

**HB1090/176089/1**

BY: Health and Government Operations Committee

AMENDMENTS TO HOUSE BILL 1090  
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 2, after “Fund” insert “and Pre-Need Contracts”.

On page 2, in line 11, strike the first “the” and substitute “certain”; in line 12, after “circumstances,” insert “prohibiting certain banking institutions and savings and loan associations from releasing any money from a certain pre-need account unless certain proof is provided; prohibiting a certain seller from withdrawing money from a certain pre-need account unless certain proof is provided; providing that it is an unfair or deceptive trade practice under the Maryland Consumer Protection Act to violate certain provisions of this Act; requiring the Board to provide certain notice to each banking institution and savings and loan association in the State on or before a certain date;”; in line 13, after “date” insert “for certain provisions of this Act”; in line 14, strike “and” and substitute a comma; in line 15, after “Committee” insert “, and pre-need contracts”; in line 18, strike “and 7-314(c)” and substitute “, 7-314(c), and 7-405(e)(1) and (2)”; after line 20 insert:

“BY repealing and reenacting, without amendments,  
Article – Health Occupations  
Section 7-405(a), 7-405(e)(3), and 7-508  
Annotated Code of Maryland  
(2005 Replacement Volume and 2007 Supplement)”;

and after line 31, insert:

“BY repealing and reenacting, with amendments,  
Article – Commercial Law  
Section 13-301(14)(xxii)”

(Over)

Annotated Code of Maryland  
(2005 Replacement Volume and 2007 Supplement)

BY repealing and reenacting, without amendments,  
Article – Commercial Law  
Section 13-301(14)(xxiii)  
Annotated Code of Maryland  
(2005 Replacement Volume and 2007 Supplement)

BY adding to  
Article – Commercial Law  
Section 13-301(14)(xxiv)  
Annotated Code of Maryland  
(2005 Replacement Volume and 2007 Supplement)”.

AMENDMENT NO. 2

On page 13, after line 32, insert:

“SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
read as follows:

Article – Commercial Law

13–301.

Unfair or deceptive trade practices include any:

(14) Violation of a provision of:

(xxii) Section 14–1319 or § 14–1320 of this article; [or]

(xxiii) Section 7–304 of the Criminal Law Article; or

(XXIV) SECTION 7-405(E)(2)(II) OF THE HEALTH  
OCCUPATIONS ARTICLE; OR

Article – Health Occupations

7-405.

(a) (1) In this section the following words have the meanings indicated.

(2) “Beneficiary” means a person for whose benefit a pre–need contract is purchased and who will receive the merchandise or services offered under the contract.

(3) “Buyer” means a person that purchases a pre–need contract.

(4) “Seller” means a person who agrees to provide services or merchandise, directly or indirectly, under a pre–need contract.

(5) “Trustee” means a person that has responsibility for making pre–need arrangements in a manner that entitles the beneficiary to be eligible for benefits that restrict assets.

(e) (1) **(I)** Except as may be provided in an irrevocable trust established under paragraph (4) of this subsection AND IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, the banking institution or savings and loan association with which funds are deposited under this section is not responsible for the application of pre–need contract escrow or trust funds.

**(II)** EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE BANKING INSTITUTION OR SAVINGS AND LOAN ASSOCIATION WITH WHICH

(Over)

**FUNDS ARE DEPOSITED UNDER THIS SECTION MAY NOT RELEASE THE FUNDS TO THE SELLER UNLESS THE SELLER PROVIDES TO THE BANKING INSTITUTION OR SAVINGS AND LOAN ASSOCIATION:**

**1. A COPY OF THE DEATH CERTIFICATE OF THE BENEFICIARY; OR**

**2. A NOTARIZED STATEMENT AND WITHDRAWAL REQUEST FROM THE BUYER OR THE BUYER'S LEGAL REPRESENTATIVE.**

(2) (I) Except as otherwise provided in this subsection, a seller may not withdraw from the account any money received from a buyer unless the services and merchandise have been provided as agreed in the contract.

**(II) 1. EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, A SELLER MAY NOT WITHDRAW FROM THE ACCOUNT ANY MONEY RECEIVED FROM A BUYER UNLESS THE SELLER PROVIDES TO THE BANKING INSTITUTION OR SAVINGS AND LOAN ASSOCIATION WITH WHICH FUNDS ARE DEPOSITED A COPY OF THE BENEFICIARY'S DEATH CERTIFICATE.**

**2. A VIOLATION OF SUBSUBPARAGRAPH 1. OF THIS SUBPARAGRAPH IS AN UNFAIR OR DECEPTIVE TRADE PRACTICE UNDER TITLE 13 OF THE COMMERCIAL LAW ARTICLE.**

(3) A pre-need contract is ended and a seller shall refund to a buyer all payments and interest held for the buyer if:

(i) The buyer or the legal representative of the buyer demands in writing a refund of all payments made;

(ii) The business of the seller is discontinued or sold;

(iii) The seller is unable to perform under the terms and conditions of the pre-need contract; or

(iv) The buyer fails to pay the entire contract price before the death of the beneficiary, and the seller considers the pre-need contract void.

7-508.

A person who violates any provision of this title is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$500 or imprisonment not exceeding 1 year or both.

SECTION 3. AND BE IT FURTHER ENACTED, That, on or before October 1, 2008, the State Board of Morticians shall provide notice of the provisions of § 7-405(e)(1) and (2) of the Health Occupations Article, as enacted by Section 2 of this Act, to each banking institution and savings and loan association in the State.

SECTION 4. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any pre-need contract entered into before January 1, 2009.”.

On page 14, in line 1, strike “2.” and substitute “5.”; in the same line, after “That” insert “Sections 1, 2, and 4 of”; and after line 2, insert:

“SECTION 6. AND BE IT FURTHER ENACTED, That, except as provided in Section 5 of this Act, this Act shall take effect July 1, 2008.”.