

SENATE BILL 751

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4r1825
CF 4r2105

By: **Senator Pugh**

Introduced and read first time: January 31, 2014

Assigned to: Education, Health, and Environmental Affairs

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.

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 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.