

REPRINTED

H-3/11/98 Commerce & Reg
H-3/12/98 Amend/Do Pass with
FILED FEB 24 1998 H- 8372
H-3/23/98 UNFINISHED BUSINESS CALENDAR

SENATE FILE 2316
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 2148)

Passed Senate ^(P.598) Date 3/10/98 Passed House ^(P.1390) Date 4/8/98
Vote: Ayes 42 Nays 0 Vote: Ayes 98 Nays 0
Approved May 14, 1998

A BILL FOR

1 An Act relating to entities and subject matter under the
2 regulatory authority of the regulated industries unit of the
3 insurance division, including business opportunities,
4 cemeteries, and cemetery merchandise, motor vehicle service
5 contracts, preneed funeral merchandise and services, and
6 residential service contracts, providing for fees, and
7 establishing penalties.

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

9

1

SENATE FILE 2316

1

S-5061

1

1 Amend Senate File 2316 as follows:

1

2 1. Page 2, line 5, by inserting after the word

1

3 "states" the following: "the dates that coverage

1

4 starts and ends and".

1

By TOM FLYNN

1

1

S-5061 FILED FEBRUARY 25, 1998

1

1

adopted 3/10/98 (P.598)

10

19

20

21

22

22

23

23

S.F. 2316

1 Section 1. Section 321I.3, subsection 2, Code 1997, is
2 amended to read as follows:

3 2. In addition to any other required filings, a true and
4 correct copy of the service contract and the provider's
5 reimbursement insurance policy, the consent to service of
6 process on the commissioner, and such other information as the
7 commissioner requires, shall be filed annually no later than
8 the first day of August. If the first day of August falls on
9 a weekend or a holiday, the date for filing shall be the next
10 business day. In addition to the annual filing, the provider
11 shall promptly file copies of any amended documents, if
12 material amendments have been made in the materials on file
13 with the division. If an annual filing is made after the
14 first of August and sales have occurred during the period when
15 the provider was in noncompliance with this section, the
16 division shall assess an additional filing fee that is two
17 times the amount normally required for an annual filing. A
18 fee shall not be charged for interim filings made to keep the
19 materials filed with the division current and accurate. The
20 annual filing shall be accompanied by a filing fee determined
21 by the commissioner which shall be sufficient to defray the
22 costs of administering this chapter.

23 Sec. 2. Section 321I.4, Code 1997, is amended to read as
24 follows:

25 321I.4 DISCLOSURE TO PROVIDER.

26 1. A motor vehicle service contract reimbursement
27 insurance policy shall not be issued, sold, or offered for
28 sale in this state unless the reimbursement insurance policy
29 conspicuously states that the issuer of the policy shall pay
30 on behalf of the provider all sums which the provider is
31 legally obligated to pay for failure to perform according to
32 the provider's contractual obligations under the motor vehicle
33 service contracts issued or sold by the provider.

34 2. The provider shall comply with chapter 555A with
35 respect to all contracts that are subject to regulation under

1 this chapter. A failure to comply is subject to the remedies
2 and penalties provided in that chapter.

3 Sec. 3. Section 321I.5, subsection 2, paragraph f, Code
4 1997, is amended to read as follows:

5 f. Clearly and conspicuously states the existence, terms,
6 and conditions of a deductible amount, if any.

7 Sec. 4. Section 321I.6, Code 1997, is amended to read as
8 follows:

9 321I.6 COMMISSIONER MAY PROHIBIT CERTAIN SALES --
10 INJUNCTION.

11 The commissioner shall ~~upon giving a ten-day notice to a~~
12 ~~motor-vehicle-service-contract-provider,~~ issue an order
13 instructing the provider to cease and desist from selling or
14 offering for sale motor vehicle service contracts if the
15 commissioner determines that the provider has failed to comply
16 with a provision of this chapter. Upon the failure of a motor
17 vehicle service contract provider to obey a cease and desist
18 order issued by the commissioner, the commissioner may give
19 notice in writing of the failure to the attorney general, who
20 shall immediately commence an action against the provider to
21 enjoin the provider from selling or offering for sale motor
22 vehicle service contracts until the provider complies with the
23 provisions of this chapter and the district court may issue
24 the injunction.

25 Sec. 5. Section 321I.11, subsection 1, paragraph g, Code
26 1997, is amended to read as follows:

27 g. A motor vehicle service contract provider shall not
28 make, publish, disseminate, circulate, or place before the
29 public, or cause, directly or indirectly, to be made,
30 published, disseminated, circulated, or placed before the
31 public in a newspaper, magazine, or other publication, or in
32 the form of a notice, circular, pamphlet, letter, or poster,
33 or over a radio or television station, or in any other way, an
34 advertisement, announcement, or statement containing an
35 assertion, representation, or statement with respect to the

1 motor vehicle service contract industry or with respect to a
2 motor vehicle service contract provider which is untrue,
3 deceptive, or misleading. It is deceptive or misleading to
4 use any combination of words, symbols, or physical materials
5 which by their content, phraseology, shape, color, or other
6 characteristics are so similar to a combination of words,
7 symbols, or physical materials used by a manufacturer or of
8 such a nature that the use would tend to mislead a person into
9 believing that the solicitation is in some manner connected
10 with the manufacturer, unless actually authorized or issued by
11 the manufacturer.

12 Sec. 6. Section 321I.12, subsection 1, paragraph a, Code
13 1997, is amended by adding the following new subparagraph:

14 NEW SUBPARAGRAPH. (4) Copies of all materials relating to
15 claims which have been denied.

16 Sec. 7. Section 523A.1, subsection 1, unnumbered paragraph
17 4, Code 1997, is amended to read as follows:

18 This section does not apply to payments for merchandise de-
19 livered to the purchaser. ~~Except for caskets and other types~~
20 ~~of inner burial containers or concrete burial vaults sold~~
21 ~~after July 1, 1995, delivery~~ Delivery includes storage in a
22 warehouse ~~under the control of the seller or any other~~
23 warehouse or storage facility approved by the commissioner
24 ~~when a receipt of ownership in the name of the purchaser is~~
25 ~~delivered to the purchaser, the merchandise is insured against~~
26 ~~loss, the merchandise is protected against damage, title has~~
27 ~~been transferred to the purchaser, the merchandise is~~
28 ~~appropriately identified and described in a manner that it can~~
29 ~~be distinguished from other similar items of merchandise, the~~
30 ~~method of storage allows for visual audits of the merchandise,~~
31 ~~and the annual reporting requirements of section 523A.2,~~
32 subsection 1, are satisfied. Concrete burial vaults and
33 caskets sold after July 1, 1995, shall not be delivered in
34 lieu of trusting. The commissioner may prohibit delivery in
35 lieu of trusting with regard to additional types of inner

1 burial containers and merchandise or establish standards for
2 the approval of storage facilities, pursuant to rules adopted
3 for that purpose.

4 Sec. 8. Section 523A.5, subsection 2, Code 1997, is
5 amended by adding the following new paragraphs:

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

9 NEW PARAGRAPH. e. "Inner burial container" means a
10 container in which human remains are placed for burial or
11 entombment and, if only one container is used for purposes of
12 burial or entombment, includes a container designed to serve
13 the same function as merchandise commonly known as burial
14 vaults, urn vaults, grave boxes, grave liners, and lawn
15 crypts.

16 Sec. 9. Section 523A.8, subsection 1, paragraph j, Code
17 1997, is amended to read as follows:

18 j. Include an explanation of regulatory oversight by the
19 insurance division in twelve point bold type, in substantially
20 the following language:

21 ~~THIS CONTRACT MUST BE REPORTED TO THE IOWA INSURANCE~~
22 ~~DIVISION BY THE FIRST DAY OF MARCH OF THE FOLLOWING YEAR IS~~
23 SUBJECT TO RULES ADMINISTERED BY THE IOWA INSURANCE DIVISION.
24 YOU MAY CALL THE INSURANCE DIVISION AT (INSERT TELEPHONE
25 NUMBER) ~~TO CONFIRM THAT YOUR CONTRACT HAS BEEN REPORTED.~~
26 WRITTEN INQUIRIES OR COMPLAINTS SHOULD BE MAILED TO THE
27 FOLLOWING ADDRESS: ~~IOWA SECURITIES BUREAU,~~ (INSERT ADDRESS).

28 Sec. 10. Section 523A.14, Code 1997, is amended to read as
29 follows:

30 523A.14 INJUNCTIONS.

31 The attorney general or the commissioner may apply to the
32 district court in any county of the state for an injunction to
33 restrain a person subject to this chapter and any agents,
34 employees, or associates of the person from engaging in
35 conduct or practices deemed contrary to the public interest.

1 In any proceeding for an injunction, the attorney general or
2 the commissioner may apply to the court for the issuance of a
3 subpoena to require the appearance of a defendant and the
4 defendant's agents and any documents, books, and records
5 germane to the hearing upon the petition for an injunction.
6 Upon proof of any of the offenses described in the petition
7 for injunction the court may grant the injunction. The
8 attorney general or the commissioner shall not be required to
9 post a bond.

10 Sec. 11. Section 523B.1, subsection 3, paragraph a,
11 unnumbered paragraph 1, Code 1997, is amended to read as
12 follows:

13 "Business opportunity" means a contract or agreement,
14 between a seller and purchaser, express or implied, orally or
15 in writing, ~~at an initial investment exceeding five hundred~~
16 ~~dollars~~, where the parties agree that the seller or a person
17 recommended by the seller is to provide to the purchaser any
18 products, equipment, supplies, materials, or services for the
19 purpose of enabling the purchaser to start a business, and the
20 seller represents, directly or indirectly, orally or in
21 writing, any of the following:

22 Sec. 12. Section 523B.1, subsection 3, paragraph b, Code
23 1997, is amended by striking the paragraph.

24 Sec. 13. Section 523B.2, subsection 4, Code 1997, is
25 amended to read as follows:

26 4. EFFECTIVE DATE. A registration automatically becomes
27 effective upon the expiration of the ~~tenth~~ fifteenth full
28 business day after the complete filing is received by the
29 administrator, provided that no order has been issued or
30 proceeding is pending under subsection 10. The administrator
31 may by order waive or reduce the time period prior to
32 effectiveness, provided that a complete filing has been made.
33 The administrator may by order defer the effective date until
34 the expiration of the ~~tenth~~ fifteenth full business day after
35 the filing of an amendment with the administrator.

1 Sec. 14. Section 523B.2, subsection 8, paragraph c,
2 subparagraph (13), Code 1997, is amended to read as follows:

3 (13) The business opportunity seller that ~~is required to~~
4 secure ~~secures~~ a bond pursuant to ~~section 523B.4~~ subsection 10
5 shall include in the disclosure document the following
6 statement: "As required by the state of Iowa, the seller has
7 secured a bond issued by [insert name and address of surety
8 company], a surety company, authorized to do business in this
9 state. Before signing a contract or agreement to purchase
10 this business opportunity, you should check with the surety
11 company to determine the bond's current status."

12 Sec. 15. Section 523B.2, subsection 10, paragraph a, Code
13 1997, is amended by adding the following new subparagraph:

14 NEW SUBPARAGRAPH. (9) The seller does not have a minimum
15 net worth of twenty-five thousand dollars, as determined in
16 accordance with generally accepted accounting principles. A
17 seller may submit a surety bond in lieu of the net worth
18 requirement. The administrator may by rule or order increase
19 the amount of the net worth or bond for the protection of
20 purchasers and may require the seller to file reports of all
21 sales in this state to determine the appropriate amount of the
22 net worth requirement. The surety bond shall be for the
23 period of the registration, issued by a surety company
24 authorized to do business in this state and for the benefit of
25 any purchaser.

26 Sec. 16. Section 523B.3, subsection 1, Code 1997, is
27 amended to read as follows:

28 1. ~~TYPES-OF~~ EXEMPTIONS. The following business
29 opportunities are exempt from the requirements of section
30 523B.2:

31 a. The offer or sale of a business opportunity if the
32 purchaser is a bank, savings and loan association, trust
33 company, insurance company, credit union, or investment
34 company as defined by the federal Investment Company Act of
35 1940, a pension or profit-sharing trust, or other financial

1 institution or institutional buyer, or a dealer broker-dealer
2 registered pursuant to chapter 502, whether the purchaser is
3 acting for itself or in a fiduciary capacity.

4 b. An offer or sale of a business opportunity to an
5 ongoing business where the seller will provide products,
6 equipment, supplies, or services which are substantially
7 similar to the products, equipment, supplies, or services sold
8 by the purchaser in connection with the purchaser's ongoing
9 business.

10 c. An offer or sale of a business opportunity where the
11 initial investment is less than five hundred dollars.

12 d. An offer or sale of an ongoing business operated by the
13 seller which is to be sold in its entirety.

14 e. An offer or sale of a business opportunity by an
15 executor, administrator, sheriff, receiver, trustee in
16 bankruptcy, guardian, or conservator, or a judicial offer or
17 sale of a business opportunity.

18 b- f. The offer or sale of a business opportunity which is
19 defined as a franchise under section 523B.1, subsection 4,
20 provided that the seller delivers to each purchaser at the
21 earlier of the first personal meeting between the seller and
22 the purchaser, or ten business days prior to the earlier of
23 the execution by a purchaser of a contract or agreement
24 imposing a binding legal obligation on the purchaser or the
25 payment by a purchaser of any consideration in connection with
26 the offer or sale of the business opportunity, one of the
27 following disclosure documents:

28 (1) A uniform franchise-offering circular prepared in
29 accordance with the guidelines adopted by the North American
30 securities administrators association, inc., as amended
31 through September 21, 1983.

32 (2) A disclosure document prepared pursuant to the federal
33 trade commission rule entitled "Disclosure requirements and
34 prohibitions concerning franchising and business opportunity
35 ventures", 16 C.F.R. § 436 (1979).

1 For the purposes of this paragraph, a personal meeting
2 means a face-to-face meeting between the purchaser and the
3 seller or their representatives, which is held for the purpose
4 of discussing the offer or sale of a business opportunity.
5 The administrator may by rule adopt any amendment to the
6 uniform franchise-offering circular that has been adopted by
7 the North American securities administrators association,
8 inc., or any amendment to the disclosure document prepared
9 pursuant to the federal trade commission rule entitled
10 "Disclosure requirements and prohibitions concerning
11 franchising and business opportunity ventures", 16 C.F.R. §
12 436 (1979), that has been adopted by the federal trade
13 commission.

14 ~~e. The offer or sale of a business opportunity for which~~
15 ~~the cash payment made by a purchaser does not exceed five~~
16 ~~hundred dollars and the payment is made for the not-for-profit~~
17 ~~sale of sales demonstration equipment, material, or samples,~~
18 ~~or the payment is made for product inventory sold to the~~
19 ~~purchaser at a bona fide wholesale price.~~

20 g. An offer or sale of a business opportunity which
21 involves a marketing plan made in conjunction with the
22 licensing of a federally registered trademark or federally
23 registered service mark provided that the seller has a minimum
24 net worth of one million dollars as determined on the basis of
25 the seller's most recent audited financial statement prepared
26 within thirteen months of the first offer in this state. Net
27 worth may be determined on a consolidated basis if the seller
28 is at least eighty percent owned by one person and that person
29 expressly guarantees the obligations of the seller with regard
30 to the offer or sale of a business opportunity claimed to be
31 exempt under this paragraph.

32 d. The offer or sale of a business opportunity which the
33 administrator exempts by order or a class of business oppor-
34 tunities which the administrator exempts by rule upon the
35 finding that the exemption would not be contrary to public

1 interest and that registration would not be necessary or ap-
2 propriate for the protection of purchasers.

3 Sec. 17. Section 523B.3, subsection 2, paragraph a, Code
4 1997, is amended to read as follows:

5 a. ~~The~~ If the public interest of the protection of
6 purchasers so requires, the administrator may by order deny or
7 revoke an exemption specified in this section with respect to
8 a particular offering of one or more business opportunities.
9 An order shall not be entered without appropriate prior notice
10 to all interested parties, opportunity for hearing, and
11 written findings of fact and conclusions of law.

12 Sec. 18. Section 523B.7, subsection 1, paragraph a, Code
13 1997, is amended to read as follows:

14 a. A person who violates ~~section-523B-4-or~~ section 523B.2,
15 subsection 1, 8, or 9, is liable to the purchaser in an action
16 for rescission of the agreement, or for recovery of all money
17 or other valuable consideration paid for the business
18 opportunity, and for actual damages together with interest as
19 determined pursuant to section 668.13 from the date of sale,
20 reasonable attorney's fees, and court costs.

21 Sec. 19. Section 523B.8, subsection 4, Code 1997, is
22 amended to read as follows:

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

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

1 ~~b---Bring-an-action-in-district-court-~~ Upon proper showing
2 by the administrator, the court may enter an order of
3 rescission, restitution, or disgorgement, as well as
4 prejudgment and postjudgment interest, directed at any person
5 who has engaged in an act constituting a violation of this
6 chapter.

7 b. The administrator, in bringing an action under
8 paragraph "a", shall not be required to post bond.

9 Sec. 20. Section 523B.11, subsection 1, Code 1997, is
10 amended to read as follows:

11 1. A seller who willfully violates ~~section-523B.4,~~ section
12 523B.2, subsection 1, 8, or 9, or section 523B.12, subsection
13 2, who willfully violates a rule under this chapter, who
14 willfully violates an order of which the person has notice, or
15 who violates section 523B.12, subsection 1, knowing that the
16 statement made was false or misleading in any material
17 respect, upon conviction, is guilty of a class "D" felony.
18 Each of the acts specified constitutes a separate offense and
19 a prosecution or conviction for any one of such offenses does
20 not bar prosecution or conviction for any other offense.

21 Sec. 21. Section 523B.12, Code 1997, is amended by adding
22 the following new subsection:

23 NEW SUBSECTION. 4. MISREPRESENTATIONS, OMISSIONS, AND
24 MISLEADING CONDUCT. It is unlawful for a business opportunity
25 seller to do any of the following:

26 a. Misrepresent, by failure to disclose or otherwise, the
27 known required total investment for such business opportunity.

28 b. Misrepresent or fail to disclose efforts to sell or
29 establish more business opportunities than it is reasonable to
30 expect the market or market area for the particular business
31 opportunity to sustain.

32 c. Misrepresent the quantity or the quality of the
33 products to be sold or distributed through the business
34 opportunity.

35 d. Misrepresent the training and management assistance

1 available to the business opportunity purchaser.

2 e. Misrepresent the amount of profits, net or gross, which
3 the business opportunity purchaser can expect from the
4 operation of the business opportunity.

5 f. Misrepresent, by failure to disclose or otherwise, the
6 termination, transfer, or renewal provision of a business
7 opportunity agreement.

8 g. Falsely claim or imply that a primary marketer or
9 trademark of products or services sponsors or participates
10 directly or indirectly in the business opportunity.

11 h. Assign a so-called exclusive territory encompassing the
12 same area to more than one business opportunity purchaser.

13 i. Provide vending locations for which written
14 authorizations have not been granted by the property owners or
15 lessees.

16 j. Provide merchandise, machines, or displays of a brand
17 or kind substantially different from or inferior to those
18 promised by the business opportunity seller.

19 k. Fail to provide the purchaser a written contract.

20 l. Misrepresent the ability of a person or entity
21 providing services to provide locations or assist the
22 purchaser in finding locations expected to have a positive
23 impact on the success of the business opportunity.

24 m. Misrepresent or omit to state a material fact or create
25 a false or misleading impression in the sale of a business
26 opportunity.

27 Sec. 22. Section 523C.7, Code 1997, is amended by adding
28 the following new subsection:

29 NEW SUBSECTION. 5. A residential service contract shall
30 comply with chapter 555A. A failure to comply is subject to
31 the remedies and penalties provided in that chapter.

32 Sec. 23. Section 523E.8, subsection 1, paragraph j, Code
33 1997, is amended to read as follows:

34 j. Include an explanation of regulatory oversight by the
35 insurance division in twelve point bold type, in substantially

1 the following language:

2 THIS CONTRACT MUST BE REPORTED TO THE IOWA INSURANCE
3 DIVISION BY THE FIRST DAY OF MARCH OF THE FOLLOWING YEAR IS
4 SUBJECT TO REGULATIONS ADMINISTERED BY THE IOWA INSURANCE
5 DIVISION. YOU MAY CALL THE INSURANCE DIVISION AT (INSERT
6 TELEPHONE NUMBER) TO CONFIRM THAT YOUR CONTRACT HAS BEEN
7 REPORTED. WRITTEN INQUIRIES OR COMPLAINTS SHOULD BE MAILED TO
8 THE FOLLOWING ADDRESS: IOWA SECURITIES BUREAU (INSERT
9 ADDRESS).

10 Sec. 24. Section 523E.14, Code 1997, is amended to read as
11 follows:

12 523E.14 INJUNCTIONS.

13 The attorney general or the commissioner may apply to the
14 district court in any county of the state for an injunction to
15 restrain a person subject to this chapter and any agents,
16 employees, or associates of the person from engaging in
17 conduct or practices deemed contrary to the public interest.
18 In any proceeding for an injunction, the attorney general or
19 the commissioner may apply to the court for the issuance of a
20 subpoena to require the appearance of a defendant and the
21 defendant's agents and any documents, books, and records
22 germane to the hearing upon the petition for an injunction.
23 Upon proof of any of the offenses described in the petition
24 for injunction the court may grant the injunction. The
25 attorney general or the commissioner shall not be required to
26 post a bond.

27 Sec. 25. Section 523I.6, subsection 1, paragraph e, Code
28 1997, is amended to read as follows:

29 e. The nonexclusive preneed and at-need sale of monuments,
30 memorials, markers, burial vaults, urns, flower vases, floral
31 arrangements, and other the following:

32 (1) Monuments.

33 (2) Memorials.

34 (3) Markers.

35 (4) Installation of monuments, memorials, or markers.

1 (5) Burial vaults.

2 (6) Urns.

3 (7) Flower vases.

4 (8) Floral arrangements.

5 (9) Other similar merchandise for use within the cemetery.

6 Sec. 26. Section 566A.1, subsection 1, Code 1997, is
7 amended to read as follows:

8 1. A corporation or other form of organization engaging in
9 the business of the ownership, maintenance, or operation of a
10 cemetery, which provides lots or other interment space for the
11 remains of human bodies, is subject to this chapter. However,
12 a religious cemetery is subject only to subsection 2, and
13 sections 566A.2A and 566A.2B. ~~A-cemetery-with-average-retail~~
14 ~~sales-equal-to-or-less-than-five-thousand-dollars-for-the~~
15 ~~previous-three-calendar-years-is-exempt-from-section-566A.2C.~~
16 Political subdivisions of the state which are counties are
17 exempt from this chapter. Political subdivisions of the state
18 other than counties are subject only to sections 566A.1A,
19 566A.2A, 566A.2B, and 566A.2D.

20 Sec. 27. Section 566A.1A, subsection 2, Code 1997, is
21 amended to read as follows:

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

26 Sec. 28. Section 566A.2C, subsection 2, Code 1997, is
27 amended to read as follows:

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

35 Sec. 29. Section 566A.2C, Code 1997, is amended by adding

1 the following new subsection:

2 NEW SUBSECTION. 5. This section does not apply to a
3 cemetery with average retail sales equal to or less than five
4 thousand dollars for the previous three calendar years.

5 Sec. 30. Section 566A.3, unnumbered paragraph 3, Code
6 1997, is amended to read as follows:

7 The initial perpetual care fund established for any
8 cemetery shall remain in an irrevocable trust fund until such
9 time as this fund has reached fifty one hundred thousand
10 dollars, when it the initial twenty-five thousand dollar
11 deposit may be withdrawn at the rate of one thousand dollars
12 from the original twenty-five thousand dollars for each
13 additional three thousand dollars added to the fund, until all
14 of the twenty-five thousand dollars has been withdrawn. An
15 affidavit shall be filed with the commissioner providing prior
16 notice of the withdrawal and attesting that the money has not
17 previously been withdrawn. Except as approved by the
18 commissioner upon sufficient proof that the money has not
19 previously been withdrawn, the withdrawal must take place
20 within one year after the fund reaches one hundred thousand
21 dollars.

22 Sec. 31. Section 566A.12, subsection 4, paragraph b, Code
23 1997, is amended to read as follows:

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

29 Sec. 32. Section 566A.12, subsection 5, Code 1997, is
30 amended to read as follows:

31 5. INJUNCTIONS. The commissioner or the attorney general
32 may apply to the district court for an injunction to restrain
33 any cemetery subject to this chapter and any agents,
34 employees, trustees, or associates of the cemetery from
35 engaging in conduct or practices deemed a violation of this

1 chapter or rules adopted pursuant to this chapter. Upon proof
2 of any violation of this chapter described in the petition for
3 injunction, the court may grant the injunction. The
4 commissioner or the attorney general shall not be required to
5 post a bond. Failure to obey a court order under this
6 subsection constitutes contempt of court.

7 Sec. 33. Section 523B.4, Code 1997, is repealed.

8 EXPLANATION

9 This bill relates to entities and subject matter under the
10 regulatory authority of the regulated industries unit of the
11 insurance division. Specifically, the bill amends provisions
12 relating to business opportunities, cemeteries and cemetery
13 merchandise, preneed funeral merchandise and services, motor
14 vehicle service contracts, and residential service contracts.

15 Code section 321I.3 is amended to provide that a person in
16 the business of selling motor vehicle service contracts must
17 promptly file copies of amended documents used by such person
18 with the insurance division. The bill provides that the
19 division is to assess an additional filing fee twice the
20 amount normally associated with an annual filing if the annual
21 filing occurs after August 1 and sales of such service
22 contracts have occurred after August 1 and prior to the filing
23 of the annual statement.

24 Code section 321I.4 is amended to provide that motor
25 vehicle service contracts are subject to the provisions of
26 Code chapter 555A, relating to door-to-door sales.

27 Code section 321I.5 is amended to provide that motor
28 vehicle service contracts must clearly state the terms and
29 conditions of a deductible amount, if one exists.

30 Code section 321I.6 is amended and eliminates the 10-day
31 notice requirement which currently must be given prior to an
32 order being issued by the insurance commissioner instructing
33 the service contract provider to cease selling such contracts.

34 Code section 321I.11 is amended to provide that it is
35 deceptive or misleading to use any combination of words,

1 symbols, or physical materials which are so similar to such
2 combinations used by a manufacturer or which tend to mislead a
3 person into believing that the solicitation is in some manner
4 connected with the manufacturer, unless such use is authorized
5 by the manufacturer.

6 Code section 321I.12 is amended to require a motor vehicle
7 service contract provider to include copies of all materials
8 relating to denied claims in the provider's records.

9 Code section 523A.1 provides that the trusting requirements
10 established in that section do not apply to payments for
11 merchandise delivered to the purchaser. The section is
12 amended to prohibit delivery in lieu of trusting with respect
13 to concrete burial vaults and caskets sold after July 1, 1995.
14 The bill provides that the commissioner may also prohibit
15 delivery in lieu of trusting with respect to additional types
16 of inner burial containers and merchandise, or may establish
17 standards for the approval of storage facilities for such
18 containers and merchandise. Currently, except for caskets and
19 other types of inner burial containers or concrete burial
20 vaults sold after July 1, 1995, delivery includes storage in a
21 warehouse under the control of the seller or any other
22 warehouse approved by the commissioner when a receipt of
23 ownership naming the purchaser is delivered to the purchaser,
24 the merchandise is insured and protected against damage, title
25 has been transferred to the purchaser, the merchandise is
26 appropriately identified and distinguishable from any other
27 similar items, and the annual reporting requirements are
28 satisfied.

29 Code section 523A.5 is amended to add definitions for the
30 terms "human remains" and "inner burial container".

31 Code section 523A.8 is amended by changing language which
32 must be included in a funeral merchandise or funeral services
33 agreement. Currently the language provides that the contract
34 (agreement) must be reported to the insurance division by the
35 first day of March of the following year and that the

1 individual purchasing such merchandise or services may call
2 the insurance division to confirm that the contract has been
3 reported. The language is amended by striking the reporting
4 language and inserting language that the contract is subject
5 to rules administered by the insurance division. The bill
6 also strikes the specific reason for calling the insurance
7 division (to confirm the contract has been reported) but
8 leaves the general language indicating that the individual may
9 call the division.

10 Code section 523A.14 is amended to provide that neither the
11 attorney general nor the commissioner are required to post
12 bond when seeking an injunction to restrain a person from
13 engaging in conduct deemed contrary to the public interest
14 with respect to the selling of funeral services or
15 merchandise.

16 Code section 523B.1 is amended by eliminating the \$500
17 minimum initial investment for purposes of defining what is a
18 business opportunity and by striking language excluding
19 certain offers from the definition of a business opportunity.

20 Code section 523B.2 is amended by increasing the time
21 period after which a business opportunity registration becomes
22 automatically effective from 10 to 15 days (the effectiveness
23 of registration amendments may also be deferred for 15 days),
24 and by providing that the administrator (insurance
25 commissioner) may issue an order denying effectiveness to, or
26 suspending or revoking the effectiveness of, a registration if
27 the administrator finds that the seller does not have a
28 minimum net worth of \$25,000. The bill provides that the
29 business opportunity seller may submit a surety bond in lieu
30 of the net worth requirement.

31 Code section 523B.3 is amended by striking language which
32 exempts from the registration requirements of Code chapter
33 523B, an offer or sale of a business opportunity for which the
34 cash payment made by a purchaser does not exceed \$500 and the
35 payment is made for the not-for-profit sale of sales

1 demonstration equipment, material, or samples, or the payment
2 is made for product inventory sold to the purchaser at a bona
3 fide wholesale price. The bill establishes several other
4 categories of offers or sales of business opportunities which
5 are exempt from the registration requirements. These include
6 the offer or sale of a business opportunity to an ongoing
7 business, where the initial investment is less than \$500, to
8 an ongoing business operated by the seller which is to be sold
9 in its entirety, or by an executor, administrator, sheriff,
10 receiver, trustee in bankruptcy, guardian, or conservator, or
11 a judicial offer or sale. The bill also provides that the
12 administrator (insurance commissioner) may deny or revoke an
13 exemption from the registration requirement with respect to a
14 particular offering if the public interest or the protection
15 of purchasers requires such action.

16 Code section 523B.8 is amended to permit the administrator
17 (insurance commissioner) to directly bring an action to enjoin
18 acts or practices, rather than notifying the attorney general
19 who would then bring the action.

20 Code section 523B.12(4) is created and identifies acts
21 which are deemed to be misrepresentations, omissions, and
22 misleading conduct associated with business opportunities.
23 The bill provides that such acts are unlawful.

24 Code section 523C.7 is amended and provides that
25 residential service contracts are to comply with Code chapter
26 555A, relating to door-to-door sales.

27 Code section 523E.8 is amended by changing language which
28 must be included in a cemetery merchandise agreement.
29 Currently the language provides that the contract (agreement)
30 must be reported to the insurance division by the first day of
31 March of the following year and that the individual purchasing
32 such merchandise may call the insurance division to confirm
33 that the contract has been reported. The language is amended
34 by striking the reporting language and inserting language that
35 the contract is subject to rules administered by the insurance

1 division. The bill also strikes the specific reason for
2 calling the insurance division (to confirm the contract has
3 been reported) but leaves the general language indicating that
4 the individual may call the division.

5 Code section 523E.14 is amended to provide that neither the
6 attorney general nor the commissioner are required to post
7 bond when seeking an injunction to restrain a person from
8 engaging in conduct deemed contrary to the public interest
9 with respect to the selling of cemetery merchandise.

10 Code section 523I.6 is amended to provide that a cemetery,
11 within the boundaries of the cemetery lands, may offer the
12 nonexclusive preneed and at-need sale of the installation of
13 monuments, memorials, or markers.

14 Code section 566A.1 is amended by striking language
15 exempting nonperpetual care cemeteries with average retail
16 sales of less than \$5,000 from the annual reporting
17 requirements. This language is reenacted in Code section
18 566A.2C.

19 Code section 566A.1A is amended to include the scattering
20 of human remains in the definition of "cemetery".

21 Code section 566A.2C is amended by striking language which
22 permits a political subdivision to commingle perpetual care
23 funds for purposes of investment and administration, if each
24 cemetery is appropriately identified and separate records are
25 maintained for each cemetery.

26 Code section 566A.3 is amended by increasing the amount
27 which a perpetual care cemetery must deposit in an irrevocable
28 trust fund from \$50,000 to \$100,000 prior to being able to
29 withdraw the initial \$25,000 which must be deposited before
30 the perpetual care cemetery can commence doing business. The
31 withdrawal must be made within one year after the fund reaches
32 \$100,000 unless otherwise approved by the insurance
33 commissioner.

34 Code section 566A.12 is amended to provide that the
35 insurance commissioner may apply to the district court for a

1 receivership with respect to a perpetual care cemetery. The
2 Code section is also amended to permit the insurance
3 commissioner to apply to the district court for an injunction
4 to restrain a perpetual care cemetery from engaging in conduct
5 or practices deemed to be in violation of Code chapter 566A.
6 The bill provides that neither the insurance commissioner nor
7 the attorney general are required to post a bond when seeking
8 such injunction.

9 Code section 523B.4 is repealed. This section requires
10 that a seller, in connection with an offer or sale of a
11 business opportunity, must have at all times a minimum net
12 worth of \$25,000 or obtain a surety bond.

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

SENATE FILE 2316
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 2148)

(AS AMENDED AND PASSED BY THE SENATE MARCH 10, 1998)

----- - New Language by the Senate

Passed Senate, ^(P.1321) Date 4/16/98 Passed House ^(P.1390) Date 4/8/98
Vote: Ayes 49 Nays 0 Vote: Ayes 98 Nays 0
Approved May 14, 1998

A BILL FOR

1 An Act relating to entities and subject matter under the
2 regulatory authority of the regulated industries unit of the
3 insurance division, including business opportunities,
4 cemeteries, and cemetery merchandise, motor vehicle service
5 contracts, preneed funeral merchandise and services, and
6 residential service contracts, providing for fees, and
7 establishing penalties.

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

9
10
11
12
13
14
15
16
17
18
19
20

S.F. 2316

1 Section 1. Section 321I.3, subsection 2, Code 1997, is
2 amended to read as follows:

3 2. In addition to any other required filings, a true and
4 correct copy of the service contract and the provider's
5 reimbursement insurance policy, the consent to service of
6 process on the commissioner, and such other information as the
7 commissioner requires, shall be filed annually no later than
8 the first day of August. If the first day of August falls on
9 a weekend or a holiday, the date for filing shall be the next
10 business day. In addition to the annual filing, the provider
11 shall promptly file copies of any amended documents, if
12 material amendments have been made in the materials on file
13 with the division. If an annual filing is made after the
14 first of August and sales have occurred during the period when
15 the provider was in noncompliance with this section, the
16 division shall assess an additional filing fee that is two
17 times the amount normally required for an annual filing. A
18 fee shall not be charged for interim filings made to keep the
19 materials filed with the division current and accurate. The
20 annual filing shall be accompanied by a filing fee determined
21 by the commissioner which shall be sufficient to defray the
22 costs of administering this chapter.

23 Sec. 2. Section 321I.4, Code 1997, is amended to read as
24 follows:

25 321I.4 DISCLOSURE TO PROVIDER.

26 1. A motor vehicle service contract reimbursement
27 insurance policy shall not be issued, sold, or offered for
28 sale in this state unless the reimbursement insurance policy
29 conspicuously states that the issuer of the policy shall pay
30 on behalf of the provider all sums which the provider is
31 legally obligated to pay for failure to perform according to
32 the provider's contractual obligations under the motor vehicle
33 service contracts issued or sold by the provider.

34 2. The provider shall comply with chapter 555A with
35 respect to all contracts that are subject to regulation under

1 this chapter. A failure to comply is subject to the remedies
2 and penalties provided in that chapter.

3 Sec. 3. Section 321I.5, subsection 2, paragraph f, Code
4 1997, is amended to read as follows:

5 f. Clearly and conspicuously states the dates that
6 coverage starts and ends and the existence, terms, and
7 conditions of a deductible amount, if any.

8 Sec. 4. Section 321I.6, Code 1997, is amended to read as
9 follows:

10 321I.6 COMMISSIONER MAY PROHIBIT CERTAIN SALES --
11 INJUNCTION.

12 The commissioner shall, ~~upon giving a ten-day notice to a~~
13 ~~motor vehicle service contract provider,~~ issue an order
14 instructing the provider to cease and desist from selling or
15 offering for sale motor vehicle service contracts if the
16 commissioner determines that the provider has failed to comply
17 with a provision of this chapter. Upon the failure of a motor
18 vehicle service contract provider to obey a cease and desist
19 order issued by the commissioner, the commissioner may give
20 notice in writing of the failure to the attorney general, who
21 shall immediately commence an action against the provider to
22 enjoin the provider from selling or offering for sale motor
23 vehicle service contracts until the provider complies with the
24 provisions of this chapter and the district court may issue
25 the injunction.

26 Sec. 5. Section 321I.11, subsection 1, paragraph g, Code
27 1997, is amended to read as follows:

28 g. A motor vehicle service contract provider shall not
29 make, publish, disseminate, circulate, or place before the
30 public, or cause, directly or indirectly, to be made,
31 published, disseminated, circulated, or placed before the
32 public in a newspaper, magazine, or other publication, or in
33 the form of a notice, circular, pamphlet, letter, or poster,
34 or over a radio or television station, or in any other way, an
35 advertisement, announcement, or statement containing an

1 assertion, representation, or statement with respect to the
2 motor vehicle service contract industry or with respect to a
3 motor vehicle service contract provider which is untrue,
4 deceptive, or misleading. It is deceptive or misleading to
5 use any combination of words, symbols, or physical materials
6 which by their content, phraseology, shape, color, or other
7 characteristics are so similar to a combination of words,
8 symbols, or physical materials used by a manufacturer or of
9 such a nature that the use would tend to mislead a person into
10 believing that the solicitation is in some manner connected
11 with the manufacturer, unless actually authorized or issued by
12 the manufacturer.

13 Sec. 6. Section 321I.12, subsection 1, paragraph a, Code
14 1997, is amended by adding the following new subparagraph:
15 NEW SUBPARAGRAPH. (4) Copies of all materials relating to
16 claims which have been denied.

17 Sec. 7. Section 523A.1, subsection 1, unnumbered paragraph
18 4, Code 1997, is amended to read as follows:

19 This section does not apply to payments for merchandise de-
20 livered to the purchaser. ~~Except-for-caskets-and-other-types~~
21 ~~of-inner-burial-containers-or-concrete-burial-vaults-sold~~
22 ~~after-July-1,-1995,-delivery~~ Delivery includes storage in a
23 warehouse ~~under-the-control-of-the-seller-or-any-other~~
24 warehouse or storage facility approved by the commissioner
25 ~~when-a-receipt-of-ownership-in-the-name-of-the-purchaser-is~~
26 ~~delivered-to-the-purchaser,-the-merchandise-is-insured-against~~
27 ~~loss,-the-merchandise-is-protected-against-damage,-title-has~~
28 ~~been-transferred-to-the-purchaser,-the-merchandise-is~~
29 ~~appropriately-identified-and-described-in-a-manner-that-it-can~~
30 ~~be-distinguished-from-other-similar-items-of-merchandise,-the~~
31 ~~method-of-storage-allows-for-visual-audits-of-the-merchandise,-~~
32 ~~and-the-annual-reporting-requirements-of-section-523A.2,-~~
33 ~~subsection-1,-are-satisfied.~~ Concrete burial vaults and
34 caskets sold after July 1, 1995, shall not be delivered in
35 lieu of trusting. The commissioner may prohibit delivery in

1 lieu of trusting with regard to additional types of inner
2 burial containers and merchandise or establish standards for
3 the approval of storage facilities, pursuant to rules adopted
4 for that purpose.

5 Sec. 8. Section 523A.5, subsection 2, Code 1997, is
6 amended by adding the following new paragraphs:

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

10 NEW PARAGRAPH. e. "Inner burial container" means a
11 container in which human remains are placed for burial or
12 entombment and, if only one container is used for purposes of
13 burial or entombment, includes a container designed to serve
14 the same function as merchandise commonly known as burial
15 vaults, urn vaults, grave boxes, grave liners, and lawn
16 crypts.

17 Sec. 9. Section 523A.8, subsection 1, paragraph j, Code
18 1997, is amended to read as follows:

19 j. Include an explanation of regulatory oversight by the
20 insurance division in twelve point bold type, in substantially
21 the following language:

22 ~~THIS CONTRACT MUST BE REPORTED TO THE IOWA INSURANCE~~
23 ~~DIVISION BY THE FIRST DAY OF MARCH OF THE FOLLOWING YEAR IS~~
24 SUBJECT TO RULES ADMINISTERED BY THE IOWA INSURANCE DIVISION.
25 YOU MAY CALL THE INSURANCE DIVISION AT (INSERT TELEPHONE
26 NUMBER) ~~TO CONFIRM THAT YOUR CONTRACT HAS BEEN REPORTED.~~
27 WRITTEN INQUIRIES OR COMPLAINTS SHOULD BE MAILED TO THE
28 FOLLOWING ADDRESS: ~~IOWA SECURITIES BUREAU,~~ (INSERT ADDRESS).

29 Sec. 10. Section 523A.14, Code 1997, is amended to read as
30 follows:

31 523A.14 INJUNCTIONS.

32 The attorney general or the commissioner may apply to the
33 district court in any county of the state for an injunction to
34 restrain a person subject to this chapter and any agents,
35 employees, or associates of the person from engaging in

1 conduct or practices deemed contrary to the public interest.
2 In any proceeding for an injunction, the attorney general or
3 the commissioner may apply to the court for the issuance of a
4 subpoena to require the appearance of a defendant and the
5 defendant's agents and any documents, books, and records
6 germane to the hearing upon the petition for an injunction.
7 Upon proof of any of the offenses described in the petition
8 for injunction the court may grant the injunction. The
9 attorney general or the commissioner shall not be required to
10 post a bond.

11 Sec. 11. Section 523B.1, subsection 3, paragraph a,
12 unnumbered paragraph 1, Code 1997, is amended to read as
13 follows:

14 "Business opportunity" means a contract or agreement,
15 between a seller and purchaser, express or implied, orally or
16 in writing, ~~at an initial investment exceeding five hundred~~
17 ~~dollars,~~ where the parties agree that the seller or a person
18 recommended by the seller is to provide to the purchaser any
19 products, equipment, supplies, materials, or services for the
20 purpose of enabling the purchaser to start a business, and the
21 seller represents, directly or indirectly, orally or in
22 writing, any of the following:

23 Sec. 12. Section 523B.1, subsection 3, paragraph b, Code
24 1997, is amended by striking the paragraph.

25 Sec. 13. Section 523B.2, subsection 4, Code 1997, is
26 amended to read as follows:

27 4. EFFECTIVE DATE. A registration automatically becomes
28 effective upon the expiration of the ~~tenth~~ fifteenth full
29 business day after the complete filing is received by the
30 administrator, provided that no order has been issued or
31 proceeding is pending under subsection 10. The administrator
32 may by order waive or reduce the time period prior to
33 effectiveness, provided that a complete filing has been made.
34 The administrator may by order defer the effective date until
35 the expiration of the ~~tenth~~ fifteenth full business day after

1 the filing of an amendment with the administrator.

2 Sec. 14. Section 523B.2, subsection 8, paragraph c,
3 subparagraph (13), Code 1997, is amended to read as follows:

4 (13) The business opportunity seller that ~~is required to~~
5 ~~secure~~ secures a bond pursuant to ~~section-523B-4~~ subsection 10
6 shall include in the disclosure document the following
7 statement: "As required by the state of Iowa, the seller has
8 secured a bond issued by [insert name and address of surety
9 company], a surety company, authorized to do business in this
10 state. Before signing a contract or agreement to purchase
11 this business opportunity, you should check with the surety
12 company to determine the bond's current status."

13 Sec. 15. Section 523B.2, subsection 10, paragraph a, Code
14 1997, is amended by adding the following new subparagraph:

15 NEW SUBPARAGRAPH. (9) The seller does not have a minimum
16 net worth of twenty-five thousand dollars, as determined in
17 accordance with generally accepted accounting principles. A
18 seller may submit a surety bond in lieu of the net worth
19 requirement. The administrator may by rule or order increase
20 the amount of the net worth or bond for the protection of
21 purchasers and may require the seller to file reports of all
22 sales in this state to determine the appropriate amount of the
23 net worth requirement. The surety bond shall be for the
24 period of the registration, issued by a surety company
25 authorized to do business in this state and for the benefit of
26 any purchaser.

27 Sec. 16. Section 523B.3, subsection 1, Code 1997, is
28 amended to read as follows:

29 1. ~~TYPES-OF~~ EXEMPTIONS. The following business
30 opportunities are exempt from the requirements of section
31 523B.2:

32 a. The offer or sale of a business opportunity if the
33 purchaser is a bank, savings and loan association, trust
34 company, insurance company, credit union, or investment
35 company as defined by the federal Investment Company Act of

1 1940, a pension or profit-sharing trust, or other financial
2 institution or institutional buyer, or a ~~dealer~~ broker-dealer
3 registered pursuant to chapter 502, whether the purchaser is
4 acting for itself or in a fiduciary capacity.

5 b. An offer or sale of a business opportunity to an
6 ongoing business where the seller will provide products,
7 equipment, supplies, or services which are substantially
8 similar to the products, equipment, supplies, or services sold
9 by the purchaser in connection with the purchaser's ongoing
10 business.

11 c. An offer or sale of a business opportunity where the
12 initial investment is less than five hundred dollars.

13 d. An offer or sale of an ongoing business operated by the
14 seller which is to be sold in its entirety.

15 e. An offer or sale of a business opportunity by an
16 executor, administrator, sheriff, receiver, trustee in
17 bankruptcy, guardian, or conservator, or a judicial offer or
18 sale of a business opportunity.

19 b. f. The offer or sale of a business opportunity which is
20 defined as a franchise under section 523B.1, subsection 4,
21 provided that the seller delivers to each purchaser at the
22 earlier of the first personal meeting between the seller and
23 the purchaser, or ten business days prior to the earlier of
24 the execution by a purchaser of a contract or agreement
25 imposing a binding legal obligation on the purchaser or the
26 payment by a purchaser of any consideration in connection with
27 the offer or sale of the business opportunity, one of the
28 following disclosure documents:

29 (1) A uniform franchise-offering circular prepared in
30 accordance with the guidelines adopted by the North American
31 securities administrators association, inc., as amended
32 through September 21, 1983.

33 (2) A disclosure document prepared pursuant to the federal
34 trade commission rule entitled "Disclosure requirements and
35 prohibitions concerning franchising and business opportunity

1 ventures", 16 C.F.R. § 436 (1979).

2 For the purposes of this paragraph, a personal meeting
3 means a face-to-face meeting between the purchaser and the
4 seller or their representatives, which is held for the purpose
5 of discussing the offer or sale of a business opportunity.
6 The administrator may by rule adopt any amendment to the
7 uniform franchise-offering circular that has been adopted by
8 the North American securities administrators association,
9 inc., or any amendment to the disclosure document prepared
10 pursuant to the federal trade commission rule entitled
11 "Disclosure requirements and prohibitions concerning
12 franchising and business opportunity ventures", 16 C.F.R. §
13 436 (1979), that has been adopted by the federal trade
14 commission.

15 ~~e.--The offer or sale of a business opportunity for which
16 the cash payment made by a purchaser does not exceed five
17 hundred dollars and the payment is made for the not-for-profit
18 sale of sales demonstration equipment, material, or samples,
19 or the payment is made for product inventory sold to the
20 purchaser at a bona fide wholesale price.~~

21 g. An offer or sale of a business opportunity which
22 involves a marketing plan made in conjunction with the
23 licensing of a federally registered trademark or federally
24 registered service mark provided that the seller has a minimum
25 net worth of one million dollars as determined on the basis of
26 the seller's most recent audited financial statement prepared
27 within thirteen months of the first offer in this state. Net
28 worth may be determined on a consolidated basis if the seller
29 is at least eighty percent owned by one person and that person
30 expressly guarantees the obligations of the seller with regard
31 to the offer or sale of a business opportunity claimed to be
32 exempt under this paragraph.

33 ~~d. The offer or sale of a business opportunity which the~~
34 ~~administrator exempts by order or a class of business oppor-~~
35 ~~tunities which the administrator exempts by rule upon the~~

1 finding that the exemption would not be contrary to public
2 interest and that registration would not be necessary or ap-
3 propriate for the protection of purchasers.

4 Sec. 17. Section 523B.3, subsection 2, paragraph a, Code
5 1997, is amended to read as follows:

6 a. The If the public interest of the protection of
7 purchasers so requires, the administrator may by order deny or
8 revoke an exemption specified in this section with respect to
9 a particular offering of one or more business opportunities.
10 An order shall not be entered without appropriate prior notice
11 to all interested parties, opportunity for hearing, and
12 written findings of fact and conclusions of law.

13 Sec. 18. Section 523B.7, subsection 1, paragraph a, Code
14 1997, is amended to read as follows:

15 a. A person who violates ~~section 523B.4 or~~ section 523B.2,
16 subsection 1, 8, or 9, is liable to the purchaser in an action
17 for rescission of the agreement, or for recovery of all money
18 or other valuable consideration paid for the business
19 opportunity, and for actual damages together with interest as
20 determined pursuant to section 668.13 from the date of sale,
21 reasonable attorney's fees, and court costs.

22 Sec. 19. Section 523B.8, subsection 4, Code 1997, is
23 amended to read as follows:

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

30 ~~a.---Notify the attorney general who shall~~ bring an action
31 in the district court to enjoin the acts or practices
32 constituting the violation and to enforce compliance with this
33 chapter or any rule or order adopted or issued pursuant to
34 this chapter. Upon a proper showing a permanent or temporary
35 injunction shall be granted and a receiver or conservator may

1 be appointed for the defendant or the defendant's assets.

2 ~~b.--Bring-an-action-in-district-court-~~ Upon proper showing
3 by the administrator, the court may enter an order of
4 rescission, restitution, or disgorgement, as well as
5 prejudgment and postjudgment interest, directed at any person
6 who has engaged in an act constituting a violation of this
7 chapter.

8 b. The administrator, in bringing an action under
9 paragraph "a", shall not be required to post bond.

10 Sec. 20. Section 523B.11, subsection 1, Code 1997, is
11 amended to read as follows:

12 1. A seller who willfully violates ~~section-523B-4,~~ section
13 523B.2, subsection 1, 8, or 9, or section 523B.12, subsection
14 2, who willfully violates a rule under this chapter, who
15 willfully violates an order of which the person has notice, or
16 who violates section 523B.12, subsection 1, knowing that the
17 statement made was false or misleading in any material
18 respect, upon conviction, is guilty of a class "D" felony.
19 Each of the acts specified constitutes a separate offense and
20 a prosecution or conviction for any one of such offenses does
21 not bar prosecution or conviction for any other offense.

22 Sec. 21. Section 523B.12, Code 1997, is amended by adding
23 the following new subsection:

24 NEW SUBSECTION. 4. MISREPRESENTATIONS, OMISSIONS, AND
25 MISLEADING CONDUCT. It is unlawful for a business opportunity
26 seller to do any of the following:

27 a. Misrepresent, by failure to disclose or otherwise, the
28 known required total investment for such business opportunity.

29 b. Misrepresent or fail to disclose efforts to sell or
30 establish more business opportunities than it is reasonable to
31 expect the market or market area for the particular business
32 opportunity to sustain.

33 c. Misrepresent the quantity or the quality of the
34 products to be sold or distributed through the business
35 opportunity.

1 d. Misrepresent the training and management assistance
2 available to the business opportunity purchaser.

3 e. Misrepresent the amount of profits, net or gross, which
4 the business opportunity purchaser can expect from the
5 operation of the business opportunity.

6 f. Misrepresent, by failure to disclose or otherwise, the
7 termination, transfer, or renewal provision of a business
8 opportunity agreement.

9 g. Falsely claim or imply that a primary marketer or
10 trademark of products or services sponsors or participates
11 directly or indirectly in the business opportunity.

12 h. Assign a so-called exclusive territory encompassing the
13 same area to more than one business opportunity purchaser.

14 i. Provide vending locations for which written
15 authorizations have not been granted by the property owners or
16 lessees.

17 j. Provide merchandise, machines, or displays of a brand
18 or kind substantially different from or inferior to those
19 promised by the business opportunity seller.

20 k. Fail to provide the purchaser a written contract.

21 l. Misrepresent the ability of a person or entity
22 providing services to provide locations or assist the
23 purchaser in finding locations expected to have a positive
24 impact on the success of the business opportunity.

25 m. Misrepresent or omit to state a material fact or create
26 a false or misleading impression in the sale of a business
27 opportunity.

28 Sec. 22. Section 523C.7, Code 1997, is amended by adding
29 the following new subsection:

30 NEW SUBSECTION. 5. A residential service contract shall
31 comply with chapter 555A. A failure to comply is subject to
32 the remedies and penalties provided in that chapter.

33 Sec. 23. Section 523E.8, subsection 1, paragraph j, Code
34 1997, is amended to read as follows:

35 j. Include an explanation of regulatory oversight by the

1 insurance division in twelve point bold type, in substantially
2 the following language:

3 THIS CONTRACT MUST-~~BE-REPORTED-TO-THE-IOWA-INSURANCE~~
4 ~~DIVISION-BY-THE-FIRST-DAY-OF-MARCH-OF-THE-FOLLOWING-YEAR~~ IS
5 SUBJECT TO REGULATIONS ADMINISTERED BY THE IOWA INSURANCE
6 DIVISION. YOU MAY CALL THE INSURANCE DIVISION AT (INSERT
7 TELEPHONE NUMBER) ~~TO-CONFIRM-THAT-YOUR-CONTRACT-HAS-BEEN~~
8 REPORTED. WRITTEN INQUIRIES OR COMPLAINTS SHOULD BE MAILED TO
9 THE FOLLOWING ADDRESS: ~~IOWA-SECURITIES-BUREAU~~ (INSERT
10 ADDRESS).

11 Sec. 24. Section 523E.14, Code 1997, is amended to read as
12 follows:

13 523E.14 INJUNCTIONS.

14 The attorney general or the commissioner may apply to the
15 district court in any county of the state for an injunction to
16 restrain a person subject to this chapter and any agents,
17 employees, or associates of the person from engaging in
18 conduct or practices deemed contrary to the public interest.
19 In any proceeding for an injunction, the attorney general or
20 the commissioner may apply to the court for the issuance of a
21 subpoena to require the appearance of a defendant and the
22 defendant's agents and any documents, books, and records
23 germane to the hearing upon the petition for an injunction.
24 Upon proof of any of the offenses described in the petition
25 for injunction the court may grant the injunction. The
26 attorney general or the commissioner shall not be required to
27 post a bond.

28 Sec. 25. Section 523I.6, subsection 1, paragraph e, Code
29 1997, is amended to read as follows:

30 e. The nonexclusive preneed and at-need sale of monuments,
31 ~~memorials,-markers,-burial-vaults,-urns,-flower-vases,-floral~~
32 ~~arrangements,-and-other~~ the following:

33 (1) Monuments.

34 (2) Memorials.

35 (3) Markers.

1 (4) Installation of monuments, memorials, or markers.

2 (5) Burial vaults.

3 (6) Urns.

4 (7) Flower vases.

5 (8) Floral arrangements.

6 (9) Other similar merchandise for use within the cemetery.

7 Sec. 26. Section 566A.1, subsection 1, Code 1997, is
8 amended to read as follows:

9 1. A corporation or other form of organization engaging in
10 the business of the ownership, maintenance, or operation of a
11 cemetery, which provides lots or other interment space for the
12 remains of human bodies, is subject to this chapter. However,
13 a religious cemetery is subject only to subsection 2, and
14 sections 566A.2A and 566A.2B. ~~A-cemetery-with-average-retail~~
15 ~~sales-equal-to-or-less-than-five-thousand-dollars-for-the~~
16 ~~previous-three-calendar-years-is-exempt-from-section-566A.2C.~~
17 Political subdivisions of the state which are counties are
18 exempt from this chapter. Political subdivisions of the state
19 other than counties are subject only to sections 566A.1A,
20 566A.2A, 566A.2B, and 566A.2D.

21 Sec. 27. Section 566A.1A, subsection 2, Code 1997, is
22 amended to read as follows:

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

27 Sec. 28. Section 566A.2C, subsection 2, Code 1997, is
28 amended to read as follows:

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

1 Sec. 29. Section 566A.2C, Code 1997, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 5. This section does not apply to a
4 cemetery with average retail sales equal to or less than five
5 thousand dollars for the previous three calendar years.

6 Sec. 30. Section 566A.3, unnumbered paragraph 3, Code
7 1997, is amended to read as follows:

8 The initial perpetual care fund established for any
9 cemetery shall remain in an irrevocable trust fund until such
10 time as this fund has reached fifty one hundred thousand
11 dollars, when it the initial twenty-five thousand dollar
12 deposit may be withdrawn at-the-rate-of-one-thousand-dollars
13 from-the-original-twenty-five-thousand-dollars-for-each
14 additional-three-thousand-dollars-added-to-the-fund,-until-all
15 of-the-twenty-five-thousand-dollars-has-been-withdrawn. An
16 affidavit shall be filed with the commissioner providing prior
17 notice of the withdrawal and attesting that the money has not
18 previously been withdrawn. Except as approved by the
19 commissioner upon sufficient proof that the money has not
20 previously been withdrawn, the withdrawal must take place
21 within one year after the fund reaches one hundred thousand
22 dollars.

23 Sec. 31. Section 566A.12, subsection 4, paragraph b, Code
24 1997, is amended to read as follows:

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

30 Sec. 32. Section 566A.12, subsection 5, Code 1997, is
31 amended to read as follows:

32 5. INJUNCTIONS. The commissioner or the attorney general
33 may apply to the district court for an injunction to restrain
34 any cemetery subject to this chapter and any agents,
35 employees, trustees, or associates of the cemetery from

1 engaging in conduct or practices deemed a violation of this
2 chapter or rules adopted pursuant to this chapter. Upon proof
3 of any violation of this chapter described in the petition for
4 injunction, the court may grant the injunction. The
5 commissioner or the attorney general shall not be required to
6 post a bond. Failure to obey a court order under this
7 subsection constitutes contempt of court.

8 Sec. 33. Section 523B.4, Code 1997, is repealed.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

SENATE FILE 2316

H-8809

1 Amend Senate File 2316, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. By striking page 1, line 23, through page 2,
4 line 2.

5 2. Page 2, by inserting after line 7 the
6 following:

7 "Sec. ____ . Section 321I.5, Code 1997, is amended
8 by adding the following new subsection:

9 NEW SUBSECTION. 3. A complete copy of the terms
10 of the motor vehicle service contract shall be
11 delivered to the prospective service contract holder
12 at or before the time that the prospective service
13 contract holder makes application for the service
14 contract. If there is no separate application
15 procedure, then a complete copy of the motor vehicle
16 service contract shall be delivered to the service
17 contract holder at or before the time the service
18 contract holder becomes bound under the contract."

19 3. Page 4, by striking lines 6 through 9 and
20 inserting the following: "amended by adding the
21 following new paragraph:"

22 4. Page 5, by striking lines 11 through 22.

23 5. Page 7, by striking lines 11 and 12.

24 6. Page 7, line 13, by striking the word "d." and
25 inserting the following: "c."

26 7. Page 7, line 15, by striking the word "e." and
27 inserting the following: "d."

28 8. Page 7, line 19, by striking the word "f." and
29 inserting the following: "e."

30 9. Page 8, by striking lines 15 through 20 and
31 inserting the following:

32 "e. f. The offer or sale of a business opportunity
33 for which the cash payment made by a purchaser does
34 not exceed five hundred dollars and the payment is
35 made for the not-for-profit sale of sales
36 demonstration equipment, material, or samples, or the
37 payment is made for product inventory sold to the
38 purchaser at a bona fide wholesale price."

39 10. Page 11, by striking lines 30 through 32, and
40 inserting the following:

41 "NEW SUBSECTION. 5. A complete copy of the terms
42 of the residential service contract shall be delivered
43 to the prospective service contract holder at or
44 before the time that the prospective service contract
45 holder makes application for the service contract. If
46 there is no separate application procedure, then a
47 complete copy of the residential service contract
48 shall be delivered to the service contract holder at
49 or before the time the service contract holder becomes
50 bound under the contract."

H-8809

-1-

H-8809

Page 2

1 11. Page 13, by striking lines 21 through 26.

2 12. By renumbering as necessary.

By VAN FOSSEN of Scott

H-8809 FILED MARCH 31, 1998

Adopted
4-8-98 (p. 1391)

H-8372

1 Amend Senate File 2316, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 4, by striking lines 7 through 9 and
4 inserting the following:

5 "NEW PARAGRAPH. d. "Human remains" means a
6 deceased human being for which a death certificate or
7 fetal death certificate is required and includes
8 cremated remains."

9 2. Page 5, by striking lines 11 through 22.

10 3. Page 7, by striking lines 11 and 12 and
11 inserting the following:

12 "c. The offer or sale of a business opportunity
13 for which the cash payment made by a purchaser does
14 not exceed five hundred dollars and the payment is
15 made for the not-for-profit sale of sales
16 demonstration equipment, material, or samples, or the
17 payment is made for product inventory sold to the
18 purchaser at a bona fide wholesale price."

19 4. Page 13, by striking lines 21 through 26.

20 5. By renumbering as necessary.

By COMMITTEE ON COMMERCE AND
REGULATION

METCALF of Polk, Chairperson

H-8372 FILED MARCH 12, 1998

Withdrawn
4-8-98
(P.1389)

HOUSE AMENDMENT TO
SENATE FILE 2316

S-5586

1 Amend Senate File 2316, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. By striking page 1, line 23, through page 2,
4 line 2.
5 2. Page 2, by inserting after line 7 the
6 following:
7 "Sec. ____ . Section 3211.5, Code 1997, is amended
8 by adding the following new subsection:
9 NEW SUBSECTION. 3. A complete copy of the terms
10 of the motor vehicle service contract shall be
11 delivered to the prospective service contract holder
12 at or before the time that the prospective service
13 contract holder makes application for the service
14 contract. If there is no separate application
15 procedure, then a complete copy of the motor vehicle
16 service contract shall be delivered to the service
17 contract holder at or before the time the service
18 contract holder becomes bound under the contract."
19 3. Page 4, by striking lines 6 through 9 and
20 inserting the following: "amended by adding the
21 following new paragraph:"
22 4. Page 5, by striking lines 11 through 22.
23 5. Page 7, by striking lines 11 and 12.
24 6. Page 7, line 13, by striking the word "d." and
25 inserting the following: "c."
26 7. Page 7, line 15, by striking the word "e." and
27 inserting the following: "d."
28 8. Page 7, line 19, by striking the word "f." and
29 inserting the following: "e."
30 9. Page 8, by striking lines 15 through 20 and
31 inserting the following:
32 "e. f. The offer or sale of a business opportunity
33 for which the cash payment made by a purchaser does
34 not exceed five hundred dollars and the payment is
35 made for the not-for-profit sale of sales
36 demonstration equipment, material, or samples, or the
37 payment is made for product inventory sold to the
38 purchaser at a bona fide wholesale price."
39 10. Page 11, by striking lines 30 through 32, and
40 inserting the following:
41 "NEW SUBSECTION. 5. A complete copy of the terms
42 of the residential service contract shall be delivered
43 to the prospective service contract holder at or
44 before the time that the prospective service contract
45 holder makes application for the service contract. If
46 there is no separate application procedure, then a
47 complete copy of the residential service contract
48 shall be delivered to the service contract holder at
49 or before the time the service contract holder becomes
50 bound under the contract."

S-5586

-1-

S-5586

Page 2

1 11. Page 13, by striking lines 21 through 26.
2 12. By renumbering as necessary.

RECEIVED FROM THE HOUSE

S-5586 FILED APRIL 8, 1998

*Senate
Concurrent
4-16-98
(P. 1321)*

Hynes
Rife
Lundby

SSB 2148
Commerce
Succeeded By
SD/HF 2316

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

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

A BILL FOR

1 An Act relating to entities and subject matter under the
2 regulatory authority of the regulated industries unit of the
3 insurance division, including business opportunities,
4 cemeteries, and cemetery merchandise, motor vehicle service
5 contracts, preneed funeral merchandise and services, and
6 residential service contracts, providing for fees, and
7 establishing penalties.

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

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

1 Section 1. Section 321I.3, subsection 2, Code 1997, is
2 amended to read as follows:

3 2. In addition to any other required filings, a true and
4 correct copy of the service contract and the provider's
5 reimbursement insurance policy, the consent to service of
6 process on the commissioner, and such other information as the
7 commissioner requires, shall be filed annually no later than
8 the first day of August. If the first day of August falls on
9 a weekend or a holiday, the date for filing shall be the next
10 business day. In addition to the annual filing, the provider
11 shall promptly file copies of any amended documents, if
12 material amendments have been made in the materials on file
13 with the division. If an annual filing is made after the
14 first of August and sales have occurred during the period when
15 the provider was in noncompliance with this section, the
16 division shall assess an additional filing fee that is two
17 times the amount normally required for an annual filing. A
18 fee shall not be charged for interim filings made to keep the
19 materials filed with the division current and accurate. The
20 annual filing shall be accompanied by a filing fee determined
21 by the commissioner which shall be sufficient to defray the
22 costs of administering this chapter.

23 Sec. 2. Section 321I.4, Code 1997, is amended to read as
24 follows:

25 321I.4 DISCLOSURE TO PROVIDER.

26 1. A motor vehicle service contract reimbursement
27 insurance policy shall not be issued, sold, or offered for
28 sale in this state unless the reimbursement insurance policy
29 conspicuously states that the issuer of the policy shall pay
30 on behalf of the provider all sums which the provider is
31 legally obligated to pay for failure to perform according to
32 the provider's contractual obligations under the motor vehicle
33 service contracts issued or sold by the provider.

34 2. The provider shall comply with chapter 555A with
35 respect to all contracts that are subject to regulation under

1 this chapter. A failure to comply is subject to the remedies
2 and penalties provided in that chapter.

3 Sec. 3. Section 321I.5, subsection 2, paragraph f, Code
4 1997, is amended to read as follows:

5 f. Clearly and conspicuously states the existence, terms,
6 and conditions of a deductible amount, if any.

7 Sec. 4. Section 321I.6, Code 1997, is amended to read as
8 follows:

9 321I.6 COMMISSIONER MAY PROHIBIT CERTAIN SALES --
10 INJUNCTION.

11 The commissioner shall, ~~upon giving a ten-day notice to a~~
12 ~~motor vehicle service contract provider,~~ issue an order
13 instructing the provider to cease and desist from selling or
14 offering for sale motor vehicle service contracts if the
15 commissioner determines that the provider has failed to comply
16 with a provision of this chapter. Upon the failure of a motor
17 vehicle service contract provider to obey a cease and desist
18 order issued by the commissioner, the commissioner may give
19 notice in writing of the failure to the attorney general, who
20 shall immediately commence an action against the provider to
21 enjoin the provider from selling or offering for sale motor
22 vehicle service contracts until the provider complies with the
23 provisions of this chapter and the district court may issue
24 the injunction.

25 Sec. 5. Section 321I.11, subsection 1, paragraph g, Code
26 1997, is amended to read as follows:

27 g. A motor vehicle service contract provider shall not
28 make, publish, disseminate, circulate, or place before the
29 public, or cause, directly or indirectly, to be made,
30 published, disseminated, circulated, or placed before the
31 public in a newspaper, magazine, or other publication, or in
32 the form of a notice, circular, pamphlet, letter, or poster,
33 or over a radio or television station, or in any other way, an
34 advertisement, announcement, or statement containing an
35 assertion, representation, or statement with respect to the

1 motor vehicle service contract industry or with respect to a
2 motor vehicle service contract provider which is untrue,
3 deceptive, or misleading. It is deceptive or misleading to
4 use any combination of words, symbols, or physical materials
5 which by their content, phraseology, shape, color, or other
6 characteristics are so similar to a combination of words,
7 symbols, or physical materials used by a manufacturer or of
8 such a nature that the use would tend to mislead a person into
9 believing that the solicitation is in some manner connected
10 with the manufacturer, unless actually authorized or issued by
11 the manufacturer.

12 Sec. 6. Section 321I.12, subsection 1, paragraph a, Code
13 1997, is amended by adding the following new subparagraph:

14 NEW SUBPARAGRAPH. (4) Copies of all materials relating to
15 claims which have been denied.

16 Sec. 7. Section 523A.1, subsection 1, unnumbered paragraph
17 4, Code 1997, is amended to read as follows:

18 This section does not apply to payments for merchandise de-
19 livered to the purchaser. ~~Except-for-caskets-and-other-types~~
20 ~~of-inner-burial-containers-or-concrete-burial-vaults-sold~~
21 ~~after-July-1,1995-delivery~~ Delivery includes storage in a
22 warehouse ~~under-the-control-of-the-seller-or-any-other~~
23 warehouse or storage facility approved by the commissioner
24 ~~when-a-receipt-of-ownership-in-the-name-of-the-purchaser-is~~
25 ~~delivered-to-the-purchaser,7-the-merchandise-is-insured-against~~
26 ~~loss,7-the-merchandise-is-protected-against-damage,7-title-has~~
27 ~~been-transferred-to-the-purchaser,7-the-merchandise-is~~
28 ~~appropriately-identified-and-described-in-a-manner-that-it-can~~
29 ~~be-distinguished-from-other-similar-items-of-merchandise,7-the~~
30 ~~method-of-storage-allows-for-visual-audits-of-the-merchandise,7~~
31 ~~and-the-annual-reporting-requirements-of-section-523A-2,7~~
32 ~~subsection-1,7-are-satisfied.~~ Concrete burial vaults and
33 caskets sold after July 1, 1995, shall not be delivered in
34 lieu of trusting. The commissioner may prohibit delivery in
35 lieu of trusting with regard to additional types of inner

2148

1 burial containers and merchandise or establish standards for
2 the approval of storage facilities, pursuant to rules adopted
3 for that purpose.

4 Sec. 8. Section 523A.5, subsection 2, Code 1997, is
5 amended by adding the following new paragraphs:

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

9 NEW PARAGRAPH. e. "Inner burial container" means a
10 container in which human remains are placed for burial or
11 entombment and, if only one container is used for purposes of
12 burial or entombment, includes a container designed to serve
13 the same function as merchandise commonly known as burial
14 vaults, urn vaults, grave boxes, grave liners, and lawn
15 crypts.

16 Sec. 9. Section 523A.8, subsection 1, paragraph j, Code
17 1997, is amended to read as follows:

18 j. Include an explanation of regulatory oversight by the
19 insurance division in twelve point bold type, in substantially
20 the following language:

21 ~~THIS CONTRACT MUST BE REPORTED TO THE IOWA INSURANCE~~
22 ~~DIVISION BY THE FIRST DAY OF MARCH OF THE FOLLOWING YEAR IS~~
23 SUBJECT TO RULES ADMINISTERED BY THE IOWA INSURANCE DIVISION.
24 YOU MAY CALL THE INSURANCE DIVISION AT (INSERT TELEPHONE
25 NUMBER) ~~TO CONFIRM THAT YOUR CONTRACT HAS BEEN REPORTED.~~
26 WRITTEN INQUIRIES OR COMPLAINTS SHOULD BE MAILED TO THE
27 FOLLOWING ADDRESS: ~~IOWA SECURITIES BUREAU,~~ (INSERT ADDRESS).

28 Sec. 10. Section 523A.14, Code 1997, is amended to read as
29 follows:

30 523A.14 INJUNCTIONS.

31 The attorney general or the commissioner may apply to the
32 district court in any county of the state for an injunction to
33 restrain a person subject to this chapter and any agents,
34 employees, or associates of the person from engaging in
35 conduct or practices deemed contrary to the public interest.

1 In any proceeding for an injunction, the attorney general or
2 the commissioner may apply to the court for the issuance of a
3 subpoena to require the appearance of a defendant and the
4 defendant's agents and any documents, books, and records
5 germane to the hearing upon the petition for an injunction.
6 Upon proof of any of the offenses described in the petition
7 for injunction the court may grant the injunction. The
8 attorney general or the commissioner shall not be required to
9 post a bond.

10 Sec. 11. Section 523B.1, subsection 3, paragraph a,
11 unnumbered paragraph 1, Code 1997, is amended to read as
12 follows:

13 "Business opportunity" means a contract or agreement,
14 between a seller and purchaser, express or implied, orally or
15 in writing, ~~at-an-initial-investment-exceeding-five-hundred~~
16 ~~dollars~~, where the parties agree that the seller or a person
17 recommended by the seller is to provide to the purchaser any
18 products, equipment, supplies, materials, or services for the
19 purpose of enabling the purchaser to start a business, and the
20 seller represents, directly or indirectly, orally or in
21 writing, any of the following:

22 Sec. 12. Section 523B.1, subsection 3, paragraph b, Code
23 1997, is amended by striking the paragraph.

24 Sec. 13. Section 523B.2, subsection 4, Code 1997, is
25 amended to read as follows:

26 4. EFFECTIVE DATE. A registration automatically becomes
27 effective upon the expiration of the ~~tenth~~ fifteenth full
28 business day after the complete filing is received by the
29 administrator, provided that no order has been issued or
30 proceeding is pending under subsection 10. The administrator
31 may by order waive or reduce the time period prior to
32 effectiveness, provided that a complete filing has been made.
33 The administrator may by order defer the effective date until
34 the expiration of the ~~tenth~~ fifteenth full business day after
35 the filing of an amendment with the administrator.

1 Sec. 14. Section 523B.2, subsection 8, paragraph c,
2 subparagraph (13), Code 1997, is amended to read as follows:

3 (13) The business opportunity seller that ~~is required to~~
4 secure secures a bond pursuant to ~~section-523B-4~~ subsection 10
5 shall include in the disclosure document the following
6 statement: "As required by the state of Iowa, the seller has
7 secured a bond issued by [insert name and address of surety
8 company], a surety company, authorized to do business in this
9 state. Before signing a contract or agreement to purchase
10 this business opportunity, you should check with the surety
11 company to determine the bond's current status."

12 Sec. 15. Section 523B.2, subsection 10, paragraph a, Code
13 1997, is amended by adding the following new subparagraph:

14 NEW SUBPARAGRAPH. (9) The seller does not have a minimum
15 net worth of twenty-five thousand dollars, as determined in
16 accordance with generally accepted accounting principles. A
17 seller may submit a surety bond in lieu of the net worth
18 requirement. The administrator may by rule or order increase
19 the amount of the net worth or bond for the protection of
20 purchasers and may require the seller to file reports of all
21 sales in this state to determine the appropriate amount of the
22 net worth requirement. The surety bond shall be for the
23 period of the registration, issued by a surety company
24 authorized to do business in this state and for the benefit of
25 any purchaser.

26 Sec. 16. Section 523B.3, subsection 1, Code 1997, is
27 amended to read as follows:

28 1. ~~TYPES-OF~~ EXEMPTIONS. The following business
29 opportunities are exempt from the requirements of section
30 523B.2:

31 a. The offer or sale of a business opportunity if the
32 purchaser is a bank, savings and loan association, trust
33 company, insurance company, credit union, or investment
34 company as defined by the federal Investment Company Act of
35 1940, a pension or profit-sharing trust, or other financial

1 institution or institutional buyer, or a dealer broker-dealer
2 registered pursuant to chapter 502, whether the purchaser is
3 acting for itself or in a fiduciary capacity.

4 b. An offer or sale of a business opportunity to an
5 ongoing business where the seller will provide products,
6 equipment, supplies, or services which are substantially
7 similar to the products, equipment, supplies, or services sold
8 by the purchaser in connection with the purchaser's ongoing
9 business.

10 c. An offer or sale of a business opportunity where the
11 initial investment is less than five hundred dollars.

12 d. An offer or sale of an ongoing business operated by the
13 seller which is to be sold in its entirety.

14 e. An offer or sale of a business opportunity by an
15 executor, administrator, sheriff, receiver, trustee in
16 bankruptcy, guardian, or conservator, or a judicial offer or
17 sale of a business opportunity.

18 b. f. The offer or sale of a business opportunity which is
19 defined as a franchise under section 523B.1, subsection 4,
20 provided that the seller delivers to each purchaser at the
21 earlier of the first personal meeting between the seller and
22 the purchaser, or ten business days prior to the earlier of
23 the execution by a purchaser of a contract or agreement
24 imposing a binding legal obligation on the purchaser or the
25 payment by a purchaser of any consideration in connection with
26 the offer or sale of the business opportunity, one of the
27 following disclosure documents:

28 (1) A uniform franchise-offering circular prepared in
29 accordance with the guidelines adopted by the North American
30 securities administrators association, inc., as amended
31 through September 21, 1983.

32 (2) A disclosure document prepared pursuant to the federal
33 trade commission rule entitled "Disclosure requirements and
34 prohibitions concerning franchising and business opportunity
35 ventures", 16 C.F.R. § 436 (1979).

1 For the purposes of this paragraph, a personal meeting
 2 means a face-to-face meeting between the purchaser and the
 3 seller or their representatives, which is held for the purpose
 4 of discussing the offer or sale of a business opportunity.
 5 The administrator may by rule adopt any amendment to the
 6 uniform franchise-offering circular that has been adopted by
 7 the North American securities administrators association,
 8 inc., or any amendment to the disclosure document prepared
 9 pursuant to the federal trade commission rule entitled
 10 "Disclosure requirements and prohibitions concerning
 11 franchising and business opportunity ventures", 16 C.F.R. §
 12 436 (1979), that has been adopted by the federal trade
 13 commission.

14 ~~e. The offer or sale of a business opportunity for which~~
 15 ~~the cash payment made by a purchaser does not exceed five~~
 16 ~~hundred dollars and the payment is made for the not-for-profit~~
 17 ~~sale of sales demonstration equipment, material, or samples,~~
 18 ~~or the payment is made for product inventory sold to the~~
 19 ~~purchaser at a bona fide wholesale price.~~

20 g. An offer or sale of a business opportunity which
 21 involves a marketing plan made in conjunction with the
 22 licensing of a federally registered trademark or federally
 23 registered service mark provided that the seller has a minimum
 24 net worth of one million dollars as determined on the basis of
 25 the seller's most recent audited financial statement prepared
 26 within thirteen months of the first offer in this state. Net
 27 worth may be determined on a consolidated basis if the seller
 28 is at least eighty percent owned by one person and that person
 29 expressly guarantees the obligations of the seller with regard
 30 to the offer or sale of a business opportunity claimed to be
 31 exempt under this paragraph.

32 d. The offer or sale of a business opportunity which the
 33 administrator exempts by order or a class of business oppor-
 34 tunities which the administrator exempts by rule upon the
 35 finding that the exemption would not be contrary to public

1 interest and that registration would not be necessary or ap-
2 propriate for the protection of purchasers.

3 Sec. 17. Section 523B.3, subsection 2, paragraph a, Code
4 1997, is amended to read as follows:

5 a. ~~The~~ If the public interest of the protection of
6 purchasers so requires, the administrator may by order deny or
7 revoke an exemption specified in this section with respect to
8 a particular offering of one or more business opportunities.
9 An order shall not be entered without appropriate prior notice
10 to all interested parties, opportunity for hearing, and
11 written findings of fact and conclusions of law.

12 Sec. 18. Section 523B.7, subsection 1, paragraph a, Code
13 1997, is amended to read as follows:

14 1. a. A person who violates ~~section-523B-4-or~~ section
15 523B.2, subsection 1, 8, or 9, is liable to the purchaser in
16 an action for rescission of the agreement, or for recovery of
17 all money or other valuable consideration paid for the
18 business opportunity, and for actual damages together with
19 interest as determined pursuant to section 668.13 from the
20 date of sale, reasonable attorney's fees, and court costs.

21 Sec. 19. Section 523B.8, subsection 4, Code 1997, is
22 amended to read as follows:

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

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

1 ~~b.---Bring-an-action-in-district-court.~~ Upon proper showing
2 by the administrator, the court may enter an order of
3 rescission, restitution, or disgorgement, as well as
4 prejudgment and postjudgment interest, directed at any person
5 who has engaged in an act constituting a violation of this
6 chapter.

7 b. The administrator, in bringing an action under
8 paragraph "a", shall not be required to post bond.

9 Sec. 20. Section 523B.11, subsection 1, Code 1997, is
10 amended to read as follows:

11 1. A seller who willfully violates ~~section-523B-4,~~ section
12 523B.2, subsection 1, 8, or 9, or section 523B.12, subsection
13 2, who willfully violates a rule under this chapter, who
14 willfully violates an order of which the person has notice, or
15 who violates section 523B.12, subsection 1, knowing that the
16 statement made was false or misleading in any material
17 respect, upon conviction, is guilty of a class "D" felony.
18 Each of the acts specified constitutes a separate offense and
19 a prosecution or conviction for any one of such offenses does
20 not bar prosecution or conviction for any other offense.

21 Sec. 21. Section 523B.12, Code 1997, is amended by adding
22 the following new subsection:

23 NEW SUBSECTION. 4. MISREPRESENTATIONS, OMISSIONS, AND
24 MISLEADING CONDUCT. It is unlawful for a business opportunity
25 seller to do any of the following:

26 a. Misrepresent, by failure to disclose or otherwise, the
27 known required total investment for such business opportunity.

28 b. Misrepresent or fail to disclose efforts to sell or
29 establish more business opportunities than it is reasonable to
30 expect the market or market area for the particular business
31 opportunity to sustain.

32 c. Misrepresent the quantity or the quality of the
33 products to be sold or distributed through the business
34 opportunity.

35 d. Misrepresent the training and management assistance

1 available to the business opportunity purchaser.

2 e. Misrepresent the amount of profits, net or gross, which
3 the business opportunity purchaser can expect from the
4 operation of the business opportunity.

5 f. Misrepresent, by failure to disclose or otherwise, the
6 termination, transfer, or renewal provision of a business
7 opportunity agreement.

8 g. Falsely claim or imply that a primary marketer or
9 trademark of products or services sponsors or participates
10 directly or indirectly in the business opportunity.

11 h. Assign a so-called exclusive territory encompassing the
12 same area to more than one business opportunity purchaser.

13 i. Provide vending locations for which written
14 authorizations have not been granted by the property owners or
15 lessees.

16 j. Provide merchandise, machines, or displays of a brand
17 or kind substantially different from or inferior to those
18 promised by the business opportunity seller.

19 k. Fail to provide the purchaser a written contract.

20 l. Misrepresent the ability of a person or entity
21 providing services to provide locations or assist the
22 purchaser in finding locations expected to have a positive
23 impact on the success of the business opportunity.

24 m. Misrepresent or omit to state a material fact or create
25 a false or misleading impression in the sale of a business
26 opportunity.

27 Sec. 22. Section 523C.7, Code 1997, is amended by adding
28 the following new subsection:

29 NEW SUBSECTION. 5. A residential service contract shall
30 comply with chapter 555A. A failure to comply is subject to
31 the remedies and penalties provided in that chapter.

32 Sec. 23. Section 523E.8, subsection 1, paragraph j, Code
33 1997, is amended to read as follows:

34 j. Include an explanation of regulatory oversight by the
35 insurance division in twelve point bold type, in substantially

1 the following language:

2 THIS CONTRACT MUST-~~BE-REPORTED-TO-THE-IOWA-INSURANCE~~
3 ~~DIVISION-BY-THE-FIRST-DAY-OF-MARCH-OF-THE-FOLLOWING-YEAR~~ IS
4 SUBJECT TO REGULATIONS ADMINISTERED BY THE IOWA INSURANCE
5 DIVISION. YOU MAY CALL THE INSURANCE DIVISION AT (INSERT
6 TELEPHONE NUMBER) ~~TO-CONFIRM-THAT-YOUR-CONTRACT-HAS-BEEN~~
7 ~~REPORTED.~~ WRITTEN INQUIRIES OR COMPLAINTS SHOULD BE MAILED TO
8 THE FOLLOWING ADDRESS: ~~IOWA-SECURITIES-BUREAU~~ (INSERT
9 ADDRESS).

10 Sec. 24. Section 523E.14, Code 1997, is amended to read as
11 follows:

12 523E.14 INJUNCTIONS.

13 The attorney general or the commissioner may apply to the
14 district court in any county of the state for an injunction to
15 restrain a person subject to this chapter and any agents,
16 employees, or associates of the person from engaging in
17 conduct or practices deemed contrary to the public interest.
18 In any proceeding for an injunction, the attorney general or
19 the commissioner may apply to the court for the issuance of a
20 subpoena to require the appearance of a defendant and the
21 defendant's agents and any documents, books, and records
22 germane to the hearing upon the petition for an injunction.
23 Upon proof of any of the offenses described in the petition
24 for injunction the court may grant the injunction. The
25 attorney general or the commissioner shall not be required to
26 post a bond.

27 Sec. 25. Section 523I.6, subsection 1, paragraph e, Code
28 1997, is amended to read as follows:

29 e. The nonexclusive preneed and at-need sale of monuments,
30 ~~memorials, markers, burial vaults, urns, flower vases, floral~~
31 ~~arrangements, and other~~ the following:

- 32 (1) Monuments.
- 33 (2) Memorials.
- 34 (3) Markers.
- 35 (4) Installation of monuments, memorials, or markers.

1 (5) Burial vaults.

2 (6) Urns.

3 (7) Flower vases.

4 (8) Floral arrangements.

5 (9) Other similar merchandise for use within the cemetery.

6 Sec. 26. Section 566A.1, subsection 1, Code 1997, is
7 amended to read as follows:

8 1. A corporation or other form of organization engaging in
9 the business of the ownership, maintenance, or operation of a
10 cemetery, which provides lots or other interment space for the
11 remains of human bodies, is subject to this chapter. However,
12 a religious cemetery is subject only to subsection 2, and
13 sections 566A.2A and 566A.2B. ~~A-cemetery-with-average-retail~~
14 ~~sales-equal-to-or-less-than-five-thousand-dollars-for-the~~
15 ~~previous-three-calendar-years-is-exempt-from-section-566A.2C.~~
16 Political subdivisions of the state which are counties are
17 exempt from this chapter. Political subdivisions of the state
18 other than counties are subject only to sections 566A.1A,
19 566A.2A, 566A.2B, and 566A.2D.

20 Sec. 27. Section 566A.1A, subsection 2, Code 1997, is
21 amended to read as follows:

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

26 Sec. 28. Section 566A.2C, subsection 2, Code 1997, is
27 amended to read as follows:

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

35 Sec. 29. Section 566A.2C, Code 1997, is amended by adding

1 the following new subsection:

2 NEW SUBSECTION. 5. This section does not apply to a
3 cemetery with average retail sales equal to or less than five
4 thousand dollars for the previous three calendar years.

5 Sec. 30. Section 566A.3, unnumbered paragraph 3, Code
6 1997, is amended to read as follows:

7 The initial perpetual care fund established for any
8 cemetery shall remain in an irrevocable trust fund until such
9 time as this fund has reached fifty one hundred thousand
10 dollars, when it the initial twenty-five thousand dollar
11 deposit may be withdrawn at-the-rate-of-one-thousand-dollars
12 from-the-original-twenty-five-thousand-dollars-for-each
13 additional-three-thousand-dollars-added-to-the-fund,-until-all
14 of-the-twenty-five-thousand-dollars-has-been-withdrawn. An
15 affidavit shall be filed with the commissioner providing prior
16 notice of the withdrawal and attesting that the money has not
17 previously been withdrawn. Except as approved by the
18 commissioner upon sufficient proof that the money has not
19 previously been withdrawn, the withdrawal must take place
20 within one year after the fund reaches one hundred thousand
21 dollars.

22 Sec. 31. Section 566A.12, subsection 4, paragraph b, Code
23 1997, is amended to read as follows:

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

29 Sec. 32. Section 566A.12, subsection 5, Code 1997, is
30 amended to read as follows:

31 5. INJUNCTIONS. The commissioner or the attorney general
32 may apply to the district court for an injunction to restrain
33 any cemetery subject to this chapter and any agents,
34 employees, trustees, or associates of the cemetery from
35 engaging in conduct or practices deemed a violation of this

1 chapter or rules adopted pursuant to this chapter. Upon proof
2 of any violation of this chapter described in the petition for
3 injunction, the court may grant the injunction. The
4 commissioner or the attorney general shall not be required to
5 post a bond. Failure to obey a court order under this
6 subsection constitutes contempt of court.

7 Sec. 33. Section 523B.4, Code 1997, is repealed.

8 EXPLANATION

9 This bill relates to entities and subject matter under the
10 regulatory authority of the regulated industries unit of the
11 insurance division. Specifically, the bill amends provisions
12 relating to business opportunities, cemeteries and cemetery
13 merchandise, preneed funeral merchandise and services, motor
14 vehicle service contracts, and residential service contracts.

15 Code section 321I.3 is amended to provide that a person in
16 the business of selling motor vehicle service contracts must
17 promptly file copies of amended documents used by such person
18 with the insurance division. The bill provides that the
19 division is to assess an additional filing fee twice the
20 amount normally associated with an annual filing if the annual
21 filing occurs after August 1 and sales of such service
22 contracts have occurred after August 1 and prior to the filing
23 of the annual statement.

24 Code section 321I.4 is amended to provide that motor
25 vehicle service contracts are subject to the provisions of
26 Code chapter 555A, relating to door-to-door sales.

27 Code section 321I.5 is amended to provide that motor
28 vehicle service contracts must clearly state the terms and
29 conditions of a deductible amount, if one exists.

30 Code section 321I.6 is amended and eliminates the 10-day
31 notice requirement which currently must be given prior to an
32 order being issued by the insurance commissioner instructing
33 the service contract provider to cease selling such contracts.

34 Code section 321I.11 is amended to provide that it is
35 deceptive or misleading to use any combination of words,

1 symbols, or physical materials which are so similar to such
2 combinations used by a manufacturer or which tend to mislead a
3 person into believing that the solicitation is in some manner
4 connected with the manufacturer, unless such use is authorized
5 by the manufacturer.

6 Code section 321I.12 is amended to require a motor vehicle
7 service contract provider to include copies of all materials
8 relating to denied claims in the provider's records.

9 Code section 523A.1 provides that the trusting requirements
10 established in that section do not apply to payments for
11 merchandise delivered to the purchaser. The section is
12 amended to prohibit delivery in lieu of trusting with respect
13 to concrete burial vaults and caskets sold after July 1, 1995.
14 The bill provides that the commissioner may also prohibit
15 delivery in lieu of trusting with respect to additional types
16 of inner burial containers and merchandise, or may establish
17 standards for the approval of storage facilities for such
18 containers and merchandise. Currently, except for caskets and
19 other types of inner burial containers or concrete burial
20 vaults sold after July 1, 1995, delivery includes storage in a
21 warehouse under the control of the seller or any other
22 warehouse approved by the commissioner when a receipt of
23 ownership naming the purchaser is delivered to the purchaser,
24 the merchandise is insured and protected against damage, title
25 has been transferred to the purchaser, the merchandise is
26 appropriately identified and distinguishable from any other
27 similar items, and the annual reporting requirements are
28 satisfied.

29 Code section 523A.5 is amended to add definitions for the
30 terms "human remains" and "inner burial container".

31 Code section 523A.8 is amended by changing language which
32 must be included in a funeral merchandise or funeral services
33 agreement. Currently the language provides that the contract
34 (agreement) must be reported to the insurance division by the
35 first day of March of the following year and that the

1 individual purchasing such merchandise or services may call
2 the insurance division to confirm that the contract has been
3 reported. The language is amended by striking the reporting
4 language and inserting language that the contract is subject
5 to rules administered by the insurance division. The bill
6 also strikes the specific reason for calling the insurance
7 division (to confirm the contract has been reported) but
8 leaves the general language indicating that the individual may
9 call the division.

10 Code section 523A.14 is amended to provide that neither the
11 attorney general nor the commissioner are required to post
12 bond when seeking an injunction to restrain a person from
13 engaging in conduct deemed contrary to the public interest
14 with respect to the selling of funeral services or
15 merchandise.

16 Code section 523B.1 is amended by eliminating the \$500
17 minimum initial investment for purposes of defining what is a
18 business opportunity and by striking language excluding
19 certain offers from the definition of a business opportunity.

20 Code section 523B.2 is amended by increasing the time
21 period after which a business opportunity registration becomes
22 automatically effective from 10 to 15 days (the effectiveness
23 of registration amendments may also be deferred for 15 days),
24 and by providing that the administrator (insurance
25 commissioner) may issue an order denying effectiveness to, or
26 suspending or revoking the effectiveness of, a registration if
27 the administrator finds that the seller does not have a
28 minimum net worth of \$25,000. The bill provides that the
29 business opportunity seller may submit a surety bond in lieu
30 of the net worth requirement.

31 Code section 523B.3 is amended by striking language which
32 exempts from the registration requirements of Code chapter
33 523B, an offer or sale of a business opportunity for which the
34 cash payment made by a purchaser does not exceed \$500 and the
35 payment is made for the not-for-profit sale of sales

2148

1 demonstration equipment, material, or samples, or the payment
2 is made for product inventory sold to the purchaser at a bona
3 fide wholesale price. The bill establishes several other
4 categories of offers or sales of business opportunities which
5 are exempt from the registration requirements. These include
6 the offer or sale of a business opportunity to an ongoing
7 business, where the initial investment is less than \$500, to
8 an ongoing business operated by the seller which is to be sold
9 in its entirety, or by an executor, administrator, sheriff,
10 receiver, trustee in bankruptcy, guardian, or conservator, or
11 a judicial offer or sale. The bill also provides that the
12 administrator (insurance commissioner) may deny or revoke an
13 exemption from the registration requirement with respect to a
14 particular offering if the public interest or the protection
15 of purchasers requires such action.

16 Code section 523B.8 is amended to permit the administrator
17 (insurance commissioner) to directly bring an action to enjoin
18 acts or practices, rather than notifying the attorney general
19 who would then bring the action.

20 Code section 523B.12(4) is created and identifies acts
21 which are deemed to be misrepresentations, omissions, and
22 misleading conduct associated with business opportunities.
23 The bill provides that such acts are unlawful.

24 Code section 523C.7 is amended and provides that
25 residential service contracts are to comply with Code chapter
26 555A, relating to door-to-door sales.

27 Code section 523E.8 is amended by changing language which
28 must be included in a cemetery merchandise agreement.
29 Currently the language provides that the contract (agreement)
30 must be reported to the insurance division by the first day of
31 March of the following year and that the individual purchasing
32 such merchandise may call the insurance division to confirm
33 that the contract has been reported. The language is amended
34 by striking the reporting language and inserting language that
35 the contract is subject to rules administered by the insurance

1 division. The bill also strikes the specific reason for
2 calling the insurance division (to confirm the contract has
3 been reported) but leaves the general language indicating that
4 the individual may call the division.

5 Code section 523E.14 is amended to provide that neither the
6 attorney general nor the commissioner are required to post
7 bond when seeking an injunction to restrain a person from
8 engaging in conduct deemed contrary to the public interest
9 with respect to the selling of cemetery merchandise.

10 Code section 523I.6 is amended to provide that a cemetery,
11 within the boundaries of the cemetery lands, may offer the
12 nonexclusive preneed and at-need sale of the installation of
13 monuments, memorials, or markers.

14 Code section 566A.1 is amended by striking language
15 exempting nonperpetual care cemeteries with average retail
16 sales of less than \$5,000 from the annual reporting
17 requirements. This language is reenacted in Code section
18 566A.2C.

19 Code section 566A.1A is amended to include the scattering
20 of human remains in the definition of "cemetery".

21 Code section 566A.2C is amended by striking language which
22 permits a political subdivision to commingle perpetual care
23 funds for purposes of investment and administration, if each
24 cemetery is appropriately identified and separate records are
25 maintained for each cemetery.

26 Code section 566A.3 is amended by increasing the amount
27 which a perpetual care cemetery must deposit in an irrevocable
28 trust fund from \$50,000 to \$100,000 prior to being able to
29 withdraw the initial \$25,000 which must be deposited before
30 the perpetual care cemetery can commence doing business. The
31 withdrawal must be made within one year after the fund reaches
32 \$100,000 unless otherwise approved by the insurance
33 commissioner.

34 Code section 566A.12 is amended to provide that the
35 insurance commissioner may apply to the district court for a

1 receivership with respect to a perpetual care cemetery. The
 2 Code section is also amended to permit the insurance
 3 commissioner to apply to the district court for an injunction
 4 to restrain a perpetual care cemetery from engaging in conduct
 5 or practices deemed to be in violation of Code chapter 566A.
 6 The bill provides that neither the insurance commissioner nor
 7 the attorney general are required to post a bond when seeking
 8 such injunction.

9 Code section 523B.4 is repealed. This section requires
 10 that a seller, in connection with an offer or sale of a
 11 business opportunity, must have at all times a minimum net
 12 worth of \$25,000 or obtain a surety bond.

13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28
 29
 30
 31
 32
 33
 34
 5

SENATE FILE 2316

AN ACT

RELATING TO ENTITIES AND SUBJECT MATTER UNDER THE REGULATORY AUTHORITY OF THE REGULATED INDUSTRIES UNIT OF THE INSURANCE DIVISION, INCLUDING BUSINESS OPPORTUNITIES, CEMETERIES, AND CEMETERY MERCHANDISE, MOTOR VEHICLE SERVICE CONTRACTS, PRENEED FUNERAL MERCHANDISE AND SERVICES, AND RESIDENTIAL SERVICE CONTRACTS, PROVIDING FOR FEES, AND ESTABLISHING PENALTIES.

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

Section 1. Section 321I.3, subsection 2, Code 1997, is amended to read as follows:

2. In addition to any other required filings, a true and correct copy of the service contract and the provider's reimbursement insurance policy, the consent to service of process on the commissioner, and such other information as the commissioner requires, shall be filed annually no later than the first day of August. If the first day of August falls on a weekend or a holiday, the date for filing shall be the next business day. In addition to the annual filing, the provider shall promptly file copies of any amended documents, if material amendments have been made in the materials on file with the division. If an annual filing is made after the first of August and sales have occurred during the period when the provider was in noncompliance with this section, the division shall assess an additional filing fee that is two times the amount normally required for an annual filing. A fee shall not be charged for interim filings made to keep the materials filed with the division current and accurate. The annual filing shall be accompanied by a filing fee determined by the commissioner which shall be sufficient to defray the costs of administering this chapter.

Sec. 2. Section 321I.5, subsection 2, paragraph f, Code 1997, is amended to read as follows:

f. Clearly and conspicuously states the dates that coverage starts and ends and the existence, terms, and conditions of a deductible amount, if any.

Sec. 3. Section 321I.5, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 3. A complete copy of the terms of the motor vehicle service contract shall be delivered to the prospective service contract holder at or before the time that the prospective service contract holder makes application for the service contract. If there is no separate application procedure, then a complete copy of the motor vehicle service contract shall be delivered to the service contract holder at or before the time the service contract holder becomes bound under the contract.

Sec. 4. Section 321I.6, Code 1997, is amended to read as follows:

321I.6 COMMISSIONER MAY PROHIBIT CERTAIN SALES --
INJUNCTION.

The commissioner shall, upon giving a ten-day notice to a motor-vehicle-service-contract-provider, issue an order instructing the provider to cease and desist from selling or offering for sale motor vehicle service contracts if the commissioner determines that the provider has failed to comply with a provision of this chapter. Upon the failure of a motor vehicle service contract provider to obey a cease and desist order issued by the commissioner, the commissioner may give notice in writing of the failure to the attorney general, who shall immediately commence an action against the provider to enjoin the provider from selling or offering for sale motor vehicle service contracts until the provider complies with the provisions of this chapter and the district court may issue the injunction.

Sec. 5. Section 321I.11, subsection 1, paragraph g, Code 1997, is amended to read as follows:

g. A motor vehicle service contract provider shall not make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over a radio or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with respect to the motor vehicle service contract industry or with respect to a motor vehicle service contract provider which is untrue, deceptive, or misleading. It is deceptive or misleading to use any combination of words, symbols, or physical materials which by their content, phraseology, shape, color, or other characteristics are so similar to a combination of words, symbols, or physical materials used by a manufacturer or of such a nature that the use would tend to mislead a person into believing that the solicitation is in some manner connected with the manufacturer, unless actually authorized or issued by the manufacturer.

Sec. 6. Section 321I.12, subsection 1, paragraph a, Code 1997, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (4) Copies of all materials relating to claims which have been denied.

Sec. 7. Section 523A.1, subsection 1, unnumbered paragraph 4, Code 1997, is amended to read as follows:

This section does not apply to payments for merchandise delivered to the purchaser. ~~Except for caskets and other types of inner burial containers or concrete burial vaults sold after July 1, 1995, delivery~~ Delivery includes storage in a warehouse under the control of the seller or any other warehouse or storage facility approved by the commissioner when a receipt of ownership in the name of the purchaser is

~~delivered to the purchaser, the merchandise is insured against loss, the merchandise is protected against damage, title has been transferred to the purchaser, the merchandise is appropriately identified and described in a manner that it can be distinguished from other similar items of merchandise, the method of storage allows for visual audits of the merchandise, and the annual reporting requirements of section 523A.2, subsection 1, are satisfied.~~ Concrete burial vaults and caskets sold after July 1, 1995, shall not be delivered in lieu of trusting. The commissioner may prohibit delivery in lieu of trusting with regard to additional types of inner burial containers and merchandise or establish standards for the approval of storage facilities, pursuant to rules adopted for that purpose.

Sec. 8. Section 523A.5, subsection 2, Code 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. d. "Inner burial container" means a container in which human remains are placed for burial or entombment and, if only one container is used for purposes of burial or entombment, includes a container designed to serve the same function as merchandise commonly known as burial vaults, urn vaults, grave boxes, grave liners, and lawn crypts.

Sec. 9. Section 523A.8, subsection 1, paragraph j, Code 1997, is amended to read as follows:

j. Include an explanation of regulatory oversight by the insurance division in twelve point bold type, in substantially the following language:

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

Sec. 10. Section 523A.14, Code 1997, is amended to read as follows:

523A.14 INJUNCTIONS.

The attorney general or the commissioner may apply to the district court in any county of the state for an injunction to restrain a person subject to this chapter and any agents, employees, or associates of the person from engaging in conduct or practices deemed contrary to the public interest. In any proceeding for an injunction, the attorney general or the commissioner may apply to the court for the issuance of a subpoena to require the appearance of a defendant and the defendant's agents and any documents, books, and records germane to the hearing upon the petition for an injunction. Upon proof of any of the offenses described in the petition for injunction the court may grant the injunction. The attorney general or the commissioner shall not be required to post a bond.

Sec. 11. Section 523B.1, subsection 3, paragraph b, Code 1997, is amended by striking the paragraph.

Sec. 12. Section 523B.2, subsection 4, Code 1997, is amended to read as follows:

4. EFFECTIVE DATE. A registration automatically becomes effective upon the expiration of the tenth fifteenth full business day after the complete filing is received by the administrator, provided that no order has been issued or proceeding is pending under subsection 10. The administrator may by order waive or reduce the time period prior to effectiveness, provided that a complete filing has been made. The administrator may by order defer the effective date until the expiration of the tenth fifteenth full business day after the filing of an amendment with the administrator.

Sec. 13. Section 523B.2, subsection 8, paragraph c, subparagraph (13), Code 1997, is amended to read as follows:

(13) The business opportunity seller that ~~is required to~~ secure ~~secures~~ a bond pursuant to section-523B:4 subsection 10

shall include in the disclosure document the following statement: "As required by the state of Iowa, the seller has secured a bond issued by [insert name and address of surety company], a surety company, authorized to do business in this state. Before signing a contract or agreement to purchase this business opportunity, you should check with the surety company to determine the bond's current status."

Sec. 14. Section 523B.2, subsection 10, paragraph a, Code 1997, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (9) The seller does not have a minimum net worth of twenty-five thousand dollars, as determined in accordance with generally accepted accounting principles. A seller may submit a surety bond in lieu of the net worth requirement. The administrator may by rule or order increase the amount of the net worth or bond for the protection of purchasers and may require the seller to file reports of all sales in this state to determine the appropriate amount of the net worth requirement. The surety bond shall be for the period of the registration, issued by a surety company authorized to do business in this state and for the benefit of any purchaser.

Sec. 15. Section 523B.3, subsection 1, Code 1997, is amended to read as follows:

1. PYPBS-6P EXEMPTIONS. The following business opportunities are exempt from the requirements of section 523B.2:

a. The offer or sale of a business opportunity if the purchaser is a bank, savings and loan association, trust company, insurance company, credit union, or investment company as defined by the federal Investment Company Act of 1940, a pension or profit-sharing trust, or other financial institution or institutional buyer, or a dealer broker-dealer registered pursuant to chapter 502, whether the purchaser is acting for itself or in a fiduciary capacity.

b. An offer or sale of a business opportunity to an ongoing business where the seller will provide products, equipment, supplies, or services which are substantially similar to the products, equipment, supplies, or services sold by the purchaser in connection with the purchaser's ongoing business.

c. An offer or sale of an ongoing business operated by the seller which is to be sold in its entirety.

d. An offer or sale of a business opportunity by an executor, administrator, sheriff, receiver, trustee in bankruptcy, guardian, or conservator, or a judicial offer or sale of a business opportunity.

b- e. The offer or sale of a business opportunity which is defined as a franchise under section 523B.1, subsection 4, provided that the seller delivers to each purchaser at the earlier of the first personal meeting between the seller and the purchaser, or ten business days prior to the earlier of the execution by a purchaser of a contract or agreement imposing a binding legal obligation on the purchaser or the payment by a purchaser of any consideration in connection with the offer or sale of the business opportunity, one of the following disclosure documents:

(1) A uniform franchise-offering circular prepared in accordance with the guidelines adopted by the North American securities administrators association, inc., as amended through September 21, 1983.

(2) A disclosure document prepared pursuant to the federal trade commission rule entitled "Disclosure requirements and prohibitions concerning franchising and business opportunity ventures", 16 C.F.R. § 436 (1979).

For the purposes of this paragraph, a personal meeting means a face-to-face meeting between the purchaser and the seller or their representatives, which is held for the purpose of discussing the offer or sale of a business opportunity. The administrator may by rule adopt any amendment to the

uniform franchise-offering circular that has been adopted by the North American securities administrators association, inc., or any amendment to the disclosure document prepared pursuant to the federal trade commission rule entitled "Disclosure requirements and prohibitions concerning franchising and business opportunity ventures", 16 C.F.R. § 436 (1979), that has been adopted by the federal trade commission.

e- f. The offer or sale of a business opportunity for which the cash payment made by a purchaser does not exceed five hundred dollars and the payment is made for the not-for-profit sale of sales demonstration equipment, material, or samples, or the payment is made for product inventory sold to the purchaser at a bona fide wholesale price.

g. An offer or sale of a business opportunity which involves a marketing plan made in conjunction with the licensing of a federally registered trademark or federally registered service mark provided that the seller has a minimum net worth of one million dollars as determined on the basis of the seller's most recent audited financial statement prepared within thirteen months of the first offer in this state. Net worth may be determined on a consolidated basis if the seller is at least eighty percent owned by one person and that person expressly guarantees the obligations of the seller with regard to the offer or sale of a business opportunity claimed to be exempt under this paragraph.

d- The offer or sale of a business opportunity which the administrator exempts by order or a class of business opportunities which the administrator exempts by rule upon the finding that the exemption would not be contrary to public interest and that registration would not be necessary or appropriate for the protection of purchasers.

Sec. 16. Section 523B.3, subsection 2, paragraph a, Code 1997, is amended to read as follows:

a. ~~The~~ If the public interest of the protection of purchasers so requires, the administrator may by order deny or revoke an exemption specified in this section with respect to a particular offering of one or more business opportunities. An order shall not be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law.

Sec. 17. Section 523B.7, subsection 1, paragraph a, Code 1997, is amended to read as follows:

a. A person who violates ~~section-523B.4-or~~ section 523B.2, subsection 1, 8, or 9, is liable to the purchaser in an action for rescission of the agreement, or for recovery of all money or other valuable consideration paid for the business opportunity, and for actual damages together with interest as determined pursuant to section 668.13 from the date of sale, reasonable attorney's fees, and court costs.

Sec. 18. Section 523B.8, subsection 4, Code 1997, is amended to read as follows:

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

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

~~b.--Bring an action in district court.~~ Upon proper showing by the administrator, the court may enter an order of rescission, restitution, or disgorgement, as well as prejudgment and postjudgment interest, directed at any person

who has engaged in an act constituting a violation of this chapter.

b. The administrator, in bringing an action under paragraph "a", shall not be required to post bond.

Sec. 19. Section 523B.11, subsection 1, Code 1997, is amended to read as follows:

1. A seller who willfully violates ~~section-523B.4,~~ section 523B.2, subsection 1, 8, or 9, or section 523B.12, subsection 2, who willfully violates a rule under this chapter, who willfully violates an order of which the person has notice, or who violates section 523B.12, subsection 1, knowing that the statement made was false or misleading in any material respect, upon conviction, is guilty of a class "D" felony. Each of the acts specified constitutes a separate offense and a prosecution or conviction for any one of such offenses does not bar prosecution or conviction for any other offense.

Sec. 20. Section 523B.12, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 4. MISREPRESENTATIONS, OMISSIONS, AND MISLEADING CONDUCT. It is unlawful for a business opportunity seller to do any of the following:

a. Misrepresent, by failure to disclose or otherwise, the known required total investment for such business opportunity.

b. Misrepresent or fail to disclose efforts to sell or establish more business opportunities than it is reasonable to expect the market or market area for the particular business opportunity to sustain.

c. Misrepresent the quantity or the quality of the products to be sold or distributed through the business opportunity.

d. Misrepresent the training and management assistance available to the business opportunity purchaser.

e. Misrepresent the amount of profits, net or gross, which the business opportunity purchaser can expect from the operation of the business opportunity.

f. Misrepresent, by failure to disclose or otherwise, the termination, transfer, or renewal provision of a business opportunity agreement.

g. Falsely claim or imply that a primary marketer or trademark of products or services sponsors or participates directly or indirectly in the business opportunity.

h. Assign a so-called exclusive territory encompassing the same area to more than one business opportunity purchaser.

i. Provide vending locations for which written authorizations have not been granted by the property owners or lessees.

j. Provide merchandise, machines, or displays of a brand or kind substantially different from or inferior to those promised by the business opportunity seller.

k. Fail to provide the purchaser a written contract.

l. Misrepresent the ability of a person or entity providing services to provide locations or assist the purchaser in finding locations expected to have a positive impact on the success of the business opportunity.

m. Misrepresent or omit to state a material fact or create a false or misleading impression in the sale of a business opportunity.

Sec. 21. Section 523C.7, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 5. A complete copy of the terms of the residential service contract shall be delivered to the prospective service contract holder at or before the time that the prospective service contract holder makes application for the service contract. If there is no separate application procedure, then a complete copy of the residential service contract shall be delivered to the service contract holder at or before the time the service contract holder becomes bound under the contract.

Sec. 22. Section 523E.8, subsection 1, paragraph j, Code 1997, is amended to read as follows:

j. Include an explanation of regulatory oversight by the insurance division in twelve point bold type, in substantially the following language:

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

Sec. 23. Section 523E.14, Code 1997, is amended to read as follows:

523E.14 INJUNCTIONS.

The attorney general or the commissioner may apply to the district court in any county of the state for an injunction to restrain a person subject to this chapter and any agents, employees, or associates of the person from engaging in conduct or practices deemed contrary to the public interest. In any proceeding for an injunction, the attorney general or the commissioner may apply to the court for the issuance of a subpoena to require the appearance of a defendant and the defendant's agents and any documents, books, and records germane to the hearing upon the petition for an injunction. Upon proof of any of the offenses described in the petition for injunction the court may grant the injunction. The attorney general or the commissioner shall not be required to post a bond.

Sec. 24. Section 523I.6, subsection 1, paragraph e, Code 1997, is amended to read as follows:

e. The nonexclusive preneed and at-need sale of monuments, memorials, markers, burial vaults, urns, flower vases, floral arrangements, and other the following:

(1) Monuments.

(2) Memorials.

- (3) Markers.
- (4) Installation of monuments, memorials, or markers.
- (5) Burial vaults.
- (6) Urns.
- (7) Flower vases.
- (8) Floral arrangements.
- (9) Other similar merchandise for use within the cemetery.

Sec. 25. Section 566A.1, subsection 1, Code 1997, is amended to read as follows:

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

Sec. 26. Section 566A.2C, subsection 2, Code 1997, is amended to read as follows:

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

Sec. 27. Section 566A.2C, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 5. This section does not apply to a cemetery with average retail sales equal to or less than five thousand dollars for the previous three calendar years.

Sec. 28. Section 566A.3, unnumbered paragraph 3, Code 1997, is amended to read as follows:

The initial perpetual care fund established for any cemetery shall remain in an irrevocable trust fund until such time as this fund has reached fifty one hundred thousand dollars, when it the initial twenty-five thousand dollar deposit may be withdrawn at the rate of one thousand dollars from the original twenty-five thousand dollars for each additional three thousand dollars added to the fund, until all of the twenty-five thousand dollars has been withdrawn. An affidavit shall be filed with the commissioner providing prior notice of the withdrawal and attesting that the money has not previously been withdrawn. Except as approved by the commissioner upon sufficient proof that the money has not previously been withdrawn, the withdrawal must take place within one year after the fund reaches one hundred thousand dollars.

Sec. 29. Section 566A.12, subsection 4, paragraph b, Code 1997, is amended to read as follows:

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

Sec. 30. Section 566A.12, subsection 5, Code 1997, is amended to read as follows:

5. INJUNCTIONS. The commissioner or the attorney general may apply to the district court for an injunction to restrain any cemetery subject to this chapter and any agents, employees, trustees, or associates of the cemetery from engaging in conduct or practices deemed a violation of this chapter or rules adopted pursuant to this chapter. Upon proof of any violation of this chapter described in the petition for injunction, the court may grant the injunction. The commissioner or the attorney general shall not be required to

post a bond. Failure to obey a court order under this subsection constitutes contempt of court.

Sec. 31. Section 523B.4, Code 1997, is repealed.

MARY E. KRAMER
President of the Senate

RON J. CORBETT
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2316, Seventy-seventh General Assembly.

MARY PAT GUNDERSON
Secretary of the Senate

Approved May 14, 1998

TERRY E. BRANSTAD
Governor