

Senate Study Bill 3080 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON COMMERCE BILL BY
CHAIRPERSON WARNSTADT)

A BILL FOR

1 An Act relating to the practice of mortuary science and to the
2 preneed sale of cemetery and funeral merchandise and funeral
3 services and providing a penalty.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 272C.2B Continuing education
2 minimum requirements — mortuary science.

3 1. The board of mortuary science, created pursuant to
4 chapter 147, shall require, as a condition of license renewal,
5 a minimum of twenty-four hours of continuing education in the
6 two years immediately prior to a licensee's license renewal.
7 The board of mortuary science may notify funeral director
8 licensees on a quarterly basis regarding continuing education
9 opportunities.

10 2. A person licensed to practice mortuary science in this
11 state shall be deemed to have complied with the continuing
12 education requirements of this state during periods that
13 the person serves honorably on active duty in the military
14 services, or for periods that the person is a government
15 employee working in the person's licensed specialty and
16 assigned to duty outside of the United States, or for other
17 periods of active practice and absence from the state approved
18 by the board of mortuary science.

19 Sec. 2. Section 523A.201, subsections 2, 3, 5, and 8, Code
20 2009, are amended to read as follows:

21 2. If a seller agrees to furnish cemetery merchandise,
22 funeral merchandise, funeral services, or a combination thereof
23 and performance or delivery may be more than one hundred twenty
24 days following the initial payment on the account, ~~a minimum~~
25 ~~of eighty percent of all payments made under the purchase~~
26 agreement shall be placed and remain in trust until the person
27 for whose benefit the funds were paid dies.

28 3. If a purchase agreement for cemetery merchandise,
29 funeral merchandise, funeral services, or a combination
30 thereof provides that payments are to be made in installments,
31 the seller shall deposit ~~eighty percent of each payment~~ all
32 payments made under the purchase agreement in the trust fund
33 until the full amount required to be placed in trust has been
34 deposited. If the purchase agreement is financed with or sold
35 to a financial institution, the purchase agreement shall be

1 considered paid in full and the trust requirements shall be
2 satisfied within fifteen days after the seller receives funds
3 from the financial institution.

4 ~~5. Unless a seller deposits all of each payment in a~~
5 ~~trust fund that meets the requirements of this section and~~
6 ~~section 523A.202~~ For purchase agreements entered into prior to
7 July 1, 2010, where the seller deposited an amount less than
8 one hundred percent of each payment made under the purchase
9 agreement in trust, the seller shall have a fidelity bond or
10 similar insurance in an amount of not less than fifty thousand
11 dollars to protect against the loss of purchaser payments
12 not placed in trust within the time period required by this
13 section and section 523A.202. The commissioner may require a
14 greater amount as the commissioner determines is necessary.
15 If the seller changes ownership, the fidelity bond or similar
16 insurance shall continue in force for at least one year after
17 the transfer of ownership.

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

1 Sec. 3. Section 523A.202, subsections 1 and 4, Code
2 Supplement 2009, are amended to read as follows:

3 1. All funds held in trust pursuant to section 523A.201
4 shall be deposited in a financial institution located in this
5 state within fifteen days following receipt of the funds. The
6 financial institution shall hold the funds for the designated
7 beneficiary until released.

8 4. This section does not prohibit moving trust funds from
9 one financial institution to another financial institution
10 located in this state if the commissioner is notified of the
11 change within thirty days of the transfer of the trust funds.

12 Sec. 4. Section 523A.207, Code 2009, is amended to read as
13 follows:

14 **523A.207 Audits by certified public accountants — penalties.**

15 A purchase agreement shall not be sold or transferred, as
16 part of the sale of a business or the assets of a business,
17 until an audit has been performed by a certified public
18 accountant and filed with the commissioner that expresses the
19 auditor's opinion of the adequacy of funding related to the
20 purchase agreements to be sold or transferred. If the buyer of
21 a purchase agreement sold or transferred as part of the sale
22 of a business or the assets of a business, fails to file such
23 an audit, the commissioner shall suspend the preneed seller's
24 license of the buyer and the preneed sales license of any sales
25 agent in the employ of the buyer until the audit is filed. In
26 addition, the commissioner shall assess a penalty against the
27 buyer in an amount up to one hundred dollars for each day that
28 the audit remains unfiled.

29 Sec. 5. Section 523A.405, subsection 8, Code 2009, is
30 amended to read as follows:

31 8. The amount of the surety bond shall equal ~~eighty~~
32 ~~percent~~ the amount of the payments received pursuant to
33 purchase agreements, or the applicable portion thereof, for
34 cemetery merchandise, funeral merchandise, funeral services,
35 or a combination thereof, and the amount needed to adjust

1 the amount of the surety bond for inflation as set by the
2 commissioner based on the consumer price index. The seller
3 shall review the amount of the surety bond no less than
4 annually and shall increase the bond as necessary to reflect
5 additional payments. The amount needed to adjust for inflation
6 shall be added annually to the surety bond during the first
7 quarter of the seller's fiscal year.

8 Sec. 6. Section 523A.601, subsection 2, paragraph a, Code
9 2009, is amended to read as follows:

10 a. ~~State the percentage of money to~~ that all payments made
11 under the purchase agreement will be placed in trust.

12 Sec. 7. Section 523A.601, subsection 6, paragraph a, Code
13 2009, is amended to read as follows:

14 a. A purchase agreement that is funded by a trust shall
15 include a conspicuous statement in language substantially
16 similar to the following language:

17 "For your prearranged funeral agreement, we will deposit
18 ~~not less than eighty percent~~ all of your payments in trust at
19 (name of financial institution), (street address), (city),
20 (state) (zip code) within fifteen days following receipt of
21 the funds. For your protection, you will ~~be notified~~ receive
22 notification within sixty days from the date of deposit from
23 the financial institution, if acting as a trustee of trust
24 funds under this chapter, to confirm that the deposit of these
25 funds has been made establishing a trust fund as required by
26 law. If you do not receive this notification, you may contact
27 the Iowa insurance division for assistance by calling the
28 insurance division at (telephone number) or by mail at (street
29 address), (city), Iowa (zip code), or you may contact the
30 financial institution by calling the financial institution at
31 (telephone number) or by mail at the address indicated above."

32 EXPLANATION

33 This bill relates to licensing requirements for funeral
34 directors and to certain trust requirements for payments to
35 purchase cemetery and funeral merchandise and funeral services.

1 New Code section 272C.2B codifies a requirement currently
2 contained in administrative rules that a funeral director must
3 fulfill a minimum of 24 hours of continuing education in the
4 two years immediately prior to that person's license renewal.
5 The provision also provides that the requirement is deemed
6 fulfilled for a funeral director during periods of active duty
7 military service, while the funeral director is a government
8 employee working in the person's specialty and assigned to duty
9 outside the United States, and for other periods of active
10 practice and absence from the state approved by the board of
11 mortuary science.

12 Code section 523A.201 is amended to require that if cemetery
13 merchandise, funeral merchandise, funeral services, or a
14 combination thereof is sold pursuant to a purchase agreement
15 entered into on or after July 1, 2010, for performance or
16 delivery more than 120 days following initial payment, all
17 payments made by the buyer pursuant to that purchase agreement
18 must be placed in trust. Currently, only 80 percent of such
19 payments must be deposited in trust. For purchase agreements
20 entered into prior to July 1, 2010, where the seller deposited
21 less than 100 percent of the payments made under the purchase
22 agreement, the seller is still required to have a fidelity
23 bond or similar insurance of not less than \$50,000, or more as
24 determined necessary by the commissioner of insurance.

25 Code section 523A.201 is also amended to delete a provision
26 that allows certain described limited liability corporations to
27 remove interest or income earned on amounts deposited in trust.

28 Code section 523A.202 is amended to provide that funds held
29 in trust pursuant to purchase agreements must be deposited in a
30 financial institution located in the state.

31 Code section 523A.207 is amended to require that if a
32 preneed seller buys purchase agreements as part of the sale of
33 a business or the assets of a business and fails to file an
34 audit by a certified public accountant regarding the adequacy
35 of funding of those purchase agreements, the licenses of

1 that preneed seller and sales agents of that preneed seller
2 are suspended until the audit is filed. In addition, the
3 commissioner of insurance is required to assess a penalty
4 against that buyer of up to \$100 for each day that the audit
5 remains unfiled.

6 Code section 523A.405 is amended to require that a surety
7 bond filed in lieu of meeting trust requirements for payments
8 made pursuant to a purchase agreement must also equal all,
9 instead of 80 percent, of the amount of the payments made.

10 Code section 523A.601 is amended to coordinate with the
11 other provisions of the bill requiring that all payments made
12 under a purchase agreement must be placed in trust.