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**By: Senator Della**

Introduced and read first time: January 30, 1997

Assigned to: Finance

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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; specifying reporting requirements for certain sellers of preneed  
9 contracts; requiring that a certain title be transferred to a buyer of preneed goods  
10 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 (3) "SELLER" DOES NOT INCLUDE A LICENSED MORTICIAN.

3

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

3 (i) "Trust account" means [a] AN INTEREST BEARING preneed ESCROW OR  
4 trust account WITH:

5 (1) A BANKING INSTITUTION THAT IS INSURED BY AN AGENCY OF THE  
6 FEDERAL GOVERNMENT; OR

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

9 5-404.

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

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

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

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

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

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

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

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

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

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

29 5-405.

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

34 (1) 100% OF THE PAYMENT THAT IS FOR PRENEED SERVICES; AND

35 (2) 80% OF THE PAYMENT THAT IS FOR PRENEED GOODS.

4

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

4 (c)] This section does not apply to:

5 (1) a preneed burial contract under which all preneed goods and preneed  
6 services, other than dates, scrolls, and other additions that represent not more than 10%  
7 of the total contract price, must be delivered or performed within 120 days after receipt of  
8 50% of the total contract price; or

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

13 5-409.

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

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

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

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

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

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

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

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

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

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

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

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

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

5

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

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

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

4 (2) the trustee shall then pay:

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

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

8 (c) If specific funds on deposit in a trust account have been dormant for at least  
9 50 years since the date of the last deposit or disbursement and the seller cannot locate the  
10 buyer:

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

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

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

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

17 5-410.

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

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

22 (i) the Attorney General or an authorized representative of the  
23 Attorney General; and

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

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

28 (2) The report shall:

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

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

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

32 (iv) include:

33 1. the name of the seller;

34 2. each location of the seller;

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

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

5                                    5. the name and address of the trustee;

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

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

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

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

17                                (1) SPECIFIC PRICES FOR:

18                                    (I) GROUND OPENING AND CLOSING;

19                                    (II) EXTRA DEPTH INTERMENT;

20                                    (III) INTERMENT OF CREMATED REMAINS; AND

21                                    (IV) MAUSOLEUM ENTOMBMENT;

22                                (2) GENERAL PRICE RANGES FOR:

23                                    (I) PLOTS;

24                                    (II) MAUSOLEUMS;

25                                    (III) MEMORIALIZATIONS; AND

26                                    (IV) URNS; AND

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

31                                (D) A SELLER OF A PRENEED BURIAL CONTRACT SHALL DISCLOSE TO THE  
32 BUYER:

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

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

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1 (3) THE PERSON RESPONSIBLE FOR INSTALLATION OF THE GOODS SOLD  
2 AND ANY WARRANTIES FOR THE GOODS SOLD; AND

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

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

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

9 (III) THE MANNER OF DELIVERY OF GOODS INCLUDING WHERE  
10 THE GOODS ARE STORED; AND

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

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

14 (1) to administer this section; and

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

16 **Article - Health Occupations**

17 7-405.

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

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

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

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

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

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

29 [(2)] (3) A seller need not have a separate escrow or trust account for each  
30 pre-need contract.

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

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

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

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

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

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

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

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

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

21 (1) A REVIEW BY A CERTIFIED PUBLIC ACCOUNTANT; AND

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

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

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