

Substituted by HF 2498
4-18-96 (P. 1440)

FILED APR 9 1996

SENATE FILE 2466
BY COMMITTEE ON WAYS AND MEANS

WITHDRAWN
4-18-96
(P. 1444)

(SUCCESSOR TO SSB 2356)

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

A BILL FOR

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

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

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WITHDRAWN

S.F. 2466

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

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

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

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

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

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

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

1 renewal fee shall be twenty dollars.

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

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

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

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

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

20 523A.14 INJUNCTIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 electronic format, such as computer diskettes.

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

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

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

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

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

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

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

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

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

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

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

11 523E.14 INJUNCTIONS.

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

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

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

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

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

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

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

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

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

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

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

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EXPLANATION

35 This bill amends provisions relating to the regulatory

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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SENATE FILE 2466

S-5709

1 Amend Senate File 2466 as follows:

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

4 "Section 1. Section 523A.1, Code Supplement 1995,
5 is amended to read as follows:

6 523A.1 TRUST FUND ESTABLISHED -- INSURANCE.

7 1. a. Whenever an agreement is made by any
8 person, firm, or corporation to furnish, upon the
9 future death of a person named or implied in the
10 agreement, funeral services or funeral merchandise, a
11 minimum of eighty percent of all payments made under
12 the agreement shall be and remain trust funds until
13 occurrence of the death of the person for whose
14 benefit the funds were paid, unless the funds are
15 sooner released to the person making the payment by
16 mutual consent of the parties. Payments otherwise
17 subject to this section are not exempt merely because
18 they are held in certificates of deposit. The
19 commissioner may adopt rules to prohibit the
20 commingling of trust funds with other funds of the
21 seller.

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

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

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1 the financial institution.
2 d. This section does not apply to payments for
3 merchandise delivered to the purchaser. Except for
4 caskets and other types of inner burial containers or
5 concrete burial vaults sold after July 1, 1995,
6 delivery includes storage in a warehouse under the
7 control of the seller or any other warehouse or
8 storage facility approved by the commissioner when a
9 receipt of ownership in the name of the purchaser is
10 delivered to the purchaser, the merchandise is insured
11 against loss, the merchandise is protected against
12 damage, title has been transferred to the purchaser,
13 the merchandise is appropriately identified and
14 described in a manner that it can be distinguished
15 from other similar items of merchandise, the method of
16 storage allows for visual audits of the merchandise,
17 and the annual reporting requirements of section
18 523A.2, subsection 1, are satisfied.

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

25 3. Except for payments received by the seller for
26 merchandise delivered to the purchaser pursuant to
27 subsection 1, paragraph "d", and for sellers who have
28 filed a surety bond in lieu of the trust fund
29 requirements, a seller that does not have insurance
30 coverage protecting against the loss of amounts
31 received from consumers that are not placed in trust
32 pursuant to this section shall not do any of the
33 following:

34 a. Commingle trust funds with any other funds of
35 the seller.

36 b. Accept cash payments.

37 c. Accept payments by check or in any other
38 manner, unless such payments are made payable directly
39 to an escrow or trust account maintained at a
40 financial institution.

41 Sec. ____ . Section 523A.2, subsection 1, paragraph
42 c, Code Supplement 1995, is amended by adding the
43 following new subparagraph:

44 NEW SUBPARAGRAPH. (2A) An audited financial
45 statement for the seller's most recent completed
46 fiscal year prepared by an independent accountant or
47 auditor in accordance with generally accepted
48 accounting principles. The financial statement shall
49 include a copy of the seller's balance sheet as of a
50 date within one hundred twenty days of the date of the

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1 filing, a profit and loss statement, and a statement
2 of change in financial position for the most recent
3 fiscal year of the seller."

4 2. Page 4, by inserting after line 23 the
5 following:

6 "Sec. _____. Section 523E.1, Code Supplement 1995,
7 is amended by adding the following new subsection:

8 NEW SUBSECTION. 7. Except for payments received
9 by the seller for merchandise delivered to the
10 purchaser pursuant to subsection 6, and for sellers
11 who have filed a surety bond in lieu of the trust fund
12 requirements, a seller that does not have insurance
13 coverage protecting against the loss of amounts
14 received from consumers that are not placed in trust
15 pursuant to this section shall not do any of the
16 following:

17 a. Commingle trust funds with any other funds of
18 the seller.

19 b. Accept cash payments.

20 c. Accept payments by check or in any other
21 manner, unless such payments are made payable directly
22 to an escrow or trust account maintained at a
23 financial institution.

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

27 NEW SUBPARAGRAPH. (2A) An audited financial
28 statement for the seller's most recent completed
29 fiscal year prepared by an independent accountant or
30 auditor in accordance with generally accepted
31 accounting principles. The financial statement shall
32 include a copy of the seller's balance sheet as of a
33 date within one hundred twenty days of the date of the
34 filing, a profit and loss statement, and a statement
35 of change in financial position for the most recent
36 fiscal year of the seller."

37 3. By renumbering as necessary.

By MIKE CONNOLLY

S-5709 FILED APRIL 10, 1996

SENATE FILE 2466

S-5749

1 Amend Senate File 2466 as follows:

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

4 "Section 1. Section 523A.1, Code Supplement 1995,
5 is amended to read as follows:

6 523A.1 TRUST FUND ESTABLISHED -- INSURANCE.

7 1. a. Whenever an agreement is made by any
8 person, firm, or corporation to furnish, upon the
9 future death of a person named or implied in the
10 agreement, funeral services or funeral merchandise, a
11 minimum of eighty percent of all payments made under
12 the agreement shall be and remain trust funds until
13 occurrence of the death of the person for whose
14 benefit the funds were paid, unless the funds are
15 sooner released to the person making the payment by
16 mutual consent of the parties. Payments otherwise
17 subject to this section are not exempt merely because
18 they are held in certificates of deposit. The
19 commissioner may adopt rules to prohibit the
20 commingling of trust funds with other funds of the
21 seller.

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

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

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1 the financial institution.
2 d. This section does not apply to payments for
3 merchandise delivered to the purchaser. Except for
4 caskets and other types of inner burial containers or
5 concrete burial vaults sold after July 1, 1995,
6 delivery includes storage in a warehouse under the
7 control of the seller or any other warehouse or
8 storage facility approved by the commissioner when a
9 receipt of ownership in the name of the purchaser is
10 delivered to the purchaser, the merchandise is insured
11 against loss, the merchandise is protected against
12 damage, title has been transferred to the purchaser,
13 the merchandise is appropriately identified and
14 described in a manner that it can be distinguished
15 from other similar items of merchandise, the method of
16 storage allows for visual audits of the merchandise,
17 and the annual reporting requirements of section
18 523A.2, subsection 1, are satisfied.

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

25 3. a. A seller shall not do any of the following:

26 (1) Commingle trust funds with any other funds of
27 the seller.

28 (2) Accept cash payments.

29 (3) Accept payments by check or in any other
30 manner, unless such payments are made payable directly
31 to an escrow or trust account maintained at a
32 financial institution.

33 b. Paragraph "a" does not apply to any of the
34 following:

35 (1) Payments received by a seller for merchandise
36 delivered to the purchaser pursuant to subsection 1,
37 paragraph "d".

38 (2) A seller who has filed a surety bond in lieu
39 of the trust fund requirements.

40 (3) A seller who has insurance coverage protecting
41 against the loss of amounts received from consumers
42 that are not placed in trust pursuant to this section.

43 Sec. 2. Section 523A.2, subsection 1, paragraph c,
44 Code Supplement 1995, is amended by adding the
45 following new subparagraph:

46 NEW SUBPARAGRAPH. (2A) A financial statement for
47 the seller's most recent completed fiscal year
48 prepared by an independent accountant or auditor in
49 accordance with generally accepted accounting
50 principles. The financial statement shall include a

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1 copy of the seller's balance sheet as of a date within
 2 one hundred twenty days of the date of the filing, a
 3 profit and loss statement, and a statement of change
 4 in financial position for the most recent fiscal year
 5 of the seller. The statement of change in financial
 6 position shall include a statement of changes in
 7 assets and liabilities related to the sale of
 8 prearranged funeral agreements audited by the
 9 independent accountant or auditor."

10 2. Page 4, by inserting after line 23 the
 11 following:

12 "Sec. 3. Section 523E.1, Code Supplement 1995, is
 13 amended by adding the following new subsection:

14 NEW SUBSECTION. 7. a. A seller shall not do any
 15 of the following:

16 (1) Commingle trust funds with any other funds of
 17 the seller.

18 (2) Accept cash payments.

19 (3) Accept payments by check or in any other
 20 manner, unless such payments are made payable directly
 21 to an escrow or trust account maintained at a
 22 financial institution.

23 b. Paragraph "a" does not apply to any of the
 24 following:

25 (1) Payments received by a seller for merchandise
 26 delivered to the purchaser pursuant to subsection 6.

27 (2) A seller who has filed a surety bond in lieu
 28 of the trust fund requirements.

29 (3) A seller who has insurance coverage protecting
 30 against the loss of amounts received from consumers
 31 that are not placed in trust pursuant to this section.

32 Sec. 4. Section 523E.2, subsection 1, paragraph c,
 33 Code Supplement 1995, is amended by adding the
 34 following new subparagraph:

35 NEW SUBPARAGRAPH. (2A) A financial statement for
 36 the seller's most recent completed fiscal year
 37 prepared by an independent accountant or auditor in
 38 accordance with generally accepted accounting
 39 principles. The financial statement shall include a
 40 copy of the seller's balance sheet as of a date within
 41 one hundred twenty days of the date of the filing, a
 42 profit and loss statement, and a statement of change
 43 in financial position for the most recent fiscal year
 44 of the seller. The statement of change in financial
 45 position shall include a statement of changes in
 46 assets and liabilities related to the sale of
 47 prearranged funeral agreements audited by the
 48 independent accountant or auditor."

49 3. By renumbering as necessary.

By MIKE CONNOLLY

DeLukey
Neuhauser
Iverson, Jr.

SSB. 2356
Ways & Means
Succeeded By
(SF) HF 2466

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
WAYS AND MEANS BILL BY
BY CHAIRPERSON PALMER)

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

A BILL FOR

1 An Act relating to entities and subject matter under the
2 regulatory authority of the division of insurance, including
3 prearranged funeral contracts, cemeteries, residential service
4 contracts, and business opportunities, and establishing fees.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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200002

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

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

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

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

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

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

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

1 renewal fee shall be twenty dollars.

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

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

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

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

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

20 523A.14 INJUNCTIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 electronic format, such as computer diskettes.

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

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

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

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

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

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

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

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

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

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

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

11 523E.14 INJUNCTIONS.

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

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

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

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

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

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

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

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

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

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

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

34 EXPLANATION

35 This bill amends provisions relating to the regulatory

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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