

House File 2239 - Introduced

HOUSE FILE 2239
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO HSB 584)

A BILL FOR

1 An Act relating to noninsurance business transactions regulated
2 by the insurance division of the department of commerce,
3 by providing for regulated securities and exchanges, and
4 financial records associated with the sale of cemetery and
5 funeral merchandise and services.

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

DIVISION I

IOWA UNIFORM SECURITIES ACT

1
2
3 Section 1. Section 502.202, subsection 2, paragraph e,
4 subparagraph (1), Code 2018, is amended to read as follows:

5 (1) The issuer of the security has a class of equity
6 securities listed on a national securities exchange registered
7 under section 6 of the Securities Exchange Act of 1934
8 ~~or designated for trading on the national association of~~
9 ~~securities dealers automated quotation system.~~

10 Sec. 2. Section 502.202, subsection 24, paragraph a, Code
11 2018, is amended to read as follows:

12 a. *Definitions.* As used in **this subsection**, unless the
13 context otherwise requires:

14 (1) *"Intermediary"* means a any of the following:

15 (a) A broker-dealer that is subject to the registration
16 requirements of **section 502.401** and that facilitates the offer
17 and sale of securities by issuers to investors through an
18 internet-based system that is open to and accessible by the
19 general public.

20 (b) ~~"Intermediary" also means an entity registered with~~
21 ~~the administrator as an Iowa crowdfunding portal.~~ A business
22 entity that is all of the following:

23 (i) A funding portal that is registered with the securities
24 and exchange commission pursuant to the Securities Act of 1933,
25 including as provided in 15 U.S.C. §77d-1.

26 (ii) A member of the financial industry regulatory
27 authority, inc. pursuant to the Securities Exchange Act of
28 1934, including as provided in 15 U.S.C. §§78c and 78o-3, and
29 17 C.F.R. §227.400.

30 (c) A business entity that qualifies as an Iowa crowdfunding
31 portal by meeting all of the following requirements:

32 (i) Is registered with the administrator as required by the
33 administrator.

34 (ii) Is engaged in intrastate crowdfunding offers and sales
35 of exempt securities in this state through an internet site.

1 (iii) Does not operate or facilitate a secondary market in
2 securities.

3 (2) "*Intrastate crowdfunding*" means the offer or sale of
4 a security by an issuer in a transaction that is available
5 for purchase only by an Iowa residents and by resident or a
6 business organizations located in, and organized and registered
7 under the laws of, entity having its principal place of
8 business in this state.

9 ~~(3) "*Iowa crowdfunding portal*" means an entity incorporated~~
10 ~~or organized under the laws of this state, authorized to do~~
11 ~~business in this state, and engaged exclusively in intrastate~~
12 ~~crowdfunding offers and sales of exempt securities in this~~
13 ~~state through an internet site and which does not operate or~~
14 ~~facilitate a secondary market in securities.~~

15 Sec. 3. Section 502.202, subsection 24, paragraph c, Code
16 2018, is amended to read as follows:

17 *c. Aggregate sales limit.* The aggregate amount of
18 securities sold to all investors by the issuer during the
19 twelve-month period preceding the date of the offer or sale,
20 including any amount sold in reliance upon the exemption in
21 this subsection, shall not exceed ~~one~~ five million dollars
22 other than either of the following:

23 (1) Securities sold to Iowa resident institutional
24 investors.

25 (2) Securities sold to the Iowa resident issuer's
26 management.

27 Sec. 4. Section 502.302, subsection 3, Code 2018, is amended
28 to read as follows:

29 3. *Notice filings for federal covered securities under*
30 *section ~~18(b)(4)(D)~~ 18(b)(4)(F).* With respect to a security
31 that is a federal covered security under section ~~18(b)(4)(D)~~
32 18(b)(4)(F) of the Securities Act of 1933, 15 U.S.C.

33 ~~§77r(b)(4)(D)~~ §77r(b)(4)(F), a rule under **this chapter** may
34 require a notice filing by or on behalf of an issuer to include
35 a copy of form D, including the appendix, as promulgated by the

1 securities and exchange commission, and a consent to service
2 of process complying with [section 502.611](#) signed by the issuer
3 not later than fifteen days after the first sale of the federal
4 covered security in this state and the payment of a fee of one
5 hundred dollars; and the payment of a fee of two hundred fifty
6 dollars for any late filing.

7 Sec. 5. Section 502.406, subsection 5, Code 2018, is amended
8 to read as follows:

9 5. *Additional conditions or waivers.* A rule adopted
10 or order issued under [this chapter](#) may impose such other
11 conditions, not inconsistent with the National Securities
12 Markets Improvement Act of 1996. An order or rule issued
13 under [this chapter](#) may waive, in whole or in part, specific
14 requirements in connection with registration as are in the
15 public interest and for the protection of investors.

16 DIVISION II

17 VIATICAL SETTLEMENT ACT

18 Sec. 6. Section 508E.15, subsection 4, paragraph a,
19 subparagraph (4), Code 2018, is amended to read as follows:

20 (4) The national association of insurance commissioners;
21 ~~the national association of securities dealers~~ the financial
22 industry regulatory authority, inc.; the North American
23 securities administrators association; their employees, agents,
24 or representatives; or other regulatory body overseeing life
25 insurance, viatical settlements, securities, or investment
26 fraud.

27 DIVISION III

28 IOWA CEMETERY AND FUNERAL MERCHANDISE AND FUNERAL SERVICES ACT

29 Sec. 7. Section 523A.207, Code 2018, is amended to read as
30 follows:

31 **523A.207 Audits Report by certified public accountants —**
32 **penalty penalties — waiver — confidentiality.**

33 1. A purchase agreement shall not be sold or transferred,
34 as part of the sale of a business or the assets of a business,
35 until ~~an audit has been performed by a certified public~~

1 accountant has completed an agreed-upon procedures engagement
2 in accordance with the attestation standards established by the
3 American institute of certified public accountants and a report
4 is filed with the commissioner that expresses the auditor's
5 opinion of factual findings and results of applying the
6 agreed-upon procedures that verifies the adequacy or inadequacy
7 of funding related to the purchase agreements to be sold or
8 transferred.

9 2. If the buyer of a purchase agreement sold or transferred
10 as part of the sale of a business or the assets of a business,
11 fails to file ~~such an audit~~ a report described in subsection 1,
12 the commissioner ~~shall~~ may suspend the preneed seller's license
13 of the buyer and the preneed sales license of any sales agent
14 in the employ of the buyer until the ~~audit~~ report is filed. In
15 addition, the commissioner ~~shall~~ may assess a penalty against
16 the buyer in an amount up to one hundred dollars for each
17 day that the ~~audit~~ report remains unfiled. The commissioner
18 shall allow a thirty-day grace period after the date that a
19 purchase agreement is sold or transferred before suspension
20 of a license or assessment of a penalty for failure to file
21 ~~an audit pursuant to this subsection~~ the report. Upon good
22 cause, the commissioner may issue an order waiving the report
23 requirements.

24 ~~2.~~ 3. All records maintained by the commissioner under
25 this section shall be confidential pursuant to section 22.7,
26 subsection 58, and shall not be made available for inspection
27 or copying except upon approval of the commissioner or the
28 attorney general, or except when sought by the preneed seller
29 to whom the records relate. Such records shall be privileged
30 and confidential in any judicial or administrative proceeding
31 except any of the following:

32 a. An action commenced by the commissioner.

33 b. An administrative proceeding brought by the insurance
34 division.

35 c. An action or proceeding which arises out of the criminal

1 provisions of the laws of this state or of the United States.

2 d. An action brought by the insurance division or
3 the attorney general to recover moneys for embezzlement,
4 misappropriation, or misuse of trust funds.

5

EXPLANATION

6

The inclusion of this explanation does not constitute agreement with
7 the explanation's substance by the members of the general assembly.

8

GENERAL. This bill provides for the regulation of a number
9 of noninsurance business transactions and associated entities
10 by the insurance division (division) of the department of
11 commerce.

12 BLUE SKY LAW — GENERAL. The amended provisions include
13 sections in the "Iowa Uniform Securities Act" which is
14 sometimes referred to as the "Blue Sky Law (Code chapter
15 502). A person is prohibited from offering to sell or selling
16 a security in this state unless it is registered with the
17 division, exempt from registration, or a federal covered
18 security regulated under federal law (Code section 502.301).
19 The bill amends provisions that are closely connected to
20 two federal statutes: the "Securities Act of 1933" and the
21 "Securities Exchange Act of 1934" (for citations, see Code
22 section 502.103) as administered by the federal securities and
23 exchange commission (SEC). The SEC works in close cooperation
24 with several private entities including the financial industry
25 regulatory authority (FINRA).

26 BLUE SKY LAW — CHANGE IN ORGANIZATION. The bill strikes
27 references to the national association of securities
28 dealers (NASD) which was a self-regulatory organization of
29 the securities industry responsible for the operation and
30 regulation of the NASDAQ stock market and over-the-counter
31 markets. It has been succeeded by FINRA, a not-for-profit
32 organization recognized by federal statute to regulate
33 broker-dealers engaged in transactions involving the purchase
34 and sale of securities for their own account or for the account
35 of others.

1 BLUE SKY LAW — INTRASTATE CROWDFUNDING — BILL'S
2 PROVISIONS. The bill amends provisions (Code section
3 502.202(24)) that currently exempt intrastate crowdfunding from
4 certain Blue Sky Law requirements, including the registration
5 of securities (Code sections 502.301 and 502.306) and the
6 filing of sales and advertising literature (Code section
7 502.504).

8 The bill revises the definition of "intermediary" to include
9 a business entity that satisfies two requirements: (1) be
10 registered with the SEC as a funding portal and (2) be a member
11 of FINRA (17 C.F.R. §227.400). Under federal law, a funding
12 portal cannot offer investment advice or recommendations or
13 solicit purchases or sales of securities, or handle investor
14 assets (17 U.S.C. §78c(a)(80)).

15 Currently, in Iowa, an intermediary is limited to either
16 a broker-dealer registered with the division (Code section
17 502.401) or a business entity, such as a corporation,
18 qualifying as an "Iowa crowdfunding portal" which means
19 it: (1) is registered with the division, (2) is organized
20 under state law, (3) is engaged exclusively in intrastate
21 crowdfunding offers and sales of exempt securities in this
22 state through an internet site, and (4) does not operate or
23 facilitate a secondary market in securities. The bill provides
24 that an Iowa crowdfunding portal would no longer be required to
25 be organized or authorized to do business in this state or be
26 engaged in crowdfunding exclusively in this state. Finally,
27 the bill increases the aggregate amount of securities that
28 could be sold to investors by an issuer acting through an
29 intermediary during the 12 months prior to the date of offer or
30 sale from \$1 million to \$5 million.

31 BLUE SKY LAW — INTRASTATE CROWDFUNDING. "Crowdfunding"
32 refers to the practice of raising capital to finance ventures
33 (e.g., start-ups and early stage companies) by attracting
34 investments generally from small contributors purchasing an
35 equity position (e.g., the purchase of stock) via the internet.

1 "Intrastate crowdfunding" refers to a securities transaction
2 that is: (1) available for purchase only by an Iowa resident
3 or business entity having its principal place of business in
4 this state and (2) made via an intermediary's internet site.
5 The bill requires the business entity maintain its principal
6 place of business in this state.

7 BLUE SKY LAW — REGULATION OF NOTICE FILINGS AND FEES. The
8 bill updates a statutory citation that provides that the SEC
9 form "D", a notice of an exempt offering (17 C.F.R. §239.500),
10 and an associated fee are required to be filed with the
11 division. The federal "National Securities Markets Improvement
12 Act of 1996" (Pub. L. No. 104-290) amended the Securities
13 Act of 1933, by creating a class of securities referred
14 to as "covered securities" which when sold by a licensed
15 broker-dealer is no longer subject to state registration but
16 may be subject to notice filings at the state level so long as
17 the state's requirements are substantially the same as those in
18 effect on September 1, 1996 (15 U.S.C. §77r).

19 VIATICAL SETTLEMENTS — CHANGE IN ORGANIZATION. The bill
20 amends a provision referring to circumstances in which a
21 person may be immune from liability from an offense involving
22 a fraudulent viatical settlement act, if the person acting in
23 good faith sends or receives information from NASD. The bill
24 changes that organization to FINRA.

25 AUDIT REQUIREMENTS ASSOCIATED WITH THE SALE OF CEMETERY
26 AND FUNERAL MERCHANDISE AND SERVICES. The bill amends the
27 "Iowa Cemetery and Funeral Merchandise and Funeral Services
28 Act" (Code chapter 523A) which regulates business entities and
29 sales agents offering to provide cemetery merchandise, funeral
30 merchandise, or funeral services upon an individual's death.
31 The bill provides that when a purchase agreement is acquired as
32 part of the sale of a business or the assets of a business, a
33 buyer would no longer be required to comply with the statute's
34 audit requirements. A requirement for an audit performed by a
35 certified public accountant is replaced by a simpler process

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1 of review referred to as an agreed-upon procedures engagement
2 and accompanying report. In addition, the division may waive
3 this requirement based on good cause (Code section 523A.207).
4 A purchase agreement refers to an agreement to furnish cemetery
5 merchandise, funeral merchandise, and funeral services which
6 may occur more than 120 days following an initial payment (Code
7 section 523A.102).