

SENATE BILL 415

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CF 4r1243

By: **Senators Klausmeier, Benson, Reilly, and Young**
Introduced and read first time: January 24, 2014
Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Morticians and Funeral Directors – Pre-Need Contracts**

3 FOR the purpose of requiring that certain disclosure statements in pre-need contracts
4 inform a buyer of whether the contract is a guaranteed contract or
5 nonguaranteed contract and, under certain circumstances, list the funeral goods
6 and services or cash advance items that are not guaranteed; repealing a
7 requirement that the disclosure statements contain a certain price; providing
8 that if certain disclosures are made, pre-need contracts may be guaranteed
9 contracts or nonguaranteed contracts and may include cash advance items that
10 are not guaranteed; repealing a certain provision of law requiring morticians,
11 funeral directors, or surviving spouses to agree to accept certain benefits as
12 certain payment for certain services and merchandise; defining certain terms;
13 making a conforming change; and generally relating to morticians and funeral
14 directors and pre-need contracts.

15 BY repealing and reenacting, without amendments,
16 Article – Health Occupations
17 Section 7-101(v)
18 Annotated Code of Maryland
19 (2009 Replacement Volume and 2013 Supplement)

20 BY repealing and reenacting, with amendments,
21 Article – Health Occupations
22 Section 7-405
23 Annotated Code of Maryland
24 (2009 Replacement Volume and 2013 Supplement)

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
26 MARYLAND, That the Laws of Maryland read as follows:

27 **Article – Health Occupations**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



1 7-101.

2 (v) "Pre-need contract" means an agreement between a consumer and a
3 licensed funeral director, licensed mortician, or surviving spouse to provide any goods
4 and services purchased prior to the time of death. Goods and services shall include:

5 (1) A service, including any form of preservation and disposition or
6 cremation, that a mortician normally provides in the ordinary course of business; or

7 (2) Merchandise, including a casket, vault, or clothing, that a
8 mortician normally provides in the ordinary course of business.

9 7-405.

10 (a) (1) In this section the following words have the meanings indicated.

11 (2) "Beneficiary" means a person for whose benefit a pre-need contract
12 is purchased and who will receive the merchandise or services offered under the
13 contract.

14 (3) "Buyer" means a person that purchases a pre-need contract.

15 (4) **"GUARANTEED CONTRACT" MEANS A WRITTEN PRE-NEED**
16 **CONTRACT THAT GUARANTEES IN WHOLE OR IN PART THE PRICE OF GOODS AND**
17 **SERVICES AND CASH ADVANCE ITEMS SPECIFIED IN THE CONTRACT.**

18 (5) **"NONGUARANTEED CONTRACT" MEANS A WRITTEN**
19 **PRE-NEED CONTRACT:**

20 (I) **THAT DOES NOT GUARANTEE THE PRICE OF ANY**
21 **SPECIFIC GOODS AND SERVICES OR CASH ADVANCE ITEMS; AND**

22 (II) **FOR WHICH ANY FUNDS OR BENEFITS PAID UNDER THE**
23 **CONTRACT ARE ONLY A DEPOSIT TO BE APPLIED TOWARD THE FINAL COST,**
24 **DETERMINED AT THE TIME OF DEATH, OF THE GOODS, MERCHANDISE, OR CASH**
25 **ADVANCE ITEMS.**

26 [(4)] (6) "Seller" means a person who agrees to provide services or
27 merchandise, directly or indirectly, under a pre-need contract.

28 [(5)] (7) "Trustee" means a person that has responsibility for making
29 pre-need arrangements in a manner that entitles the beneficiary to be eligible for
30 benefits that restrict assets.

1 (b) (1) Only a licensed mortician, a licensed funeral director, or a holder of
 2 a surviving spouse license may offer or agree, directly or indirectly, to provide services
 3 or merchandise under a pre-need contract.

4 (2) Notwithstanding the provisions of paragraph (1) of this subsection,
 5 a licensed mortician or a licensed funeral director who is employed by a funeral
 6 establishment may execute pre-need contracts on behalf of the funeral establishment
 7 with which the mortician or funeral director is employed.

8 (3) Any funeral establishment on whose behalf pre-need contracts are
 9 executed under this subsection must comply with the requirements of this section.

10 (c) (1) A pre-need contract shall contain:

11 (i) The name of each party to the contract and, if the
 12 beneficiary is an individual other than the buyer, the name of the beneficiary of the
 13 contract;

14 (ii) A description of any service or merchandise to be provided
 15 under the pre-need contract;

16 (iii) A disclosure statement that clearly:

17 1. States that all funeral costs may not be covered under
 18 the pre-need contract; [and]

19 2. Lists all funeral goods and services that are
 20 reasonably expected to be required at the time of need, but are not included in the
 21 contract;

22 **3. INFORMS A BUYER OF WHETHER THE CONTRACT**
 23 **IS A GUARANTEED CONTRACT OR A NONGUARANTEED CONTRACT; AND**

24 **4. IF A GUARANTEED CONTRACT IS GUARANTEED**
 25 **ONLY IN PART, LISTS THE FUNERAL GOODS AND SERVICES OR CASH ADVANCE**
 26 **ITEMS INCLUDED IN THE GUARANTEE; AND**

27 [(iv) The total price of the services and merchandise agreed on;
 28 and]

29 [(v)] **(IV)** The method of payment.

30 **(2) IF DISCLOSURE IS MADE IN ACCORDANCE WITH ITEMS**
 31 **(1)(III)3 AND 4 OF THIS SUBSECTION, A PRE-NEED CONTRACT MAY:**

1 **(I) BE A GUARANTEED CONTRACT OR A NONGUARANTEED**
2 **CONTRACT; AND**

3 **(II) INCLUDE CASH ADVANCE ITEMS THAT ARE NOT**
4 **GUARANTEED.**

5 **[(2)] (3)** A pre-need contract shall be executed in duplicate and be
6 signed by each party.

7 **[(3)] (4)** The seller shall give one of the duplicate originals of the
8 pre-need contract to the buyer.

9 (d) (1) Within 10 days after receiving a payment under a pre-need
10 contract, the seller shall deposit into an interest bearing, escrow or trust account:

11 (i) For services, 100% of the payment under the pre-need
12 contract; and

13 (ii) For goods:

14 1. An amount from the payment that is equal to 80% of
15 the selling price of a casket or casket vault under the pre-need contract; and

16 2. 100% of the payment that is for all other goods under
17 the pre-need contract.

18 (2) The interest bearing, escrow or trust account shall be with:

19 (i) A banking institution that is insured by an agency of the
20 federal government; or

21 (ii) A savings and loan association that is insured by an agency
22 of the federal government.

23 (3) A seller need not have a separate escrow or trust account for each
24 pre-need contract.

25 (4) (i) Any interest or dividends earned by the escrow or trust
26 account prior to service being rendered belong to the buyers of the pre-need contracts.

27 (ii) Upon performance of the contract, any interest or dividends
28 earned by the escrow or trust account belong to the seller.

29 (e) (1) (i) Except as may be provided in an irrevocable trust
30 established under paragraph (4) of this subsection and in subparagraph (ii) of this
31 paragraph, the banking institution or savings and loan association with which funds

1 are deposited under this section is not responsible for the application of pre-need
2 contract escrow or trust funds.

3 (ii) Except as otherwise provided in this section, the banking
4 institution or savings and loan association with which funds are deposited under this
5 section may not release the funds to the seller unless the seller provides to the
6 banking institution or savings and loan association:

7 1. A copy of the death certificate of the beneficiary; or

8 2. A notarized statement and withdrawal request from
9 the buyer or the buyer's legal representative.

10 (2) (i) Except as otherwise provided in this subsection, a seller may
11 not withdraw from the account any money received from a buyer unless the services
12 and merchandise have been provided as agreed in the contract.

13 (ii) 1. Except as otherwise provided in this subsection, a
14 seller may not withdraw from the account any money received from a buyer unless the
15 seller provides to the banking institution or savings and loan association with which
16 funds are deposited a copy of the beneficiary's death certificate.

17 2. A violation of subparagraph 1 of this
18 subparagraph is an unfair or deceptive trade practice under Title 13 of the
19 Commercial Law Article.

20 (3) A pre-need contract is ended and a seller shall refund to a buyer
21 all payments and interest held for the buyer if:

22 (i) The buyer or the legal representative of the buyer demands
23 in writing a refund of all payments made;

24 (ii) The business of the seller is discontinued or sold;

25 (iii) The seller is unable to perform under the terms and
26 conditions of the pre-need contract; or

27 (iv) The buyer fails to pay the entire contract price before the
28 death of the beneficiary, and the seller considers the pre-need contract void.

29 (4) (i) Notwithstanding the provisions of paragraph (3) of this
30 subsection, the buyer of a pre-need contract has the option, at any time, to establish,
31 under paragraph (5) of this subsection, an irrevocable trust with respect to all or any
32 portion of the payment made under the contract in the escrow or trust account held by
33 the seller, but only for the purpose of entitling the buyer to be eligible for any current
34 Social Security benefits or for any benefits under any other plan that restricts
35 eligibility to those with limited assets.

1 (ii) The trust document establishing a trust under this
2 paragraph shall contain the following notice, conspicuously displayed in 10–point
3 boldface type:

4 “This document creates an irrevocable trust. Under the terms of this document,
5 a buyer may not receive a refund of any payments made for the pre–need burial
6 contract”.

7 (5) The trust document establishing a trust under paragraph (4) of
8 this subsection shall provide for:

9 (i) The disposition of the income earned by the trust which
10 shall inure to the benefit of the buyer;

11 (ii) The transfer of the trust funds if required by a trustee
12 substituted under paragraph (6) of this subsection; and

13 (iii) The disposition of the trust funds if:

14 1. The business of the seller is discontinued or sold;

15 2. The seller is unable to perform under the terms and
16 conditions of the pre–need contract; and

17 3. The buyer fails to pay the entire contract price before
18 the death of the beneficiary and the seller considers the pre–need contract void.

19 (6) If the buyer exercises the option described in paragraph (4) of this
20 subsection, the buyer, a relative of the buyer, or legal representative of the buyer shall
21 retain the right to appoint, as trustee of the irrevocable trust, a trustee other than the
22 one originally designated in the contract.

23 (7) If a contract is voided under paragraph (3) of this subsection and
24 the option to establish an irrevocable trust has been exercised under paragraph (4) of
25 this subsection, the buyer, a relative of the buyer, or a legal representative of the
26 buyer shall retain the right to appoint, as trustee of the irrevocable trust, a trustee
27 other than the one originally designated in the contract.

28 (f) (1) A pre–need contract is not subject to the Retail Installment Sales
29 Act.

30 (2) The making of a pre–need contract by a licensed mortician, a
31 licensed funeral director, or a holder of a surviving spouse license is not the practice of
32 insurance business.

1 (3) (i) A pre-need contract **THAT IS A GUARANTEED CONTRACT**
2 **OR A NONGUARANTEED CONTRACT** may be funded by a life insurance policy or an
3 annuity contract if:

4 1. The mortician, funeral director, or surviving spouse is
5 not the owner of or beneficiary under the life insurance policy or annuity contract;

6 2. An assignment of benefits to the mortician, funeral
7 director, or surviving spouse may be revoked at any time by the owner of the life
8 insurance policy or annuity contract; **AND**

9 [3. Subject to item 4 of this subparagraph, the mortician,
10 funeral director, or surviving spouse agrees to accept the benefits payable under the
11 life insurance policy or annuity contract as payment in full for the services and
12 merchandise agreed on in the pre-need contract; and]

13 [4.] **3.** Any benefits payable under the life insurance
14 policy or annuity contract in excess of the amount necessary to pay the total price, as
15 determined at the time of death of the insured, of the services and merchandise agreed
16 on in the pre-need contract are paid to the beneficiary under the life insurance policy
17 or annuity contract.

18 (ii) A pre-need contract that is funded by a life insurance policy
19 or an annuity contract shall terminate if the assignment of benefits to the mortician,
20 funeral director, or surviving spouse is revoked by the owner of the life insurance
21 policy or annuity contract.

22 (iii) 1. The offer, sale, or assignment of a life insurance policy
23 or annuity contract to fund a pre-need contract is not subject to this section.

24 2. A pre-need contract funded by a life insurance policy
25 or an annuity contract is not subject to subsection (d) or (e) of this section.

26 (g) A seller of a pre-need contract shall provide the buyer with a general
27 price list for the buyer to keep of the goods and services offered by the seller.

28 (h) A seller of a pre-need contract shall disclose to the consumer the buyer's
29 cancellation and refund rights under subsection (d) of this section.

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
31 July 1, 2014.