

Sec. 2. This Act, being deemed of immediate importance, takes effect upon enactment and is retroactively applicable to March 9, 1992.

Approved May 14, 1998

CHAPTER 1189
INDUSTRIES REGULATED BY REGULATED INDUSTRIES
UNIT OF INSURANCE DIVISION
S.F. 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 SECURITIES 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. ~~TYPES OF 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.

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 SECURITIES 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 ~~twenty five thousand~~ 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.

Approved May 14, 1998

CHAPTER 1190

JUVENILE JUSTICE — OUT-OF-HOME PLACEMENT, TERMINATION OF PARENTAL RIGHTS, AND ADOPTION

S.F. 2345

AN ACT relating to juvenile justice system provisions involving foster care, termination of parental rights, and adoption preplacement investigations.

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

Section 1. Section 232.2, subsection 4, Code Supplement 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. h. If reasonable efforts to place a child for adoption or with a guardian are made concurrently with reasonable efforts as defined in section 232.102, the concurrent goals and timelines may be identified. Concurrent case permanency plan goals for reunification, and for adoption or for other permanent out-of-home placement of a child shall not be considered inconsistent in that the goals reflect divergent possible outcomes for a child in an out-of-home placement.

Sec. 2. Section 232.2, subsection 21, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

“Guardian” means a person who is not the parent of a child, but who has been appointed by a court or juvenile court having jurisdiction over the child, to have a permanent self-sustaining relationship with the child and to make important decisions which have a permanent effect on the life and development of that child and to promote the general welfare of that child. A guardian may be a court or a juvenile court. Guardian does not mean conservator, as defined in section 633.3, although a person who is appointed to be a guardian may also be appointed to be a conservator.

Sec. 3. Section 232.2, subsection 21, Code Supplement 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. f. To make other decisions involving protection, education, and care and control of the child.

Sec. 4. Section 232.78, subsection 1, Code 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. d. The application for the order includes a statement of the facts to support the findings specified in paragraphs “a”, “b”, and “c”.

Sec. 5. Section 232.78, Code 1997, is amended by adding the following new subsection: