

Senate File 2233 - Introduced

SENATE FILE _____
BY SCHOENJAHN

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

A BILL FOR

1 An Act relating to the preneed sale of cemetery and funeral
2 merchandise and funeral services.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 5542XS 82
5 av/sc/8

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1 1 Section 1. Section 523A.102, subsection 27, Code
1 2 Supplement 2007, is amended to read as follows:
1 3 27. "Seller" or "preneed seller" means a person doing
1 4 business within this state, including a person doing business
1 5 within this state who sells insurance, who advertises, sells,
1 6 promotes, or offers to furnish cemetery merchandise, funeral
1 7 merchandise, funeral services, or a combination thereof when
1 8 performance or delivery may be more than one hundred twenty
1 9 days following the initial payment on the account whether the
1 10 transaction is completed or offered in person, through the
1 11 mail, over the telephone, by the internet, or through any
1 12 other means of commerce. "Seller" or "preneed seller"
1 13 includes any person performing any term of a purchase
1 14 agreement executed within this state, and any person
1 15 identified under a burial account as the provider of cemetery
1 16 merchandise, funeral merchandise, funeral services, or a
1 17 combination thereof. "Seller" or "preneed seller" does not
1 18 include a person who has an ownership interest in a seller or
1 19 preneed seller but who is not actively engaged in advertising,
1 20 selling, promoting, or offering to furnish such cemetery
1 21 merchandise, funeral merchandise, funeral services, or a
1 22 combination thereof.
1 23 Sec. 2. Section 523A.201, subsections 2, 3, and 8, Code
1 24 Supplement 2007, are amended to read as follows:
1 25 2. If a seller agrees to furnish cemetery merchandise,
1 26 funeral merchandise, funeral services, or a combination
1 27 thereof and performance or delivery may be more than one
1 28 hundred twenty days following the initial payment on the
1 29 account, a minimum of eighty percent of all payments made
1 30 under the purchase agreement shall be placed and remain in
1 31 trust until the person for whose benefit the funds were paid
1 32 dies. Beginning on January 1, 2009, the minimum amount of all
1 33 payments made under a purchase agreement which shall be placed
1 34 and remain in trust shall increase by two percent each year
1 35 until by January 1, 2018, and every year thereafter, the total
2 1 amount of all payments made under a purchase agreement shall
2 2 be placed in and remain in trust as provided in this section.
2 3 3. If a purchase agreement for cemetery merchandise,
2 4 funeral merchandise, funeral services, or a combination
2 5 thereof provides that payments are to be made in installments,
2 6 the seller shall deposit eighty percent of each payment in the
2 7 trust fund until the full amount required to be placed in
2 8 trust has been deposited. If the purchase agreement is
2 9 financed with or sold to a financial institution, the purchase
2 10 agreement shall be considered paid in full and the trust
2 11 requirements shall be satisfied within fifteen days after the
2 12 seller receives funds from the financial institution.
2 13 Beginning on January 1, 2009, the minimum amount of each
2 14 installment payment made under a purchase agreement which
2 15 shall be placed and remain in trust shall increase by two
2 16 percent each year until by January 1, 2018, and every year
2 17 thereafter, the total amount of all installment payments made
2 18 under a purchase agreement shall be placed in and remain in
2 19 trust as provided in this section.
2 20 8. ~~Interest~~ All interest or income earned on amounts
2 21 deposited in trust shall remain in trust ~~under the same terms~~

~~2 22 and conditions as payments made under the purchase agreement,
2 23 except that a limited liability corporation that was formed in
2 24 2002 for the purpose of purchasing a cemetery from a foreign
2 25 entity reorganizing under bankruptcy and such corporation is
2 26 comprised of six establishments all located within the same
2 27 county may withdraw so much of the interest or income as
2 28 represents the difference between the amount needed to adjust
2 29 the trust funds for inflation as set by the commissioner based
2 30 on the consumer price index and the interest or income earned
2 31 during the preceding year not to exceed fifty percent of the
2 32 total interest or income on a calendar-year basis. The early
2 33 withdrawal of interest or income under this provision does not
2 34 affect the purchaser's right to a credit of such interest or
2 35 income in the event of a nonguaranteed price agreement,
3 1 cancellation, or nonperformance by such limited liability
3 2 corporation.~~

3 3 Sec. 3. Section 523A.405, subsection 8, Code Supplement
3 4 2007, is amended to read as follows:

3 5 8. The amount of the surety bond shall equal eighty
3 6 percent of the payments received pursuant to purchase
3 7 agreements, or the applicable portion thereof, for cemetery
3 8 merchandise, funeral merchandise, funeral services, or a
3 9 combination thereof, and the amount needed to adjust the
3 10 amount of the surety bond for inflation as set by the
3 11 commissioner based on the consumer price index. The seller
3 12 shall review the amount of the surety bond no less than
3 13 annually and shall increase the bond as necessary to reflect
3 14 additional payments. The amount needed to adjust for
3 15 inflation shall be added annually to the surety bond during
3 16 the first quarter of the ~~establishment's~~ seller's fiscal year.
3 17 Beginning on January 1, 2009, the minimum amount of the surety
3 18 bond shall increase by two percent each year until by January
3 19 1, 2018, and every year thereafter, the amount of the surety
3 20 bond shall equal the total amount of the payments received
3 21 pursuant to purchase agreements, or the applicable portion
3 22 thereof, for cemetery merchandise, funeral merchandise,
3 23 funeral services, or a combination thereof, and the amount
3 24 needed to adjust the amount of the surety bond for inflation
3 25 as set by the commissioner based on the consumer price index.

3 26 Sec. 4. Section 523A.502, subsection 6, Code Supplement
3 27 2007, is amended to read as follows:

3 28 6. A sales agent licensed pursuant to this section shall
3 29 satisfactorily fulfill continuing education requirements for
3 30 the license as prescribed by the commissioner by rule.
3 31 However, this continuing education requirement is not
3 32 applicable to a sales agent who is also a licensed insurance
3 33 producer under chapter 522B or a licensed funeral director
3 34 under chapter 156.

3 35 Sec. 5. Section 523A.601, subsection 6, paragraph a, Code
4 1 Supplement 2007, is amended to read as follows:

4 2 a. A purchase agreement that is funded by a trust shall
4 3 include a conspicuous statement in language substantially
4 4 similar to the following language:
4 5 "For your prearranged funeral agreement, we will deposit
4 6 not less than eighty percent of your payments in trust at
4 7 (name of financial institution), (street address), (city),
4 8 (state) (zip code) within fifteen days following receipt of
4 9 the funds. Beginning on January 1, 2009, the minimum amount
4 10 of your payments that will be placed in trust will increase by
4 11 two percent each year until by January 1, 2018, and every year
4 12 thereafter, the total amount of all payments you make under
4 13 your prearranged funeral agreement will be placed in trust
4 14 within fifteen days following receipt of the funds. For your
4 15 protection, you have the right to contact the financial
4 16 institution directly to confirm that the deposit of these
4 17 funds occurred as required by law. If you are unable to
4 18 confirm the deposit of these funds in trust, you may contact
4 19 the Iowa insurance division for assistance by calling the
4 20 insurance division at (telephone number) or by mail at (street
4 21 address), (city), Iowa (zip code)."

4 22 Sec. 6. NEW SECTION. 523A.810A ELECTRONIC FILING.

4 23 The commissioner shall, by rule, develop a system and
4 24 procedures and a format for electronic filing of documents
4 25 required to be filed with the commissioner under this chapter.

4 26 Sec. 7. Section 523A.811, subsection 1, paragraph c, Code
4 27 Supplement 2007, is amended to read as follows:

4 28 c. The amount of funds currently held in trust for
4 29 cemetery merchandise, funeral merchandise, and funeral
4 30 services is less than ~~eighty percent of all payments made~~
4 31 under the purchase agreements referred to in the amount
4 32 required in section 523A.201, subsection 2 or 3, as

4 33 applicable.

4 34

EXPLANATION

4 35 This bill relates to the sale of cemetery and funeral
5 1 merchandise and funeral services that are furnished more than
5 2 120 days after the initial payment on the account.

5 3 Code section 523A.102 is amended to provide that the
5 4 definition of "seller" or "preneed seller" does not include a
5 5 person who has an ownership interest in such a seller or
5 6 preneed seller but who is not actively engaged in furnishing
5 7 cemetery and funeral merchandise and funeral services.

5 8 Code section 523A.201(2) is amended to provide that
5 9 beginning on January 1, 2009, the minimum amount of payments
5 10 made under a purchase agreement for such merchandise and
5 11 services that is required to be held in trust increases by 2
5 12 percent per year for 10 years until January 1, 2018, and
5 13 thereafter the total amount of all payments made are required
5 14 to be held in trust. Currently, only 80 percent of such
5 15 payments are required to be held in trust. A similar
5 16 requirement applies to installment payments made under a
5 17 purchase agreement in Code section 523A.201(3).

5 18 Code section 523A.201(8) is amended to require that all
5 19 interest or income on amounts deposited in trust by all
5 20 entities shall remain in trust.

5 21 Code section 523A.405 is amended to provide that the
5 22 minimum amount of a surety bond that is filed in lieu of a
5 23 trust fund for payments received under a purchase agreement
5 24 must also, beginning on January 1, 2009, increase by 2 percent
5 25 per year until by January 1, 2018, and every year thereafter
5 26 the amount of the bond must equal the total amount of payments
5 27 received, or the applicable portion received for cemetery and
5 28 funeral merchandise and funeral services, plus an amount
5 29 needed to adjust the bond for inflation.

5 30 Code section 523A.502 is amended to provide that continuing
5 31 education requirements for sales agents do not apply to a
5 32 sales agent who is also a licensed insurance producer under
5 33 Code chapter 522B or a licensed funeral director under Code
5 34 chapter 156.

5 35 Code section 523A.601 is amended to require that the
6 1 disclosure information given to purchasers of such merchandise
6 2 and services inform them of the increased trust fund
6 3 requirements.

6 4 New Code section 523A.810A requires the commissioner of
6 5 insurance to develop, by rule, a system and procedures for
6 6 electronic filing of documents under this Code chapter.

6 7 Code section 523A.811 is amended to provide that the
6 8 commissioner of insurance must notify the attorney general of
6 9 the potential need for establishment of a receivership for a
6 10 seller who is not meeting the increased trust fund
6 11 requirements.

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