

Senate File 2194 - Introduced

SENATE FILE 2194
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 3058)

A BILL FOR

1 An Act relating to preneed sellers and purchase agreements
2 for cemetery merchandise, funeral merchandise, and funeral
3 services, providing penalties, and including applicability
4 provisions.

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

1 Section 1. Section 523A.207, Code 2022, is amended by
2 striking the section and inserting in lieu thereof the
3 following:

4 **523A.207 Transfer of preneed purchase agreements — sale of**
5 **a business or business assets.**

6 1. A purchase agreement shall not be sold or transferred as
7 part of the sale of a business, or of the assets of a business,
8 until the seller of the business has provided all of the
9 following to the buyer of the business:

10 a. A copy of the most recent annual report filed with the
11 commissioner by the seller.

12 b. The aggregate amount of any interest income withdrawn
13 to date from trust accounts pursuant to section 523A.201,
14 subsection 8.

15 c. Copies of all purchase agreements to be assumed by the
16 buyer.

17 d. A list of the purchase agreements provided under
18 paragraph "c" that includes all of the following:

19 (1) The name of the purchaser and the name of the seller of
20 each purchase agreement.

21 (2) The total dollar amount of each purchase agreement.

22 (3) The date each purchase agreement was executed.

23 (4) Whether each purchase agreement is guaranteed,
24 nonguaranteed, or mixed, and affirm or deny one hundred percent
25 trusting of any guaranteed items and specify the lesser amount
26 or percentage placed in trust, if applicable.

27 e. A list of insurance policies that are applicable to the
28 purchase agreements provided under paragraph "c". The list
29 shall identify the purchase agreement to which each insurance
30 policy applies, the named policyholder on each insurance
31 policy, and the face amount of each insurance policy.

32 f. A list of trust fund beneficiaries and the amount in
33 trust for each beneficiary.

34 g. A list that identifies and describes any items of presold
35 merchandise that are not fully funded with insurance or trust

1 funds in compliance with this chapter, and the amount or
2 percentage that is either unfunded or underfunded.

3 2. a. The seller of a business shall file a disclosure
4 with the commissioner that contains the information required
5 under subsection 1, paragraphs "d" and "e", at least thirty
6 calendar days prior to the date of the transfer of any purchase
7 agreements to the buyer.

8 b. If the seller fails to file the disclosure required under
9 paragraph "a", the commissioner may suspend the buyer's preneed
10 seller's license, the seller's preneed seller's license, and
11 the license of any sales agent authorized to sell for the buyer
12 or seller until the disclosure is filed. In addition, the
13 commissioner may assess a penalty against the buyer or seller
14 in an amount up to one hundred dollars for each calendar day
15 that the disclosure remains unfiled. The commissioner shall
16 allow a thirty-day grace period after the date that a purchase
17 agreement is sold or transferred before the commissioner
18 suspends the preneed seller's license of the buyer, seller, or
19 of a sales agent authorized to sell for the buyer or seller,
20 or assesses a penalty against the buyer or seller. Upon
21 good cause, the commissioner may issue an order waiving the
22 disclosure requirement.

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

31 a. An action commenced by the commissioner.

32 b. An administrative proceeding brought by the division.

33 c. An action or proceeding which arises out of the criminal
34 provisions of the laws of this state or of the United States.

35 d. An action brought by the division or the attorney general

1 to recover moneys from embezzlement, misappropriation, or
2 misuse of trust funds.

3 Sec. 2. Section 523A.401, subsection 4, Code 2022, is
4 amended to read as follows:

5 ~~4. The premiums of any new insurance policy shall be~~
6 ~~fully paid~~ If a preneed funeral purchase agreement contains
7 a provision stating that the agreement will be funded by the
8 purchase of a new insurance policy, the insurance producer
9 who sells the insurance policy that will fund the purchase
10 agreement shall require that any payment made by the purchaser
11 shall be made payable only to the insurance company designated
12 in the purchase agreement. The insurance producer shall
13 remit the insurance policy application and the premium made
14 payable to the insurance company designated in the purchase
15 agreement to the insurance company within thirty calendar days
16 after execution of the purchase agreement or, with respect
17 to a purchase agreement that provides for periodic payments,
18 the premiums shall be paid directly by the purchaser to the
19 insurance company issuing that issues the insurance policy.

20 Sec. 3. Section 523A.402, subsection 4, Code 2022, is
21 amended to read as follows:

22 ~~4. The premiums of any new annuity shall be fully paid~~
23 If a preneed funeral purchase agreement contains a provision
24 stating that the agreement will be funded by the purchase of
25 a new annuity, the insurance producer who sells the annuity
26 that will fund the purchase agreement shall require that any
27 payment made by the purchaser shall be made payable only to the
28 insurance company designated in the purchase agreement. The
29 insurance producer shall remit the annuity application and the
30 premium made payable to the insurance company designated in
31 the purchase agreement to the insurance company within thirty
32 calendar days after execution of the purchase agreement or,
33 with respect to a purchase agreement that provides for periodic
34 payments, the premiums shall be paid directly by the purchaser
35 to the insurance company issuing that issues the annuity.

1 Sec. 4. NEW SECTION. **523A.505 Duty to disclose.**

2 1. A sales agent, and any person who owns at least five
3 percent of a preneed seller business, shall have an ongoing
4 duty to disclose to the commissioner all felony crimes and
5 those misdemeanor-level crimes involving dishonesty or false
6 statement for which the sales agent or person has been found
7 guilty, or for which the sales agent or person has pled
8 guilty or no contest. Such disclosure shall be made to the
9 commissioner within thirty calendar days of the date that
10 the sales agent or person has been found guilty by a court
11 of competent jurisdiction, or of the date the sales agent or
12 person pleads not guilty or no contest.

13 2. A sales agent, and any person who owns at least five
14 percent of a preneed seller business, shall have an ongoing
15 duty to disclose to the commissioner all liens and judgments
16 over twenty thousand dollars that have been entered against
17 the sales agent or person, and all bankruptcy petitions that
18 have been filed by the sales agent or person. Such disclosure
19 shall be made to the commissioner within thirty calendar days
20 of the date on which the lien or judgment is entered, or of the
21 date on which the sales agent or person files a petition for
22 bankruptcy.

23 Sec. 5. NEW SECTION. **523A.506 Business continuity planning.**

24 A preneed seller shall establish, implement, and maintain
25 written procedures relating to business continuity and
26 succession planning. The business continuity and succession
27 plan shall be based upon the specific facts and circumstances
28 of the preneed seller's business model including the size of
29 the preneed seller's business, the types of services provided,
30 and the number of physical locations established and maintained
31 by the preneed seller. The plan must provide for all of the
32 following:

33 1. The protection, secure backup, and recovery of the
34 preneed seller's business records.

35 2. Alternative forms of communication to ensure timely

1 notice of all of the following to customers, key personnel,
2 employees, vendors, and service providers:

3 a. A significant business interruption.

4 b. The death or unavailability of key personnel.

5 c. A disruption of service.

6 d. The cessation of business activities.

7 3. Reassignment of key duties to qualified individuals in
8 the event of the death or unavailability of key personnel.

9 4. Minimization and mitigation of service disruptions and
10 negative impacts to clients that may result from a significant
11 business interruption.

12 Sec. 6. NEW SECTION. 523A.605 Allocation of growth or
13 interest.

14 If a purchase agreement funded by insurance proceeds under
15 section 523A.401 or by annuity proceeds under section 523A.402
16 includes nonguaranteed merchandise or services, the purchaser,
17 beneficiary, or the beneficiary's estate shall receive a credit
18 for, and the benefit of, any growth in death benefits that is
19 at least equal to the percentage of the total price under the
20 purchase agreement that is attributable to the nonguaranteed
21 merchandise or services.

22 Sec. 7. Section 523A.807, subsection 3, unnumbered
23 paragraph 1, Code 2022, is amended to read as follows:

24 If the commissioner finds that a person has violated section
25 523A.201, 523A.202, 523A.203, 523A.204, 523A.207, 523A.401,
26 523A.402, 523A.403, 523A.404, 523A.405, 523A.501, 523A.502,
27 ~~or~~ 523A.502A, 523A.505, or 523A.605, or any rule adopted
28 pursuant thereto, the commissioner may order any or all of the
29 following:

30 Sec. 8. APPLICABILITY. The following applies to purchase
31 agreements sold or transferred as part of the sale of a
32 business, or the assets of a business, on or after July 1,
33 2022:

34 The section of this Act amending section 523A.207.

35

EXPLANATION

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

3 This bill relates to preneed sellers and purchase agreements
4 (agreement) for cemetery merchandise, funeral merchandise, and
5 funeral services.

6 The bill provides that an agreement shall not be sold or
7 transferred as part of the sale of a business, or the assets
8 of a business, until the seller of the business (seller) has
9 provided the buyer of the business (buyer) with copies of
10 all agreements to be assumed by the buyer, as well as the
11 additional information detailed in the bill. Current law
12 requires a certified public accountant to complete a procedures
13 engagement in accordance with the attestation standards
14 established by the American institute of certified public
15 accountants that verifies the adequacy or inadequacy of funding
16 related to the agreements to be sold or transferred. The
17 buyer must file a copy of the report with the commissioner of
18 insurance (commissioner).

19 The bill requires that the seller file a disclosure with the
20 commissioner at least 30 calendar days prior to the date of the
21 transfer of any agreements that lists all of the agreements
22 that are to be transferred to the buyer, and provides
23 additional information as detailed in the bill. If the seller
24 fails to file the disclosure, the commissioner may suspend
25 certain licenses or assess penalties as detailed in the bill.

26 The bill requires that if an agreement contains a provision
27 stating that it will be funded by either the purchase of a
28 new insurance policy or a new annuity, the insurance producer
29 (producer) who sells the policy or annuity that will fund the
30 agreement must require that any payment made by the purchaser
31 be made payable only to the insurance company (company)
32 designated in the agreement. The producer must remit the
33 insurance or annuity application and the premium to the company
34 designated in the agreement within 30 calendar days after the
35 date of execution of the agreement. Current law requires that

1 the premiums for any new insurance policy be fully paid within
2 30 days after execution of the agreement.

3 The bill requires sales agents (agents), and any persons
4 who own at least five percent of a preneed seller business, to
5 disclose to the commissioner all felony crimes and misdemeanors
6 that involve dishonesty or false statement to which the agent
7 or person has been found guilty, or to which the agent or
8 person has pled guilty or no contest. The disclosure must be
9 made within 30 days of the date that the agent or person is
10 found guilty, or of the date the agent or person pleads not
11 guilty or no contest. The agent or person must also disclose
12 all liens and judgments over \$20,000 that are entered against
13 them, and all bankruptcy petitions filed by the agent or
14 person. Disclosure must occur within 30 calendar days of the
15 date that the lien or judgment is entered, or that a petition
16 for bankruptcy is filed.

17 Preneed sellers are required by the bill to establish,
18 implement, and maintain written procedures relating to business
19 continuity and succession planning (plan). The plan must
20 be based upon the specific facts and circumstances of the
21 seller's business model, and must also address the additional
22 circumstances detailed in the bill.

23 Under the bill, if a purchase agreement funded by insurance
24 or annuity proceeds includes nonguaranteed merchandise or
25 services, the purchaser, beneficiary, or the beneficiary's
26 estate shall receive a credit for, and the benefit of,
27 any growth in death benefits that is at least equal to the
28 percentage of the total price under the purchase agreement that
29 is attributable to the nonguaranteed merchandise or services.

30 The bill provides that if the commissioner finds that a
31 person has violated the duty to disclose a felony, misdemeanor,
32 judgment, or lien; or failed to credit a purchaser,
33 beneficiary, or the beneficiary's estate for any growth in
34 death benefits, the person is subject to the remedies and
35 penalties under Code section 523A.807(3).

S.F. 2194

1 The section of the bill that amends Code section 523A.207
2 applies to purchase agreements sold or transferred as part of
3 the sale of a business, or of the assets of a business, on or
4 after July 1, 2022.