
By: **Senator Baker**

Introduced and read first time: January 22, 2001

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Preneed Burial Contracts and Pre-Need Contracts - Cancellation Provisions**

3 FOR the purpose of altering certain cancellation conditions for certain preneed burial

4 contracts and pre-need contracts.

5 BY repealing and reenacting, without amendments,

6 Article - Business Regulation

7 Section 5-709(a)

8 Annotated Code of Maryland

9 (1998 Replacement Volume and 2000 Supplement)

10 BY repealing and reenacting, with amendments,

11 Article - Business Regulation

12 Section 5-709(b)

13 Annotated Code of Maryland

14 (1998 Replacement Volume and 2000 Supplement)

15 BY repealing and reenacting, with amendments,

16 Article - Health Occupations

17 Section 7-405(e)

18 Annotated Code of Maryland

19 (2000 Replacement Volume)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

21 MARYLAND, That the Laws of Maryland read as follows:

22 **Article - Business Regulation**

23 5-709.

24 (a) (1) A buyer may cancel a preneed burial contract as to preneed goods not

25 delivered or preneed services not performed if the buyer:

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

3 (ii) gives to the seller written notice, under oath, of the move and
4 includes the buyer's new permanent address.

5 (2) In that event:

6 (i) the seller shall certify to the trustee:

7 1. the cancellation of the preneed burial contract;

8 2. the amount of the remaining specific funds applicable to
9 the preneed burial contract; and

10 3. the name and address of the buyer; and

11 (ii) the trustee shall then pay to the buyer the remaining specific
12 funds and accrued interest.

13 (b) (1) Notwithstanding subsection (a) of this section, [by written notice,] a
14 buyer may cancel the purchase of a casket or casket vault under a preneed burial
15 contract [at any time prior to the time the buyer needs the casket or casket vault for
16 burial] IF:

17 (I) THE BUYER OR THE LEGAL REPRESENTATIVE OF THE BUYER
18 DEMANDS IN WRITING A REFUND OF ALL PAYMENTS MADE; OR

19 (II) IN THE CASE OF A BUYER WHO IS THE BENEFICIARY OF THE
20 CONTRACT:

21 1. THE BUYER IS DECEASED;

22 2. THE CONTRACT HAS NOT BEEN PAID IN FULL BY THE
23 BUYER AT THE TIME OF DEATH; AND

24 3. THE AUTHORIZING AGENT OR THE LEGAL
25 REPRESENTATIVE OF THE BUYER DEMANDS IN WRITING A REFUND OF ALL
26 PAYMENTS MADE.

27 (2) In [that] THE event THAT A CONTRACT IS CANCELLED UNDER
28 PARAGRAPH (1) OF THIS SUBSECTION:

29 (i) the seller shall certify to the trustee:

30 1. the cancellation of the purchase of the casket or casket
31 vault under the preneed burial contract;

32 2. the amount of the specific funds applicable to the casket or
33 casket vault under the preneed burial contract; and

1 (4) (i) Notwithstanding the provisions of paragraph (3) of this
2 subsection, the buyer of a pre-need contract has the option, at any time, to establish,
3 under paragraph (5) of this subsection, an irrevocable trust with respect to all or any
4 portion of the payment made under the contract in the escrow or trust account held by
5 the seller, but only for the purpose of entitling the buyer to be eligible for any current
6 Social Security benefits or for any benefits under any other plan that restricts
7 eligibility to those with limited assets.

8 (ii) The trust document establishing a trust under this paragraph
9 shall contain the following notice, conspicuously displayed in 10-point boldface type:

10 "This document creates an irrevocable trust. Under the terms of this document,
11 a buyer may not receive a refund of any payments made for the pre-need burial
12 contract".

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

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

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

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

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

21 2. The seller is unable to perform under the terms and
22 conditions of the pre-need contract; and

23 3. The buyer fails to pay the entire contract price before the
24 death of the beneficiary and the seller considers the pre-need contract void.

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

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

34 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
35 October 1, 2001.