

3/22/95. Way & Means

FILED MAR 20 1995

SENATE FILE **445**  
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 259)  
(COMPANION TO HSB 261)

Passed Senate, Date \_\_\_\_\_ Passed House, 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:

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S.F. 445

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

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

3 Sec. 3. Section 523A.2, subsection 1, paragraphs a and c,  
4 Code 1995, are amended to read as follows:

5 a. All funds held in trust under section 523A.1 shall be  
6 deposited in a state or federally insured bank, savings and  
7 loan association, or credit union authorized to conduct  
8 business in this state, or trust department thereof of such  
9 bank, savings and loan association, or credit union, or in a  
10 trust company authorized to conduct business in this state,  
11 within fifteen days after the close of the month of receipt of  
12 the funds and shall be held as provided in paragraph "g" for  
13 the designated beneficiary until released pursuant to section  
14 523A.1.

15 c. The seller under an agreement referred to in section  
16 523A.1 shall file with the commissioner not later than March 1  
17 of each year a report including the following information:

18 (1) The name and address of the seller and the name and  
19 address of the establishment that will provide the funeral  
20 services or funeral merchandise.

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26 and a report of any amounts withdrawn from trust and the  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

28 ~~The total value of agreements subject to section~~  
29 ~~523A.1 entered into, the total amount paid pursuant to those~~  
30 ~~agreements, and the total amount deposited in trust as~~  
31 ~~required under section 523A.1, during the preceding year.~~ A  
32 description of insurance funding outstanding at the end of the  
33 preceding calendar year, identified by the name of the  
34 purchaser or the beneficiary, and a report of any insurance  
35 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

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

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

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

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

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

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

22 523A.20 INSURANCE DIVISION'S REGULATORY FUND.

23 The insurance division may authorize the creation of a  
24 special revenue fund in the state treasury, to be known as the  
25 insurance division regulatory fund. Commencing July 17, 1997  
26 ~~and annually thereafter, the~~ The commissioner shall allocate  
27 annually from the fees paid pursuant to section 523A.2, ~~one~~  
28 ~~dollar~~ two dollars for each agreement reported on an  
29 establishment permit holder's annual report for deposit to the  
30 regulatory fund. The remainder of the fees collected pursuant  
31 to section 523A.2 shall be deposited into the general fund of  
32 the state. ~~However, if the balance of the regulatory fund on~~  
33 ~~that July 1 exceeds two hundred thousand dollars, the~~  
34 ~~allocation to the regulatory fund shall not be made and the~~  
35 ~~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. GROUND 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 subsection does not limit the liquidator or  
6 exclude the liquidator from exercising a power not listed in  
7 paragraph "a" that may be necessary or appropriate to  
8 accomplish the 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 17, 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 remains 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 subsection does not limit the liquidator or  
30 exclude the liquidator from exercising a power not listed in  
31 paragraph "a" that may be necessary or appropriate to  
32 accomplish the 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 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.

1        This bill may create a state mandate as defined in chapter  
2 25B.

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Hansen  
Deluhery  
Hedge

SSB-259

Successor By  
SF/HF \_\_\_\_\_

SENATE FILE 445

BY (PROPOSED COMMITTEE ON  
COMMERCE BILL BY CHAIR-  
PERSON DELUHERY)

Passed Senate, Date \_\_\_\_\_ Passed House, 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:

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~~Accepted By~~  
7H 2

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

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

3 c. The seller under an agreement referred to in section  
4 523A.1 shall file with the commissioner not later than March 1  
5 of each year a report including the following information:

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

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

16 ~~(3) The total value of agreements subject to section~~  
17 ~~523A.1 entered into, the total amount paid pursuant to those~~  
18 ~~agreements, and the total amount deposited in trust as~~  
19 ~~required under section 523A.1, during the preceding year. A~~  
20 ~~description of insurance funding outstanding at the end of the~~  
21 ~~preceding calendar year, identified by the name of the~~  
22 ~~purchaser or the beneficiary, and a report of any insurance~~  
23 ~~payments received by the seller.~~

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

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

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

1 each-insurance-company-which-funds-agreements-under-section  
2 523A.1-

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

7 (8) (4) The A complete inventory of funeral merchandise  
8 and-its-location-in-the-seller's-possession-that-has-been  
9 delivered in lieu of trusting pursuant to section 523A.1-

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

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

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

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

27 7. This chapter does not prohibit the funding of an  
28 agreement otherwise subject to section 523A.1 by insurance  
29 proceeds derived from a policy issued by an insurance company  
30 authorized to conduct business in this state. Payments may be  
31 made directly to the insurance company by the purchaser of the  
32 agreement, in any amount. If the payments are not made  
33 directly to the insurance company by the purchaser of the  
34 agreement, at least eighty percent of the payments received by  
35 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

S.F. \_\_\_\_\_ H.F. \_\_\_\_\_

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 17, 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 17, 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 remains 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.

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