

House Study Bill 584 - Introduced

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
COMMERCE/INSURANCE DIVISION
BILL)

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,
4 financial records associated with the sale of cemetery and
5 funeral merchandise and services, and eliminating specified
6 penalties for violations of requirements relating to
7 retirement and senior adult congregate living facilities.
8 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 DIVISION II

8 VIATICAL SETTLEMENT ACT

9 Sec. 5. Section 508E.15, subsection 4, paragraph a,
10 subparagraph (4), Code 2018, is amended to read as follows:

11 (4) The national association of insurance commissioners;
12 ~~the national association of securities dealers~~ the financial
13 industry regulatory authority, inc.; the North American
14 securities administrators association; their employees, agents,
15 or representatives; or other regulatory body overseeing life
16 insurance, viatical settlements, securities, or investment
17 fraud.

18 DIVISION III

19 IOWA CEMETERY AND FUNERAL MERCHANDISE AND FUNERAL SERVICES ACT

20 Sec. 6. Section 523A.207, Code 2018, is amended to read as
21 follows:

22 **523A.207 Audits Report by certified public accountants —**
23 **penalty penalties — waiver — confidentiality.**

24 1. A purchase agreement shall not be sold or transferred,
25 as part of the sale of a business or the assets of a business,
26 until ~~an audit has been performed by a certified public~~
27 accountant has completed an agreed-upon procedures engagement
28 in accordance with the attestation standards established by the
29 American institute of certified public accountants and a report
30 is filed with the commissioner that expresses the auditor's
31 opinion of factual findings and results of applying the
32 agreed-upon procedures that verifies the adequacy or inadequacy
33 of funding related to the purchase agreements to be sold or
34 transferred.

35 2. If the buyer of a purchase agreement sold or transferred

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

15 ~~2.~~ 3. All records maintained by the commissioner under
16 this section shall be confidential pursuant to section 22.7,
17 subsection 58, and shall not be made available for inspection
18 or copying except upon approval of the commissioner or the
19 attorney general, or except when sought by the preneed seller
20 to whom the records relate. Such records shall be privileged
21 and confidential in any judicial or administrative proceeding
22 except any of the following:

23 *a.* An action commenced by the commissioner.

24 *b.* An administrative proceeding brought by the insurance
25 division.

26 *c.* An action or proceeding which arises out of the criminal
27 provisions of the laws of this state or of the United States.

28 *d.* An action brought by the insurance division or
29 the attorney general to recover moneys for embezzlement,
30 misappropriation, or misuse of trust funds.

31 DIVISION IV

32 RETIREMENT AND SENIOR ADULT CONGREGATE LIVING FACILITIES

33 Sec. 7. REPEAL. Section 523D.8, Code 2018, is repealed.

34 EXPLANATION

35 The inclusion of this explanation does not constitute agreement with

1 the explanation's substance by the members of the general assembly.

2 GENERAL. This bill provides for the regulation of a number
3 of noninsurance business transactions and associated entities
4 by the insurance division (division) of the department of
5 commerce.

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

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

30 BLUE SKY LAW — INTRASTATE CROWDFUNDING — BILL'S
31 PROVISIONS. The bill amends provisions (Code section
32 502.202(24)) that currently exempt intrastate crowdfunding from
33 certain Blue Sky Law requirements, including the registration
34 of securities (Code sections 502.301 and 502.306) and the
35 filing of sales and advertising literature (Code section

1 502.504).

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

9 Currently, in Iowa, an intermediary is limited to either
10 a broker-dealer registered with the division (Code section
11 502.401) or a business entity, such as a corporation,
12 qualifying as an "Iowa crowdfunding portal" which means
13 it: (1) is registered with the division, (2) is organized
14 under state law, (3) is engaged exclusively in intrastate
15 crowdfunding offers and sales of exempt securities in this
16 state through an internet site, and (4) does not operate or
17 facilitate a secondary market in securities. The bill provides
18 that an Iowa crowdfunding portal would no longer be required to
19 be organized or authorized to do business in this state or be
20 engaged in crowdfunding exclusively in this state. Finally,
21 the bill increases the aggregate amount of securities that
22 could be sold to investors by an issuer acting through an
23 intermediary during the 12 months prior to the date of offer or
24 sale from \$1 million to \$5 million.

25 BLUE SKY LAW — INTRASTATE CROWDFUNDING. "Crowdfunding"
26 refers to the practice of raising capital to finance ventures
27 (e.g., start-ups and early stage companies) by attracting
28 investments generally from small contributors purchasing an
29 equity position (e.g., the purchase of stock) via the internet.
30 "Intrastate crowdfunding" refers to a securities transaction
31 that is: (1) available for purchase only by an Iowa resident
32 or business entity having its principal place of business in
33 this state and (2) made via an intermediary's internet site.
34 The bill requires the business entity maintain its principal
35 place of business in this state.

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

13 VIATICAL SETTLEMENTS — CHANGE IN ORGANIZATION. The bill
14 amends a provision referring to circumstances in which a
15 person may be immune from liability from an offense involving
16 a fraudulent viatical settlement act, if the person acting in
17 good faith sends or receives information from NASD. The bill
18 changes that organization to FINRA.

19 AUDIT REQUIREMENTS ASSOCIATED WITH THE SALE OF CEMETERY
20 AND FUNERAL MERCHANDISE AND SERVICES. The bill amends the
21 "Iowa Cemetery and Funeral Merchandise and Funeral Services
22 Act" (Code chapter 523A) which regulates business entities and
23 sales agents offering to provide cemetery merchandise, funeral
24 merchandise, or funeral services upon an individual's death.
25 The bill provides that when a purchase agreement is acquired as
26 part of the sale of a business or the assets of a business, a
27 buyer would no longer be required to comply with the statute's
28 audit requirements. A requirement for an audit performed by a
29 certified public accountant is replaced by a simpler process
30 of review referred to as an agreed-upon procedures engagement
31 and accompanying report. In addition, the division may waive
32 this requirement based on good cause (Code section 523A.207).
33 A purchase agreement refers to an agreement to furnish cemetery
34 merchandise, funeral merchandise, and funeral services which
35 may occur more than 120 days following an initial payment (Code

1 section 523A.102).

2 RETIREMENT AND SENIOR ADULT CONGREGATE LIVING FACILITIES —
3 GENERAL. The bill amends Code chapter 523D which provides for
4 the regulation of continuing care retirement communities and
5 senior adult congregate living facilities, in part by requiring
6 the provider of care to deliver a disclosure statement to
7 a prospective resident or representative, and an annual
8 disclosure statement to an actual resident or representative
9 (Code section 523D.3). In addition, certain terms and
10 conditions included in a contract for care are required to
11 be specified including procedures for the cancellation of a
12 contract (Code section 523D.6).

13 RETIREMENT AND SENIOR ADULT CONGREGATE LIVING FACILITIES
14 — ELIMINATION OF CRIMINAL PENALTY. The bill eliminates a
15 provision that makes a violation of the Code chapter or rule
16 adopted under the Code chapter a fraudulent practice (Code
17 section 523D.8). A provider in violation of the Code chapter
18 or associated rule would still be liable for damages in a
19 civil trial (Code section 523D.7). The division would also
20 retain authority to petition the district court to obtain an
21 injunction in order to restrain a person in violation of the
22 Code chapter or associated rule (Code section 523D.14).

23 RETIREMENT AND SENIOR ADULT CONGREGATE LIVING FACILITIES —
24 FRAUDULENT PRACTICE DESCRIBED. A fraudulent practice involves
25 a number of acts which is a type of theft committed through
26 deceit or other fraud against a consumer with the offender's
27 penalty based on the value of the affected consumer's goods or
28 services (either the market value, replacement value, or actual
29 value) (Code sections 714.1 and 714.3). There are five degrees
30 of fraudulent practice, ranging from fraudulent practice in
31 the first degree when the amount of money or value of property
32 exceeds \$10,000 and is punishable as a class "C" felony
33 (confinement for no more than 10 years and a fine of at least
34 \$1,000 but not to exceed \$10,000) to fraudulent practice in
35 the fifth degree when the amount of money or value of property

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1 does not exceed \$200 and is punishable as a simple misdemeanor
2 (confinement for no more than 30 days or a fine of at least \$65
3 but not more than \$625 or by both) (Code sections 714.9 through
4 714.14).