House Study Bill 600 - Introduced

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES BILL)

A BILL FOR

An Act relating to preneed sellers, sales agents and sales agent applicants, and government cemeteries.

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

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Section 1. Section 22.7, subsection 58, Code 2026, is amended to read as follows:

58. Information filed with the commissioner of insurance pursuant to sections 523A.204, 523A.205, 523A.206, 523A.207, 523A.401, ~~523A.502A,~~ and 523A.803.

Sec. 2. Section 523A.102, subsection 7, Code 2026, is amended by striking the subsection.

Sec. 3. Section 523A.201, subsection 8, Code 2026, is amended to read as follows:

8. Interest or income earned on amounts deposited in trust shall remain in trust under the same terms and conditions as payments made under the purchase agreement, except that a seller may withdraw so much of the interest or income as represents the difference between the amount needed to adjust the trust funds for inflation ~~as set by the commissioner~~ based on the most recently released consumer price index for all urban consumers published by the United States department of labor, bureau of labor statistics, and the interest or income earned during the immediately preceding year not to exceed fifty percent of the total interest or income on a calendar-year basis. ~~The early~~ Early withdrawal of interest or income under this ~~provision does~~ subsection shall not affect the purchaser's right to a credit of such interest or income in the event of a nonguaranteed price agreement, cancellation, or nonperformance by ~~such a~~ the seller.

Sec. 4. Section 523A.206, subsection 1, Code 2026, is amended to read as follows:

1. The commissioner may conduct an examination under this chapter of any seller as often as the commissioner deems appropriate. ~~If a seller has a trust arrangement, the commissioner shall conduct an examination of such seller doing business in this state not less than once every five years unless the seller has provided to the commissioner, on an annual basis, a certified copy of an audit conducted by an independent certified public accountant verifying compliance with this chapter.~~ The commissioner may require a seller to

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provide a certified copy of an audit of ~~a~~ the seller~~, or other person~~ conducted by ~~a~~ an independent certified public accountant to verify compliance with ~~the requirements of~~ this chapter, including rules adopted and orders issued pursuant to this chapter.

Sec. 5. Section 523A.502, subsection 1, Code 2026, is amended to read as follows:

1. *a.* A person shall not advertise, sell, promote, or offer to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof when performance or delivery may be more than one hundred twenty days following initial payment on the account unless the person has a sales license and is a sales agent of a person holding a preneed seller's license. ~~The~~

b. A preneed seller licensee is liable for the acts of ~~its~~ the licensee's sales agents performed in advertising, selling, promoting, or offering to furnish, upon the future death of a person named or implied in a purchase agreement, cemetery merchandise, funeral merchandise, funeral services, or a combination thereof.

c. (1) Prior to being issued a sales license, an applicant for a sales license shall be designated by at least one preneed seller to sell, negotiate, or solicit purchase agreements on behalf of the preneed seller. At the time an individual submits an application for a sales license, the preneed seller shall file, in a format approved by the commissioner, documentation of the designation of the applicant to sell, negotiate, or solicit purchase agreements on behalf of the preneed seller.

(2) A sales license shall not be issued to a sales license applicant until the applicant has met all licensure requirements of this chapter.

(3) The preneed seller shall disclose to the commissioner any changes made to the designation for a sales agent to sell, negotiate, or solicit preneed contracts on the preneed seller's behalf within thirty calendar days of the date of the change in

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designation.

d. The license of a sales agent shall not be effective during any time period during which the sales agent is not employed by or associated with a preneed seller licensed under this chapter.

Sec. 6. Section 523A.502, subsection 5, Code 2026, is amended to read as follows:

5. A sales license shall expire annually on April 30. If a sales agent has ~~filed an annual report pursuant to section 523A.502A, subsection 1, and has~~ fulfilled the continuing education requirements pursuant to subsection 6 and has paid the required renewal fee, the commissioner shall renew the sales agent's sales license ~~until April 30 of the following year~~.

Sec. 7. Section 523A.601, subsection 1, paragraph i, Code 2026, is amended to read as follows:

i. Include an explanation of regulatory oversight by the insurance division in twelve point boldface type, in substantially the following language:

This agreement is subject to rules administered by the Iowa insurance division. You may ~~call~~ contact the Iowa insurance division with inquiries or complaints at ~~(telephone number). Written inquiries or complaints should be mailed to the Iowa securities and regulated industries bureau, (street address), (city), Iowa (zip code)~~ iid.iowa.gov.

Sec. 8. Section 523A.602, subsection 2, paragraph b, subparagraph (1), Code 2026, is amended to read as follows:

(1) If a purchase agreement is canceled, a purchaser requests a transfer of the trust assets upon cancellation of a purchase agreement, or another seller provides merchandise or services designated in a purchase agreement, the seller shall refund or transfer within thirty days of receiving a written demand no less than the purchase price of the applicable cemetery merchandise, funeral merchandise, and funeral services adjusted for inflation, using the most recently released consumer price index ~~amounts announced by the commissioner annually~~ for all urban consumers published by the United States department of labor, bureau of

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labor statistics, less any actual expenses incurred by the seller pursuant to the purchase agreement as set forth in the purchase agreement under section 523A.601, subsection 1, paragraph "*f*". The amount of the actual expenses deducted by the seller shall not exceed ten percent of the purchase price of the applicable cemetery merchandise, funeral merchandise, and funeral services. The seller may also deduct the value of the cemetery merchandise, funeral merchandise, and funeral services already received by, delivered to, or warehoused for the purchaser.

Sec. 9. Section 523A.602, subsection 2, paragraph c, Code 2026, is amended to read as follows:

c. A purchase agreement must include a statement that the purchaser is entitled to a refund of the purchase price of the applicable funeral merchandise adjusted for inflation, using the most recently released consumer price index ~~amounts announced by the commissioner annually~~ for all urban consumers published by the United States department of labor, bureau of labor statistics, for any item of funeral merchandise that cannot be delivered to the location specified in the purchase agreement within forty-eight hours of notice of the individual's death, unless the delay is caused by weather conditions or a natural disaster. The seller must return such refund to the purchaser within thirty days of receiving the written demand.

Sec. 10. Section 523A.807, subsection 3, unnumbered paragraph 1, Code 2026, is amended to read as follows:

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

Sec. 11. Section 523I.102, subsections 9, 16, and 45, Code 2026, are amended by striking the subsections.

Sec. 12. Section 523I.102, Code 2026, is amended by adding the following new subsections:

NEW SUBSECTION. 13A. "*Government cemetery*" means a cemetery

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that is owned, operated, or controlled by a governmental subdivision.

NEW SUBSECTION. 13B. *"Governmental subdivision"* means a city, county, or township.

Sec. 13. Section 523I.102, subsection 37, Code 2026, is amended to read as follows:

37. *a.* *"Perpetual care cemetery"* includes all of the following:

~~*a.*~~ (1) Any cemetery that was organized or commenced business in this state on or after July 1, 1995.

~~*b.*~~ (2) Any cemetery that has established a care fund in compliance with section 523I.810.

~~*c.*~~ (3) Any cemetery that represents that it is a perpetual care cemetery in its interment rights agreement.

~~*d.*~~ (4) Any cemetery that represents in any other manner that the cemetery provides perpetual, permanent, or guaranteed care.

b. "Perpetual care cemetery" does not include a government cemetery.

Sec. 14. Section 523I.213A, subsection 1, Code 2026, is amended to read as follows:

1. The commissioner or the commissioner's designee may conduct an examination under this chapter of any cemetery as often as the commissioner deems appropriate. ~~If a cemetery has a trust arrangement, the commissioner shall conduct an examination not less than once every five years.~~

Sec. 15. Section 523I.312, subsection 2, paragraph n, Code 2026, is amended to read as follows:

n. Include an explanation of regulatory oversight by the insurance division in twelve point boldface type, in substantially the following language:

This agreement is subject to rules administered by the Iowa insurance division. You may ~~call~~ contact the Iowa insurance division with inquiries or complaints at ~~(insert telephone number). Written inquiries or complaints should be mailed to: Iowa Securities and Regulated Industries Bureau, (insert~~

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~~address)~~ iid.iowa.gov.

Sec. 16. Section 523I.501, Code 2026, is amended to read as follows:

523I.501 Cemetery authorized.

The governing body of a governmental subdivision may purchase, establish, operate, enclose, improve, or regulate a cemetery. A government cemetery ~~owned or operated by a governmental subdivision~~ may sell interment rights subject to ~~the provisions of~~ this chapter.

Sec. 17. Section 523I.801, subsection 1, Code 2026, is amended to read as follows:

1. All cemeteries are designated as either "perpetual care cemeteries", ~~or~~ "nonperpetual care cemeteries", or "government cemeteries" for the purposes of this chapter. A cemetery that represents that it is offering perpetual care on or after July 1, 2005, is subject to this subchapter. This subchapter shall not apply to government cemeteries.

Sec. 18. Section 523I.805, subsection 1, Code 2026, is amended to read as follows:

1. A ~~cemetery owned or operated by a political subdivision of this state is not required to make a minimum initial deposit in a care fund. Any other~~ cemetery commencing business in this state on or after July 1, 2005, shall not sell interment spaces unless the cemetery has a care fund of at least twenty-five thousand dollars in cash.

Sec. 19. Section 523I.810, subsection 1, paragraph f, unnumbered paragraph 1, Code 2026, is amended to read as follows:

If the amount of a care fund exceeds two hundred thousand dollars, the cemetery or any officer, director, agent, employee, or affiliate of the cemetery shall not serve as trustee ~~unless the cemetery is a cemetery owned or operated by a governmental subdivision of this state~~. A financial institution holding care funds shall not do any of the following:

Sec. 20. REPEAL. Sections 523A.502A and 523I.401, Code 2026, are repealed.

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EXPLANATION

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

This bill relates to preneed sellers, sales agents and sales agent applicants, and government cemeteries.

The bill amends Code sections 523A.201(8) (establishment of trust funds), 523A.602(2)(b)(1) (consumer rescission, cancellation, and refund rights —— purchase agreement compliance with other laws), and 523A.602(2)(c) to calculate the rate of inflation by relying on the most recently released consumer price index for all urban consumers published by the United States department of labor, bureau of labor statistics, rather than relying on the inflation as set by the commissioner of insurance (commissioner) based on the consumer price index under current law.

The bill eliminates the requirement under current law that if a preneed seller has a trust agreement, the commissioner shall conduct an examination of the preneed seller at least once every five years unless the preneed seller has annually provided to the commissioner a certified copy of an audit conducted by an independent certified public accountant. Under the bill, the commissioner may require a preneed seller to provide a certified copy of an audit of the preneed seller conducted by an independent certified public accountant to verify compliance.

Under the bill, prior to being issued a sales license, an applicant for a sales license must be designated by a preneed seller to sell, negotiate, or solicit purchase agreements on behalf of the preneed seller. At the time the applicant submits their application for a sales license, the preneed seller shall file documentation of the designation for the applicant to sell, negotiate, or solicit purchase agreements on behalf of the preneed seller. A license as a sales agent shall not be issued to an applicant unless they have met all licensure requirements and the insurance division (division) has received a designation by a preneed seller. A preneed seller must disclose to the

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commissioner changes made to the designation of a sales agent authorized to conduct business on the preneed seller's behalf within 30 days of a designation change. A sales agent license shall not be effective during a time period in which the sales agent is not employed by or associated with a preneed seller.

Under the bill, for a sales agent to renew their license, the sales agent must pay a renewal fee. Payment of a renewal fee is not required under current law.

The bill amends Code sections 523A.601(1)(i) (disclosures) and 523I.312(2)(n) (disclosure requirements —— interment agreements) to clarify the manner in which to contact the division by directing inquiries and complaints to the division's internet site, rather than by telephone or mail under current law.

The bill eliminates the requirement that the commissioner or the commissioner's designee conduct an examination no less than once every five years of any cemetery that has a trust arrangement.

Under the bill, all cemeteries under Code chapter 523I (Iowa cemetery Act) are designated as perpetual care cemeteries, nonperpetual care cemeteries, or government cemeteries. "Government cemetery" is defined in the bill. Under the bill, Code chapter 523I, subchapter VIII (perpetual care cemeteries —— requirements), shall not apply to government cemeteries.

Under current law, a cemetery owned or operated by a political subdivision is not required to make a minimum initial deposit in a care fund, and may serve as a trustee. The bill eliminates these exceptions.

The bill repeals Code sections 523A.502A (sales agent annual reporting requirements) and 523I.401 (neglected cemeteries), and makes conforming changes to Code sections 22.7(58) and 523A.807(3).

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