

# SENATE BILL 751

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By: **Senator Pugh**

Introduced and read first time: January 31, 2014

Assigned to: Education, Health, and Environmental Affairs

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## A BILL ENTITLED

1 AN ACT concerning

2 **Health Occupations – Pre-Need Contracts – Trust Accounts**

3 FOR the purpose of authorizing a certain trustee to invest money of a trust account for  
4 a pre-need contract in certain securities; requiring the income of the trust  
5 account to remain in the trust account, be reinvested and compounded, and be  
6 disbursed only for payment of certain fees, commissions, and other costs of the  
7 trust account; and generally relating to trust accounts and pre-need contracts.

8 BY repealing and reenacting, with amendments,  
9 Article – Health Occupations  
10 Section 7-405  
11 Annotated Code of Maryland  
12 (2009 Replacement Volume and 2013 Supplement)

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

15 **Article – Health Occupations**

16 7-405.

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

18 (2) “Beneficiary” means a person for whose benefit a pre-need contract  
19 is purchased and who will receive the merchandise or services offered under the  
20 contract.

21 (3) “Buyer” means a person that purchases a pre-need contract.

22 (4) “Seller” means a person who agrees to provide services or  
23 merchandise, directly or indirectly, under a pre-need contract.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1           (5) "Trustee" means a person that has responsibility for making  
2 pre-need arrangements in a manner that entitles the beneficiary to be eligible for  
3 benefits that restrict assets.

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

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

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

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

14                   (i) The name of each party to the contract and, if the  
15 beneficiary is an individual other than the buyer, the name of the beneficiary of the  
16 contract;

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

19                   (iii) A disclosure statement that clearly:

20                                 1. States that all funeral costs may not be covered under  
21 the pre-need contract; and

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

25                   (iv) The total price of the services and merchandise agreed on;  
26 and

27                   (v) The method of payment.

28           (2) A pre-need contract shall be executed in duplicate and be signed  
29 by each party.

30           (3) The seller shall give one of the duplicate originals of the pre-need  
31 contract to the buyer.

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

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

5 (ii) For goods:

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

8 2. 100% of the payment that is for all other goods under  
9 the pre-need contract.

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

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

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

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

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

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

21 **(E) (1) A TRUSTEE MAY INVEST MONEY OF A TRUST ACCOUNT FOR A**  
22 **PRE-NEED CONTRACT IN ANY SECURITY THAT IS A LAWFUL INVESTMENT FOR A**  
23 **FIDUCIARY, INCLUDING A TIME DEPOSIT OR A CERTIFICATE OF DEPOSIT.**

24 **(2) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBTITLE, TO**  
25 **ENSURE THAT MONEY IN THE TRUST ACCOUNT IS ADEQUATE, THE INCOME OF**  
26 **THE TRUST ACCOUNT SHALL:**

27 **(I) REMAIN IN THE TRUST ACCOUNT;**

28 **(II) BE REINVESTED AND COMPOUNDED; AND**

29 **(III) BE DISBURSED ONLY FOR PAYMENT OF APPROPRIATE**  
30 **TRUSTEE'S FEES, COMMISSIONS, AND OTHER COSTS OF THE TRUST ACCOUNT.**

1            ~~[(e)]~~ (F)    (1)    (i)    Except as may be provided in an irrevocable trust  
2 established under paragraph (4) of this subsection and in subparagraph (ii) of this  
3 paragraph, the banking institution or savings and loan association with which funds  
4 are deposited under this section is not responsible for the application of pre-need  
5 contract escrow or trust funds.

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

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

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

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

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

20    2.    A violation of subparagraph 1 of this  
21 subparagraph is an unfair or deceptive trade practice under Title 13 of the  
22 Commercial Law Article.

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

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

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

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

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

32                            (4)    (i)    Notwithstanding the provisions of paragraph (3) of this  
33 subsection, the buyer of a pre-need contract has the option, at any time, to establish,  
34 under paragraph (5) of this subsection, an irrevocable trust with respect to all or any  
35 portion of the payment made under the contract in the escrow or trust account held by

1 the seller, but only for the purpose of entitling the buyer to be eligible for any current  
2 Social Security benefits or for any benefits under any other plan that restricts  
3 eligibility to those with limited assets.

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

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

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

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

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

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

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

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

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

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

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

31 **[(f)] (G)** (1) A pre–need contract is not subject to the Retail Installment  
32 Sales Act.

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

4           (3)    (i)    A pre-need contract may be funded by a life insurance policy  
5 or an annuity contract if:

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

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

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

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

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

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

26                   2.    A pre-need contract funded by a life insurance policy  
27 or an annuity contract is not subject to subsection (d) or ~~[(e)]~~ **(F)** of this section.

28           ~~[(g)]~~ **(H)**    A seller of a pre-need contract shall provide the buyer with a  
29 general price list for the buyer to keep of the goods and services offered by the seller.

30           ~~[(h)]~~ **(I)**    A seller of a pre-need contract shall disclose to the consumer the  
31 buyer's cancellation and refund rights under subsection (d) of this section.

32           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
33 October 1, 2014.