUDULENT TRANSFERS PRIOR TO PETITION.
6 a. A transfer made and an obligation incurred by a funeral
7 establishment within one year prior to the filing of a
8 successful petition for liquidation under this chapter is
9 fraudulent as to then existing and future creditors if made or
10 incurred without fair consideration, or with actual intent to
11 hinder, delay, or defraud either existing or future creditors.
12 A fraudulent transfer made or an obligation incurred by a
13 funeral establishment ordered to be liquidated under this
14 chapter may be avoided by the receiver, except as to a person
15 who in good faith is a purchaser, lienor, or obligee for a
16 present fair equivalent value. A purchaser, lienor, or
17 obligee, who in good faith has given a consideration less than
18 fair for such transfer, lien, or obligation, may retain the
19 property, lien, or obligation as security for repayment. The
20 court may, on due notice, order any such transfer or
21 obligation to be preserved for the benefit of the estate, and
22 in that event, the receiver shall succeed to and may enforce
23 the rights of the purchaser, lienor, or obligee.
24 b. (1) A transfer of property other than real property is
25 made when it becomes perfected so that a subsequent lien
26 obtainable by legal or equitable proceedings on a simple
27 contract could not become superior to the rights of the
28 transferee under subsection 9, paragraph "c".
29 (2) A transfer of real property is made when it becomes
30 perfected so that a subsequent bona fide purchaser from the
31 funeral establishment could not obtain rights superior to the
32 rights of the transferee.
33 (3) A transfer which creates an equitable lien is not
34 perfected if there are available means by which a legal lien
35 could be created.

1 (4) A transfer not perfected prior to the filing of a
2 petition for liquidation is deemed to be made immediately
3 before the filing of the successful petition.
4 (5) This subsection applies whether or not there are or
5 were creditors who might have obtained a lien or persons who
6 might have become bona fide purchasers.
7 8. FRAUDULENT TRANSFER AFTER PETITION.
8 a. After a petition for liquidation has been filed a
9 transfer of real property of the funeral establishment made to
10 a person acting in good faith is valid against the liquidator
11 if made for a present fair equivalent value. If the transfer
12 was not made for a present fair equivalent value, then the
13 transfer is valid to the extent of the present consideration
14 actually paid for which amount the transferee shall have a
15 lien on the property transferred. The commencement of a
16 proceeding in liquidation is constructive notice upon the
17 recording of a copy of the petition for or order of
18 liquidation with the recorder of deeds in the county where any
19 real property in question is located. The exercise by a court
20 of the United States or a state or jurisdiction to authorize a
21 judicial sale of real property of the funeral establishment
22 within a county in a state shall not be impaired by the
23 pendency of a proceeding unless the copy is recorded in the
24 county prior to the consummation of the judicial sale.
25 b. After a petition for liquidation has been filed and
26 before either the receiver takes possession of the property of
27 the funeral establishment or an order of liquidation is
28 granted:
29 (1) A transfer of the property, other than real property,
30 of the funeral establishment made to a person acting in good
31 faith is valid against the receiver if made for a present fair
32 equivalent value. If the transfer was not made for a present
33 fair equivalent value, then the transfer is valid to the
34 extent of the present consideration actually paid for which
35 amount the transferee shall have a lien on the property

1 transferred.
2 (2) If acting in good faith, a person indebted to the
3 funeral establishment or holding property of the funeral
4 establishment may pay the debt or deliver the property, or any
5 part of the property, to the funeral establishment or upon the
6 funeral establishment's order as if the petition were not
7 pending.
8 (3) A person having actual knowledge of the pending
9 liquidation is not acting in good faith.
10 (4) A person asserting the validity of a transfer under
11 this subsection has the burden of proof. Except as provided
12 in this subsection, a transfer by or on behalf of the funeral
13 establishment after the date of the petition for liquidation
14 by any person other than the liquidator is not valid against
15 the liquidator.
16 c. A person receiving any property from the funeral
17 establishment or any benefit of the property of the funeral
18 establishment which is a fraudulent transfer under paragraph
19 "a" is personally liable for the property or benefit and shall
20 account to the liquidator.
21 d. This chapter does not impair the negotiability of
22 currency or negotiable instruments.
23 9. VOIDABLE PREFERENCES AND LIENS.
24 a. (1) A preference is a transfer of the property of a
25 funeral establishment to or for the benefit of a creditor for
26 an antecedent debt made or suffered by the funeral
27 establishment within one year before the filing of a
28 successful petition for liquidation under this chapter, the
29 effect of which transfer may be to enable the creditor to
30 obtain a greater percentage of this debt than another creditor
31 of the same class would receive. If a liquidation order is
32 entered while the funeral establishment is already subject to
33 a receivership, then the transfers are preferences if made or
34 suffered within one year before the filing of the successful
35 petition for the receivership, or within two years before the

1 filing of the successful petition for liquidation, whichever
2 time is shorter.
3 (2) A preference may be avoided by the liquidator if any
4 of the following exist:
5 (a) The funeral establishment was insolvent at the time of
6 the transfer.
7 (b) The transfer was made within four months before the
8 filing of the petition.
9 (c) At the time the transfer was made, the creditor
10 receiving it or to be benefited by the transfer or the
11 creditor's agent acting with reference to the transfer had
12 reasonable cause to believe that the funeral establishment was
13 insolvent or was about to become insolvent.
14 (d) The creditor receiving the transfer was an officer, or
15 an employee, attorney, or other person who was in fact in a
16 position of comparable influence in the funeral establishment
17 to an officer whether or not the person held the position of
18 an officer, owner, or other person, firm, corporation,
19 association, or aggregation of persons with whom the funeral
20 establishment did not deal at arm's length.
21 (3) Where the preference is voidable, the liquidator may
22 recover the property. If the property has been converted, the
23 liquidator may recover its value from a person who has
24 received or converted the property. However, if a bona fide
25 purchaser or lienor has given less than fair equivalent value,
26 the purchaser or lienor shall have a lien upon the property to
27 the extent of the consideration actually given. Where a
28 preference by way of lien or security interest is voidable,
29 the court may on due notice order the lien or security
30 interest to be preserved for the benefit of the estate, in
31 which event the lien or title shall pass to the liquidator.
32 b. (1) A transfer of property other than real property is
33 made when it becomes perfected so that a subsequent lien
34 obtainable by legal or equitable proceedings on a simple
35 contract could not become superior to the rights of the

1 transferee.
2 (2) A transfer of real property is made when it becomes
3 perfected so that a subsequent bona fide purchaser from the
4 funeral establishment could not obtain rights superior to the
5 rights of the transferee.
6 (3) A transfer which creates an equitable lien is not
7 perfected if there are available means by which a legal lien
8 could be created.
9 (4) A transfer not perfected prior to the filing of a
10 petition for liquidation is deemed to be made immediately
11 before the filing of the successful petition.
12 (5) This subsection applies whether or not there are or
13 were creditors who might have obtained liens or persons who
14 might have become bona fide purchasers.
15 c. (1) A lien obtainable by legal or equitable
16 proceedings upon a simple contract is one arising in the
17 ordinary course of the proceedings upon the entry or docketing
18 of a judgment or decree, or upon attachment, garnishment,
19 execution, or like process, whether before, upon, or after
20 judgment or decree and whether before or upon levy. It does
21 not include liens which under applicable law are given a
22 special priority over other liens which are prior in time.
23 (2) A lien obtainable by legal or equitable proceedings
24 could become superior to the rights of a transferee, or a
25 purchaser could obtain rights superior to the rights of a
26 transferee within the meaning of paragraph "b", if such
27 consequences would follow only from the lien or purchase
28 itself, or from the lien or purchase followed by a step wholly
29 within the control of the respective lienholder or purchaser,
30 with or without the aid of ministerial action by public
31 officials. However, a lien could not become superior and a
32 purchase could not create superior rights for the purpose of
33 paragraph "b" through an act subsequent to the obtaining of a
34 lien or subsequent to a purchase which requires the agreement
35 or concurrence of any third party or which requires further

1 judicial action or ruling.
2 d. A transfer of property for or on account of a new and
3 contemporaneous consideration, which is under paragraph "b"
4 made or suffered after the transfer because of delay in
5 perfecting it, does not become a transfer for or on account of
6 an antecedent debt if any acts required by the applicable law
7 to be performed in order to perfect the transfer as against
8 liens or a bona fide purchaser's rights are performed within
9 twenty-one days or any period expressly allowed by the law,
10 whichever is less. A transfer to secure a future loan, if a
11 loan is actually made, or a transfer which becomes security
12 for a future loan, shall have the same effect as a transfer
13 for or on account of a new and contemporaneous consideration.
14 e. If a lien voidable under paragraph "a", subparagraph
15 (2), has been dissolved by the furnishing of a bond or other
16 obligation, the surety on which has been indemnified directly
17 or indirectly by the transfer or the creation of a lien upon
18 property of a funeral establishment before the filing of a
19 petition under this chapter which results in a liquidation
20 order, the indemnifying transfer or lien is also voidable.
21 f. The property affected by a lien voidable under
22 paragraphs "a" and "e" is discharged from the lien. The
23 property and any of the indemnifying property transferred to
24 or for the benefit of a surety shall pass to the liquidator.
25 However, the court may on due notice order a lien to be
26 preserved for the benefit of the estate and the court may
27 direct that the conveyance be executed to evidence the title
28 of the liquidator.
29 g. The court shall have summary jurisdiction of a
30 proceeding by the liquidator to hear and determine the rights
31 of the parties under this section. Reasonable notice of
32 hearing in the proceeding shall be given to all parties in
33 interest, including the obligee of a releasing bond or other
34 like obligation. Where an order is entered for the recovery
35 of indemnifying property in kind or for the avoidance of an

1 indemnifying lien, upon application of any party in interest,
2 the court shall in the same proceeding ascertain the value of
3 the property or lien. If the value is less than the amount
4 for which the property is indemnified or less than the amount
5 of the lien, the transferee or lienholder may elect to retain
6 the property or lien upon payment of its value, as ascertained
7 by the court, to the liquidator within the time as fixed by
8 the court.
9 h. The liability of a surety under a releasing bond or
10 other like obligation is discharged to the extent of the value
11 of the indemnifying property recovered or the indemnifying
12 lien nullified and avoided by the liquidator. Where the
13 property is retained under paragraph "g", the liability of the
14 surety is discharged to the extent of the amount paid to the
15 liquidator.
16 i. If a creditor has been preferred for property which
17 becomes a part of the funeral establishment's estate, and
18 afterward in good faith gives the funeral establishment
19 further credit without security of any kind, the amount of the
20 new credit remaining unpaid at the time of the petition may be
21 set off against the preference which would otherwise be
22 recoverable from the creditor.
23 j. If within four months before the filing of a successful
24 petition for liquidation under this chapter, or at any time in
25 contemplation of a proceeding to liquidate, a funeral
26 establishment, directly or indirectly, pays money or transfers
27 property to an attorney for services rendered or to be
28 rendered, the transaction may be examined by the court on its
29 own motion or shall be examined by the court on petition of
30 the liquidator. The payment or transfer shall be held valid
31 only to the extent of a reasonable amount to be determined by
32 the court. The excess may be recovered by the liquidator for
33 the benefit of the estate. However, where the attorney is in
34 a position of influence in the funeral establishment or an
35 affiliate, payment of any money or the transfer of any

1 property to the attorney for services rendered or to be
2 rendered shall be governed by the provision of paragraph "a",
3 subparagraph (2), subparagraph subdivision (d).
4 k. (1) An officer, manager, employee, shareholder,
5 subscriber, attorney, or any other person acting on behalf of
6 the funeral establishment who knowingly participates in giving
7 any preference when the person has reasonable cause to believe
8 the funeral establishment is or is about to become insolvent
9 at the time of the preference is personally liable to the
10 liquidator for the amount of the preference. There is an
11 inference that reasonable cause exists if the transfer was
12 made within four months before the date of filing of this
13 successful petition for liquidation.
14 (2) A person receiving property from the funeral
15 establishment or the benefit of the property of the funeral
16 establishment as a preference voidable under paragraph "a" is
17 personally liable for the property and shall account to the
18 liquidator.
19 (3) This subsection shall not prejudice any other claim by
20 the liquidator against any person.
21 10. CLAIMS OF HOLDER OF VOID OR VOIDABLE RIGHTS.
22 a. A claim of a creditor who has received or acquired a
23 preference, lien, conveyance, transfer, assignment, or
24 encumbrance, voidable under this chapter, shall not be allowed
25 unless the creditor surrenders the preference, lien,
26 conveyance, transfer, assignment, or encumbrance. If the
27 avoidance is effected by a proceeding in which a final
28 judgment has been entered, the claim shall not be allowed
29 unless the money is paid or the property is delivered to the
30 liquidator within thirty days from the date of the entering of
31 the final judgment. However, the court having jurisdiction
32 over the liquidation may allow further time if there is an
33 appeal or other continuation of the proceeding.
34 b. A claim allowable under paragraph "a" by reason of a
35 voluntary or involuntary avoidance, preference, lien,

1 conveyance, transfer, assignment, or encumbrance may be filed
2 as an excused late filing under subsection 12, if filed within
3 thirty days from the date of the avoidance or within the
4 further time allowed by the court under paragraph "a".
5 11. LIQUIDATOR'S PROPOSAL TO DISTRIBUTE ASSETS.
6 a. From time to time as assets become available, the
7 liquidator shall make application to the court for approval of
8 a proposal to disburse assets out of marshaled assets.
9 b. The proposal shall at least include provisions for all
10 of the following:
11 (1) Reserving amounts for the payment of all the
12 following:
13 (a) Expenses of administration.
14 (b) To the extent of the value of the security held, the
15 payment of claims of secured creditors.
16 (c) Claims falling within the priorities established in
17 subsection 18, paragraphs "a" and "b".
18 (2) Disbursement of the assets marshaled to date and
19 subsequent disbursement of assets as they become available.
20 c. Action on the application may be taken by the court
21 provided that the liquidator's proposal complies with
22 paragraph "b".
23 12. FILING OF CLAIMS.
24 a. Proof of all claims shall be filed with the liquidator
25 in the form required by subsection 13 on or before the last
26 day for filing specified in the notice required under
27 subsection 4.
28 b. The liquidator may permit a claimant making a late
29 filing to share in distributions, whether past or future, as
30 if the claimant were not late, to the extent that the payment
31 will not prejudice the orderly administration of the
32 liquidation under any of the following circumstances:
33 (1) The existence of the claim was not known to the
34 claimant and that the claimant filed the claim as promptly as
35 reasonably possible after learning of it.

1 (2) A transfer to a creditor was avoided under subsections
2 7 through 9, or was voluntarily surrendered under subsection
3 10, and that the filing satisfies the conditions of subsection
4 10.
5 (3) The valuation under subsection 17 of security held by
6 a secured creditor shows a deficiency, which is filed within
7 thirty days after the valuation.
8 c. The liquidator may consider any claim filed late and
9 permit the claimant to receive distributions which are
10 subsequently declared on any claims of the same or lower
11 priority if the payment does not prejudice the orderly
12 administration of the liquidation. The late-filing claimant
13 shall receive at each distribution the same percentage of the
14 amount allowed on the claim as is then being paid to claimants
15 of any lower priority. This shall continue until the claim
16 has been paid in full.
17 13. PROOF OF CLAIM.
18 a. Proof of claim shall consist of a statement signed by
19 the claimant that includes all of the following that are
20 applicable:
21 (1) The particulars of the claim, including the
22 consideration given for it.
23 (2) The identity and amount of the security on the claim.
24 (3) The payments, if any, made on the debt.
25 (4) A statement that the sum claimed is justly owing and
26 that there is no setoff, counterclaim, or defense to the
27 claim.
28 (5) Any right of priority of payment or other specific
29 right asserted by the claimant.
30 (6) A copy of the written instrument which is the
31 foundation of the claim.
32 (7) The name and address of the claimant and the attorney
33 who represents the claimant, if any.
34 b. A claim need not be considered or allowed if it does
35 not contain all the information identified in paragraph "a"

1 which is applicable. The liquidator may require that a
2 prescribed form be used and may require that other information
3 and documents be included.
4 c. At any time the liquidator may request the claimant to
5 present information or evidence supplementary to that required
6 under paragraph "a", and may take testimony under oath,
7 require production of affidavits or depositions, or otherwise
8 obtain additional information or evidence.
9 d. A judgment or order against a funeral establishment
10 entered after the date of filing of a successful petition for
11 liquidation, or a judgment or order against the funeral
12 establishment entered at any time by default or by collusion
13 need not be considered as evidence of liability or of the
14 amount of damages. A judgment or order against a funeral
15 establishment before the filing of the petition need not be
16 considered as evidence of liability or of the amount of
17 damages.
18 14. SPECIAL CLAIMS.
19 a. A claim may be allowed even if contingent, if it is
20 filed pursuant to subsection 12. The claim may be allowed and
21 the claimant may participate in all distributions declared
22 after it is filed to the extent that it does not prejudice the
23 orderly administration of the liquidation.
24 b. Claims that are due except for the passage of time
25 shall be treated as absolute claims are treated. However, the
26 claims may be discounted at the legal rate of interest.
27 c. Claims made under employment contracts by directors,
28 principal officers, or persons in fact performing similar
29 functions or having similar powers are limited to payment for
30 services rendered prior to the issuance of an order of
31 liquidation under subsection 2.
32 15. DISPUTED CLAIMS.
33 a. If a claim is denied in whole or in part by the
34 liquidator, written notice of the determination shall be given
35 to the claimant or the claimant's attorney by first class mail

1 at the address shown in the proof of claim. Within sixty days
2 from the mailing of the notice, the claimant may file
3 objections with the liquidator. Unless a filing is made, the
4 claimant shall not further object to the determination.
5 b. If objections are filed with the liquidator and the
6 liquidator does not alter the denial of the claim as a result
7 of the objections, the liquidator shall ask the court for a
8 hearing as soon as practicable and give notice of the hearing
9 by first class mail to the claimant or the claimant's attorney
10 and to any other persons directly affected. The notice shall
11 be given not less than ten nor more than thirty days before
12 the date of the hearing. The matter shall be heard by the
13 court or by a court-appointed referee. The referee shall
14 submit findings of fact along with a recommendation.
15 16. CLAIMS OF OTHER PERSON. If a creditor, whose claim
16 against a funeral establishment is secured in whole or in part
17 by the undertaking of another person, fails to prove and file
18 that claim, then the other person may do so in the creditor's
19 name and shall be subrogated to the rights of the creditor,
20 whether the claim has been filed by the creditor or by the
21 other person in the creditor's name to the extent that the
22 other person discharges the undertaking. However, in the
23 absence of an agreement with the creditor to the contrary, the
24 other person is not entitled to any distribution until the
25 amount paid to the creditor on the undertaking plus the
26 distributions paid on the claim from the funeral
27 establishment's estate to the creditor equal the amount of the
28 entire claim of the creditor. An excess received by the
29 creditor shall be held by the creditor in trust for the other
30 person.
31 17. SECURED CREDITOR'S CLAIMS.
32 a. The value of security held by a secured creditor shall
33 be determined in one of the following ways, as the court may
34 direct:
35 (1) By converting the security into money according to the

1 terms of the agreement pursuant to which the security was
2 delivered to the creditors.
3 (2) By agreement, arbitration, compromise, or litigation
4 between the creditor and the liquidator.
5 b. The determination shall be under the supervision and
6 control of the court with due regard for the recommendation of
7 the liquidator. The amount so determined shall be credited
8 upon the secured claim. A deficiency shall be treated as an
9 unsecured claim. If the claimant surrenders the security to
10 the liquidator, the entire claim shall be allowed as if
11 unsecured.
12 18. PRIORITY OF DISTRIBUTION. The priority of
13 distribution of claims from the funeral establishment's estate
14 shall be in accordance with the order in which each class of
15 claims is set forth. Claims in each class shall be paid in
16 full or adequate funds retained for the payment before the
17 members of the next class receive any payment. Subclasses
18 shall not be established within a class. The order of
19 distribution of claims is as follows:
20 a. CLASS 1. The costs and expenses of administration,
21 including but not limited to the following:
22 (1) The actual and necessary costs of preserving or
23 recovering the assets of the funeral establishment.
24 (2) Compensation for all authorized services rendered in
25 the liquidation.
26 (3) Necessary filing fees.
27 (4) The fees and mileage payable to witnesses.
28 (5) Authorized reasonable attorney's fees and other
29 professional services rendered in the liquidation.
30 b. CLASS 2. Reasonable compensation to employees for
31 services performed to the extent that they do not exceed two
32 months of monetary compensation and represent payment for
33 services performed within one year before the filing of the
34 petition for liquidation. Officers and directors are not
35 entitled to the benefit of this priority. The priority is in

1 lieu of other similar priority which may be authorized by law
2 as to wages or compensation of employees.
3 c. CLASS 3. Claims under at-need and preneed funeral
4 contracts.
5 d. CLASS 4. Claims of general creditors.
6 e. CLASS 5. Claims of the federal or any state or local
7 government. Claims, including those of a governmental body
8 for a penalty or forfeiture, are allowed in this class only to
9 the extent of the pecuniary loss sustained from the act,
10 transaction, or proceeding out of which the penalty or
11 forfeiture arose, with reasonable and actual costs incurred.
12 The remainder of such claims shall be postponed to the class
13 of claims under paragraph "g".
14 f. CLASS 6. Claims filed late or any other claims other
15 than claims under paragraph "g".
16 g. CLASS 7. The claims of shareholders or other owners.
17 19. LIQUIDATOR'S RECOMMENDATIONS TO THE COURT.
18 a. The liquidator shall review claims duly filed in the
19 liquidation and shall make further investigation as necessary.
20 The liquidator may compound, compromise, or in any other
21 manner negotiate the amount for which claims will be
22 recommended to the court except where the liquidator is
23 required by law to accept claims as settled by a person or
24 organization. Unresolved disputes shall be determined under
25 subsection 15. As soon as practicable, the liquidator shall
26 present to the court a report of the claims against the
27 funeral establishment with the liquidator's recommendations.
28 The report shall include the name and address of each claimant
29 and the amount of the claim finally recommended.
30 b. The court may approve, disapprove, or modify the report
31 on claims by the liquidator. Reports not modified by the
32 court within sixty days following submission by the liquidator
33 shall be treated by the liquidator as allowed claims, subject
34 to later modification or to rulings made by the court pursuant
35 to subsection 15. A claim under a policy of insurance shall

1 not be allowed for an amount in excess of the applicable
2 policy limits.
3 20. DISTRIBUTION OF ASSETS. Under the direction of the
4 court, the liquidator shall pay distributions in a manner that
5 will assure the proper recognition of priorities and a
6 reasonable balance between the expeditious completion of the
7 liquidation and the protection of unliquidated and
8 undetermined claims, including third-party claims.
9 Distribution of assets in kind may be made at valuations set
10 by agreement between the liquidator and the creditor and
11 approved by the court.
12 21. UNCLAIMED AND WITHHELD FUNDS.
13 a. Unclaimed funds subject to distribution remaining in
14 the liquidator's hands when the liquidator is ready to apply
15 to the court for discharge, including the amount distributable
16 to a creditor, owner, or other person who is unknown or cannot
17 be found, shall be deposited with the treasurer of state, and
18 shall be paid without interest, except as provided in
19 subsection 18, to the person entitled or the person's legal
20 representative upon proof satisfactory to the treasurer of
21 state of the right to the funds. An amount on deposit not
22 claimed within six years from the discharge of the liquidator
23 is deemed to have been abandoned and shall become the property
24 of the state without formal escheat proceedings and be
25 transferred to the insurance division regulatory fund.
26 b. Funds withheld under subsection 14 and not distributed
27 shall upon discharge of the liquidator be deposited with the
28 treasurer of state and paid pursuant to subsection 18. Sums
29 remaining which under subsection 18 would revert to the
30 undistributed assets of the funeral establishment shall be
31 transferred to the insurance division regulatory fund and
32 become the property of the state as provided under paragraph
33 "a", unless the commissioner in the commissioner's discretion
34 petitions the court to reopen the liquidation pursuant to
35 subsection 23.

1 c. Notwithstanding any other provision of this chapter,
2 funds as identified in paragraph "a", with the approval of the
3 court, shall be made available to the commissioner for use in
4 the detection and prevention of future insolvencies. The
5 commissioner shall hold these funds in the insurance division
6 regulatory fund and shall pay without interest, except as
7 provided in subsection 18, to the person entitled to the funds
8 or the person's legal representative upon proof satisfactory
9 to the commissioner of the person's right to the funds. The
10 funds shall be held by the commissioner for a period of two
11 years at which time the rights and duties to the unclaimed
12 funds shall vest in the commissioner.
13 22. TERMINATION OF PROCEEDINGS.
14 a. When all assets justifying the expense of collection
15 and distribution have been collected and distributed under
16 this chapter, the liquidator shall apply to the court for
17 discharge. The court may grant the discharge and make any
18 other orders, including an order to transfer remaining funds
19 that are uneconomical to distribute, as appropriate.
20 b. Any other person may apply to the court at any time for
21 an order under paragraph "a". If the application is denied,
22 the applicant shall pay the costs and expenses of the
23 liquidator in resisting the application, including a
24 reasonable attorney's fee.
25 23. REOPENING LIQUIDATION. At any time after the
26 liquidation proceeding has been terminated and the liquidator
27 discharged, the commissioner or other interested party may
28 petition the court to reopen the proceedings for good cause
29 including the discovery of additional assets. The court shall
30 order the proceeding reopened if it is satisfied that there is
31 justification for the reopening.
32 24. DISPOSITION OF RECORDS DURING AND AFTER TERMINATION OF
33 LIQUIDATION. If it appears to the commissioner that the
34 records of a funeral establishment in process of liquidation
35 or completely liquidated are no longer useful, the

1 commissioner may recommend to the court and the court shall
2 direct what records shall be retained for future reference and
3 what records shall be destroyed.
4 25. EXTERNAL AUDIT OF RECEIVER'S BOOKS. The court may
5 order audits to be made of the books of the commissioner
6 relating to a receivership established under this chapter, and
7 a report of each audit shall be filed with the commissioner
8 and with the court. The books, records, and other documents
9 of the receivership shall be made available to the auditor at
10 any time without notice. The expense of an audit shall be
11 considered a cost of administration of the receivership.
12 Sec. 8. Section 523E.1, subsection 1, Code 1995, is
13 amended to read as follows:
14 1. If an agreement is made by a person to furnish, upon
15 the future death of a person named or implied in the
16 agreement, ~~cemetery~~ funeral merchandise, a minimum of one
17 hundred twenty-five percent of the wholesale cost of the
18 ~~cemetery~~ funeral merchandise, based upon the current
19 advertised prices available from a manufacturer or wholesaler
20 who has delivered the same or substantially the same type of
21 merchandise to the seller during the last twelve months, shall
22 be and remain trust funds until purchase of the merchandise or
23 the occurrence of the death of the person for whose benefit
24 the funds were paid, unless the funds are sooner released to
25 the person making the payment by mutual consent of the
26 parties. Payments otherwise subject to this section are not
27 exempt merely because they are held in certificates of
28 deposit.
29 Sec. 9. Section 523E.2, subsection 1, paragraphs a and c,
30 Code 1995, are amended to read as follows:
31 a. Until an agreement is funded by insurance, covered by a
32 bond in lieu of a trust fund, or an amount is transferred to
33 trust pursuant to section 523E.1, payments subject to section
34 523E.1 shall not be commingled with other funds of the seller.
35 (1) Unless directly deposited in a trust account in a

1 manner consistent with this section, one hundred percent of
2 the amount received shall be deposited and held in an escrow
3 account in a state or federally insured financial institution.
4 (2) All funds held in trust under section 523E.1 shall be
5 deposited in a state or federally insured bank, savings and
6 loan association, or credit union authorized to conduct
7 business in this state, or trust department ~~thereof~~ of such
8 bank, savings and loan association, or credit union, or in a
9 trust company authorized to conduct business in this state,
10 within fifteen days after the close of the month of receipt of
11 the funds and shall be held as provided in paragraph "g" for
12 the designated beneficiary until released pursuant to section
13 523E.1.
14 c. The seller under an agreement referred to in section
15 523E.1 shall file with the commissioner not later than March 1
16 of each year a report including the following information:
17 (1) The name and address of the seller and the name and
18 address of the establishment that will provide the ~~cemetery~~
19 funeral services or funeral merchandise.
20 (2) ~~The-name-of-the-purchaser,-beneficiary,-and-the-amount~~
21 ~~of-each-agreement-under-section-523E.1-made-in-the-preceding~~
22 ~~year-and-the-date-on-which-it-was-made.~~ The balance of each
23 trust account as of the end of the immediately preceding
24 calendar year, identified by the name of the purchaser or the
25 beneficiary, and a report of any amounts withdrawn from trust
26 and the reason for each withdrawal.
27 (3) ~~The-total-value-of-agreements-subject-to-section~~
28 ~~523E.1-entered-into,-the-total-amount-paid-pursuant-to-those~~
29 ~~agreements,-and-the-total-amount-deposited-in-trust-as~~
30 ~~required-under-section-523E.1,-during-the-preceding-year.~~ A
31 description of insurance funding outstanding at the end of the
32 immediately preceding calendar year, identified by the name of
33 the purchaser or the beneficiary, and a report of any
34 insurance payments received by the seller.
35 ~~(4)--The-amount-of-any-payments-received-pursuant-to~~

1 ~~agreements-reported-in-previous-years-in-accordance-with~~
2 ~~subparagraphs-(2)-and-(3)-and-the-amount-of-those-payments~~
3 ~~deposited-in-trust-for-each-purchaser.~~
4 ~~(5)--The-change-in-status-of-any-trust-account,-for-each~~
5 ~~purchaser,-any-other-amounts-withdrawn-from-trust-and-the~~
6 ~~reason-for-each-withdrawal.--However,-regular-increments-of~~
7 ~~interest-or-income-need-not-be-reported-on-a-yearly-basis.~~
8 ~~(6)--The-name-and-address-of-the-financial-institution-in~~
9 ~~which-trust-funds-were-deposited,-and-the-name-and-address-of~~
10 ~~each-insurance-company-which-funds-agreements-under-section~~
11 ~~523E.1.~~
12 ~~(7)--The-name-and-address-of-each-purchaser-of-cemetery~~
13 ~~merchandise-delivered-in-lieu-of-trusting-pursuant-to-section~~
14 ~~523E.1,-and-a-description-of-that-merchandise-for-each~~
15 ~~purchaser.~~
16 ~~(8)~~ (4) ~~The~~ A complete inventory of ~~cemetery~~ funeral
17 merchandise ~~and-its-location-in-the-seller's-possession-that~~
18 ~~has-been~~ delivered in lieu of trusting pursuant to section
19 523E.1~~.~~
20 ~~(9)--Other-information-reasonably-required-by-the~~
21 ~~commissioner-for-purposes-of-administration-of-this-chapter.~~
22 ~~The-information-required-by-subparagraphs-(7)-and-(8)-shall~~
23 ~~include~~, including the location of the merchandise, serial
24 numbers or warehouse receipt numbers, identified by the name
25 of the purchaser or the beneficiary, and a verified statement
26 of a certified public accountant that the certified public
27 accountant has conducted a physical inventory of the ~~cemetery~~
28 funeral merchandise ~~specified-in-subparagraph-(8)~~ and that
29 each item of that merchandise is in the seller's possession at
30 the specified location. The statement shall be on a form
31 prescribed by the commissioner. ~~The-commissioner-shall-permit~~
32 ~~the-filing-of-a-unified-annual-report-by-a-seller-subject-to~~
33 ~~both-chapter-523A-and-this-chapter.~~
34 The report shall be accompanied by a filing fee determined
35 by the commissioner which shall be sufficient to defray the

1 costs of administering this chapter.
2 Sec. 10. Section 523E.8, subsection 1, paragraphs e, h,
3 and j, Code 1995, are amended to read as follows:
4 e. State clearly whether the agreement is a guaranteed
5 price contract or a nonguaranteed price contract. Each
6 nonguaranteed price contract shall contain in twelve point
7 bold type, an explanation of the consequences in substantially
8 the following language:
9 THE PRICES OF MERCHANDISE AND SERVICES UNDER THIS CONTRACT
10 ARE SUBJECT TO CHANGE IN THE FUTURE. ANY FUNDS PAID UNDER
11 THIS CONTRACT ARE ONLY A DEPOSIT TO BE APPLIED, TOGETHER WITH
12 ACCRUED INCOME, TOWARD THE FINAL COSTS OF THE MERCHANDISE OR
13 SERVICES CONTRACTED FOR. ADDITIONAL CHARGES MAY BE REQUIRED.
14 h. Explain the disposition of the ~~interest-and-disclose~~
15 ~~what-fees-and-expenses-may-be-charged-if-incurred~~ income
16 generated from investments, include a statement of fees,
17 expenses, and taxes which may be deducted, and include a
18 statement of the buyer's responsibility for income taxes owed
19 on the income, if applicable.
20 j. ~~State-the-name-and-address-of-the-commissioner.~~
21 Include an explanation of regulatory oversight by the
22 insurance division in twelve point bold type, in substantially
23 the following language:
24 THIS CONTRACT MUST BE REPORTED TO THE IOWA INSURANCE
25 DIVISION BY THE FIRST DAY OF MARCH OF THE FOLLOWING YEAR. YOU
26 MAY CALL THE INSURANCE DIVISION AT (INSERT TELEPHONE NUMBER)
27 TO CONFIRM THAT YOUR CONTRACT HAS BEEN REPORTED. WRITTEN
28 INQUIRIES OR COMPLAINTS SHOULD BE MAILED TO THE FOLLOWING
29 ADDRESS: IOWA SECURITIES BUREAU (INSERT ADDRESS).
30 Sec. 11. Section 523E.20, Code 1995, is amended to read as
31 follows:
32 523E.20 INSURANCE DIVISION'S REGULATORY FUND.
33 The insurance division may authorize the creation of a
34 special revenue fund in the state treasury, to be known as the
35 insurance division regulatory fund. ~~Commencing-July-1,-1990,~~

1 ~~and-annually-thereafter,-the~~ The commissioner shall allocate
2 annually from the fees paid pursuant to section 523E.2, ~~one~~
3 ~~dollar~~ two dollars for each agreement reported on an
4 establishment permit holder's annual report for deposit to the
5 regulatory fund. The remainder of the fees collected pursuant
6 to section 523E.2 shall be deposited into the general fund of
7 the state. In addition, on May 1 of ~~1994~~ 1996 and ~~1995~~ 1997,
8 the commissioner, to the extent necessary to fund consumer
9 education, audits, investigations, payments under contract
10 with licensed establishments to provide funeral and cemetery
11 merchandise or services in the event of statutory
12 noncompliance by the initial seller, liquidations, and
13 receiverships, shall assess establishment permit holders ~~five~~
14 two dollars for each agreement reported on the establishment
15 permit holder's annual report of sales executed during the
16 preceding year, which shall be deposited in the insurance
17 division regulatory fund. ~~However,-if-the-balance-of-the~~
18 ~~regulatory-fund-on-that-July-1-exceeds-two-hundred-thousand~~
19 ~~dollars,-the-allocation-to-the-regulatory-fund-shall-not-be~~
20 ~~made-and-the-total-sum-of-the-fees-paid-pursuant-to-section~~
21 ~~523E.2-shall-be-deposited-in-the-general-fund-of-the-state.~~
22 The moneys in the regulatory fund shall be retained in the
23 fund. The moneys are appropriated and, subject to
24 authorization by the commissioner, may be used to pay
25 auditors, audit expenses, investigative expenses, and the
26 expenses of receiverships established pursuant to section
27 523E.19. An annual assessment shall not be imposed if the
28 current balance of the fund exceeds two hundred thousand
29 dollars.
30 Sec. 12. NEW SECTION. 523E.21 LICENSE REVOCATION --
31 RECOMMENDATION BY COMMISSIONER TO BOARD OF MORTUARY SCIENCE
32 EXAMINERS.
33 Upon a determination by the commissioner that grounds exist
34 for an administrative license revocation action by the board
35 of mortuary science examiners under chapter 156, the

1 commissioner may forward to the board the grounds for the
2 determination, including all evidence in the possession of the
3 commissioner, so that the board may proceed with the matter as
4 deemed appropriate.
5 Sec. 13. NEW SECTION. 523J.1 DEFINITIONS.
6 As used in this chapter, unless the context otherwise
7 requires:
8 1. "Abandoned cemetery" means any cemetery where there has
9 been a failure to cut grass or weeds or care for graves, grave
10 markers, walls, fences, driveways, and buildings, or for which
11 proper records have not been maintained.
12 2. "Cemetery" means a cemetery, mausoleum, columbarium, or
13 other space held for the purpose of burial, entombment, or
14 inurnment of human remains, and which is subject to this
15 chapter.
16 3. "Commissioner" means the commissioner of insurance or
17 the deputy appointed under section 502.601.
18 4. "Interment rights" means a right of use conveyed by
19 contract or property ownership to inter human rights in a
20 columbarium, grave, mausoleum, lawn crypt, or undeveloped
21 space.
22 5. "Perpetual care cemetery" means a cemetery which has
23 established a perpetual care fund for the maintenance, repair,
24 and care of all interment spaces subject to perpetual care
25 within the cemetery in compliance with section 566A.3 or
26 566A.4.
27 Sec. 14. NEW SECTION. 523J.2 CEMETERIES COMMENCING
28 BUSINESS AFTER JULY 1, 1995.
29 A cemetery which is organized or commences business in this
30 state on or after July 1, 1995, shall operate as a perpetual
31 care cemetery and is subject to this chapter and other
32 applicable law.
33 Sec. 15. NEW SECTION. 523J.3 PERMIT REQUIREMENTS.
34 1. A perpetual care cemetery shall not sell or offer
35 interment rights to the public without a permit as provided

1 for in this section.
2 2. Applications for a permit shall be made to and filed
3 with the commissioner on forms approved by the commissioner
4 and accompanied by a filing fee of twenty dollars. If the
5 application contains the following information, the
6 commissioner shall issue the license:
7 (a) The name and principal address of the applicant.
8 (b) The identity of the applicant's owner or owners.
9 (c) Evidence of a trust fund for cemetery maintenance and
10 care in compliance with section 566A.3 or 566A.4.
11 3. Each permit issued under this chapter shall expire on
12 June 30 of the year following the date of issuance.
13 Sec. 16. NEW SECTION. 523J.4 DENIAL, SUSPENSION, OR
14 REVOCATION OF PERMIT.
15 The commissioner, pursuant to chapter 17A, may deny,
16 suspend, or revoke any permit to operate a cemetery if the
17 commissioner finds any of the following:
18 1. The cemetery has committed a fraudulent practice, or
19 the cemetery's trust assets, warehoused merchandise, surety
20 bonds, or insurance funding are in material noncompliance with
21 chapter 523A or 523E or section 566A.3 or 566A.4.
22 2. An owner or officer of the cemetery has been convicted
23 of a felony related to the sale of interment rights or the
24 sale of funeral services, funeral merchandise, or cemetery
25 merchandise, as defined in section 523A.5, subsection 2,
26 paragraphs "a" and "b", and section 523E.5, subsection 2,
27 paragraph "a".
28 Sec. 17. NEW SECTION. 523J.5 LIQUIDATION.
29 1. GROUNDS FOR LIQUIDATION. The commissioner may petition
30 the district court for an order directing the commissioner to
31 liquidate a perpetual care cemetery on any of the following
32 grounds:
33 a. The cemetery's trust fund is in material noncompliance
34 with the requirements of section 566A.3 or 566A.4 and is
35 insolvent.

1 b. The cemetery's trust fund is in material noncompliance
2 with the requirements of section 566A.3 or 566A.4 and the
3 condition of the cemetery is such that the further transaction
4 of business would be hazardous, financially or otherwise, to
5 its customers or the public.
6 c. The cemetery has been abandoned.
7 2. LIQUIDATION ORDER.
8 a. An order to liquidate the business of a perpetual care
9 cemetery shall appoint the commissioner as liquidator and
10 shall direct the liquidator to immediately take possession of
11 the assets of the cemetery and to administer them under the
12 general supervision of the court. The liquidator is vested
13 with the title to the property, contracts, and rights of
14 action and the books and records of the cemetery ordered
15 liquidated, wherever located, as of the entry of the final
16 order of liquidation. The filing or recording of the order
17 with the clerk of court and the recorder of deeds of the
18 county in which its principal office or place of business is
19 located, or, in the case of real estate with the recorder of
20 deeds of the county where the property is located, is notice
21 as a deed, bill of sale, or other evidence of title duly filed
22 or recorded with the recorder of deeds.
23 b. Upon issuance of an order, the rights and liabilities
24 of a cemetery and of the cemetery's creditors, customers,
25 owners, and other persons interested in the cemetery's estate
26 shall become fixed as of the date of the entry of the order of
27 liquidation, except as provided in subsection 14.
28 c. At the time of petitioning for an order of liquidation,
29 or at any time after the time of petitioning, the
30 commissioner, after making appropriate findings of a
31 cemetery's insolvency, may petition the court for a
32 declaration of insolvency. After providing notice and hearing
33 as it deems proper, the court may make the declaration.
34 d. An order issued under this section shall require
35 accounting to the court by the liquidator. Accountings, at a

1 minimum, must include all funds received or disbursed by the
2 liquidator during the current period. An accounting shall be
3 filed within one year of the liquidation order and at such
4 other times as the court may require.
5 e. Within five days after the initiation of an appeal of
6 an order of liquidation, which order has not been stayed, the
7 commissioner shall present for the court's approval a plan for
8 the continued performance of the cemetery's obligations during
9 the pendency of an appeal. The plan shall provide for the
10 continued performance of interment rights contracts in the
11 normal course of events, notwithstanding the grounds alleged
12 in support of the order of liquidation including the ground of
13 insolvency. If the defendant cemetery's financial condition,
14 in the judgment of the commissioner, will not support the full
15 performance of all obligations during the appeal pendency
16 period, the plan may prefer the claims of certain customers
17 and claimants over creditors and interested parties as well as
18 other customers and claimants, as the commissioner finds to be
19 fair and equitable considering the relative circumstances of
20 such customers and claimants. The court shall examine the
21 plan submitted by the commissioner and if it finds the plan to
22 be in the best interests of the parties, the court shall
23 approve the plan. An action shall not lie against the
24 commissioner or any of the commissioner's deputies, agents,
25 clerks, assistants, or attorneys by any party based on
26 preference in an appeal pendency plan approved by the court.
27 3. POWERS OF LIQUIDATOR.
28 a. The liquidator may do any of the following:
29 (1) Appoint a special deputy to act for the liquidator
30 under this chapter, and determine the special deputy's
31 reasonable compensation. The special deputy shall have all
32 the powers of the liquidator granted by this section. The
33 special deputy shall serve at the pleasure of the liquidator.
34 (2) Hire employees and agents, legal counsel, accountants,
35 appraisers, consultants, and other personnel as the

1 commissioner may deem necessary to assist in the liquidation.
2 (3) With the approval of the court fix reasonable
3 compensation of employees and agents, legal counsel,
4 accountants, appraisers and consultants.
5 (4) Pay reasonable compensation to persons appointed and
6 defray from the funds or assets of the cemetery all expenses
7 of taking possession of, conserving, conducting, liquidating,
8 disposing of, or otherwise dealing with the business and
9 property of the cemetery. If the property of the cemetery
10 does not contain sufficient cash or liquid assets to defray
11 the costs incurred, the commissioner may advance the costs so
12 incurred out of the insurance division cemetery fund. Amounts
13 so advanced for expenses of administration shall be repaid to
14 the insurance division cemetery fund for the use of the
15 division out of the first available moneys of the cemetery.
16 (5) Hold hearings, subpoena witnesses, and compel their
17 attendance, administer oaths, examine a person under oath, and
18 compel a person to subscribe to the person's testimony after
19 it has been correctly reduced to writing, and in connection to
20 the proceedings require the production of books, papers,
21 records, or other documents which the liquidator deems
22 relevant to the inquiry.
23 (6) Collect debts and moneys due and claims belonging to
24 the cemetery, wherever located. Pursuant to this
25 subparagraph, the liquidator may do any of the following:
26 (a) Institute timely action in other jurisdictions to
27 forestall garnishment and attachment proceedings against
28 debts.
29 (b) Perform acts as are necessary or expedient to collect,
30 conserve, or protect its assets or property, including the
31 power to sell, compound, compromise, or assign debts for
32 purposes of collection upon terms and conditions as the
33 liquidator deems best.
34 (c) Pursue any creditor's remedies available to enforce
35 claims.

1 (7) Conduct public and private sales of the property of
2 the cemetery.
3 (8) Use assets of the cemetery under a liquidation order
4 to transfer obligations of preneed funeral contracts to a
5 solvent cemetery, if the transfer can be accomplished without
6 prejudice to applicable priorities under subsection 18.
7 (9) Acquire, hypothecate, encumber, lease, improve, sell,
8 transfer, abandon, or otherwise dispose of or deal with
9 property of the cemetery at its market value or upon terms and
10 conditions as are fair and reasonable. The liquidator shall
11 also have power to execute, acknowledge, and deliver deeds,
12 assignments, releases, and other instruments necessary to
13 effectuate a sale of property or other transaction in
14 connection with the liquidation.
15 (10) Borrow money on the security of the cemetery's assets
16 or without security and execute and deliver documents
17 necessary to that transaction for the purpose of facilitating
18 the liquidation. Money borrowed pursuant to this subparagraph
19 shall be repaid as an administrative expense and have priority
20 over any other class 1 claims under the priority of
21 distribution established in subsection 18.
22 (11) Enter into contracts as necessary to carry out the
23 order to liquidate and affirm or disavow contracts to which
24 the cemetery is a party.
25 (12) Continue to prosecute and to institute in the name of
26 the cemetery or in the liquidator's own name any and all suits
27 and other legal proceedings, in this state or elsewhere, and
28 to abandon the prosecution of claims the liquidator deems
29 unprofitable to pursue further.
30 (13) Prosecute an action on behalf of the creditors,
31 customers, or owners against an officer of the cemetery or any
32 other person.
33 (14) Remove records and property of the cemetery to the
34 offices of the commissioner or to other places as may be
35 convenient for the purposes of efficient and orderly execution

1 of the liquidation.
2 (15) Deposit in one or more banks in this state sums as
3 are required for meeting current administration expenses and
4 distributions.
5 (16) Unless the court orders otherwise, invest funds not
6 currently needed.
7 (17) File necessary documents for recording in the office
8 of a recorder of deeds or record office in this state or
9 elsewhere where property of the cemetery is located.
10 (18) Assert defenses available to the cemetery as against
11 third persons including statutes of limitations, statutes of
12 fraud, and the defense of usury. A waiver of a defense by the
13 cemetery after a petition in liquidation has been filed shall
14 not bind the liquidator.
15 (19) Exercise and enforce the rights, remedies, and powers
16 of a creditor, customer, or owner, including the power to
17 avoid transfer or lien that may be given by the general law
18 and that is not included within subsections 7 through 9.
19 (20) Intervene in a proceeding wherever instituted that
20 might lead to the appointment of a receiver or trustee, and
21 act as the receiver or trustee whenever the appointment is
22 offered.
23 (21) Exercise powers now held or later conferred upon
24 receivers by the laws of this state which are not inconsistent
25 with this chapter.
26 b. This section does not limit the liquidator or exclude
27 the liquidator from exercising a power not listed in paragraph
28 "a" that may be necessary or appropriate to accomplish the
29 purposes of this chapter.
30 4. NOTICE TO CREDITORS AND OTHERS.
31 a. Unless the court otherwise directs, the liquidator
32 shall give notice of the liquidation order as soon as possible
33 by doing all of the following:
34 (1) By first class mail to all persons known or reasonably
35 expected to have claims against the cemetery, including

1 customers who purchased interment rights, by mailing a notice
2 to their last known address as indicated by the records of the
3 cemetery.
4 (2) By publication in a newspaper of general circulation
5 in the county in which the cemetery has its principal place of
6 business and in other locations as the liquidator deems
7 appropriate.
8 b. Notice to potential claimants under paragraph "a" shall
9 require claimants to file with the liquidator their claims
10 together with proper proofs of the claim under subsection 13
11 on or before a date the liquidator shall specify in the
12 notice. Claimants shall keep the liquidator informed of their
13 changes of address, if any.
14 c. If notice is given pursuant to this section, the
15 distribution of assets of the cemetery under this chapter
16 shall be conclusive with respect to claimants, whether or not
17 a claimant actually received notice.
18 5. ACTIONS BY AND AGAINST LIQUIDATOR.
19 a. After the issuance of an order appointing a liquidator
20 of a cemetery, an action at law or equity shall not be brought
21 against the cemetery in this state or elsewhere, and existing
22 actions shall not be maintained or further presented after
23 issuance of the order. Whenever in the liquidator's judgment,
24 protection of the estate of the cemetery necessitates
25 intervention in an action against the cemetery that is pending
26 outside this state, the liquidator may intervene in the
27 action. The liquidator may defend, at the expense of the
28 estate of the cemetery, an action in which the liquidator
29 intervenes under this section.
30 b. Within two years or such additional time as applicable
31 law may permit, the liquidator, after the issuance of an order
32 for liquidation, may institute an action or proceeding on
33 behalf of the estate of the cemetery upon any cause of action
34 against which the period of limitation fixed by applicable law
35 has not expired at the time of the filing of the petition upon

1 which the order is entered. If a period of limitation is
2 fixed by agreement for instituting a suit or proceeding upon a
3 claim, or for filing a claim, proof of claim, proof of loss,
4 demand, notice, or the like, or if in a proceeding, judicial
5 or otherwise, a period of limitation is fixed in the
6 proceeding or pursuant to applicable law for taking an action,
7 filing a claim or pleading, or doing an act, and if the period
8 had not expired at the date of the filing of the petition, the
9 liquidator, for the benefit of the estate, may take any action
10 or do any act, required of or permitted to the cemetery,
11 within a period of one hundred eighty days subsequent to the
12 entry of an order for liquidation, or within a further period
13 as is shown to the satisfaction of the court not to be
14 unfairly prejudicial to the other party.
15 c. A statute of limitation or defense of laches shall not
16 run with respect to an action against a cemetery between the
17 filing of a petition for liquidation against the cemetery and
18 the denial of the petition. An action against the cemetery
19 that might have been commenced when the petition was filed may
20 be commenced for at least sixty days after the petition is
21 denied.
22 6. COLLECTION AND LIST OF ASSETS.
23 a. As soon as practicable after the liquidation order but
24 not later than one hundred twenty days after such order, the
25 liquidator shall prepare in duplicate a list of the cemetery's
26 assets. The list shall be amended or supplemented as the
27 liquidator may determine. One copy shall be filed in the
28 office of the clerk of court and one copy shall be retained
29 for the liquidator's files. Amendments and supplements shall
30 be similarly filed.
31 b. The liquidator shall reduce the assets to a degree of
32 liquidity that is consistent with the effective execution of
33 the liquidation.
34 c. A submission to the court for distribution of assets in
35 accordance with subsection 11 fulfills the requirements of

1 paragraph "a".
2 7. FRAUDULENT TRANSFERS PRIOR TO PETITION.
3 a. A transfer made and an obligation incurred by a
4 cemetery within one year prior to the filing of a successful
5 petition for liquidation under this chapter is fraudulent as
6 to then existing and future creditors if made or incurred
7 without fair consideration, or with actual intent to hinder,
8 delay, or defraud either existing or future creditors. A
9 fraudulent transfer made or an obligation incurred by a
10 cemetery ordered to be liquidated under this chapter may be
11 avoided by the receiver, except as to a person who in good
12 faith is a purchaser, lienor, or obligee for a present fair
13 equivalent value. A purchaser, lienor, or obligee, who in
14 good faith has given a consideration less than fair for such
15 transfer, lien, or obligation, may retain the property, lien,
16 or obligation as security for repayment. The court, on due
17 notice, may order any such transfer or obligation to be
18 preserved for the benefit of the estate, and in that event,
19 the receiver shall succeed to and may enforce the rights of
20 the purchaser, lienor, or obligee.
21 b. (1) A transfer of property other than real property is
22 made when it becomes perfected so that a subsequent lien
23 obtainable by legal or equitable proceedings on a simple
24 contract could not become superior to the rights of the
25 transferee under subsection 9, paragraph "c".
26 (2) A transfer of real property is made when it becomes
27 perfected so that a subsequent bona fide purchaser from the
28 cemetery could not obtain rights superior to the rights of the
29 transferee.
30 (3) A transfer which creates an equitable lien is not
31 perfected if there are available means by which a legal lien
32 could be created.
33 (4) A transfer not perfected prior to the filing of a
34 petition for liquidation is deemed to be made immediately
35 before the filing of the successful petition.

1 (5) This subsection applies whether or not there are or
2 were creditors who might have obtained a lien or persons who
3 might have become bona fide purchasers.
4 8. FRAUDULENT TRANSFER AFTER PETITION.
5 a. After a petition for liquidation has been filed a
6 transfer of real property of the cemetery made to a person
7 acting in good faith is valid against the receiver if made for
8 a present fair equivalent value. If the transfer was not made
9 for a present fair equivalent value, then the transfer is
10 valid to the extent of the present consideration actually paid
11 for which amount the transferee shall have a lien on the
12 property transferred. The commencement of a proceeding in
13 liquidation is constructive notice upon the recording of a
14 copy of the petition for or order of liquidation with the
15 recorder of deeds in the county where any real property in
16 question is located. The exercise by a court of the United
17 States or a state or jurisdiction to authorize a judicial sale
18 of real property of the cemetery within a county in a state
19 shall not be impaired by the pendency of a proceeding unless
20 the copy is recorded in the county prior to the consummation
21 of the judicial sale.
22 b. After a petition for liquidation has been filed and
23 before either the receiver takes possession of the property of
24 the cemetery or an order of liquidation is granted:
25 (1) A transfer of the property, other than real property,
26 of the cemetery made to a person acting in good faith is valid
27 against the receiver if made for a present fair equivalent
28 value. If the transfer was not made for a present fair
29 equivalent value, then the transfer is valid to the extent of
30 the present consideration actually paid for which amount the
31 transferee shall have a lien on the property transferred.
32 (2) If acting in good faith, a person indebted to the
33 cemetery or holding property of the cemetery may pay the debt
34 or deliver the property, or any part of the property, to the
35 cemetery or upon the cemetery's order as if the petition were

1 not pending.
2 (3) A person having actual knowledge of the pending
3 liquidation is not acting in good faith.
4 (4) A person asserting the validity of a transfer under
5 this subsection has the burden of proof. Except as provided
6 in this subsection, a transfer by or on behalf of the cemetery
7 after the date of the petition for liquidation by any person
8 other than the liquidator is not valid against the liquidator.
9 c. A person receiving any property from the cemetery or
10 any benefit of the property of the cemetery which is a
11 fraudulent transfer under paragraph "a" is personally liable
12 for the property or benefit and shall account to the
13 liquidator.
14 d. This chapter does not impair the negotiability of
15 currency or negotiable instruments.
16 9. VOIDABLE PREFERENCES AND LIENS.
17 a. (1) A preference is a transfer of the property of a
18 cemetery to or for the benefit of a creditor for an antecedent
19 debt made or suffered by the cemetery within one year before
20 the filing of a successful petition for liquidation under this
21 chapter, the effect of which transfer may be to enable the
22 creditor to obtain a greater percentage of this debt than
23 another creditor of the same class would receive. If a
24 liquidation order is entered while the cemetery is already
25 subject to a receivership, then the transfers are preferences
26 if made or suffered within one year before the filing of the
27 successful petition for the receivership, or within two years
28 before the filing of the successful petition for liquidation,
29 whichever time is shorter.
30 (2) A preference may be avoided by the liquidator if any
31 of the following exist:
32 (a) The cemetery was insolvent at the time of the
33 transfer.
34 (b) The transfer was made within four months before the
35 filing of the petition.

1 (c) At the time the transfer was made, the creditor
2 receiving it or to be benefited by the transfer or the
3 creditor's agent acting with reference to the transfer had
4 reasonable cause to believe that the cemetery was insolvent or
5 was about to become insolvent.
6 (d) The creditor receiving the transfer was an officer, or
7 an employee, attorney, or other person who was in fact in a
8 position of comparable influence in the cemetery to an officer
9 whether or not the person held the position of an officer,
10 owner, or other person, firm, corporation, association, or
11 aggregation of persons with whom the cemetery did not deal at
12 arm's length.
13 (3) Where the preference is voidable, the liquidator may
14 recover the property. If the property has been converted, the
15 liquidator may recover its value from a person who has
16 received or converted the property. However, if a bona fide
17 purchaser or lienor has given less than fair equivalent value,
18 the purchaser or lienor shall have a lien upon the property to
19 the extent of the consideration actually given. Where a
20 preference by way of lien or security interest is voidable,
21 the court may on due notice order the lien or security
22 interest to be preserved for the benefit of the estate, in
23 which event the lien or title shall pass to the liquidator.
24 b. (1) A transfer of property other than real property is
25 made when it becomes perfected so that a subsequent lien
26 obtainable by legal or equitable proceedings on a simple
27 contract could not become superior to the rights of the
28 transferee.
29 (2) A transfer of real property is made when it becomes
30 perfected so that a subsequent bona fide purchaser from the
31 cemetery could not obtain rights superior to the rights of the
32 transferee.
33 (3) A transfer which creates an equitable lien is not
34 perfected if there are available means by which a legal lien
35 could be created.

1 (4) A transfer not perfected prior to the filing of a
2 petition for liquidation is deemed to be made immediately
3 before the filing of the successful petition.
4 (5) This subsection applies whether or not there are or
5 were creditors who might have obtained liens or persons who
6 might have become bona fide purchasers.
7 c. (1) A lien obtainable by legal or equitable
8 proceedings upon a simple contract is one arising in the
9 ordinary course of the proceedings upon the entry or docketing
10 of a judgment or decree, or upon attachment, garnishment,
11 execution, or like process, whether before, upon, or after
12 judgment or decree and whether before or upon levy. It does
13 not include liens which under applicable law are given a
14 special priority over other liens which are prior in time.
15 (2) A lien obtainable by legal or equitable proceedings
16 could become superior to the rights of a transferee, or a
17 purchaser could obtain rights superior to the rights of a
18 transferee within the meaning of paragraph "b", if such
19 consequences would follow only from the lien or purchase
20 itself, or from the lien or purchase followed by a step wholly
21 within the control of the respective lienholder or purchaser,
22 with or without the aid of ministerial action by public
23 officials. However, a lien could not become superior and a
24 purchase could not create superior rights for the purpose of
25 paragraph "b" through an act subsequent to the obtaining of a
26 lien or subsequent to a purchase which requires the agreement
27 or concurrence of any third party or which requires further
28 judicial action or ruling.
29 d. A transfer of property for or on account of a new and
30 contemporaneous consideration, which is under paragraph "b"
31 made or suffered after the transfer because of delay in
32 perfecting it, does not become a transfer for or on account of
33 an antecedent debt if any acts required by the applicable law
34 to be performed in order to perfect the transfer as against
35 liens or a bona fide purchaser's rights are performed within

1 twenty-one days or any period expressly allowed by the law,
2 whichever is less. A transfer to secure a future loan, if a
3 loan is actually made, or a transfer which becomes security
4 for a future loan, shall have the same effect as a transfer
5 for or on account of a new and contemporaneous consideration.
6 e. If a lien voidable under paragraph "a", subparagraph
7 (2) has been dissolved by the furnishing of a bond or other
8 obligation, the surety on which has been indemnified directly
9 or indirectly by the transfer or the creation of a lien upon
10 property of a cemetery before the filing of a petition under
11 this chapter which results in a liquidation order, the
12 indemnifying transfer or lien is also voidable.
13 f. The property affected by a lien voidable under
14 paragraphs "a" and "e" is discharged from the lien. The
15 property and any of the indemnifying property transferred to
16 or for the benefit of a surety shall pass to the liquidator.
17 However, the court may on due notice order a lien to be
18 preserved for the benefit of the estate and the court may
19 direct that the conveyance be executed to evidence the title
20 of the liquidator.
21 g. The court shall have summary jurisdiction of a
22 proceeding by the liquidator to hear and determine the rights
23 of the parties under this section. Reasonable notice of
24 hearing in the proceeding shall be given to all parties in
25 interest, including the obligee of a releasing bond or other
26 like obligation. Where an order is entered for the recovery
27 of indemnifying property in kind or for the avoidance of an
28 indemnifying lien, upon application of any party in interest,
29 the court shall in the same proceeding ascertain the value of
30 the property or lien. If the value is less than the amount
31 for which the property is indemnified or less than the amount
32 of the lien, the transferee or lienholder may elect to retain
33 the property or lien upon payment of its value, as ascertained
34 by the court, to the liquidator within the time as fixed by
35 the court.

1 h. The liability of a surety under a releasing bond or
2 other like obligation is discharged to the extent of the value
3 of the indemnifying property recovered or the indemnifying
4 lien nullified and avoided by the liquidator. Where the
5 property is retained under paragraph "g", the liability of the
6 surety is discharged to the extent of the amount paid to the
7 liquidator.
8 i. If a creditor has been preferred for property which
9 becomes a part of the cemetery's estate, and afterward in good
10 faith gives the cemetery further credit without security of
11 any kind, the amount of the new credit remaining unpaid at the
12 time of the petition may be set off against the preference
13 which would otherwise be recoverable from the creditor.
14 j. If within four months before the filing of a successful
15 petition for liquidation under this chapter, or at any time in
16 contemplation of a proceeding to liquidate, a cemetery,
17 directly or indirectly, pays money or transfers property to an
18 attorney for services rendered or to be rendered, the
19 transaction may be examined by the court on its own motion or
20 shall be examined by the court on petition of the liquidator.
21 The payment or transfer shall be held valid only to the extent
22 of a reasonable amount to be determined by the court. The
23 excess may be recovered by the liquidator for the benefit of
24 the estate. However, where the attorney is in a position of
25 influence in the cemetery or an affiliate, payment of any
26 money or the transfer of any property to the attorney for
27 services rendered or to be rendered is governed by the
28 provision of paragraph "a", subparagraph (2), subparagraph
29 subdivision (d).
30 k. (1) An officer, manager, employee, shareholder,
31 subscriber, attorney, or any other person acting on behalf of
32 the cemetery who knowingly participates in giving any
33 preference when the person has reasonable cause to believe the
34 cemetery is or is about to become insolvent at the time of the
35 preference is personally liable to the liquidator for the

1 amount of the preference. There is an inference that
2 reasonable cause exists if the transfer was made within four
3 months before the date of filing of this successful petition
4 for liquidation.
5 (2) A person receiving property from the cemetery or the
6 benefit of the property of the cemetery as a preference
7 voidable under paragraph "a" is personally liable for the
8 property and shall account to the liquidator.
9 (3) This subsection shall not prejudice any other claim by
10 the liquidator against any person.
11 10. CLAIMS OF HOLDER OF VOID OR VOIDABLE RIGHTS.
12 a. A claim of a creditor who has received or acquired a
13 preference, lien, conveyance, transfer, assignment, or
14 encumbrance, voidable under this chapter shall not be allowed
15 unless the creditor surrenders the preference, lien,
16 conveyance, transfer, assignment, or encumbrance. If the
17 avoidance is effected by a proceeding in which a final
18 judgment has been entered, the claim shall not be allowed
19 unless the money is paid or the property is delivered to the
20 liquidator within thirty days from the date of the entering of
21 the final judgment. However, the court having jurisdiction
22 over the liquidation may allow further time if there is an
23 appeal or other continuation of the proceeding.
24 b. A claim allowable under paragraph "a" by reason of a
25 voluntary or involuntary avoidance, preference, lien,
26 conveyance, transfer, assignment, or encumbrance may be filed
27 as an excused late filing under subsection 12, if filed within
28 thirty days from the date of the avoidance or within the
29 further time allowed by the court under paragraph "a".
30 11. LIQUIDATOR'S PROPOSAL TO DISTRIBUTE ASSETS.
31 a. From time to time as assets become available, the
32 liquidator shall make application to the court for approval of
33 a proposal to disburse assets out of marshaled assets.
34 b. The proposal shall at least include provisions for all
35 of the following:

1 (1) Reserving amounts for the payment of all the
2 following:
3 (a) Expenses of administration.
4 (b) To the extent of the value of the security held, the
5 payment of claims of secured creditors.
6 (c) Claims falling within the priorities established in
7 subsection 18, paragraphs "a" and "b".
8 (2) Disbursement of the assets marshaled to date and
9 subsequent disbursement of assets as they become available.
10 c. Action on the application may be taken by the court
11 provided that the liquidator's proposal complies with
12 paragraph "b".
13 12. FILING OF CLAIMS.
14 a. Proof of all claims shall be filed with the liquidator
15 in the form required by subsection 13 on or before the last
16 day for filing specified in the notice required under
17 subsection 4.
18 b. The liquidator may permit a claimant making a late
19 filing to share in distributions, whether past or future, as
20 if the claimant were not late, to the extent that the payment
21 will not prejudice the orderly administration of the
22 liquidation under any of the following circumstances:
23 (1) The existence of the claim was not known to the
24 claimant and that the claimant filed the claim as promptly as
25 reasonably possible after learning of it.
26 (2) A transfer to a creditor was avoided under subsections
27 7 through 9, or was voluntarily surrendered under subsection
28 10, and that the filing satisfies the conditions of subsection
29 10.
30 (3) The valuation under subsection 17 of security held by
31 a secured creditor shows a deficiency, which is filed within
32 thirty days after the valuation.
33 c. The liquidator may consider any claim filed late and
34 permit the claimant to receive distributions which are
35 subsequently declared on any claims of the same or lower

1 priority if the payment does not prejudice the orderly
2 administration of the liquidation. The late-filing claimant
3 shall receive at each distribution the same percentage of the
4 amount allowed on the claim as is then being paid to claimants
5 of any lower priority. This shall continue until the claim
6 has been paid in full.
7 13. PROOF OF CLAIM.
8 a. Proof of claim shall consist of a statement signed by
9 the claimant that includes all of the following that are
10 applicable:
11 (1) The particulars of the claim including the
12 consideration given for it.
13 (2) The identity and amount of the security on the claim.
14 (3) The payments, if any, made on the debt.
15 (4) A statement that the sum claimed is justly owing and
16 that there is no setoff, counterclaim, or defense to the
17 claim.
18 (5) Any right of priority of payment or other specific
19 right asserted by the claimant.
20 (6) A copy of the written instrument which is the
21 foundation of the claim.
22 (7) The name and address of the claimant and the attorney
23 who represents the claimant, if any.
24 b. A claim need not be considered or allowed if it does
25 not contain all the information identified in paragraph "a"
26 which is applicable. The liquidator may require that a
27 prescribed form be used and may require that other information
28 and documents be included.
29 c. At any time the liquidator may request the claimant to
30 present information or evidence supplementary to that required
31 under paragraph "a" and may take testimony under oath, require
32 production of affidavits or depositions, or otherwise obtain
33 additional information or evidence.
34 d. A judgment or order against a cemetery entered after
35 the date of filing of a successful petition for liquidation,

1 or a judgment or order against the cemetery entered at any
2 time by default or by collusion need not be considered as
3 evidence of liability or of the amount of damages. A judgment
4 or order against a cemetery before the filing of the petition
5 need not be considered as evidence of liability or of the
6 amount of damages.
7 14. SPECIAL CLAIMS.
8 a. A claim may be allowed even if contingent, if it is
9 filed pursuant to subsection 12. The claim may be allowed and
10 the claimant may participate in all distributions declared
11 after it is filed to the extent that it does not prejudice the
12 orderly administration of the liquidation.
13 b. Claims that are due except for the passage of time
14 shall be treated as absolute claims are treated. However, the
15 claims may be discounted at the legal rate of interest.
16 c. Claims made under employment contracts by directors,
17 principal officers, or persons in fact performing similar
18 functions or having similar powers are limited to payment for
19 services rendered prior to the issuance of an order of
20 liquidation under subsection 2.
21 15. DISPUTED CLAIMS.
22 a. If a claim is denied in whole or in part by the
23 liquidator, written notice of the determination shall be given
24 to the claimant or the claimant's attorney by first class mail
25 at the address shown in the proof of claim. Within sixty days
26 from the mailing of the notice, the claimant may file
27 objections with the liquidator. Unless a filing is made, the
28 claimant shall not further object to the determination.
29 b. If objections are filed with the liquidator and the
30 liquidator does not alter the denial of the claim as a result
31 of the objections, the liquidator shall ask the court for a
32 hearing as soon as practicable and give notice of the hearing
33 by first class mail to the claimant or the claimant's attorney
34 and to any other persons directly affected. The notice shall
35 be given not less than ten nor more than thirty days before

1 the date of the hearing. The matter shall be heard by the
2 court or by a court-appointed referee. The referee shall
3 submit findings of fact along with a recommendation.
4 16. CLAIMS OF OTHER PERSON. If a creditor, whose claim
5 against a cemetery is secured in whole or in part by the
6 undertaking of another person, fails to prove and file that
7 claim, then the other person may do so in the creditor's name
8 and shall be subrogated to the rights of the creditor, whether
9 the claim has been filed by the creditor or by the other
10 person in the creditor's name to the extent that the other
11 person discharges the undertaking. However, in the absence of
12 an agreement with the creditor to the contrary, the other
13 person is not entitled to any distribution until the amount
14 paid to the creditor on the undertaking plus the distributions
15 paid on the claim from the cemetery's estate to the creditor
16 equal the amount of the entire claim of the creditor. An
17 excess received by the creditor shall be held by the creditor
18 in trust for the other person.
19 17. SECURED CREDITOR'S CLAIMS.
20 a. The value of security held by a secured creditor shall
21 be determined in one of the following ways, as the court may
22 direct:
23 (1) By converting the security into money according to the
24 terms of the agreement pursuant to which the security was
25 delivered to the creditors.
26 (2) By agreement, arbitration, compromise, or litigation
27 between the creditor and the liquidator.
28 b. The determination shall be under the supervision and
29 control of the court with due regard for the recommendation of
30 the liquidator. The amount determined shall be credited upon
31 the secured claim. A deficiency shall be treated as an
32 unsecured claim. If the claimant surrenders the security to
33 the liquidator, the entire claim shall be allowed as if
34 unsecured.
35 18. PRIORITY OF DISTRIBUTION.

1 The priority of distribution of claims from the cemetery's
2 estate shall be in accordance with the order in which each
3 class of claims is set forth. Claims in each class shall be
4 paid in full or adequate funds retained for the payment before
5 the members of the next class receive any payment. Subclasses
6 shall not be established within a class. The order of
7 distribution of claims is as follows:
8 a. CLASS 1. The costs and expenses of administration,
9 including but not limited to the following:
10 (1) The actual and necessary costs of preserving or
11 recovering the assets of the cemetery.
12 (2) Compensation for all authorized services rendered in
13 the liquidation.
14 (3) Necessary filing fees.
15 (4) The fees and mileage payable to witnesses.
16 (5) Authorized reasonable attorney's fees and other
17 professional services rendered in the liquidation.
18 b. CLASS 2. Reasonable compensation to employees for
19 services performed to the extent that they do not exceed two
20 months of monetary compensation and represent payment for
21 services performed within one year before the filing of the
22 petition for liquidation. Officers and directors are not
23 entitled to the benefit of this priority. The priority is in
24 lieu of other similar priority which may be authorized by law
25 as to wages or compensation of employees.
26 c. CLASS 3. Claims under interment rights contracts.
27 d. CLASS 4. Claims of general creditors.
28 e. CLASS 5. Claims of the federal or any state or local
29 government. Claims, including those of a governmental body
30 for a penalty or forfeiture, are allowed in this class only to
31 the extent of the pecuniary loss sustained from the act,
32 transaction, or proceeding out of which the penalty or
33 forfeiture arose, with reasonable and actual costs incurred.
34 The remainder of such claims shall be postponed to the class
35 of claims under paragraph "g".

1 f. CLASS 6. Claims filed late or any other claims other
2 than claims under paragraph "g".
3 g. CLASS 7. The claims of shareholders or other owners.
4 19. LIQUIDATOR'S RECOMMENDATIONS TO THE COURT.
5 a. The liquidator shall review claims duly filed in the
6 liquidation and shall make further investigation as necessary.
7 The liquidator may compound, compromise or in any other manner
8 negotiate the amount for which claims will be recommended to
9 the court except where the liquidator is required by law to
10 accept claims as settled by a person or organization.
11 Unresolved disputes shall be determined under subsection 15.
12 As soon as practicable, the liquidator shall present to the
13 court a report of the claims against the cemetery with the
14 liquidator's recommendations. The report shall include the
15 name and address of each claimant and the amount of the claim
16 finally recommended.
17 b. The court may approve, disapprove, or modify the report
18 on claims by the liquidator. Reports not modified by the
19 court within sixty days following submission by the liquidator
20 shall be treated by the liquidator as allowed claims, subject
21 to later modification or to rulings made by the court pursuant
22 to subsection 15. A claim under a policy of insurance shall
23 not be allowed for an amount in excess of the applicable
24 policy limits.
25 20. DISTRIBUTION OF ASSETS. Under the direction of the
26 court, the liquidator shall pay distributions in a manner that
27 will assure the proper recognition of priorities and a
28 reasonable balance between the expeditious completion of the
29 liquidation and the protection of unliquidated and
30 undetermined claims, including third-party claims.
31 Distribution of assets in kind may be made at valuations set
32 by agreement between the liquidator and the creditor and
33 approved by the court.
34 21. UNCLAIMED AND WITHHELD FUNDS.
35 a. Unclaimed funds subject to distribution remaining in

1 the liquidator's hands when the liquidator is ready to apply
2 to the court for discharge, including the amount distributable
3 to a creditor, owner, or other person who is unknown or cannot
4 be found, shall be deposited with the treasurer of state, and
5 shall be paid without interest, except as provided in
6 subsection 18, to the person entitled or the person's legal
7 representative upon proof satisfactory to the treasurer of
8 state of the right to the funds. An amount on deposit not
9 claimed within six years from the discharge of the liquidator
10 is deemed to have been abandoned and shall become the property
11 of the state without formal escheat proceedings and be
12 transferred to the insurance division regulatory fund.
13 b. Funds withheld under subsection 14 and not distributed
14 shall upon discharge of the liquidator be deposited with the
15 treasurer of state and paid pursuant to subsection 18. Sums
16 remaining which under subsection 18 would revert to the
17 undistributed assets of the cemetery shall be transferred to
18 the insurance division regulatory fund and become the property
19 of the state as provided under paragraph "a", unless the
20 commissioner in the commissioner's discretion petitions the
21 court to reopen the liquidation pursuant to subsection 23.
22 c. Notwithstanding any other provision of this chapter,
23 funds as identified in paragraph "a", with the approval of the
24 court, shall be made available to the commissioner for use in
25 the detection and prevention of future insolvencies. The
26 commissioner shall hold these funds in the insurance division
27 regulatory fund and shall pay without interest, except as
28 provided in subsection 18, to the person entitled to the funds
29 or the person's legal representative upon proof satisfactory
30 to the commissioner of the person's right to the funds. The
31 funds shall be held by the commissioner for a period of two
32 years at which time the rights and duties to the unclaimed
33 funds shall vest in the commissioner.
34 22. TERMINATION OF PROCEEDINGS.
35 a. When all assets justifying the expense of collection

1 and distribution have been collected and distributed under
2 this chapter, the liquidator shall apply to the court for
3 discharge. The court may grant the discharge and make any
4 other orders, including an order to transfer remaining funds
5 that are uneconomical to distribute, as appropriate.
6 b. Any other person may apply to the court at any time for
7 an order under paragraph "a". If the application is denied,
8 the applicant shall pay the costs and expenses of the
9 liquidator in resisting the application, including a
10 reasonable attorney's fee.
11 23. REOPENING LIQUIDATION. At any time after the
12 liquidation proceeding has been terminated and the liquidator
13 discharged, the commissioner or other interested party may
14 petition the court to reopen the proceedings for good cause
15 including the discovery of additional assets. The court shall
16 order the proceeding reopened if it is satisfied that there is
17 justification for the reopening.
18 24. DISPOSITION OF RECORDS DURING AND AFTER TERMINATION OF
19 LIQUIDATION. If it appears to the commissioner that the
20 records of a cemetery in process of liquidation or completely
21 liquidated are no longer useful, the commissioner may
22 recommend to the court and the court shall direct what records
23 shall be retained for future reference and what records shall
24 be destroyed.
25 25. EXTERNAL AUDIT OF RECEIVER'S BOOKS. The court may
26 order audits to be made of the books of the commissioner
27 relating to a receivership established under this chapter, and
28 a report of each audit shall be filed with the commissioner
29 and with the court. The books, records, and other documents
30 of the receivership shall be made available to the auditor at
31 any time without notice. The expense of an audit shall be
32 considered a cost of administration of the receivership.
33 26. TRANSFER TO GOVERNMENTAL SUBDIVISION. If the
34 liquidator is unable to sell the cemetery after one year, the
35 liquidator may vest title in an appropriate governmental

1 subdivision. The perpetual care guarantee fund, together with
2 all investments then outstanding, and all books, records, and
3 papers of the cemetery shall be transferred to the treasurer
4 of the governmental subdivision. The principal and interest
5 of the fund shall be used exclusively for the care and
6 maintenance of the cemetery.
7 Sec. 18. NEW SECTION. 523J.6 POWERS AND DUTIES OF
8 PERPETUAL CARE CEMETERIES.
9 1. Within the boundaries of the cemetery lands that the
10 cemetery owns, a cemetery may perform the following functions:
11 a. The exclusive care and maintenance of the cemetery.
12 b. The exclusive interment, entombment, or inurnment of
13 human remains, including the exclusive right to open, prepare
14 for interment, and close all ground, mausoleum, and urn
15 burials. Each preneed contract for burial rights or services
16 shall disclose, pursuant to the cemetery's bylaws, rules, and
17 regulations, whether opening and closing of the burial space
18 is included in the contract, and, if not, the current prices
19 for opening and closing and a statement that these prices are
20 subject to change. Each cemetery which sells preneed
21 contracts must offer opening and closing as part of a preneed
22 contract.
23 c. The exclusive initial preneed and at-need sale of
24 interment or burial rights in earth, mausoleum, crypt, niche,
25 or columbarium interment. However, this chapter does not
26 limit the right of a person owning interment or burial rights
27 to sell those rights to third parties subject to transfer of
28 title by the cemetery.
29 d. The adoption of bylaws regulating the activities
30 conducted within the cemetery's boundaries, provided that a
31 licensed funeral director shall not be denied access by any
32 cemetery to conduct a funeral for or supervise a disinterment
33 of human remains. The cemetery shall not approve any bylaw
34 which unreasonably restricts competition, or which
35 unreasonably increases the cost to the owner of interment or

1 burial rights in utilizing these rights.
2 e. The nonexclusive preneed and at-need sale of monuments,
3 memorials, markers, burial vaults, urns, flower vases, floral
4 arrangements, and other similar merchandise for use within the
5 cemetery.
6 f. The entry into sales or management contracts with other
7 persons. The cemetery shall be responsible for the deposit of
8 all moneys required to be placed in a trust fund.
9 2. A full disclosure shall be made of all fees required
10 for interment, entombment, or inurnment of human remains.
11 3. A cemetery may adopt bylaws establishing minimum
12 standards for burial merchandise or the installation of such
13 merchandise.
14 Sec. 19. NEW SECTION. 523J.7 INVESTIGATIONS.
15 The commissioner or the attorney general, for the purpose
16 of discovering violations of this chapter, may do any of the
17 following:
18 1. Investigate the cemetery and examine records as
19 necessary to verify compliance with this chapter.
20 2. Administer oaths and affirmations, subpoena witnesses,
21 receive evidence, and require the production of documents and
22 records in connection with an investigation or proceeding
23 being conducted pursuant to this chapter.
24 3. Apply to the district court for issuance of an order
25 requiring a person's appearance before the commissioner or
26 attorney general, or a designee of either or both, in cases
27 where the person has refused to obey a subpoena issued by the
28 commissioner or attorney general. The person may also be
29 required to produce documentary evidence germane to the
30 subject of the investigation. Failure to obey a court order
31 under this subsection constitutes contempt of court.
32 Sec. 20. Section 566A.1, subsection 1, Code 1995, is
33 amended to read as follows:
34 1. A corporation or other form of organization engaging in
35 the business of the ownership, maintenance, or operation of a

1 cemetery, which provides lots or other interment space for the
2 remains of human bodies is subject to this chapter. However,
3 a ~~church,~~ religious ~~organization,-or-established-fraternal~~
4 ~~society~~ cemetery is subject only to subsection 2 ~~of-this~~
5 ~~section~~, and sections 566A.2A, 566A.2B, and 566A.2C.
6 Political subdivisions of the state are exempt from ~~this~~
7 ~~chapter~~ sections 566A.3 and 566A.6.
8 Sec. 21. NEW SECTION. 566A.1A DEFINITIONS.
9 As used in this chapter, unless the context otherwise
10 requires:
11 1. "Agent" means a person authorized by a cemetery or a
12 cemetery operator to represent the cemetery in dealing with
13 the public.
14 2. "Cemetery" means a cemetery, mausoleum, columbarium, or
15 other space held for the purpose of burial, entombment, or
16 inurnment of human remains and where such space is offered for
17 sale to the public.
18 3. "Cemetery operator" means a person who owns, controls,
19 operates, or manages a cemetery, who is responsible for the
20 cemetery's care and maintenance, and who controls the opening
21 and closing of all graves, crypts, and niches.
22 4. "Columbarium" means a structure or room or other space
23 in a building or structure used or intended to be used for the
24 inurnment or deposit of cremated human remains.
25 5. "Commissioner" means the commissioner of insurance or
26 the deputy appointed under section 502.601.
27 6. "Deed" means the assignment or conveyance of interment
28 rights.
29 7. "Grave" means a piece of land that is used or intended
30 to be used for the underground burial of human remains, other
31 than an underground mausoleum or columbarium space.
32 8. "Human remains" means the body of a deceased individual
33 that is in any stage of decomposition or has been cremated.
34 9. "Interment" means the disposition of human remains by
35 earth burial, entombment, or inurnment.

1 10. "Interment rights" means a right of use conveyed by
2 contract or property ownership to inter human remains in a
3 columbarium, grave, mausoleum, lawn crypt, or undeveloped
4 space.
5 11. "Lawn crypt" means an outer enclosure, for a casket or
6 similar inner burial container which is permanently installed
7 below ground prior to the time of actual interment. A lawn
8 crypt may permit single or multiple interments in a grave
9 space.
10 12. "Mausoleum" means a building, structure, or part of a
11 building or structure that is used or intended to be used for
12 the entombment of human remains.
13 13. "Mausoleum space" means a niche, crypt, or specific
14 place in a mausoleum that contains or is intended to contain
15 human remains.
16 14. "Niche" means a recess in the wall of a mausoleum or
17 columbarium for the deposit of human remains.
18 15. "Perpetual care" means maintenance, repair, and care
19 of all interment spaces, features, buildings, roadways,
20 parking lots, water supply, and other existing cemetery
21 structures subject to the provisions of section 566A.3 and
22 includes the general overhead expenses needed to accomplish
23 such maintenance, repair, and care.
24 16. "Perpetual care cemetery" means a cemetery which has
25 established a perpetual care fund for the maintenance, repair,
26 and care of all interment spaces subject to perpetual care
27 within the cemetery in compliance with section 566A.3.
28 17. "Religious cemetery" means a cemetery that is owned,
29 operated, or controlled by a recognized church, religious
30 society, association, or denomination.
31 18. "Sale" means a transfer for consideration of any
32 interest in ownership, title, or right of use.
33 19. "Undeveloped space" means a mausoleum, columbarium
34 space, or lawn crypt that is not ready for the burial of human
35 remains on the date of the sale of the space.

1 Sec. 22. NEW SECTION. 566A.2A PERPETUAL CARE CEMETERY
2 REGISTRY.
3 A perpetual care cemetery shall maintain a registry of
4 individuals who have purchased items subject to the perpetual
5 care requirements of this chapter including the amount
6 deposited in trust for each individual. The registry shall
7 include all transactions entered into on or after July 1,
8 1995.
9 Sec. 23. NEW SECTION. 566A.2B INTERMENT RIGHTS AGREEMENT
10 -- REQUIREMENTS -- CONTENTS.
11 1. An agreement for interment rights under this chapter
12 must be written in clear, understandable language and do all
13 of the following:
14 a. Identify the seller and purchaser.
15 b. Identify the salesperson.
16 c. Specify the interment rights to be provided and the
17 cost of each item.
18 d. State clearly the conditions on which substitution will
19 be allowed.
20 e. Set forth the total purchase price and the terms under
21 which it is to be paid.
22 f. State clearly whether the agreement is a revocable or
23 irrevocable contract, and, if revocable, which parties have
24 the authority to revoke the agreement.
25 g. State the amount or percentage of money to be placed in
26 the cemetery's perpetual care and maintenance guarantee fund.
27 h. Set forth an explanation that the perpetual care and
28 maintenance guarantee fund is an irrevocable trust, that
29 deposits cannot be withdrawn even in the event of
30 cancellation, and that the trust's income shall be used by the
31 cemetery for its maintenance, repair, and care.
32 i. Set forth an explanation of any fees or expenses that
33 may be charged.
34 j. Set forth an explanation of whether amounts for
35 perpetual care will be deposited in trust upon payment in full

1 or on an allocable basis as payments are made.
2 k. Set forth an explanation of whether initial payments on
3 agreements for multiple items of funeral and cemetery
4 merchandise or services, or both, will be allocated first to
5 the purchase of a grave, niche, columbarium space, or
6 mausoleum space. If such an allocation is to be made, the
7 agreement shall provide for the immediate transfer of such
8 interment rights upon payment in full and prominently state
9 that any applicable trust deposits under chapters 523A and
10 523E will not be made until the cemetery has received payment
11 in full for the interment rights. The transfer of an
12 undeveloped space may be deferred until such space is ready
13 for burial.
14 l. If the transfer of an undeveloped space will be
15 deferred until the space is ready for burial as permitted in
16 paragraph "k", the agreement shall provide for some form of
17 written acknowledgment upon payment in full, specify a
18 reasonable time period for development of the space, describe
19 what happens in the event of a death prior to development of
20 the space, and provide for the immediate transfer of the
21 interment rights when development of the space is complete.
22 m. Specify the purchaser's right to cancel and the damages
23 payable for cancellation, if any.
24 n. State the name and address of the commissioner.
25 Sec. 24. NEW SECTION. 566A.2C ANNUAL REPORT BY RELIGIOUS
26 CEMETERIES.
27 1. A religious cemetery shall file a written report with
28 the insurance division annually within four months following
29 the end of the cemetery's fiscal year. The report shall
30 include all of the following:
31 a. The name and address of the cemetery.
32 b. An affidavit that the cemetery is a religious cemetery.
33 c. Copies of all sales agreement forms used by the
34 cemetery.
35 2. The commissioner shall permit the filing of a unified

1 annual report in the event of commonly owned or affiliated
2 cemeteries. A religious organization may commingle perpetual
3 care funds for purposes of investment and administration and
4 may file a single report by diocese or similar region, if each
5 cemetery is appropriately identified and separate records are
6 maintained for each cemetery.
7 3. The report shall be made under oath and shall be
8 accompanied by a filing fee of one hundred dollars. The fee
9 shall be waived for a cemetery with less than two thousand
10 five hundred dollars average annual retail sales for the
11 previous three calendar years.
12 4. Notwithstanding chapter 22, all records maintained by
13 the commissioner under this section are confidential and shall
14 not be made available for inspection or copying except upon
15 the approval of the commissioner or attorney general.
16 Sec. 25. NEW SECTION. 566A.2D ANNUAL REPORT BY
17 NONPERPETUAL CARE CEMETERIES.
18 1. A nonperpetual care cemetery shall file a written
19 report with the insurance division within four months
20 following the end of the cemetery's fiscal year. The report
21 shall include all of the following:
22 a. The name and address of the cemetery.
23 b. An affidavit that the cemetery is a nonperpetual care
24 cemetery in compliance with section 566A.5.
25 c. Copies of all sales agreement forms used by the
26 cemetery.
27 2. The commissioner shall permit the filing of a unified
28 annual report in the event of commonly owned or affiliated
29 cemeteries. A political subdivision may commingle perpetual
30 care funds for purposes of investment and administration and
31 may file a single report, if each cemetery is appropriately
32 identified and separate records are maintained for each
33 cemetery.
34 3. The report shall be made under oath and shall be
35 accompanied by a filing fee of one hundred dollars for a

1 cemetery with average retail sales equal to or greater than
2 two thousand five hundred dollars for the previous three
3 calendar years. The fee shall be waived for a cemetery with
4 less than two thousand five hundred dollars average annual
5 retail sales for the previous three calendar years.
6 4. Notwithstanding chapter 22, all records maintained by
7 the commissioner under this section are confidential and shall
8 not be made available for inspection or copying except upon
9 the approval of the commissioner or attorney general.
10 Sec. 26. NEW SECTION. 566A.2E ANNUAL REPORT BY PERPETUAL
11 CARE CEMETERIES.
12 1. A perpetual care cemetery shall file a written report
13 as of the end of each fiscal year of the cemetery including
14 the following:
15 a. The name and address of the cemetery.
16 b. The name and address of any trustee holding perpetual
17 care and maintenance guarantee fund moneys.
18 c. The name and address of any depository holding
19 perpetual care and maintenance guarantee fund moneys.
20 d. An affidavit that the cemetery is a perpetual care
21 cemetery in compliance with section 566A.3.
22 e. Copies of all sales agreement forms used by the
23 cemetery.
24 f. The amount of the principal of the cemetery's perpetual
25 care funds at the end of the fiscal year.
26 g. The number of interments made and the number of deeds
27 issued during the cemetery's preceding fiscal year.
28 2. The report shall be filed with the insurance division
29 within four months following the end of the cemetery's fiscal
30 year in the form required by the commissioner.
31 3. The commissioner shall permit the filing of a unified
32 annual report in the event of commonly owned or affiliated
33 cemeteries. A political subdivision may commingle perpetual
34 care funds for purposes of investment and administration and
35 may file a single report, if each cemetery is appropriately

1 identified and separate records are maintained for each
2 cemetery.
3 4. The commissioner shall establish by rule an audit fee
4 to be filed with the annual report. The audit report fee
5 shall be based on the number of deeds issued by the cemetery
6 during the reporting period. The audit fee shall apply only
7 to perpetual care cemeteries and shall be based on the
8 approximate cost of regulation.
9 5. Notwithstanding chapter 22, all records maintained by
10 the commissioner under this subsection are confidential and
11 shall not be made available for inspection or copying except
12 upon approval of the commissioner or attorney general.
13 Sec. 27. Section 566A.3, Code 1995, is amended by adding
14 the following new unnumbered paragraph:
15 NEW UNNUMBERED PARAGRAPH. A perpetual care cemetery may
16 require a contribution to the cemetery's perpetual care
17 guarantee fund for each grave marker, tombstone, monument, or
18 item of ornamental merchandise installed in the cemetery from
19 the purchaser of such merchandise. A cemetery may establish a
20 separate perpetual care fund for this purpose. The
21 contribution, if required by the cemetery, shall be uniformly
22 charged on every installation and shall be set aside and
23 deposited in the perpetual care trust fund. The contributions
24 shall be nonrefundable and shall not be withdrawn from the
25 trust fund once deposited.
26 Sec. 28. Section 566A.5, Code 1995, is amended by striking
27 the section and inserting in lieu thereof the following:
28 566A.5 NONPERPETUAL CARE CEMETERIES.
29 1. All other organizations subject to the provisions of
30 this chapter shall be nonperpetual care cemeteries.
31 2. Each nonperpetual care cemetery shall post a legible
32 sign in a conspicuous place in the office or offices where
33 sales are conducted, and at or near the entrance of the
34 cemetery or its administration building and readily accessible
35 to the public stating: "This is a nonperpetual care

1 cemetery". The lettering of these signs shall be of a size
2 and style as approved by the commissioner by rule or order so
3 that the signs can be read at a reasonable distance.
4 3. Each nonperpetual care cemetery shall also have printed
5 or stamped at the head of all of its contracts, deeds,
6 statements, letterheads, and advertising material, the legend:
7 "This is a nonperpetual care cemetery", and shall not sell any
8 lot or interment space in the cemetery unless the purchaser of
9 the lot or interment space is informed that the cemetery is a
10 nonperpetual care cemetery.
11 4. A nonperpetual care cemetery or cemetery operator or
12 employee or agent of a nonperpetual care cemetery shall not
13 advertise or represent that the cemetery is a perpetual care
14 cemetery or use any similar title, description, or term
15 indicating that the cemetery provides guaranteed or permanent
16 maintenance and care or that the cemetery has a trust fund or
17 endowment fund to pay for the expenses of such care.
18 Sec. 29. Section 566A.12, Code 1995, is amended by
19 striking the section and inserting in lieu thereof the
20 following:
21 566A.12 ANNUAL REPORTS AND ADMINISTRATION.
22 1. CEMETERY REGISTRY. The commissioner shall establish
23 and maintain a public registry of cemeteries that indicates
24 whether a cemetery is a perpetual care cemetery or a
25 nonperpetual care cemetery.
26 2. INVESTIGATIONS AND AUDITS. The commissioner or the
27 attorney general, for the purpose of discovering violations of
28 this chapter or rules adopted pursuant to this chapter, may do
29 any of the following:
30 a. Audit any cemetery, for cause or on a random basis, to
31 determine compliance with this chapter. A cemetery shall make
32 available to the commissioner or attorney general the
33 cemetery's deed registry and those books, accounts, records,
34 and files related to the sale of interment rights.
35 Notwithstanding chapter 22, all business records and files

1 acquired by the commissioner or attorney general pursuant to
2 an audit under this subsection are confidential and shall not
3 be made available for inspection or copying unless ordered by
4 a court for good cause shown. If it is determined pursuant to
5 an audit that a material violation of this chapter or rules
6 adopted pursuant to this chapter has occurred, the cost of the
7 audit may be assessed to the cemetery.
8 b. Administer oaths and affirmations, subpoena witnesses,
9 receive evidence, and require the production of documents and
10 records in connection with an investigation or proceeding
11 being conducted pursuant to this chapter.
12 c. Apply to the district court for issuance of an order
13 requiring a person's appearance before the commissioner or
14 attorney general, or a designee of either or both, where the
15 person has refused to obey a subpoena issued by the
16 commissioner or attorney general. The person may also be
17 required to produce documentary evidence germane to the
18 subject of the investigation. Failure to obey a court order
19 under this subsection constitutes contempt of court.
20 3. CEASE AND DESIST ORDERS. If an audit or investigation
21 provides reasonable evidence that a person has violated this
22 chapter, or any rule adopted pursuant to this chapter, the
23 commissioner may issue an order directed at the person to
24 cease and desist from engaging in such act or practice.
25 4. RECEIVERSHIPS.
26 a. The commissioner shall notify the attorney general if
27 the commissioner finds that a perpetual care cemetery subject
28 to regulation under this chapter meets one or more of the
29 following grounds for the establishment of a receivership:
30 (1) Is insolvent.
31 (2) Has utilized trust funds for personal or business
32 purposes in a manner inconsistent with the requirements of
33 this chapter, and the amount of funds currently held in the
34 trust is less than the amount required by this chapter.
35 b. The attorney general may apply to the district court in

1 any county of the state for a receivership. Upon proof of any
2 of the grounds for a receivership described in this section
3 the court may grant a receivership.
4 5. INJUNCTIONS. The attorney general may apply to the
5 district court for an injunction to restrain any cemetery
6 subject to this chapter and any agents, employees, trustees,
7 or associates of the cemetery from engaging in conduct or
8 practices deemed a violation of this chapter or rules adopted
9 pursuant to this chapter. Upon proof of any violation of this
10 chapter described in the petition for injunction, the court
11 may grant the injunction. Failure to obey a court order under
12 this subsection constitutes contempt of court.
13 Sec. 30. Section 566A.13, Code 1995, is amended to read as
14 follows:
15 566A.13 VIOLATIONS AND PENALTIES.
16 A violation of this chapter or rules adopted by the
17 ~~attorney-general~~ commissioner pursuant to this chapter is a
18 violation of section 714.16, subsection 2, paragraph "a". The
19 remedies and penalties provided by section 714.16, including
20 but not limited to, provisions relating to injunctive relief
21 and penalties, apply to a violation of this chapter.
22 Sec. 31. NEW SECTION. 566A.14 RULES.
23 The division of insurance may adopt rules pursuant to
24 chapter 17A as necessary and appropriate to administer this
25 chapter.
26 Sec. 32. NEW SECTION. 566A.15 CEMETERY FUND.
27 A special revenue fund is created in the state treasury,
28 under the control of the commissioner, to be known as the
29 insurance division cemetery fund. Commencing July 1, 1995,
30 filing fees received pursuant to sections 566A.2C and 566A.2D
31 and one dollar from the audit fee for each deed reported on
32 the annual report required by section 566A.2E, executed during
33 the preceding fiscal year, shall be deposited in the insurance
34 division cemetery fund by the commissioner. However, if the
35 balance of the fund on July 1 of any year exceeds two hundred

1 thousand dollars, the allocation to the fund shall not be
2 made, and the total sum of the fees paid pursuant to sections
3 566A.2C, 566A.2D, and 566A.2E shall be deposited in the
4 general fund of the state. Notwithstanding section 8.33,
5 moneys in the fund shall not revert to the general fund but
6 shall remain in the cemetery fund. Moneys in the cemetery
7 fund are appropriated to the insurance division and, subject
8 to authorization by the commissioner, may be used to pay the
9 expenses of that office incurred in the administration of the
10 audit, investigative, and enforcement duties and obligations
11 imposed under this chapter, and the expenses of receiverships
12 established pursuant to section 566A.12.
13 Sec. 33. CONDITION TO ENACTMENT OF CERTAIN PROVISIONS.
14 The section of this Act which amends Code section 566A.12
15 shall only be implemented if the general assembly makes an
16 appropriation of at least fifty thousand dollars and provides
17 for the employment of one full-time employee devoted to the
18 insurance division for the implementation of this Act.
19 EXPLANATION
20 This bill amends chapter 523A, which applies to funeral
21 services and merchandise, and chapter 523E, which applies to
22 cemetery merchandise, and creates a new chapter 523J, which
23 applies to cemeteries.
24 Section 523A.1 is amended to except caskets and other types
25 of inner burial containers or concrete burial vaults sold
26 after July 1, 1995, from language in that section which
27 defines when a delivery to a purchaser is made.
28 Section 523A.2, subsection 1, is amended to provide that
29 payments subject to the trust requirements of section 523A.1
30 are not to be commingled with other funds of the seller of
31 funeral services and merchandise. The section is also amended
32 to provide that unless such funds are directly deposited in a
33 trust account pursuant to section 523A.2, 100 percent of the
34 amount received by the seller is to be deposited in an escrow
35 account in an insured financial institution. The section is

1 also amended to require that the balance of each trust account
2 of the seller be reported annually to the insurance
3 commissioner, along with the identity of the purchaser or
4 beneficiary.
5 Section 523A.2, subsection 7 is amended to provide that
6 payments may be made directly to the insurance company by the
7 purchaser of the agreement, in any amount. If the payments
8 are not made directly to the insurance company by the
9 purchaser of the agreement, at least 80 percent of the
10 payments received by the seller under an agreement otherwise
11 subject to section 523A.1, shall be used to purchase the
12 insurance until an insurance policy has been issued and paid
13 in full for the amount of the agreement.
14 Section 523A.8, subsection 1, is amended to require certain
15 disclosures in an agreement for the sale of funeral services
16 and merchandise.
17 Section 523A.20 is amended to increase the amount allocated
18 from fees paid by sellers of funeral services and merchandise
19 to the insurance division regulatory fund from $1 to $2. The
20 section is also amended to decrease the fee to be assessed
21 establishment permit holders for each agreement reported on
22 the permit holder's annual report from $5 to $2. The $5 fee
23 on establishment holders is authorized for assessment on May 1
24 of 1994 and 1995. The $2 fee is to be assessed on May 1 of
25 1996 and 1997. The fee is to be used to fund consumer
26 education, audits, investigations, payments under contract
27 with licensed establishments to provide funeral and cemetery
28 merchandise or services in the event of statutory
29 noncompliance by the initial seller, liquidations, and
30 receiverships.
31 New section 523A.21 is created and provides that upon a
32 determination by the commissioner that grounds exist for an
33 administrative license revocation or suspension action by the
34 board of mortuary science examiners, the commissioner may
35 forward the grounds for the determination to that board.

1 New section 523A.22 establishes the process for the
2 liquidation of a funeral establishment which is found to be
3 insolvent or in such condition that the further transaction of
4 business would be hazardous, financially or otherwise, to its
5 preneed funeral customers or the public. The procedure
6 established is similar to the procedure established for the
7 liquidation of insurance companies.
8 Section 523E.2, subsection 1, is amended to provide that
9 payments subject to the trust requirements of section 523E.1
10 are not to be commingled with other funds of the seller of
11 funeral services and merchandise. The section is also amended
12 to provide that unless such funds are directly deposited in a
13 trust account pursuant to section 523E.2, 100 percent of the
14 amount received by the seller is to be deposited in an escrow
15 account in an insured financial institution. The section is
16 also amended to require that the balance of each trust account
17 of the seller be reported annually to the insurance
18 commissioner, along with the identity of the purchaser or
19 beneficiary.
20 Section 523E.8, subsection 1, is amended to require certain
21 disclosures in an agreement for the sale of funeral services
22 and merchandise.
23 Section 523E.20 is amended to increase the amount allocated
24 from fees paid by sellers of funeral services and merchandise
25 to the insurance division regulatory fund from one dollar to
26 two dollars. The section is also amended to decrease the fee
27 to be assessed establishment permit holders for each agreement
28 reported on the permit holder's annual report from $5 to $2.
29 The $5 fee on establishment holders is authorized for
30 assessment on May 1 of 1994 and 1995. The $2 fee is to be
31 assessed on May 1 of 1996 and 1997. The fee is to be used to
32 fund consumer education, audits, investigations, payments
33 under contract with licensed establishments to provide funeral
34 and cemetery merchandise or services in the event of statutory
35 noncompliance by the initial seller, liquidations, and

1 receiverships.
2 New section 523E.21 is created and provides that upon a
3 determination by the commissioner that grounds exist for an
4 administrative license revocation or suspension action by the
5 board of mortuary science examiners, the commissioner may
6 forward the grounds for the determination to that board.
7 New section 523J.1 is created and establishes the
8 definitions of terms used in the chapter including "abandoned
9 cemetery", "cemetery", "commissioner", "interment rights", and
10 "perpetual care cemetery".
11 New section 523J.2 is created and provides that cemeteries
12 organized or commencing business in this state on or after
13 July 1, 1995, are to operate as perpetual care cemeteries.
14 New section 523J.3 is created and provides that a perpetual
15 care cemetery is not to offer interment rights to the public
16 without a permit pursuant to chapter 523J.
17 New section 523J.4 is created and provides that the
18 commissioner may deny, suspend, or revoke a permit issued
19 under chapter 523J upon a finding that the owner of a cemetery
20 has committed a fraudulent practice or been convicted of a
21 felony related to the sale of interment rights or the sale of
22 funeral services, funeral merchandise, or cemetery
23 merchandise, or the cemetery's trust assets, warehoused
24 merchandise, surety bonds, or insurance funding are in
25 material noncompliance with applicable statutory provisions.
26 New section 523J.5 is created and establishes the process
27 for the liquidation of a funeral establishment which is found
28 to be insolvent or in such condition that the further
29 transaction of business would be hazardous, financially or
30 otherwise, to its customers or the public. The procedure
31 established is similar to the procedure established for the
32 liquidation of insurance companies.
33 New section 523J.6 is created and establishes the powers
34 and duties of a perpetual care cemetery.
35 New section 523J.7 is created and provides that the

1 insurance commissioner or the attorney general may investigate
2 a perpetual care cemetery to verify compliance with chapter
3 523J.
4 Section 566A.1 is amended to provide that a fraternal
5 society is subject to the provisions of chapter 566A and that
6 a political subdivision is subject to the chapter except for
7 sections 566A.3 and 566A.6.
8 New section 566A.1A is created establishing the definitions
9 for chapter 566A.
10 New section 566A.2A is created which requires perpetual
11 care cemeteries to maintain a registry of individuals
12 purchasing items subject to perpetual care.
13 New section 566A.2B is created and requires an agreement
14 for interment rights to be written in clear, understandable
15 language. The section also sets forth the contents of the
16 agreement.
17 New section 566A.2C is created and requires a religious
18 cemetery to file a written report with the insurance division
19 annually. The report is to be accompanied by a filing fee of
20 $100.
21 New section 566A.2D is created and requires a nonperpetual
22 care cemetery to file a written report with the insurance
23 division annually. The report is to be accompanied by a
24 filing fee of $100.
25 New section 566A.2E is created and requires a perpetual
26 care cemetery to file a written report with the insurance
27 division annually. The commissioner is to establish an audit
28 fee by rule to be filed with the annual report.
29 Section 566A.3 is amended to permit a perpetual care
30 cemetery to require a contribution to the cemetery's perpetual
31 care guarantee fund for each grave marker, tombstone,
32 monument, or item of ornamental merchandise installed or
33 placed in the cemetery.
34 Section 566A.5, which relates to nonperpetual care
35 cemeteries, is substantially rewritten and provides that a

1 legible sign must be posted indicating that the cemetery is a
2 nonperpetual care cemetery; requires such indication to be
3 included on the cemetery's contracts, deeds, statements,
4 letterhead, and advertising material; and prohibits the
5 cemetery from advertising as a perpetual care cemetery.
6 Section 566A.12, relating to perpetual care cemetery
7 records, is struck, is rewritten, and provides for a cemetery
8 registry to be established by the insurance commissioner,
9 annual reports to be filed concerning the number of interments
10 made and the amount of the principal of the cemetery's
11 perpetual care funds, investigations and audits of cemeteries
12 by the insurance commissioner or the attorney general, and
13 certain regulatory powers.
14 Section 566A.13, relating to penalties, reflects that rules
15 will be adopted pursuant to the chapter by the insurance
16 commissioner and not the attorney general.
17 New section 566A.14 is created and authorizes the division
18 of insurance to adopt rules as necessary for the
19 administration of chapter 566A.
20 New section 566A.15 is created and establishes the
21 insurance division cemetery fund.
22 Section 33 of the bill conditions the implementation of
23 566A.12, as rewritten, upon an appropriation to the insurance
24 division of $50,000 and one full-time equivalent position.
25 This bill may create a state mandate as defined in chapter
26 25B.
27
28
29
30
31
32
33
34
35

HOUSE FILE 486

AN ACT

RELATING TO THE REGULATION OF CEMETERY OPERATORS AND THE REGULATION OF PERPETUAL CARE CEMETERIES AND NONPERPETUAL CARE CEMETERIES, ESTABLISHING REQUIREMENTS RELATED TO THE SALE OF PRENEED FUNERAL CONTRACTS AND THE SALE OF FUNERAL AND CEMETERY MERCHANDISE, ESTABLISHING FEES AND USE OF THOSE FEES, AND PROVIDING PENALTIES.

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

Section 1. Section 523A.1, unnumbered paragraphs 1 and 4, Code 1995, are amended to read as follows:

1. Whenever an agreement is made by any person, firm, or corporation to furnish, upon the future death of a person named or implied in the agreement, funeral services or funeral merchandise, a minimum of eighty percent of all payments made under the agreement shall be and remain trust funds until 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. The commissioner may adopt rules to prohibit the commingling of trust funds with other funds of the seller.

This section does not apply to payments for merchandise delivered to the purchaser. ~~Delivery~~ Except for caskets and other types of inner burial containers or concrete burial vaults sold after July 1, 1995, 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.1, Code 1995, is amended by adding the following new subsection:

NEW SUBSECTION. 2. An agreement may be funded by insurance proceeds derived from a policy issued by an insurance company authorized to conduct business in this state. Such funding may be in lieu of a trust fund if the payments are made directly to the insurance company by the purchaser of the agreement.

Sec. 3. Section 523A.2, subsection 1, paragraphs a and c, Code 1995, 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~~ of such bank, savings and loan association, or credit union, 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 523A.1.

c. The seller under an agreement referred to in section 523A.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 funeral services or funeral merchandise.

(2) ~~The name of the purchaser, beneficiary, and the amount of each agreement under section 523A.1 made in the preceding year and the date on which it was made.~~ The balance of each trust account as of the end of the preceding calendar year, identified by the name of the purchaser or the beneficiary, and a report of any amounts withdrawn from trust and the reason for each withdrawal.

(3) ~~The total value of agreements subject to section 523A.1 entered into, the total amount paid pursuant to those agreements, and the total amount deposited in trust as required under section 523A.1, during the preceding year.~~ A description of insurance funding outstanding at the end of the preceding calendar year, identified by the name of the purchaser or the beneficiary, and a report of any insurance payments received by the seller.

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

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

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

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

~~(8)~~ (4) ~~The~~ A complete inventory of funeral merchandise ~~and its location in the seller's possession that has been~~ delivered in lieu of trusting pursuant to section 523A.1.

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

~~The information required by subparagraphs (7) and (8) shall include,~~ including the location of the merchandise, serial numbers or warehouse receipt numbers, identified by the name of the purchaser or the beneficiary, and a verified statement of a certified public accountant that the certified public accountant has conducted a physical inventory of the funeral merchandise ~~specified in subparagraph (8)~~ and that each item of that merchandise is in the seller's possession at the specified location. The statement shall be on a form prescribed by the commissioner.

(5) The name of the purchaser, beneficiary, and the amount of each agreement referred to in section 523A.1 made in the preceding year and the date on which it was made.

(6) Other information reasonably required by the commissioner for purposes of administration of 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.

Sec. 4. Section 523A.2, subsection 7, Code 1995, is amended to read as follows:

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

Sec. 5. Section 523A.8, subsection 1, paragraphs e, h, and j, Code 1995, are amended to read as follows:

e. State clearly whether the agreement is a guaranteed price contract or a nonguaranteed price contract. Each nonguaranteed price contract shall contain in twelve point bold type, an explanation of the consequences in substantially the following language:

THE PRICES OF MERCHANDISE AND SERVICES UNDER THIS AGREEMENT ARE SUBJECT TO CHANGE IN THE FUTURE. ANY FUNDS PAID UNDER THIS CONTRACT ARE ONLY A DEPOSIT TO BE APPLIED, TOGETHER WITH ACCRUED INCOME, TOWARD THE FINAL COSTS OF THE MERCHANDISE OR SERVICES CONTRACTED FOR. ADDITIONAL CHARGES MAY BE REQUIRED.

h. Explain the disposition of the ~~interest and disclose what fees and expenses may be charged if incurred~~ income generated from investments, include a statement of fees, expenses, and taxes which may be deducted, and include a statement of the buyer's responsibility for income taxes owed on the income, if applicable.

j. ~~State the name and address of the commissioner.~~ Include an explanation of regulatory oversight by the insurance division in twelve point bold type, in substantially the following language:

THIS CONTRACT MUST BE REPORTED TO THE IOWA INSURANCE DIVISION BY THE FIRST DAY OF MARCH OF THE FOLLOWING YEAR. YOU MAY CALL THE INSURANCE DIVISION AT (INSERT TELEPHONE NUMBER) TO CONFIRM THAT YOUR CONTRACT HAS BEEN REPORTED. WRITTEN INQUIRIES OR COMPLAINTS SHOULD BE MAILED TO THE FOLLOWING ADDRESS: IOWA SECURITIES BUREAU, (INSERT ADDRESS).

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

NEW SUBSECTION. 1A. The commissioner may adopt rules establishing disclosure and format requirements to promote consumers' understanding of the merchandise and services purchased and the available funding mechanisms under an agreement pursuant to this chapter.

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

NEW SUBSECTION. 3. The seller shall disclose at the time an application is made by an individual and prior to accepting the applicant's initial premium or deposit for a preneed funeral contract or prearrangement subject to section 523A.1 which is funded by a life insurance policy, the following information:

a. That a life insurance policy is involved or being used to fund an agreement.

b. The nature of the relationship among the soliciting agent or agents, the provider of the funeral or cemetery merchandise or services, the administrator, and any other person.

c. The relationship of the life insurance policy to the funding of the prearrangement and the nature and existence of any guarantees relating to the prearrangement.

d. The impact on the prearrangement of the following:

(1) Changes in the life insurance policy including, but not limited to, changes in the assignment, beneficiary designation, or use of proceeds.

(2) Any penalties to be incurred by the policyholder as a result of the failure to make premium payments.

(3) Penalties to be incurred or cash to be received as a result of the cancellation or surrender of the life insurance policy.

e. A list of merchandise and services which are applied or contracted for in the prearrangement and all relevant information concerning the price of the funeral services, including an indication that the purchase price is either guaranteed at the time of purchase or to be determined at the time of need.

f. All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the proceeds of the life insurance policy and the amount actually needed to fund the agreement.

g. Any penalties or restrictions, including but not limited to, geographic restrictions or the inability of the provider to perform, on the delivery of merchandise, services, or the prearrangement guarantee.

h. That a sales commission or other form of compensation is being paid and, if so, the identity of the individuals or entities to whom it is paid.

Sec. 8. Section 523A.20, Code 1995, is amended to read as follows:

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~~ The commissioner shall allocate annually from the fees paid pursuant to section 523A.2, ~~one dollar~~ two dollars 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 general fund of the state. ~~However, 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 general fund of the state.~~ In addition, on May 1 of ~~1994~~ 1996 and ~~1995~~ 1997, the commissioner, to the extent necessary to fund consumer education, audits, investigations, payments under contract with licensed establishments to provide funeral merchandise or services in the event of statutory noncompliance by the initial seller, liquidations, and receiverships, shall assess establishment permit holders ~~five~~ two dollars for each agreement reported on the establishment permit holder's annual report of sales executed during the preceding year, which shall be deposited in the insurance division regulatory fund. The moneys in the regulatory fund shall be retained in the fund. The moneys are appropriated and, subject to authorization by the commissioner, may be used to pay auditors, audit expenses, 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. 9. NEW SECTION. 523A.21 LICENSE REVOCATION -- RECOMMENDATION BY COMMISSIONER TO BOARD OF MORTUARY SCIENCE EXAMINERS.

Upon a determination by the commissioner that grounds exist for an administrative license revocation or suspension action by the board of mortuary science examiners under chapter 156, the commissioner may forward to the board the grounds for the determination, including all evidence in the possession of the commissioner, so that the board may proceed with the matter as deemed appropriate.

Sec. 10. NEW SECTION. 523A.22 LIQUIDATION.

1. GROUNDS FOR LIQUIDATION. Upon receipt of a written request from the board of mortuary science examiners, the commissioner may petition the district court for an order directing the commissioner to liquidate a funeral establishment on any of the following grounds:

a. The funeral establishment did not deposit funds pursuant to section 523A.1 or withdrew funds in a manner inconsistent with this chapter and is insolvent.

b. The funeral establishment did not deposit funds pursuant to section 523A.1 or withdrew funds in a manner inconsistent with this chapter and the condition of the funeral establishment is such that the further transaction of business would be hazardous, financially or otherwise, to its preneed funeral customers or the public.

2. LIQUIDATION ORDER.

a. An order to liquidate the business of a funeral establishment shall appoint the commissioner as liquidator and shall direct the liquidator to immediately take possession of the assets of the funeral establishment and to administer them under the general supervision of the court. The liquidator is vested with the title to the property, contracts, and rights of action and the books and records of the funeral establishment ordered liquidated, wherever located, as of the entry of the final order of liquidation. The filing or recording of the order with the clerk of court and the recorder of deeds of the county in which its principal office

or place of business is located, or, in the case of real estate with the recorder of deeds of the county where the property is located, is notice as a deed, bill of sale, or other evidence of title duly filed or recorded with the recorder of deeds.

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

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

d. An order issued under this section shall require accounting to the court by the liquidator. Accountings, at a minimum, must include all funds received or disbursed by the liquidator during the current period. An accounting shall be filed within one year of the liquidation order and at such other times as the court may require.

e. Within five days after the initiation of an appeal of an order of liquidation, which order has not been stayed, the commissioner shall present for the court's approval a plan for the continued performance of the funeral establishment's obligations during the pendency of an appeal. The plan shall provide for the continued performance of preneed and at-need funeral contracts in the normal course of events, notwithstanding the grounds alleged in support of the order of liquidation including the ground of insolvency. If the defendant funeral establishment's financial condition, in the judgment of the commissioner, will not support the full performance of all obligations during the appeal pendency period, the plan may prefer the claims of certain at-need and preneed funeral customers and claimants over creditors and

interested parties as well as other at-need and preneed funeral customers and claimants, as the commissioner finds to be fair and equitable considering the relative circumstances of such at-need and preneed funeral customers and claimants. The court shall examine the plan submitted by the commissioner and if it finds the plan to be in the best interests of the parties, the court shall approve the plan. An action shall not lie against the commissioner or any of the commissioner's deputies, agents, clerks, assistants, or attorneys by any party based on preference in an appeal pendency plan approved by the court.

3. POWERS OF LIQUIDATOR.

a. The liquidator may do any of the following:

(1) Appoint a special deputy to act for the liquidator under this chapter, and determine the special deputy's reasonable compensation. The special deputy shall have all the powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator.

(2) Hire employees and agents, legal counsel, accountants, appraisers, consultants, and other personnel as the commissioner may deem necessary to assist in the liquidation.

(3) With the approval of the court fix reasonable compensation of employees and agents, legal counsel, accountants, appraisers, and consultants.

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

(5) Hold hearings, subpoena witnesses, and compel their attendance, administer oaths, examine a person under oath, and compel a person to subscribe to the person's testimony after it has been correctly reduced to writing, and in connection to the proceedings require the production of books, papers, records, or other documents which the liquidator deems relevant to the inquiry.

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

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

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

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

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

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

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

(10) Borrow money on the security of the funeral establishment's assets or without security and execute and

deliver documents necessary to that transaction for the purpose of facilitating the liquidation. Money borrowed pursuant to this subparagraph shall be repaid as an administrative expense and shall have priority over any other class 1 claims under the priority of distribution established in subsection 18.

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

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

(13) Prosecute an action on behalf of the creditors, at-need funeral customers, preneed funeral customers, or owners against an officer of the funeral establishment or any other person.

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

(15) Deposit in one or more banks in this state sums as are required for meeting current administration expenses and distributions.

(16) Unless the court orders otherwise, invest funds not currently needed.

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

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

(19) Exercise and enforce the rights, remedies, and powers of a creditor, at-need funeral customer, preneed funeral customer, or owner, including the power to avoid transfer or lien that may be given by the general law and that is not included within subsections 7 through 9.

(20) Intervene in a proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and act as the receiver or trustee whenever the appointment is offered.

(21) Exercise powers now held or later conferred upon receivers by the laws of this state which are not inconsistent with this chapter.

b. This subsection does not limit the liquidator or exclude the liquidator from exercising a power not listed in paragraph "a" that may be necessary or appropriate to accomplish the purposes of this chapter.

4. NOTICE TO CREDITORS AND OTHERS.

a. Unless the court otherwise directs, the liquidator shall give notice of the liquidation order as soon as possible by doing all of the following:

(1) By first class mail to all persons known or reasonably expected to have claims against the funeral establishment, including at-need and preneed funeral customers, by mailing a notice to their last known address as indicated by the records of the funeral establishment.

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

b. Notice to potential claimants under paragraph "a" shall require claimants to file with the liquidator their claims together with proper proofs of the claim under subsection 13 on or before a date the liquidator shall specify in the notice. Claimants shall keep the liquidator informed of their changes of address, if any.

c. If notice is given pursuant to this section, the distribution of assets of the funeral establishment under this

chapter shall be conclusive with respect to claimants, whether or not a claimant actually received notice.

5. ACTIONS BY AND AGAINST LIQUIDATOR.

a. After the issuance of an order appointing a liquidator of a funeral establishment, an action at law or equity shall not be brought against the funeral establishment in this state or elsewhere, and existing actions shall not be maintained or further presented after issuance of the order. Whenever in the liquidator's judgment, protection of the estate of the funeral establishment necessitates intervention in an action against the funeral establishment that is pending outside this state, the liquidator may intervene in the action. The liquidator may defend, at the expense of the estate of the funeral establishment, an action in which the liquidator intervenes under this section.

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

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

6. COLLECTION AND LIST OF ASSETS.

a. As soon as practicable after the liquidation order but not later than one hundred twenty days after such order, the liquidator shall prepare in duplicate a list of the funeral establishment's assets. The list shall be amended or supplemented as the liquidator may determine. One copy shall be filed in the office of the clerk of court and one copy shall be retained for the liquidator's files. Amendments and supplements shall be similarly filed.

b. The liquidator shall reduce the assets to a degree of liquidity that is consistent with the effective execution of the liquidation.

c. A submission to the court for distribution of assets in accordance with subsection 11 fulfills the requirements of paragraph "a".

7. FRAUDULENT TRANSFERS PRIOR TO PETITION.

a. A transfer made and an obligation incurred by a funeral establishment within one year prior to the filing of a successful petition for liquidation under this chapter is fraudulent as to then existing and future creditors if made or incurred without fair consideration, or with actual intent to hinder, delay, or defraud either existing or future creditors. A fraudulent transfer made or an obligation incurred by a funeral establishment ordered to be liquidated under this chapter may be avoided by the receiver, except as to a person who in good faith is a purchaser, lienor, or obligee for a present fair equivalent value. A purchaser, lienor, or obligee, who in good faith has given a consideration less than fair for such transfer, lien, or obligation, may retain the property, lien, or obligation as security for repayment. The

court may, on due notice, order any such transfer or obligation to be preserved for the benefit of the estate, and in that event, the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.

b. (1) A transfer of property other than real property is made when it becomes perfected so that a subsequent lien obtainable by legal or equitable proceedings on a simple contract could not become superior to the rights of the transferee under subsection 9, paragraph "c".

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

(3) A transfer which creates an equitable lien is not perfected if there are available means by which a legal lien could be created.

(4) A transfer not perfected prior to the filing of a petition for liquidation is deemed to be made immediately before the filing of the successful petition.

(5) This subsection applies whether or not there are or were creditors who might have obtained a lien or persons who might have become bona fide purchasers.

8. FRAUDULENT TRANSFER AFTER PETITION.

a. After a petition for liquidation has been filed a transfer of real property of the funeral establishment made to a person acting in good faith is valid against the liquidator if made for a present fair equivalent value. If the transfer was not made for a present fair equivalent value, then the transfer is valid to the extent of the present consideration actually paid for which amount the transferee shall have a lien on the property transferred. The commencement of a proceeding in liquidation is constructive notice upon the recording of a copy of the petition for or order of liquidation with the recorder of deeds in the county where any real property in question is located. The exercise by a court of the United States or a state or jurisdiction to authorize a judicial sale of real property of the funeral establishment

within a county in a state shall not be impaired by the pendency of a proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.

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

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

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

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

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

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

d. This chapter does not impair the negotiability of currency or negotiable instruments.

9. VOIDABLE PREFERENCES AND LIENS.

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

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

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

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

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

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

(3) Where the preference is voidable, the liquidator may recover the property. If the property has been converted, the liquidator may recover its value from a person who has received or converted the property. However, if a bona fide purchaser or lienor has given less than fair equivalent value,

the purchaser or lienor shall have a lien upon the property to the extent of the consideration actually given. Where a preference by way of lien or security interest is voidable, the court may on due notice order the lien or security interest to be preserved for the benefit of the estate, in which event the lien or title shall pass to the liquidator.

b. (1) A transfer of property other than real property is made when it becomes perfected so that a subsequent lien obtainable by legal or equitable proceedings on a simple contract could not become superior to the rights of the transferee.

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

(3) A transfer which creates an equitable lien is not perfected if there are available means by which a legal lien could be created.

(4) A transfer not perfected prior to the filing of a petition for liquidation is deemed to be made immediately before the filing of the successful petition.

(5) This subsection applies whether or not there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers.

c. (1) A lien obtainable by legal or equitable proceedings upon a simple contract is one arising in the ordinary course of the proceedings upon the entry or docketing of a judgment or decree, or upon attachment, garnishment, execution, or like process, whether before, upon, or after judgment or decree and whether before or upon levy. It does not include liens which under applicable law are given a special priority over other liens which are prior in time.

(2) A lien obtainable by legal or equitable proceedings could become superior to the rights of a transferee, or a purchaser could obtain rights superior to the rights of a transferee within the meaning of paragraph "b", if such consequences would follow only from the lien or purchase

itself, or from the lien or purchase followed by a step wholly within the control of the respective lienholder or purchaser, with or without the aid of ministerial action by public officials. However, a lien could not become superior and a purchase could not create superior rights for the purpose of paragraph "b" through an act subsequent to the obtaining of a lien or subsequent to a purchase which requires the agreement or concurrence of any third party or which requires further judicial action or ruling.

d. A transfer of property for or on account of a new and contemporaneous consideration, which is under paragraph "b" made or suffered after the transfer because of delay in perfecting it, does not become a transfer for or on account of an antecedent debt if any acts required by the applicable law to be performed in order to perfect the transfer as against liens or a bona fide purchaser's rights are performed within twenty-one days or any period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if a loan is actually made, or a transfer which becomes security for a future loan, shall have the same effect as a transfer for or on account of a new and contemporaneous consideration.

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

f. The property affected by a lien voidable under paragraphs "a" and "e" is discharged from the lien. The property and any of the indemnifying property transferred to or for the benefit of a surety shall pass to the liquidator. However, the court may on due notice order a lien to be preserved for the benefit of the estate and the court may direct that the conveyance be executed to evidence the title of the liquidator.

g. The court shall have summary jurisdiction of a proceeding by the liquidator to hear and determine the rights of the parties under this section. Reasonable notice of hearing in the proceeding shall be given to all parties in interest, including the obligee of a releasing bond or other like obligation. Where an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, upon application of any party in interest, the court shall in the same proceeding ascertain the value of the property or lien. If the value is less than the amount for which the property is indemnified or less than the amount of the lien, the transferee or lienholder may elect to retain the property or lien upon payment of its value, as ascertained by the court, to the liquidator within the time as fixed by the court.

h. The liability of a surety under a releasing bond or other like obligation is discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and avoided by the liquidator. Where the property is retained under paragraph "g", the liability of the surety is discharged to the extent of the amount paid to the liquidator.

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

j. If within four months before the filing of a successful petition for liquidation under this chapter, or at any time in contemplation of a proceeding to liquidate, a funeral establishment, directly or indirectly, pays money or transfers property to an attorney for services rendered or to be rendered, the transaction may be examined by the court on its own motion or shall be examined by the court on petition of the liquidator. The payment or transfer shall be held valid

only to the extent of a reasonable amount to be determined by the court. The excess may be recovered by the liquidator for the benefit of the estate. However, where the attorney is in a position of influence in the funeral establishment or an affiliate, payment of any money or the transfer of any property to the attorney for services rendered or to be rendered shall be governed by the provision of paragraph "a", subparagraph (2), subparagraph subdivision (d).

k. (1) An officer, manager, employee, shareholder, subscriber, attorney, or any other person acting on behalf of the funeral establishment who knowingly participates in giving any preference when the person has reasonable cause to believe the funeral establishment is or is about to become insolvent at the time of the preference is personally liable to the liquidator for the amount of the preference. There is an inference that reasonable cause exists if the transfer was made within four months before the date of filing of this successful petition for liquidation.

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

(3) This subsection shall not prejudice any other claim by the liquidator against any person.

10. CLAIMS OF HOLDER OF VOID OR VOIDABLE RIGHTS.

a. A claim of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment, or encumbrance, voidable under this chapter, shall not be allowed unless the creditor surrenders the preference, lien, conveyance, transfer, assignment, or encumbrance. If the avoidance is effected by a proceeding in which a final judgment has been entered, the claim shall not be allowed unless the money is paid or the property is delivered to the liquidator within thirty days from the date of the entering of the final judgment. However, the court having jurisdiction over the liquidation may allow further time if there is an appeal or other continuation of the proceeding.

b. A claim allowable under paragraph "a" by reason of a voluntary or involuntary avoidance, preference, lien, conveyance, transfer, assignment, or encumbrance may be filed as an excused late filing under subsection 12, if filed within thirty days from the date of the avoidance or within the further time allowed by the court under paragraph "a".

11. LIQUIDATOR'S PROPOSAL TO DISTRIBUTE ASSETS.

a. From time to time as assets become available, the liquidator shall make application to the court for approval of a proposal to disburse assets out of marshaled assets.

b. The proposal shall at least include provisions for all of the following:

(1) Reserving amounts for the payment of all the following:

(a) Expenses of administration.

(b) To the extent of the value of the security held, the payment of claims of secured creditors.

(c) Claims falling within the priorities established in subsection 18, paragraphs "a" and "b".

(2) Disbursement of the assets marshaled to date and subsequent disbursement of assets as they become available.

c. Action on the application may be taken by the court provided that the liquidator's proposal complies with paragraph "b".

12. FILING OF CLAIMS.

a. Proof of all claims shall be filed with the liquidator in the form required by subsection 13 on or before the last day for filing specified in the notice required under subsection 4.

b. The liquidator may permit a claimant making a late filing to share in distributions, whether past or future, as if the claimant were not late, to the extent that the payment will not prejudice the orderly administration of the liquidation under any of the following circumstances:

(1) The existence of the claim was not known to the claimant and that the claimant filed the claim as promptly as reasonably possible after learning of it.

(2) A transfer to a creditor was avoided under subsections 7 through 9, or was voluntarily surrendered under subsection 10, and that the filing satisfies the conditions of subsection 10.

(3) The valuation under subsection 17 of security held by a secured creditor shows a deficiency, which is filed within thirty days after the valuation.

c. The liquidator may consider any claim filed late and permit the claimant to receive distributions which are subsequently declared on any claims of the same or lower priority if the payment does not prejudice the orderly administration of the liquidation. The late-filing claimant shall receive at each distribution the same percentage of the amount allowed on the claim as is then being paid to claimants of any lower priority. This shall continue until the claim has been paid in full.

13. PROOF OF CLAIM.

a. Proof of claim shall consist of a statement signed by the claimant that includes all of the following that are applicable:

(1) The particulars of the claim, including the consideration given for it.

(2) The identity and amount of the security on the claim.

(3) The payments, if any, made on the debt.

(4) A statement that the sum claimed is justly owing and that there is no setoff, counterclaim, or defense to the claim.

(5) Any right of priority of payment or other specific right asserted by the claimant.

(6) A copy of the written instrument which is the foundation of the claim.

(7) The name and address of the claimant and the attorney who represents the claimant, if any.

b. A claim need not be considered or allowed if it does not contain all the information identified in paragraph "a" which is applicable. The liquidator may require that a prescribed form be used and may require that other information and documents be included.

c. At any time the liquidator may request the claimant to present information or evidence supplementary to that required under paragraph "a", and may take testimony under oath, require production of affidavits or depositions, or otherwise obtain additional information or evidence.

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

14. SPECIAL CLAIMS.

a. A claim may be allowed even if contingent, if it is filed pursuant to subsection 12. The claim may be allowed and the claimant may participate in all distributions declared after it is filed to the extent that it does not prejudice the orderly administration of the liquidation.

b. Claims that are due except for the passage of time shall be treated as absolute claims are treated. However, the claims may be discounted at the legal rate of interest.

c. Claims made under employment contracts by directors, principal officers, or persons in fact performing similar functions or having similar powers are limited to payment for services rendered prior to the issuance of an order of liquidation under subsection 2.

15. DISPUTED CLAIMS.

a. If a claim is denied in whole or in part by the liquidator, written notice of the determination shall be given to the claimant or the claimant's attorney by first class mail at the address shown in the proof of claim. Within sixty days from the mailing of the notice, the claimant may file objections with the liquidator. Unless a filing is made, the claimant shall not further object to the determination.

b. If objections are filed with the liquidator and the liquidator does not alter the denial of the claim as a result of the objections, the liquidator shall ask the court for a hearing as soon as practicable and give notice of the hearing by first class mail to the claimant or the claimant's attorney and to any other persons directly affected. The notice shall be given not less than ten nor more than thirty days before the date of the hearing. The matter shall be heard by the court or by a court-appointed referee. The referee shall submit findings of fact along with a recommendation.

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

17. SECURED CREDITOR'S CLAIMS.

a. The value of security held by a secured creditor shall be determined in one of the following ways, as the court may direct:

(1) By converting the security into money according to the terms of the agreement pursuant to which the security was delivered to the creditors.

(2) By agreement, arbitration, compromise, or litigation between the creditor and the liquidator.

b. The determination shall be under the supervision and control of the court with due regard for the recommendation of

the liquidator. The amount so determined shall be credited upon the secured claim. A deficiency shall be treated as an unsecured claim. If the claimant surrenders the security to the liquidator, the entire claim shall be allowed as if unsecured.

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

a. CLASS 1. The costs and expenses of administration, including but not limited to the following:

(1) The actual and necessary costs of preserving or recovering the assets of the funeral establishment.

(2) Compensation for all authorized services rendered in the liquidation.

(3) Necessary filing fees.

(4) The fees and mileage payable to witnesses.

(5) Authorized reasonable attorney's fees and other professional services rendered in the liquidation.

b. CLASS 2. Reasonable compensation to employees for services performed to the extent that they do not exceed two months of monetary compensation and represent payment for services performed within one year before the filing of the petition for liquidation. Officers and directors are not entitled to the benefit of this priority. The priority is in lieu of other similar priority which may be authorized by law as to wages or compensation of employees.

c. CLASS 3. Claims under at-need and preneed funeral contracts.

d. CLASS 4. Claims of general creditors.

e. CLASS 5. Claims of the federal or any state or local government. Claims, including those of a governmental body for a penalty or forfeiture, are allowed in this class only to

the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs incurred. The remainder of such claims shall be postponed to the class of claims under paragraph "g".

f. CLASS 6. Claims filed late or any other claims other than claims under paragraph "g".

g. CLASS 7. The claims of shareholders or other owners.

19. LIQUIDATOR'S RECOMMENDATIONS TO THE COURT.

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

b. The court may approve, disapprove, or modify the report on claims by the liquidator. Reports not modified by the court within sixty days following submission by the liquidator shall be treated by the liquidator as allowed claims, subject to later modification or to rulings made by the court pursuant to subsection 15. A claim under a policy of insurance shall not be allowed for an amount in excess of the applicable policy limits.

20. DISTRIBUTION OF ASSETS. Under the direction of the court, the liquidator shall pay distributions in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third-party claims. Distribution of assets in kind may be made at valuations set by agreement between the liquidator and the creditor and approved by the court.

21. UNCLAIMED AND WITHHELD FUNDS.

a. Unclaimed funds subject to distribution remaining in the liquidator's hands when the liquidator is ready to apply to the court for discharge, including the amount distributable to a creditor, owner, or other person who is unknown or cannot be found, shall be deposited with the treasurer of state, and shall be paid without interest, except as provided in subsection 18, to the person entitled or the person's legal representative upon proof satisfactory to the treasurer of state of the right to the funds. An amount on deposit not claimed within six years from the discharge of the liquidator is deemed to have been abandoned and shall become the property of the state without formal escheat proceedings and be transferred to the insurance division regulatory fund.

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

c. Notwithstanding any other provision of this chapter, funds as identified in paragraph "a", with the approval of the court, shall be made available to the commissioner for use in the detection and prevention of future insolvencies. The commissioner shall hold these funds in the insurance division regulatory fund and shall pay without interest, except as provided in subsection 18, to the person entitled to the funds or the person's legal representative upon proof satisfactory to the commissioner of the person's right to the funds. The funds shall be held by the commissioner for a period of two years at which time the rights and duties to the unclaimed funds shall vest in the commissioner.

22. TERMINATION OF PROCEEDINGS.

a. When all assets justifying the expense of collection and distribution have been collected and distributed under this chapter, the liquidator shall apply to the court for discharge. The court may grant the discharge and make any other orders, including an order to transfer remaining funds that are uneconomical to distribute, as appropriate.

b. Any other person may apply to the court at any time for an order under paragraph "a". If the application is denied, the applicant shall pay the costs and expenses of the liquidator in resisting the application, including a reasonable attorney's fee.

23. REOPENING LIQUIDATION. At any time after the liquidation proceeding has been terminated and the liquidator discharged, the commissioner or other interested party may petition the court to reopen the proceedings for good cause including the discovery of additional assets. The court shall order the proceeding reopened if it is satisfied that there is justification for the reopening.

24. DISPOSITION OF RECORDS DURING AND AFTER TERMINATION OF LIQUIDATION. If it appears to the commissioner that the records of a funeral establishment in process of liquidation or completely liquidated are no longer useful, the commissioner may recommend to the court and the court shall direct what records shall be retained for future reference and what records shall be destroyed.

25. EXTERNAL AUDIT OF RECEIVER'S BOOKS. The court may order audits to be made of the books of the commissioner relating to a receivership established under this chapter, and a report of each audit shall be filed with the commissioner and with the court. The books, records, and other documents of the receivership shall be made available to the auditor at any time without notice. The expense of an audit shall be considered a cost of administration of the receivership.

Sec. 11. NEW SECTION. 523A.23 MINIMUM FIDELITY BOND OR INSURANCE POLICY.

The seller, in connection with an offer or sale of an agreement referred to in section 523A.1, shall obtain and

maintain at all times a fidelity bond or insurance policy covering losses resulting from dishonest or fraudulent acts committed by employees of the seller which cause a loss, theft, or misappropriation of cash, property, or a negotiable instrument submitted to the seller pursuant to the agreement. The fidelity bond or insurance policy must be maintained in an amount not less than fifty thousand dollars.

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

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. The commissioner may adopt rules to prohibit the commingling of trust funds with other funds of the seller.

Sec. 13. Section 523E.1, Code 1995, is amended by adding the following new subsection:

NEW SUBSECTION. 5. An agreement may be funded by insurance proceeds derived from a policy issued by an insurance company authorized to conduct business in this state. Such funding may be in lieu of a trust fund if the payments are made directly to the insurance company by the purchaser of the agreement.

Sec. 14. Section 523E.2, subsection 1, paragraphs a and c, Code 1995, are amended to read as follows:

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~~ of such bank, savings and loan association, or credit union, 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.

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.~~ The balance of each trust account as of the end of the immediately preceding calendar year, identified by the name of the purchaser or the beneficiary, and a report of any amounts withdrawn from trust and the reason for each withdrawal.

(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.~~ A description of insurance funding outstanding at the end of the immediately preceding calendar year, identified by the name of the purchaser or the beneficiary, and a report of any insurance payments received by the seller.

~~(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)~~ (4) ~~The~~ A 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~~, including the location of the merchandise, serial numbers or warehouse receipt numbers, identified by the name of the purchaser or the beneficiary, and 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.~~

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

(6) Other information reasonably required by the commissioner for purposes of administration of 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.

Sec. 15. Section 523E.2, subsection 6, Code 1995, is amended to read as follows:

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. 16. Section 523E.8, subsection 1, paragraphs e, h, and j, Code 1995, are amended to read as follows:

e. State clearly whether the agreement is a guaranteed price contract or a nonguaranteed price contract. Each nonguaranteed price contract shall contain in twelve point bold type, an explanation of the consequences in substantially the following language:

THE PRICES OF MERCHANDISE AND SERVICES UNDER THIS CONTRACT ARE SUBJECT TO CHANGE IN THE FUTURE. ANY FUNDS PAID UNDER THIS CONTRACT ARE ONLY A DEPOSIT TO BE APPLIED, TOGETHER WITH ACCRUED INCOME, TOWARD THE FINAL COSTS OF THE MERCHANDISE OR SERVICES CONTRACTED FOR. ADDITIONAL CHARGES MAY BE REQUIRED.

h. Explain the disposition of the ~~interest and disclose what fees and expenses may be charged if incurred~~ income generated from investments, include a statement of fees, expenses, and taxes which may be deducted, and include a statement of the buyer's responsibility for income taxes owed on the income, if applicable.

j. ~~State the name and address of the commissioner.~~ Include an explanation of regulatory oversight by the insurance division in twelve point bold type, in substantially the following language:

THIS CONTRACT MUST BE REPORTED TO THE IOWA INSURANCE DIVISION BY THE FIRST DAY OF MARCH OF THE FOLLOWING YEAR. YOU MAY CALL THE INSURANCE DIVISION AT (INSERT TELEPHONE NUMBER) TO CONFIRM THAT YOUR CONTRACT HAS BEEN REPORTED. WRITTEN INQUIRIES OR COMPLAINTS SHOULD BE MAILED TO THE FOLLOWING ADDRESS: IOWA SECURITIES BUREAU (INSERT ADDRESS).

Sec. 17. Section 523E.8, subsection 1, Code 1995, is amended by adding the following new subsection:

NEW SUBSECTION. 1A. The commissioner may adopt rules establishing disclosure and format requirements to promote consumers' understanding of the cemetery merchandise purchased and the available funding mechanisms under an agreement for cemetery merchandise under this chapter.

Sec. 18. Section 523E.8, Code 1995, is amended by adding the following new subsection:

NEW SUBSECTION. 3. The seller shall disclose at the time an application is made by an individual and prior to accepting the applicant's initial premium or deposit for a preneed funeral contract or prearrangement subject to section 523E.1 which is funded by a life insurance policy, the following information:

a. That a life insurance policy is involved or being used to fund an agreement.

b. The nature of the relationship among the soliciting agent or agents, the provider of the funeral or cemetery merchandise or services, the administrator, and any other person.

c. The relationship of the life insurance policy to the funding of the prearrangement and the nature and existence of any guarantees relating to the prearrangement.

d. The impact on the prearrangement of the following:

(1) Changes in the life insurance policy including, but not limited to, changes in the assignment, beneficiary designation, or use of proceeds.

(2) Any penalties to be incurred by the policyholder as a result of the failure to make premium payments.

(3) Penalties to be incurred or cash to be received as a result of the cancellation or surrender of the life insurance policy.

e. A list of merchandise and services which are applied or contracted for in the prearrangement and all relevant information concerning the price of the merchandise and services, including an indication that the purchase price is either guaranteed at the time of purchase or to be determined at the time of need.

f. All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the proceeds of the life insurance policy and the amount actually needed to fund the agreement.

g. Any penalties or restrictions, including but not limited to, geographic restrictions or the inability of the provider to perform, on the delivery of merchandise, services, or the prearrangement guarantee.

h. That a sales commission or other form of compensation is being paid and, if so, the identity of the individuals or entities to whom it is paid.

Sec. 19. Section 523E.20, Code 1995, is amended to read as follows:

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~~ The commissioner shall allocate annually from the fees paid pursuant to section 523E.2, ~~one dollar~~ two dollars 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 general fund of the state. In addition, on May 1 of ~~1994~~ 1996 and ~~1995~~ 1997, the commissioner, to the extent necessary to fund consumer education, audits, investigations, payments under contract with licensed establishments to provide funeral and cemetery merchandise or services in the event of statutory noncompliance by the initial seller, liquidations, and receiverships, shall assess establishment permit holders ~~five~~ two dollars for each agreement reported on the establishment permit holder's annual report of sales executed during the preceding year, which shall be deposited in the insurance division regulatory fund. ~~However, 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 general fund of the state.~~ The moneys in the regulatory fund shall be retained in the fund. The moneys are appropriated and, subject to authorization by the commissioner, may be used to pay auditors, audit expenses, 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. 20. NEW SECTION. 523E.21 LICENSE REVOCATION -- RECOMMENDATION BY COMMISSIONER TO BOARD OF MORTUARY SCIENCE EXAMINERS.

Upon a determination by the commissioner that grounds exist for an administrative license revocation action by the board of mortuary science examiners under chapter 156, the commissioner may forward to the board the grounds for the determination, including all evidence in the possession of the commissioner, so that the board may proceed with the matter as deemed appropriate.

Sec. 21. NEW SECTION. 523E.22 MINIMUM FIDELITY BOND OR INSURANCE POLICY.

The seller, in connection with an offer or sale of an agreement referred to in section 523E.1, shall obtain and maintain at all times a fidelity bond or insurance policy covering losses resulting from dishonest or fraudulent acts committed by employees of the seller which cause a loss, theft, or misappropriation of cash, property, or a negotiable instrument submitted to the seller pursuant to the agreement. The fidelity bond or insurance policy must be maintained in an amount not less than fifty thousand dollars.

Sec. 22. NEW SECTION. 523J.1 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. "Abandoned cemetery" means any cemetery where there has been a failure to cut grass or weeds or care for graves, grave markers, walls, fences, driveways, and buildings, or for which proper records have not been maintained.

2. "Cemetery" means a cemetery, mausoleum, columbarium, or other space held for the purpose of burial, entombment, or inurnment of human remains, and which is subject to this chapter.

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

4. "Interment rights" means a right of use conveyed by contract or property ownership to inter human rights in a columbarium, grave, mausoleum, lawn crypt, or undeveloped space.

5. "Perpetual care cemetery" means a cemetery which has established a perpetual care fund for the maintenance, repair, and care of all interment spaces subject to perpetual care within the cemetery in compliance with section 566A.3 or 566A.4.

Sec. 23. NEW SECTION. 523J.2 CEMETERIES COMMENCING BUSINESS AFTER JULY 1, 1995.

A cemetery which is organized or commences business in this state on or after July 1, 1995, shall operate as a perpetual care cemetery and is subject to this chapter and other applicable law.

Sec. 24. NEW SECTION. 523J.3 PERMIT REQUIREMENTS.

1. A perpetual care cemetery shall not sell or offer interment rights to the public without a permit as provided for in this section.

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 year following the date of issuance.

Sec. 25. NEW SECTION. 523J.4 DENIAL, SUSPENSION, OR REVOCATION OF PERMIT.

The commissioner, pursuant to chapter 17A, may deny, suspend, or revoke any permit to operate a cemetery if the commissioner finds any of the following:

1. The cemetery has committed a fraudulent practice, or the cemetery's trust assets, warehoused merchandise, surety bonds, or insurance funding are in material noncompliance with chapter 523A or 523E or section 566A.3 or 566A.4.

2. An owner or officer of the cemetery has been convicted of a felony related to the sale of interment rights or the sale of funeral services, funeral merchandise, or cemetery merchandise, as defined in section 523A.5, subsection 2, paragraphs "a" and "b", and section 523E.5, subsection 2, paragraph "a".

Sec. 26. NEW SECTION. 523J.5 LIQUIDATION.

1. GROUNDS FOR LIQUIDATION. The commissioner may petition the district court for an order directing the commissioner to liquidate a perpetual care cemetery on any of the following grounds:

a. The cemetery's trust fund is in material noncompliance with the requirements of section 566A.3 or 566A.4 and is insolvent.

b. The cemetery's trust fund is in material noncompliance with the requirements of section 566A.3 or 566A.4 and the condition of the cemetery is such that the further transaction of business would be hazardous, financially or otherwise, to its customers or the public.

c. The cemetery has been abandoned.

2. LIQUIDATION ORDER.

a. An order to liquidate the business of a perpetual care cemetery shall appoint the commissioner as liquidator and shall direct the liquidator to immediately take possession of the assets of the cemetery and to administer them under the general supervision of the court. The liquidator is vested with the title to the property, contracts, and rights of action and the books and records of the cemetery ordered

liquidated, wherever located, as of the entry of the final order of liquidation. The filing or recording of the order with the clerk of court and the recorder of deeds of the county in which its principal office or place of business is located, or, in the case of real estate with the recorder of deeds of the county where the property is located, is notice as a deed, bill of sale, or other evidence of title duly filed or recorded with the recorder of deeds.

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

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

d. An order issued under this section shall require accounting to the court by the liquidator. Accountings, at a minimum, must include all funds received or disbursed by the liquidator during the current period. An accounting shall be filed within one year of the liquidation order and at such other times as the court may require.

e. Within five days after the initiation of an appeal of an order of liquidation, which order has not been stayed, the commissioner shall present for the court's approval a plan for the continued performance of the cemetery's obligations during the pendency of an appeal. The plan shall provide for the continued performance of interment rights contracts in the normal course of events, notwithstanding the grounds alleged in support of the order of liquidation including the ground of insolvency. If the defendant cemetery's financial condition, in the judgment of the commissioner, will not support the full performance of all obligations during the appeal pendency period, the plan may prefer the claims of certain customers

and claimants over creditors and interested parties as well as other customers and claimants, as the commissioner finds to be fair and equitable considering the relative circumstances of such customers and claimants. The court shall examine the plan submitted by the commissioner and if it finds the plan to be in the best interests of the parties, the court shall approve the plan. An action shall not lie against the commissioner or any of the commissioner's deputies, agents, clerks, assistants, or attorneys by any party based on preference in an appeal pendency plan approved by the court.

3. POWERS OF LIQUIDATOR.

a. The liquidator may do any of the following:

(1) Appoint a special deputy to act for the liquidator under this chapter, and determine the special deputy's reasonable compensation. The special deputy shall have all the powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator.

(2) Hire employees and agents, legal counsel, accountants, appraisers, consultants, and other personnel as the commissioner may deem necessary to assist in the liquidation.

(3) With the approval of the court fix reasonable compensation of employees and agents, legal counsel, accountants, appraisers and consultants.

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

(5) Hold hearings, subpoena witnesses, and compel their attendance, administer oaths, examine a person under oath, and compel a person to subscribe to the person's testimony after

it has been correctly reduced to writing, and in connection to the proceedings require the production of books, papers, records, or other documents which the liquidator deems relevant to the inquiry.

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

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

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

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

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

(8) Use assets of the cemetery under a liquidation order to transfer obligations of preneed funeral contracts to a solvent cemetery, if the transfer can be accomplished without prejudice to applicable priorities under subsection 18.

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

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

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

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

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

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

(15) Deposit in one or more banks in this state sums as are required for meeting current administration expenses and distributions.

(16) Unless the court orders otherwise, invest funds not currently needed.

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

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

(19) Exercise and enforce the rights, remedies, and powers of a creditor, customer, or owner, including the power to avoid transfer or lien that may be given by the general law and that is not included within subsections 7 through 9.

(20) Intervene in a proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and act as the receiver or trustee whenever the appointment is offered.

(21) Exercise powers now held or later conferred upon receivers by the laws of this state which are not inconsistent with this chapter.

b. This subsection does not limit the liquidator or exclude the liquidator from exercising a power not listed in paragraph "a" that may be necessary or appropriate to accomplish the purposes of this chapter.

4. NOTICE TO CREDITORS AND OTHERS.

a. Unless the court otherwise directs, the liquidator shall give notice of the liquidation order as soon as possible by doing all of the following:

(1) By first class mail to all persons known or reasonably expected to have claims against the cemetery by mailing a notice to their last known address as indicated by the records of the cemetery.

(2) By publication in a newspaper of general circulation in the county in which the cemetery has its principal place of business and in other locations as the liquidator deems appropriate.

b. Notice to potential claimants under paragraph "a" shall require claimants to file with the liquidator their claims together with proper proofs of the claim under subsection 13 on or before a date the liquidator shall specify in the notice. Claimants shall keep the liquidator informed of their changes of address, if any.

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

5. ACTIONS BY AND AGAINST LIQUIDATOR.

a. After the issuance of an order appointing a liquidator of a cemetery, an action at law or equity shall not be brought against the cemetery in this state or elsewhere, and existing actions shall not be maintained or further presented after issuance of the order. Whenever in the liquidator's judgment, protection of the estate of the cemetery necessitates intervention in an action against the cemetery that is pending

outside this state, the liquidator may intervene in the action. The liquidator may defend, at the expense of the estate of the cemetery, an action in which the liquidator intervenes under this section.

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

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

6. COLLECTION AND LIST OF ASSETS.

a. As soon as practicable after the liquidation order but not later than one hundred twenty days after such order, the liquidator shall prepare in duplicate a list of the cemetery's assets. The list shall be amended or supplemented as the liquidator may determine. One copy shall be filed in the

office of the clerk of court and one copy shall be retained for the liquidator's files. Amendments and supplements shall be similarly filed.

b. The liquidator shall reduce the assets to a degree of liquidity that is consistent with the effective execution of the liquidation.

c. A submission to the court for distribution of assets in accordance with subsection 11 fulfills the requirements of paragraph "a".

7. FRAUDULENT TRANSFERS PRIOR TO PETITION.

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

b. (1) A transfer of property other than real property is made when it becomes perfected so that a subsequent lien obtainable by legal or equitable proceedings on a simple contract could not become superior to the rights of the transferee under subsection 9, paragraph "c".

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

(3) A transfer which creates an equitable lien is not perfected if there are available means by which a legal lien could be created.

(4) A transfer not perfected prior to the filing of a petition for liquidation is deemed to be made immediately before the filing of the successful petition.

(5) This subsection applies whether or not there are or were creditors who might have obtained a lien or persons who might have become bona fide purchasers.

8. FRAUDULENT TRANSFER AFTER PETITION.

a. After a petition for liquidation has been filed a transfer of real property of the cemetery made to a person acting in good faith is valid against the receiver if made for a present fair equivalent value. If the transfer was not made for a present fair equivalent value, then the transfer is valid to the extent of the present consideration actually paid for which amount the transferee shall have a lien on the property transferred. The commencement of a proceeding in liquidation is constructive notice upon the recording of a copy of the petition for or order of liquidation with the recorder of deeds in the county where any real property in question is located. The exercise by a court of the United States or a state or jurisdiction to authorize a judicial sale of real property of the cemetery within a county in a state shall not be impaired by the pendency of a proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.

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

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

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

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

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

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

d. This chapter does not impair the negotiability of currency or negotiable instruments.

9. VOIDABLE PREFERENCES AND LIENS.

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

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

(a) The cemetery was insolvent at the time of the transfer.

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

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

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

(3) Where the preference is voidable, the liquidator may recover the property. If the property has been converted, the liquidator may recover its value from a person who has received or converted the property. However, if a bona fide purchaser or lienor has given less than fair equivalent value, the purchaser or lienor shall have a lien upon the property to the extent of the consideration actually given. Where a preference by way of lien or security interest is voidable, the court may on due notice order the lien or security interest to be preserved for the benefit of the estate, in which event the lien or title shall pass to the liquidator.

b. (1) A transfer of property other than real property is made when it becomes perfected so that a subsequent lien obtainable by legal or equitable proceedings on a simple contract could not become superior to the rights of the transferee.

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

(3) A transfer which creates an equitable lien is not perfected if there are available means by which a legal lien could be created.

(4) A transfer not perfected prior to the filing of a petition for liquidation is deemed to be made immediately before the filing of the successful petition.

(5) This subsection applies whether or not there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers.

c. (1) A lien obtainable by legal or equitable proceedings upon a simple contract is one arising in the ordinary course of the proceedings upon the entry or docketing of a judgment or decree, or upon attachment, garnishment, execution, or like process, whether before, upon, or after judgment or decree and whether before or upon levy. It does not include liens which under applicable law are given a special priority over other liens which are prior in time.

(2) A lien obtainable by legal or equitable proceedings could become superior to the rights of a transferee, or a purchaser could obtain rights superior to the rights of a transferee within the meaning of paragraph "b", if such consequences would follow only from the lien or purchase itself, or from the lien or purchase followed by a step wholly within the control of the respective lienholder or purchaser, with or without the aid of ministerial action by public officials. However, a lien could not become superior and a purchase could not create superior rights for the purpose of paragraph "b" through an act subsequent to the obtaining of a lien or subsequent to a purchase which requires the agreement or concurrence of any third party or which requires further judicial action or ruling.

d. A transfer of property for or on account of a new and contemporaneous consideration, which is under paragraph "b" made or suffered after the transfer because of delay in perfecting it, does not become a transfer for or on account of an antecedent debt if any acts required by the applicable law to be performed in order to perfect the transfer as against liens or a bona fide purchaser's rights are performed within twenty-one days or any period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if a

loan is actually made, or a transfer which becomes security for a future loan, shall have the same effect as a transfer for or on account of a new and contemporaneous consideration.

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

f. The property affected by a lien voidable under paragraphs "a" and "e" is discharged from the lien. The property and any of the indemnifying property transferred to or for the benefit of a surety shall pass to the liquidator. However, the court may on due notice order a lien to be preserved for the benefit of the estate and the court may direct that the conveyance be executed to evidence the title of the liquidator.

g. The court shall have summary jurisdiction of a proceeding by the liquidator to hear and determine the rights of the parties under this section. Reasonable notice of hearing in the proceeding shall be given to all parties in interest, including the obligee of a releasing bond or other like obligation. Where an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, upon application of any party in interest, the court shall in the same proceeding ascertain the value of the property or lien. If the value is less than the amount for which the property is indemnified or less than the amount of the lien, the transferee or lienholder may elect to retain the property or lien upon payment of its value, as ascertained by the court, to the liquidator within the time as fixed by the court.

h. The liability of a surety under a releasing bond or other like obligation is discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and avoided by the liquidator. Where the

property is retained under paragraph "g", the liability of the surety is discharged to the extent of the amount paid to the liquidator.

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

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

k. (1) An officer, manager, employee, shareholder, subscriber, attorney, or any other person acting on behalf of the cemetery who knowingly participates in giving any preference when the person has reasonable cause to believe the cemetery is or is about to become insolvent at the time of the preference is personally liable to the liquidator for the amount of the preference. There is an inference that reasonable cause exists if the transfer was made within four months before the date of filing of this successful petition for liquidation.

(2) A person receiving property from the cemetery or the benefit of the property of the cemetery as a preference

voidable under paragraph "a" is personally liable for the property and shall account to the liquidator.

(3) This subsection shall not prejudice any other claim by the liquidator against any person.

10. CLAIMS OF HOLDER OF VOID OR VOIDABLE RIGHTS.

a. A claim of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment, or encumbrance, voidable under this chapter shall not be allowed unless the creditor surrenders the preference, lien, conveyance, transfer, assignment, or encumbrance. If the avoidance is effected by a proceeding in which a final judgment has been entered, the claim shall not be allowed unless the money is paid or the property is delivered to the liquidator within thirty days from the date of the entering of the final judgment. However, the court having jurisdiction over the liquidation may allow further time if there is an appeal or other continuation of the proceeding.

b. A claim allowable under paragraph "a" by reason of a voluntary or involuntary avoidance, preference, lien, conveyance, transfer, assignment, or encumbrance may be filed as an excused late filing under subsection 12, if filed within thirty days from the date of the avoidance or within the further time allowed by the court under paragraph "a".

11. LIQUIDATOR'S PROPOSAL TO DISTRIBUTE ASSETS.

a. From time to time as assets become available, the liquidator shall make application to the court for approval of a proposal to disburse assets out of marshaled assets.

b. The proposal shall at least include provisions for all of the following:

(1) Reserving amounts for the payment of all the following:

(a) Expenses of administration.

(b) To the extent of the value of the security held, the payment of claims of secured creditors.

(c) Claims falling within the priorities established in subsection 18, paragraphs "a" and "b".

(2) Disbursement of the assets marshaled to date and subsequent disbursement of assets as they become available.

c. Action on the application may be taken by the court provided that the liquidator's proposal complies with paragraph "b".

12. FILING OF CLAIMS.

a. Proof of all claims shall be filed with the liquidator in the form required by subsection 13 on or before the last day for filing specified in the notice required under subsection 4.

b. The liquidator may permit a claimant making a late filing to share in distributions, whether past or future, as if the claimant were not late, to the extent that the payment will not prejudice the orderly administration of the liquidation under any of the following circumstances:

(1) The existence of the claim was not known to the claimant and that the claimant filed the claim as promptly as reasonably possible after learning of it.

(2) A transfer to a creditor was avoided under subsections 7 through 9, or was voluntarily surrendered under subsection 10, and that the filing satisfies the conditions of subsection 10.

(3) The valuation under subsection 17 of security held by a secured creditor shows a deficiency, which is filed within thirty days after the valuation.

c. The liquidator may consider any claim filed late and permit the claimant to receive distributions which are subsequently declared on any claims of the same or lower priority if the payment does not prejudice the orderly administration of the liquidation. The late-filing claimant shall receive at each distribution the same percentage of the amount allowed on the claim as is then being paid to claimants of any lower priority. This shall continue until the claim has been paid in full.

13. PROOF OF CLAIM.

a. Proof of claim shall consist of a statement signed by the claimant that includes all of the following that are applicable:

(1) The particulars of the claim including the consideration given for it.

(2) The identity and amount of the security on the claim.

(3) The payments, if any, made on the debt.

(4) A statement that the sum claimed is justly owing and that there is no setoff, counterclaim, or defense to the claim.

(5) Any right of priority of payment or other specific right asserted by the claimant.

(6) A copy of the written instrument which is the foundation of the claim.

(7) The name and address of the claimant and the attorney who represents the claimant, if any.

b. A claim need not be considered or allowed if it does not contain all the information identified in paragraph "a" which is applicable. The liquidator may require that a prescribed form be used and may require that other information and documents be included.

c. At any time the liquidator may request the claimant to present information or evidence supplementary to that required under paragraph "a" and may take testimony under oath, require production of affidavits or depositions, or otherwise obtain additional information or evidence.

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

14. SPECIAL CLAIMS.

a. A claim may be allowed even if contingent, if it is filed pursuant to subsection 12. The claim may be allowed and the claimant may participate in all distributions declared after it is filed to the extent that it does not prejudice the orderly administration of the liquidation.

b. Claims that are due except for the passage of time shall be treated as absolute claims are treated. However, the claims may be discounted at the legal rate of interest.

c. Claims made under employment contracts by directors, principal officers, or persons in fact performing similar functions or having similar powers are limited to payment for services rendered prior to the issuance of an order of liquidation under subsection 2.

15. DISPUTED CLAIMS.

a. If a claim is denied in whole or in part by the liquidator, written notice of the determination shall be given to the claimant or the claimant's attorney by first class mail at the address shown in the proof of claim. Within sixty days from the mailing of the notice, the claimant may file objections with the liquidator. Unless a filing is made, the claimant shall not further object to the determination.

b. If objections are filed with the liquidator and the liquidator does not alter the denial of the claim as a result of the objections, the liquidator shall ask the court for a hearing as soon as practicable and give notice of the hearing by first class mail to the claimant or the claimant's attorney and to any other persons directly affected. The notice shall be given not less than ten nor more than thirty days before the date of the hearing. The matter shall be heard by the court or by a court-appointed referee. The referee shall submit findings of fact along with a recommendation.

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

paid on the claim from the cemetery's estate to the creditor equal the amount of the entire claim of the creditor. An excess received by the creditor shall be held by the creditor in trust for the other person.

17. SECURED CREDITOR'S CLAIMS.

a. The value of security held by a secured creditor shall be determined in one of the following ways, as the court may direct:

(1) By converting the security into money according to the terms of the agreement pursuant to which the security was delivered to the creditors.

(2) By agreement, arbitration, compromise, or litigation between the creditor and the liquidator.

b. The determination shall be under the supervision and control of the court with due regard for the recommendation of the liquidator. The amount determined shall be credited upon the secured claim. A deficiency shall be treated as an unsecured claim. If the claimant surrenders the security to the liquidator, the entire claim shall be allowed as if unsecured.

18. PRIORITY OF DISTRIBUTION.

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

a. CLASS 1. The costs and expenses of administration, including but not limited to the following:

(1) The actual and necessary costs of preserving or recovering the assets of the cemetery.

(2) Compensation for all authorized services rendered in the liquidation.

(3) Necessary filing fees.

(4) The fees and mileage payable to witnesses.

(5) Authorized reasonable attorney's fees and other professional services rendered in the liquidation.

b. CLASS 2. Reasonable compensation to employees for services performed to the extent that they do not exceed two months of monetary compensation and represent payment for services performed within one year before the filing of the petition for liquidation. Officers and directors are not entitled to the benefit of this priority. The priority is in lieu of other similar priority which may be authorized by law as to wages or compensation of employees.

c. CLASS 3. Claims under interment rights contracts.

d. CLASS 4. Claims of general creditors.

e. CLASS 5. Claims of the federal or any state or local government. Claims, including those of a governmental body for a penalty or forfeiture, are allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs incurred. The remainder of such claims shall be postponed to the class of claims under paragraph "g".

f. CLASS 6. Claims filed late or any other claims other than claims under paragraph "g".

g. CLASS 7. The claims of shareholders or other owners.

19. LIQUIDATOR'S RECOMMENDATIONS TO THE COURT.

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

b. The court may approve, disapprove, or modify the report on claims by the liquidator. Reports not modified by the court within sixty days following submission by the liquidator shall be treated by the liquidator as allowed claims, subject to later modification or to rulings made by the court pursuant to subsection 15. A claim under a policy of insurance shall not be allowed for an amount in excess of the applicable policy limits.

20. DISTRIBUTION OF ASSETS. Under the direction of the court, the liquidator shall pay distributions in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third-party claims. Distribution of assets in kind may be made at valuations set by agreement between the liquidator and the creditor and approved by the court.

21. UNCLAIMED AND WITHHELD FUNDS.

a. Unclaimed funds subject to distribution remaining in the liquidator's hands when the liquidator is ready to apply to the court for discharge, including the amount distributable to a creditor, owner, or other person who is unknown or cannot be found, shall be deposited with the treasurer of state, and shall be paid without interest, except as provided in subsection 18, to the person entitled or the person's legal representative upon proof satisfactory to the treasurer of state of the right to the funds. An amount on deposit not claimed within six years from the discharge of the liquidator is deemed to have been abandoned and shall become the property of the state without formal escheat proceedings and be transferred to the insurance division regulatory fund.

b. Funds withheld under subsection 14 and not distributed shall upon discharge of the liquidator be deposited with the treasurer of state and paid pursuant to subsection 18. Sums remaining which under subsection 18 would revert to the undistributed assets of the cemetery shall be transferred to the insurance division regulatory fund and become the property

of the state as provided under paragraph "a", unless the commissioner in the commissioner's discretion petitions the court to reopen the liquidation pursuant to subsection 23.

c. Notwithstanding any other provision of this chapter, funds as identified in paragraph "a", with the approval of the court, shall be made available to the commissioner for use in the detection and prevention of future insolvencies. The commissioner shall hold these funds in the insurance division regulatory fund and shall pay without interest, except as provided in subsection 18, to the person entitled to the funds or the person's legal representative upon proof satisfactory to the commissioner of the person's right to the funds. The funds shall be held by the commissioner for a period of two years at which time the rights and duties to the unclaimed funds shall vest in the commissioner.

22. TERMINATION OF PROCEEDINGS.

a. When all assets justifying the expense of collection and distribution have been collected and distributed under this chapter, the liquidator shall apply to the court for discharge. The court may grant the discharge and make any other orders, including an order to transfer remaining funds that are uneconomical to distribute, as appropriate.

b. Any other person may apply to the court at any time for an order under paragraph "a". If the application is denied, the applicant shall pay the costs and expenses of the liquidator in resisting the application, including a reasonable attorney's fee.

23. REOPENING LIQUIDATION. At any time after the liquidation proceeding has been terminated and the liquidator discharged, the commissioner or other interested party may petition the court to reopen the proceedings for good cause including the discovery of additional assets. The court shall order the proceeding reopened if it is satisfied that there is justification for the reopening.

24. DISPOSITION OF RECORDS DURING AND AFTER TERMINATION OF LIQUIDATION. If it appears to the commissioner that the records of a cemetery in process of liquidation or completely

liquidated are no longer useful, the commissioner may recommend to the court and the court shall direct what records shall be retained for future reference and what records shall be destroyed.

25. EXTERNAL AUDIT OF RECEIVER'S BOOKS. The court may order audits to be made of the books of the commissioner relating to a receivership established under this chapter, and a report of each audit shall be filed with the commissioner and with the court. The books, records, and other documents of the receivership shall be made available to the auditor at any time without notice. The expense of an audit shall be considered a cost of administration of the receivership.

Sec. 27. NEW SECTION. 523J.6 POWERS AND DUTIES OF PERPETUAL CARE CEMETERIES.

1. Within the boundaries of the cemetery lands that the cemetery owns, a cemetery may perform the following functions:

a. The exclusive care and maintenance of the cemetery.

b. The exclusive interment, entombment, or inurnment of human remains, including the exclusive right to open, prepare for interment, and close all ground, mausoleum, and urn burials. Each preneed contract for burial rights or services shall disclose, pursuant to the cemetery's bylaws, rules, and regulations, whether opening and closing of the burial space is included in the contract, and, if not, the current prices for opening and closing and a statement that these prices are subject to change. Each cemetery which sells preneed contracts must offer opening and closing as part of a preneed contract.

c. The exclusive initial preneed and at-need sale of interment or burial rights in earth, mausoleum, crypt, niche, or columbarium interment. However, this chapter does not limit the right of a person owning interment or burial rights to sell those rights to third parties subject to transfer of title by the cemetery.

d. The adoption of bylaws regulating the activities conducted within the cemetery's boundaries, provided that a licensed funeral director shall not be denied access by any

cemetery to conduct a funeral for or supervise a disinterment of human remains. The cemetery shall not approve any bylaw which unreasonably restricts competition, or which unreasonably increases the cost to the owner of interment or burial rights in utilizing these rights.

e. The nonexclusive preneed and at-need sale of monuments, memorials, markers, burial vaults, urns, flower vases, floral arrangements, and other similar merchandise for use within the cemetery.

f. The entry into sales or management contracts with other persons. The cemetery shall be responsible for the deposit of all moneys required to be placed in a trust fund.

2. A full disclosure shall be made of all fees required for interment, entombment, or inurnment of human remains.

3. A cemetery may adopt bylaws establishing minimum standards for burial merchandise or the installation of such merchandise.

Sec. 28. NEW SECTION. 523J.7 INVESTIGATIONS.

The commissioner or the attorney general, for the purpose of discovering violations of this chapter, may do any of the following:

1. Investigate the cemetery and examine records as necessary to verify compliance with 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. 29. Section 566A.1, subsection 1, Code 1995, is amended to read as follows:

1. A corporation or other form of organization engaging in the business of the ownership, maintenance, or operation of a cemetery, which provides lots or other interment space for the remains of human bodies is subject to this chapter. However, a church, religious ~~organization, or established fraternal society~~ cemetery is subject only to subsection 2 ~~of this section~~, and sections 566A.2A and 566A.2B. A cemetery with average retail sales equal to or less than five thousand dollars for the previous three calendar years is exempt from section 566A.2D. Political subdivisions of the state which are counties are exempt from this chapter. Political subdivisions of the state other than counties are subject only to sections 566A.1A, 566A.2A, 566A.2B, and 566A.2E.

Sec. 30. NEW SECTION. 566A.1A DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. "Agent" means a person authorized by a cemetery or a cemetery operator to represent the cemetery in dealing with the public.

2. "Cemetery" means a cemetery, mausoleum, columbarium, or other space held for the purpose of burial, entombment, or inurnment of human remains and where such space is offered for sale to the public.

3. "Cemetery operator" means a person who owns, controls, operates, or manages a cemetery, who is responsible for the cemetery's care and maintenance, and who controls the opening and closing of all graves, crypts, and niches.

4. "Columbarium" means a structure or room or other space in a building or structure used or intended to be used for the inurnment or deposit of cremated human remains.

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

6. "Deed" means the assignment or conveyance of interment rights.

7. "Grave" means a piece of land that is used or intended to be used for the underground burial of human remains, other than an underground mausoleum or columbarium space.

8. "Human remains" means the body of a deceased individual that is in any stage of decomposition or has been cremated.

9. "Interment" means the disposition of human remains by earth burial, entombment, or inurnment.

10. "Interment rights" means a right of use conveyed by contract or property ownership to inter human remains in a columbarium, grave, mausoleum, lawn crypt, or undeveloped space.

11. "Lawn crypt" means an outer enclosure, for a casket or similar inner burial container which is permanently installed below ground prior to the time of actual interment. A lawn crypt may permit single or multiple interments in a grave space.

12. "Mausoleum" means a building, structure, or part of a building or structure that is used or intended to be used for the entombment of human remains.

13. "Mausoleum space" means a niche, crypt, or specific place in a mausoleum that contains or is intended to contain human remains.

14. "Niche" means a recess in the wall of a mausoleum or columbarium for the deposit of human remains.

15. "Perpetual care" means maintenance, repair, and care of all interment spaces, features, buildings, roadways, parking lots, water supply, and other existing cemetery structures subject to the provisions of section 566A.3 and includes the general overhead expenses needed to accomplish such maintenance, repair, and care.

16. "Perpetual care cemetery" means a cemetery which has established a perpetual care fund for the maintenance, repair, and care of all interment spaces subject to perpetual care within the cemetery in compliance with section 566A.3.

17. "Religious cemetery" means a cemetery that is owned, operated, or controlled by a recognized church, religious society, association, or denomination.

18. "Sale" means a transfer for consideration of any interest in ownership, title, or right of use.

19. "Undeveloped space" means a mausoleum, columbarium space, or lawn crypt that is not ready for the burial of human remains on the date of the sale of the space.

Sec. 31. NEW SECTION. 566A.2A PERPETUAL CARE CEMETERY REGISTRY.

A perpetual care cemetery shall maintain a registry of individuals who have purchased items subject to the perpetual care requirements of this chapter including the amount deposited in trust for each individual. The registry shall include all transactions entered into on or after July 1, 1995.

Sec. 32. NEW SECTION. 566A.2B INTERMENT RIGHTS AGREEMENT -- REQUIREMENTS -- CONTENTS.

1. An agreement for interment rights under this chapter must be written in clear, understandable language and do all of the following:

a. Identify the seller and purchaser.

b. Identify the salesperson.

c. Specify the interment rights to be provided and the cost of each item.

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

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

f. State clearly whether the agreement is a revocable or irrevocable contract, and, if revocable, which parties have the authority to revoke the agreement.

g. State the amount or percentage of money to be placed in the cemetery's perpetual care and maintenance guarantee fund.

h. Set forth an explanation that the perpetual care and maintenance guarantee fund is an irrevocable trust, that deposits cannot be withdrawn even in the event of cancellation, and that the trust's income shall be used by the cemetery for its maintenance, repair, and care.

i. Set forth an explanation of any fees or expenses that may be charged.

j. Set forth an explanation of whether amounts for perpetual care will be deposited in trust upon payment in full or on an allocable basis as payments are made.

k. Set forth an explanation of whether initial payments on agreements for multiple items of funeral and cemetery merchandise or services, or both, will be allocated first to the purchase of a grave, niche, columbarium space, or mausoleum space. If such an allocation is to be made, the agreement shall provide for the immediate transfer of such interment rights upon payment in full and prominently state that any applicable trust deposits under chapters 523A and 523E will not be made until the cemetery has received payment in full for the interment rights. The transfer of an undeveloped space may be deferred until such space is ready for burial.

l. If the transfer of an undeveloped space will be deferred until the space is ready for burial as permitted in paragraph "l", the agreement shall provide for some form of written acknowledgment upon payment in full, specify a reasonable time period for development of the space, describe what happens in the event of a death prior to development of the space, and provide for the immediate transfer of the interment rights when development of the space is complete.

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

n. State the name and address of the commissioner.

Sec. 33. NEW SECTION. 566A.2D ANNUAL REPORT BY NONPERPETUAL CARE CEMETERIES.

1. A nonperpetual care cemetery shall file a written report with the insurance division within four months following the end of the cemetery's fiscal year. The report shall include all of the following:

a. The name and address of the cemetery.

b. An affidavit that the cemetery is a nonperpetual care cemetery in compliance with section 566A.5.

c. Copies of all sales agreement forms used by the cemetery.

2. The commissioner shall permit the filing of a unified annual report in the event of commonly owned or affiliated cemeteries. A political subdivision subject to this section may commingle perpetual care funds for purposes of investment and administration and may file a single report, if each cemetery is appropriately identified and separate records are maintained for each cemetery.

3. The report shall be made under oath.

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

Sec. 34. NEW SECTION. 566A.2E ANNUAL REPORT BY PERPETUAL CARE CEMETERIES.

1. A perpetual care cemetery shall file a written report as of the end of each fiscal year of the cemetery including the following:

a. The name and address of the cemetery.

b. The name and address of any trustee holding perpetual care and maintenance guarantee fund moneys.

c. The name and address of any depository holding perpetual care and maintenance guarantee fund moneys.

d. An affidavit that the cemetery is a perpetual care cemetery in compliance with section 566A.3.

e. Copies of all sales agreement forms used by the cemetery.

f. The amount of the principal of the cemetery's perpetual care funds at the end of the fiscal year.

g. The number of interments made and the number of deeds issued during the cemetery's preceding fiscal year.

2. The report shall be filed with the insurance division within four months following the end of the cemetery's fiscal year in the form required by the commissioner.

3. The commissioner shall permit the filing of a unified annual report in the event of commonly owned or affiliated cemeteries. A political subdivision subject to this section may commingle perpetual care funds for purposes of investment

and administration and may file a single report, if each cemetery is appropriately identified and separate records are maintained for each cemetery.

4. The commissioner shall establish by rule an audit fee to be filed with the annual report. The audit report fee shall be based on the number of deeds issued by the cemetery during the reporting period. The audit fee shall apply only to perpetual care cemeteries and shall be based on the approximate cost of regulation.

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

Sec. 35. Section 566A.3, Code 1995, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. A perpetual care cemetery may require a contribution to the cemetery's perpetual care guarantee fund for each grave marker, tombstone, monument, or item of ornamental merchandise installed in the cemetery from the purchaser of such merchandise. A cemetery may establish a separate perpetual care fund for this purpose. The contribution, if required by the cemetery, shall be uniformly charged on every installation and shall be set aside and deposited in the perpetual care trust fund. The contributions shall be nonrefundable and shall not be withdrawn from the trust fund once deposited.

Sec. 36. Section 566A.5, Code 1995, is amended by striking the section and inserting in lieu thereof the following:

566A.5 NONPERPETUAL CARE CEMETERIES.

1. Each nonperpetual care cemetery shall post a legible sign in a conspicuous place in the office or offices where sales are conducted, and at or near the entrance of the cemetery or its administration building and readily accessible to the public stating: "This is a nonperpetual care cemetery". The lettering of these signs shall be of a size and style as approved by the commissioner by rule or order so that the signs can be read at a reasonable distance.

2. Each nonperpetual care cemetery shall also have printed or stamped at the head of all of its contracts, deeds, statements, letterheads, and advertising material, the legend: "This is a nonperpetual care cemetery", and shall not sell any lot or interment space in the cemetery unless the purchaser of the lot or interment space is informed that the cemetery is a nonperpetual care cemetery.

3. A nonperpetual care cemetery or cemetery operator or employee or agent of a nonperpetual care cemetery shall not advertise or represent that the cemetery is a perpetual care cemetery or use any similar title, description, or term indicating that the cemetery provides guaranteed or permanent maintenance and care or that the cemetery has a trust fund or endowment fund to pay for the expenses of such care.

Sec. 37. Section 566A.12, Code 1995, is amended by striking the section and inserting in lieu thereof the following:

566A.12 ANNUAL REPORTS AND ADMINISTRATION.

1. CEMETERY REGISTRY. The commissioner shall establish and maintain a public registry of perpetual care cemeteries.

2. INVESTIGATIONS AND AUDITS. The commissioner or the attorney general, for the purpose of discovering violations of this chapter or rules adopted pursuant to this chapter, may do any of the following:

a. Audit any cemetery, for cause or on a random basis, to determine compliance with this chapter. A cemetery shall make available to the commissioner or attorney general the cemetery's deed registry and those books, accounts, records, and files related to the sale of interment rights. Notwithstanding chapter 22, all business records and files acquired by the commissioner or attorney general pursuant to an audit under this subsection are confidential and shall not be made available for inspection or copying unless ordered by a court for good cause shown. If it is determined pursuant to an audit that a material violation of this chapter or rules adopted pursuant to this chapter has occurred, the cost of the audit may be assessed to the cemetery.

b. 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.

c. 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, 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.

3. CEASE AND DESIST ORDERS. If an audit or investigation provides reasonable evidence that a person has violated this chapter, or any rule adopted pursuant to this chapter, the commissioner may issue an order directed at the person to cease and desist from engaging in such act or practice.

4. RECEIVERSHIPS.

a. The commissioner shall notify the attorney general if the commissioner finds that a perpetual care cemetery subject to regulation under this chapter meets one or more of the following grounds for the establishment of a receivership:

(1) Is insolvent.

(2) Has utilized trust funds for personal or business purposes in a manner inconsistent with the requirements of this chapter, and the amount of funds currently held in the trust is less than the amount required by this chapter.

b. 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.

5. INJUNCTIONS. The attorney general may apply to the district court for an injunction to restrain any cemetery subject to this chapter and any agents, employees, trustees, or associates of the cemetery from engaging in conduct or practices deemed a violation of this chapter or rules adopted pursuant to this chapter. Upon proof of any violation of this

chapter described in the petition for injunction, the court may grant the injunction. Failure to obey a court order under this subsection constitutes contempt of court.

Sec. 38. Section 566A.13, Code 1995, is amended to read as follows:

566A.13 VIOLATIONS AND PENALTIES.

A violation of this chapter or rules adopted by the ~~attorney-general~~ 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 a violation of this chapter.

Sec. 39. NEW SECTION. 566A.14 RULES.

The division of insurance may adopt rules pursuant to chapter 17A as necessary and appropriate to administer this chapter.

Sec. 40. NEW SECTION. 566A.15 CEMETERY FUND.

A special revenue fund is created in the state treasury, under the control of the commissioner, to be known as the insurance division cemetery fund. Commencing July 1, 1995, filing fees received pursuant to section 566A.2D and one dollar from the audit fee for each deed reported on the annual report required by section 566A.2E, executed during the preceding fiscal year, shall be deposited in the insurance division cemetery fund by the commissioner. However, if the balance of the fund on July 1 of any year exceeds two hundred thousand dollars, the allocation to the fund shall not be made, and the total sum of the fees paid pursuant to section 566A.2E shall be deposited in the general fund of the state. Notwithstanding section 8.33, moneys in the fund shall not revert to the general fund but shall remain in the cemetery fund. Moneys in the cemetery fund are appropriated to the insurance division and, subject to authorization by the commissioner, may be used to pay the expenses of that office incurred in the administration of the audit, investigative, and enforcement duties and obligations imposed under this chapter, and the expenses of receiverships established pursuant to section 566A.12.

Sec. 41. CONDITION TO ENACTMENT OF CERTAIN PROVISIONS. The section of this Act which amends Code section 566A.12 shall only be implemented if the general assembly makes an appropriation of at least fifty thousand dollars and provides for the employment of one full-time employee devoted to the insurance division for the implementation of this Act.

RON J. CORBETT
Speaker of the House

LEONARD L. BOSWELL
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 486, Seventy-sixth General Assembly.

ELIZABETH ISAACSON
Chief Clerk of the House

Approved May 3, 1995

TERRY E. BRANSTAD
Governor