

reason of the provisions of section 502.202, subsection 10, except that the sale of thrift certificates or installment thrift certificates which are redeemable by the holder either upon demand or within a period not in excess of five years are exempt from sections 502.201 and 502.602.

For purposes of this section, "control" means control as defined in section 524.103.

Approved April 24, 1996

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## CHAPTER 1160

### MISCELLANEOUS INSURANCE DIVISION REGULATORY PROVISIONS

H.F. 2498

**AN ACT** relating to entities and subject matter under the regulatory authority of the division of insurance, including prearranged funeral contracts, cemeteries, residential service contracts, and business opportunities, and establishing fees.

*Be It Enacted by the General Assembly of the State of Iowa:*

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

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

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

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

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

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

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

Sec. 4. Section 523A.11, Code 1995, is amended by adding the following new subsection:  
**NEW SUBSECTION.** 1A. Notwithstanding chapter 22, keep confidential the information obtained in the course of an investigation. However, if the commissioner determines that it is necessary or appropriate in the public interest or for the protection of the public,

the commissioner may share information with other regulatory authorities or governmental agencies, or may publish information concerning a violation of this chapter or a rule or order under this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

NEW SUBSECTION. 2A. Notwithstanding chapter 22, keep confidential the information obtained in the course of an investigation. However, if the administrator determines

that it is necessary or appropriate in the public interest or for the protection of the public, the administrator shall share information with other regulatory authorities or governmental agencies, or may publish information concerning a violation of this chapter or a rule or order under this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

523E.14 INJUNCTIONS.

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

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

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

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

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

a. The name and principal address of the applicant.

b. The identity of the applicant's owner or owners.

c. Evidence of a trust fund for cemetery maintenance and care in compliance with section 566A.3 or 566A.4.

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

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

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

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

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