

BY: Finance Committee

AMENDMENTS TO HOUSE BILL NO. 559
(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, strike line 2 in its entirety and substitute "Death Care Industry Regulation"; in line 17, strike "registrant" and substitute "registration"; in the same line, strike "a permit holder" and substitute "permit"; and in line 23, after the semicolon insert "requiring that a certain title be transferred to a buyer of preneed goods under certain circumstances; altering the trust and escrow requirements for certain sellers of preneed contracts; providing that a buyer of a preneed contract may receive a refund under certain circumstances; specifying reporting requirements for certain sellers of preneed contracts;".

On page 2, in line 7, after "Act;" insert "providing for the application of this Act;"; and in line 43, after "5-705," insert "5-707(g),".

AMENDMENT NO. 2

On page 2, in line 6, strike "certain effective dates for" and substitute "the implementation of"; and in line 43, strike "5-704(e)" and substitute "5-704(c) and (e)".

On page 3, in line 1, before "5-710" insert "5-709,"; and after line 15, insert:

"BY repealing and reenacting, with amendments,

Article - Health Occupations

Section 7-405(d)

Annotated Code of Maryland

(1994 Replacement Volume and 1996 Supplement)".

AMENDMENT NO. 3

On page 5, strike in their entirety lines 28 through 30, inclusive, and substitute:

(Over)

“THIS TITLE DOES NOT APPLY TO:

(1) A PERSON THAT:

(I) OWNS OR OPERATES A BONA FIDE RELIGIOUS, NONPROFIT CEMETERY IN THIS STATE; OR

(II) PROVIDES BURIAL GOODS IN THIS STATE ON BEHALF OF A BONA FIDE RELIGIOUS, NONPROFIT ENTITY AND IN CONNECTION WITH THE OPERATION OF A BONA FIDE RELIGIOUS, NONPROFIT CEMETERY;”;

strike line 31 in its entirety; in lines 32 and 35, strike “(1)” and “(2)”, respectively, and substitute “(2)” and “(3)”, respectively.

On page 6, in line 1, strike “(3)” and substitute “(4)”.

On page 15, strike in their entirety lines 21 through 25, inclusive, and substitute:

“(2) NOTWITHSTANDING § 5-102 OF THIS TITLE, THE DIRECTOR MAY RECEIVE AND ATTEMPT TO NEGOTIATE A SETTLEMENT TO RESOLVE COMPLAINTS CONCERNING PERSONS THAT OWN OR OPERATE BONA FIDE RELIGIOUS, NONPROFIT CEMETERIES OR PROVIDE BURIAL GOODS ON BEHALF OF A BONA FIDE RELIGIOUS NONPROFIT ENTITY AND IN CONNECTION WITH THE OPERATION OF A BONA FIDE RELIGIOUS, NONPROFIT CEMETERY.”.

On page 2, in line 30, strike “5-405” and substitute “5-404”.

On page 17, in line 15, strike “AND STATEMENT FILINGS”.

On pages 18 and 19, strike in their entirety the lines beginning with line 33 on page 18 through line 4 on page 19, inclusive.

AMENDMENT NO. 4

On page 16, in line 9, strike “(1)”; and strike in their entirety lines 12 through 15, inclusive; in line 19, after “(2)” insert “BEGINNING DECEMBER 31, 1998, AND”; in line 19, after “YEAR” insert “THEREAFTER”; in line 22, after “SUBSECTION” insert “AND THE NUMBER OF COMPLAINTS RECEIVED UNDER SUBSECTION (C)(2) OF THIS SECTION”; before line 40,

insert:

“(D) THE HEARING NOTICE PROVIDED TO THE PERSON UNDER SUBSECTION (A) (1) OF THIS SECTION SHALL BE SENT BY CERTIFIED MAIL TO THE LAST KNOWN ADDRESS OF THE PERSON AT LEAST 10 DAYS BEFORE THE HEARING.”;

and in line 40, strike “(D)” and substitute “(E)”.

On page 17, in lines 3 and 4, strike “(E)” and “(F)”, respectively, and substitute “(F)” and “(G)”, respectively; in line 3, strike “INDIVIDUAL” and substitute “PERSON”; and strike in their entirety lines 9 through 11, inclusive.

AMENDMENT NO. 5

On page 25, after line 16, insert:

“(c) (1) A preneed burial contract may provide for delivery of identified preneed goods by providing for the seller to:

(i) transfer physical possession of the preneed goods to the buyer or designee of the buyer;

(ii) attach the preneed goods to a designated burial space;

(iii) pay for and suitably store the preneed goods until needed, at a cemetery or other location of the seller, if:

1. the preneed goods are marked with the name of the buyer and the sale is supported by a verifiable record; AND

2. TITLE HAS BEEN TRANSFERRED TO THE BUYER OR DESIGNEE OF THE BUYER; or

(iv) have the supplier of the preneed goods:

(Over)

and

1. cause title to be transferred to the buyer or designee of the buyer;

2. agree in writing to ship the preneed goods at the direction of the buyer or designee of the buyer.

(2) If a preneed burial contract does not provide for the manner of delivery of preneed goods, compliance with paragraph (1)(i) or (ii) of this subsection is delivery in accordance with this subtitle.”.

On pages 25 and 26, strike in their entirety the lines beginning with line 30 on page 25 through line 2 on page 26, inclusive, and substitute:

“(A) WITHIN 10 DAYS AFTER RECEIVING A PAYMENT UNDER A PRENEED BURIAL CONTRACT, THE SELLER SHALL DEPOSIT INTO A TRUST ACCOUNT:

(1) 100% OF THE PAYMENT THAT IS FOR PRENEED SERVICES; AND

(2) FOR PRENEED GOODS:

(I) AN AMOUNT FROM THE PAYMENT THAT IS EQUAL TO 100% OF THE SELLING PRICE OF A CASKET OR CASKET VAULT; AND

(II) 55% OF THE PAYMENT THAT IS FOR ALL OTHER PRENEED GOODS.”.

On page 26, in line 3, strike “(c)” and substitute “(B)”; after line 18, insert:

“5-709.

(a) [(1)] A buyer may cancel a preneed burial contract as to preneed goods not delivered or preneed services not performed [if the buyer:

(i) permanently moves more than 75 miles from the cemetery specified in the preneed burial contract; and

(ii) gives to the seller written notice, under oath, of the move and includes the buyer's new permanent address] AT ANY TIME.

[(2)] (B) In that event:

[(i)] (1) the seller shall certify to the trustee:

[1.] (I) the cancellation of the preneed burial contract;

[2. the amount of the remaining specific funds applicable to the preneed burial contract;] and

[3.] (II) the name and address of the buyer; [and]

[(ii)] (2) the trustee shall then pay to the buyer [the remaining specific funds and accrued interest.] 100% OF THE MONEY PAID FOR THE PRENEED BURIAL CONTRACT; AND

(3) (I) IF THE CONTRACT HAS NOT BEEN PAID IN FULL AT THE TIME OF CANCELLATION, THE TRUSTEE SHALL PAY TO THE SELLER ALL OF THE ACCRUED INTEREST IN THE TRUST ACCOUNT; OR

(II) IF THE CONTRACT HAS BEEN PAID IN FULL AT THE TIME OF CANCELLATION, THE TRUSTEE SHALL DIVIDE THE ACCRUED INTEREST EVENLY BETWEEN THE BUYER AND SELLER.

[(b) If a buyer defaults on a preneed burial contract and, as a result, the seller terminates the preneed burial contract:

(1) the seller shall certify to the trustee:

(Over)

(i) the default and termination of the preneed burial contract;

(ii) the amount of the specific funds; and

(iii) the reasonable expenses of the seller; and

(2) the trustee shall then pay:

(i) to the buyer, those specific funds and accrued interest, less the reasonable expenses of the seller; and

(ii) to the seller, the reasonable expenses of the seller.

(c) If specific funds on deposit in a trust account have been dormant for at least 50 years since the date of the last deposit or disbursement and the seller cannot locate the buyer:

(1) the seller shall certify to the trustee:

(i) that the trust account is dormant and the buyer cannot be located; and

(ii) the amount of the specific funds; and

(2) the trustee shall then pay to the seller those specific funds and accrued interest.]”.

AMENDMENT NO. 6

On page 26, in line 32, after “seller” insert “AS TO COMPLIANCE WITH THE REQUIREMENTS OF THIS SUBTITLE”.

On page 27, in line 4, strike “and”; in line 5, after “trustee” insert “; AND”

6. IF THE PRENEED BURIAL CONTRACT PROVIDES FOR DELIVERY OF GOODS PRIOR TO DEATH, A REPORT STATING THAT THE GOODS HAVE BEEN DELIVERED OR THAT TITLE HAS BEEN TRANSFERRED TO THE BUYER AND THE LOCATION OF WHERE THE GOODS ARE STORED FOR THE BUYER”;

and in line 23, strike "ON REQUEST."

AMENDMENT NO. 7

On page 30, after line 34, insert:

"(d) (1) Within 10 days after receiving a payment under a pre-need contract, THE SELLER SHALL DEPOSIT INTO AN INTEREST BEARING, ESCROW OR TRUST ACCOUNT:

(I) 100% OF THE PAYMENT THAT IS FOR SERVICES; AND

(II) 80% OF THE PAYMENT THAT IS FOR MERCHANDISE.

(2) [the] THE [seller shall deposit the payment into an] interest bearing, escrow or trust account SHALL BE with:

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

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

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

[(3)] (4) (i) [Any interest or dividends earned by the escrow or trust account prior to service being rendered belong to the buyers of the pre-need contracts.] IF A PRE-NEED CONTRACT HAS NOT BEEN PAID IN FULL AT THE TIME OF CANCELLATION, 100% OF THE ACCRUED INTEREST ON THE ACCOUNT BELONGS TO THE SELLER.

(II) IF A PRE-NEED CONTRACT HAS BEEN PAID IN FULL AT THE TIME OF CANCELLATION, 100% OF THE ACCRUED INTEREST SHALL BE DIVIDED EVENLY BETWEEN THE BUYER AND SELLER.

(Over)

[(ii)] (5) Upon performance of the contract, any interest or dividends earned by the escrow or trust account belong to the seller.”;

and in line 35, strike “ON REQUEST,”.

On page 31, after line 7, insert:

“(I) A SELLER SHALL ANNUALLY FILE A REPORT WITH THE BOARD WHICH INCLUDES:

(1) A CERTIFICATION BY A CERTIFIED PUBLIC ACCOUNTANT AS TO THE SELLER’S COMPLIANCE WITH THE PROVISIONS OF THIS SECTION; AND

(2) ANY OTHER INFORMATION THE BOARD DEEMS NECESSARY.”.

AMENDMENT NO. 8

On page 31, strike in their entirety lines 24 through 29, inclusive; and in lines 30 and 35, strike “5.” and “6.”, respectively, and substitute “4.” and “5.”, respectively.

On page 32, strike in their entirety lines 4 and 5, inclusive, and substitute:

“SECTION 6. AND BE IT FURTHER ENACTED, That this Act shall be construed only prospectively and may not be applied or interpreted to have any effect on or application to any preneed burial contract or pre-need contract entered into before the effective date of this Act.

SECTION 7. AND BE IT FURTHER ENACTED, That the provisions of this Act that are related to the duties and responsibilities of the Office of Cemetery Oversight and the Director of the Office of Cemetery Oversight concerning negotiating settlements, investigating, and conducting proceedings on complaints are not required to be implemented before January 1, 1998.”;

and strike beginning with “, except” in line 6 down through “Act,” in line 7.