

CF 7r2526

By: Delegates Morhaim, Harrison, and Muse (Task Force to Examine the State's Cemetery and Funeral Industry) and Delegates Pitkin, Finifter, DeCarlo, Frank, Holt, Kittleman, and M. Burns

Introduced and read first time: January 29, 1997

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Morticians and Cemeteries - Preneed Contracts - Trust and Escrow Requirements**

3 FOR the purpose of changing the trust and escrow requirements for certain sellers of
 4 preneed contracts for funeral and cemetery goods and services; providing that a
 5 buyer of a preneed burial contract may receive a refund at any time; providing for
 6 the distribution of accrued income between the buyer and seller of a preneed
 7 contract; requiring sellers of preneed contracts to provide certain disclosures and
 8 price lists to buyers; and specifying reporting requirements for certain sellers of
 9 preneed contracts; requiring that a certain title be transferred to a buyer of preneed
 10 goods under certain circumstances; modifying certain definitions; providing for the
 11 application of this Act; and generally relating to preneed contracts for funeral and
 12 cemetery goods and services.

13 BY repealing and reenacting, with amendments,
 14 Article - Business Regulation
 15 Section 5-401, 5-404(c), 5-405, 5-409, and 5-410
 16 Annotated Code of Maryland
 17 (1992 Volume and 1996 Supplement)

18 BY repealing and reenacting, with amendments,
 19 Article - Health Occupations
 20 Section 7-405(d)
 21 Annotated Code of Maryland
 22 (1994 Replacement Volume and 1996 Supplement)

23 BY adding to
 24 Article - Health Occupations
 25 Section 7-405(g) through (i)
 26 Annotated Code of Maryland
 27 (1994 Replacement Volume and 1996 Supplement)

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

2

1 **Article - Business Regulation**

2 5-401.

3 (a) In this subtitle the following words have the meanings indicated.

4 (b) (1) "Burial space" means land or space in a structure used or to be used for
5 burial.

6 (2) "Burial space" includes a burial right in the land or space.

7 (c) "Buyer" means a person who buys preneed goods or preneed services.

8 (d) "Preneed burial contract" means a written instrument under which preneed
9 goods or preneed services are to be sold and delivered or performed.

10 (e) (1) "Preneed goods" means goods that are sold:

11 (i) before the buyer's death; and

12 (ii) in connection with burial.

13 (2) "Preneed goods" includes:

14 (i) A CASKET;

15 (II) a grave liner;

16 [(ii)] (III) a memorial;

17 [(iii)] (IV) a monument;

18 [(iv)] (V) a scroll;

19 [(v)] (VI) an urn;

20 [(vi)] (VII) a vase; and

21 [(vii)] (VIII) a vault.

22 (3) "Preneed goods" does not include burial space.

23 (f) (1) "Preneed services" means services that are sold:

24 (i) before the buyer's death; and

25 (ii) in connection with burial.

26 (2) "Preneed services" includes opening and closing a grave.

27 (g) (1) "Seller" means a person who sells preneed goods or preneed services.

28 (2) "SELLER" INCLUDES A PERSON WHO IS NOT AFFILIATED WITH A
29 CEMETERY.

30 (h) "Specific funds" means money that is identified to a specific preneed burial
31 contract.

3

1 (i) "Trust account" means [a] AN INTEREST BEARING preneed ESCROW OR
2 trust account WITH A:

3 (1) BANKING INSTITUTION THAT IS INSURED BY AN AGENCY OF THE
4 FEDERAL GOVERNMENT; OR

5 (2) A SAVINGS AND LOAN ASSOCIATION THAT IS INSURED BY AN
6 AGENCY OF THE FEDERAL GOVERNMENT.

7 5-404.

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

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

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

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

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

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

19 (iv) have the supplier of the preneed goods:

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

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

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

27 5-405.

28 (a) [A seller shall put in trust the second 50% of the total preneed burial contract
29 price as the seller receives payments from the buyer.] WITHIN 10 DAYS AFTER
30 RECEIVING A PAYMENT UNDER A PRENEED BURIAL CONTRACT, THE SELLER SHALL
31 DEPOSIT INTO A TRUST ACCOUNT:

32 (1) 100% OF THE PAYMENT THAT IS FOR PRENEED SERVICES; AND

33 (2) 80% OF THE PAYMENT THAT IS FOR PRENEED GOODS.

34 (b) [Within 30 days after receipt of the last payment, the seller shall deposit an
35 additional amount to make the balance in the trust account equal to 55% of the total
36 contract price.

4

1 (c) This section does not apply to:

2 (1) a preneed burial contract under which all preneed goods and preneed
3 services, other than dates, scrolls, and other additions that represent not more than 10%
4 of the total contract price, must be delivered or performed within 120 days after receipt of
5 50% of the total contract price; or

6 (2) money that a seller receives for preneed goods or preneed services to be
7 delivered or performed within 120 days after receipt of any payment on account of the
8 sale, if the buyer's obligation for these preneed goods or preneed services is separately
9 itemized.

10 5-409.

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

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

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

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

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

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

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

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

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

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

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

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

34 (1) the seller shall certify to the trustee:

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

36 (ii) the amount of the specific funds; and

5

1 (iii) the reasonable expenses of the seller; and

2 (2) the trustee shall then pay:

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

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

6 (c) If specific funds on deposit in a trust account have been dormant for at least
7 50 years since the date of the last deposit or disbursement and the seller cannot locate the
8 buyer:

9 (1) the seller shall certify to the trustee:

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

12 (ii) the amount of the specific funds; and

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

15 5-410.

16 (a) (1) Each seller shall keep detailed records of all preneed burial contracts
17 and specific funds.

18 (2) The records of each seller and of each trustee appointed by the seller
19 are subject to examination by:

20 (i) the Attorney General or an authorized representative of the
21 Attorney General; and

22 (ii) the State's Attorney for the county where the seller does business.

23 (b) (1) Each seller subject to the trust requirements of this subtitle shall submit
24 a report to the Secretary of State within 120 days after the close of each calendar or other
25 fiscal year chosen by the seller.

26 (2) The report shall:

27 (i) be on the form that the Secretary of State requires;

28 (ii) be certified by a certified public accountant employed by the seller;

29 (iii) be accompanied by a fee of \$25; and

30 (iv) include:

31 1. the name of the seller;

32 2. each location of the seller;

33 3. the amount of money that the seller received during that year
34 that is subject to the trust requirements of this subtitle;

6

1 4. the amount of money actually deposited into trust accounts
2 in that year; [and]

3 5. the name and address of the trustee;

4 6. AN UNQUALIFIED AUDIT BY A CERTIFIED PUBLIC
5 ACCOUNTANT; AND

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

10 (3) A seller who stops selling preneed goods or preneed services shall notify
11 the Secretary of State in the required report for the year in which sales stop.

12 (c) A SELLER OF A PRENEED BURIAL CONTRACT SHALL PROVIDE EACH
13 BUYER OR PROSPECTIVE BUYER WITH A GENERAL PRICE LIST FOR THE BUYER OR
14 PROSPECTIVE BUYER TO KEEP WHICH SHALL INCLUDE:

15 (1) SPECIFIC PRICES FOR:

16 (I) GROUND OPENING AND CLOSING;

17 (II) EXTRA DEPTH INTERMENT;

18 (III) INTERMENT OF CREMATED REMAINS; AND

19 (IV) MAUSOLEUM ENTOMBMENT;

20 (2) GENERAL PRICE RANGES FOR:

21 (I) PLOTS;

22 (II) MAUSOLEUMS;

23 (III) MEMORIALIZATIONS; AND

24 (IV) URNS; AND

25 (3) IF THE AT-NEED PRICES FOR GOODS AND SERVICES OFFERED BY A
26 SELLER DIFFER FROM THE PRENEED PRICES OFFERED BY THAT SELLER, THE
27 GENERAL PRICE LIST SHALL PROVIDE A SIDE-BY-SIDE COMPARISON BETWEEN THE
28 AT-NEED AND PRENEED PRICES.

29 (D) A SELLER OF A PRENEED BURIAL CONTRACT SHALL DISCLOSE TO THE
30 BUYER:

31 (1) ALL GOODS AND SERVICES THAT ARE REQUIRED AT THE TIME OF
32 NEED THAT ARE NOT INCLUDED IN THE PRENEED BURIAL CONTRACT;

33 (2) THE BUYER'S CANCELLATION AND REFUND RIGHTS UNDER § 5-405
34 OF THIS SUBTITLE;

35 (3) THE PERSON RESPONSIBLE FOR INSTALLATION OF THE GOODS SOLD
36 AND ANY WARRANTIES FOR THE GOODS SOLD; AND

7

1 (4) IF THE PRENEED CONTRACT PROVIDES FOR GOODS OR SERVICES
2 TO BE DELIVERED OR PERFORMED BEFORE DEATH:

3 (I) THAT INTEREST OR FINANCE CHARGES WILL BE IMPOSED;

4 (II) THAT INTEREST OR FINANCE CHARGES ARE NOT ALLOWED ON
5 OTHER PRENEED BURIAL CONTRACTS THAT DO NOT PROVIDE FOR GOODS OR
6 SERVICES TO BE DELIVERED OR PERFORMED BEFORE DEATH;

7 (III) THE MANNER OF DELIVERY OF GOODS INCLUDING WHERE
8 THE GOODS ARE STORED; AND

9 (IV) THE BUYER'S REMEDY IF DELIVERED GOODS ARE DAMAGED
10 OR DESTROYED.

11 (E) The Secretary of State may adopt regulations:

12 (1) to administer this section; and

13 (2) for determining whether sellers are complying with this subtitle.

14 **Article - Health Occupations**

15 7-405.

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

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

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

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

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

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

27 [(2)] (3) A seller need not have a separate escrow or trust account for each
28 pre-need contract.

29 [(3)] (4) (i) [Any interest or dividends earned by the escrow or trust
30 account prior to service being rendered belong to the buyers of the pre-need contracts.]
31 IF THE PRE-NEED CONTRACT HAS NOT BEEN PAID IN FULL AT THE TIME OF
32 CANCELLATION, 100% OF THE ACCRUED INTEREST ON THE ACCOUNT BELONGS TO
33 THE SELLER.

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

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

3 (G) (1) A SELLER OF A PRE-NEED CONTRACT SHALL PROVIDE THE BUYER
4 WITH A GENERAL PRICE LIST FOR THE BUYER TO KEEP OF THE GOODS AND
5 SERVICES OFFERED BY THE SELLER.

6 (2) IF THE AT-NEED PRICES FOR GOODS AND SERVICES OFFERED BY A
7 SELLER DIFFER FROM THE PRE-NEED PRICES OFFERED BY THAT SELLER, THE
8 GENERAL PRICE LIST SHALL PROVIDE A SIDE-BY-SIDE COMPARISON BETWEEN THE
9 AT-NEED AND PRE-NEED PRICES.

10 (H) A SELLER OF A PRE-NEED CONTRACT SHALL DISCLOSE TO THE
11 CONSUMER:

12 (1) ALL GOODS AND SERVICES THAT ARE REQUIRED AT THE TIME OF
13 NEED, BUT ARE NOT INCLUDED IN THE PRE-NEED CONTRACT; AND

14 (2) THE BUYER'S CANCELLATION AND REFUND RIGHTS UNDER THIS
15 SUBSECTION (D) OF THIS SECTION.

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

18 (1) AN UNQUALIFIED AUDIT BY A CERTIFIED PUBLIC ACCOUNTANT;
19 AND

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

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed
22 only prospectively and may not be applied or interpreted to have any effect on or
23 application to any preneed contract entered into before the effective date of this Act.

24 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 1997.