

HOUSE BILL 1090

J2, C2

8lr1516

By: **Delegates Morhaim and Harrison**

Introduced and read first time: February 7, 2008

Assigned to: Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 19, 2008

CHAPTER _____

1 AN ACT concerning

2 **State Board of Morticians – Family Security Trust Fund and Pre-Need**
3 **Contracts**

4 FOR the purpose of establishing the Family Security Trust Fund; requiring the State
5 Board of Morticians to administer the Fund and to build the Fund to a certain
6 monetary level; requiring the Board to order a certain payment of a certain
7 claim related to pre-need funds from the Fund in a certain manner; requiring
8 the Board to deposit all money collected to the credit of the Fund with the State
9 Treasurer; authorizing the State Treasurer to invest or reinvest Fund monies in
10 a certain manner; requiring that accounting and financial reports be publicly
11 available in a timely manner; requiring the Legislative Auditor to audit the
12 accounts and transactions of the Fund in a certain manner; authorizing the
13 Board to retain certain services for a certain purpose; requiring that costs of
14 certain services be paid out of the Fund; requiring the Board to adopt certain
15 regulations; specifying that the Fund is not subject to certain provisions of State
16 law; specifying that the Fund is not liable to any other expenses or obligations
17 of the Board; establishing the Family Security Trust Fund Advisory Committee;
18 specifying the membership, leadership, and terms of the Advisory Committee;
19 requiring the Advisory Committee to meet in a certain manner; specifying the
20 purpose of the Advisory Committee; requiring the Board to work with the
21 Advisory Committee in a certain manner and provide the Advisory Committee
22 with certain information in a certain manner; prohibiting Advisory Committee
23 members from receiving certain compensation but authorizing reimbursement
24 for certain expenses; requiring a funeral establishment applicant to pay a
25 certain fee to be credited to the Fund before the Board may issue an initial
26 funeral establishment license; requiring each funeral establishment licensee to

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 pay a certain annual fee to the Fund until the Fund has accumulated a certain
 2 balance; requiring each funeral establishment to pay a certain fee to the Fund
 3 under certain circumstances; prohibiting the Board from issuing a renewal
 4 funeral establishment license to a funeral establishment that has not made
 5 certain payment to the Board; requiring a funeral establishment to include
 6 certain written notice regarding the Fund in each sales contract provided by the
 7 funeral establishment; requiring that claims against the Fund be based on
 8 certain acts or omissions and be made in a certain manner; requiring the Board
 9 to process claims against the Fund in a certain manner; requiring the Board to
 10 provide the claimant and person against whom the complaint is made certain
 11 opportunities to participate in a certain hearing process; requiring that certain
 12 reimbursement be made to the Fund in a certain manner; establishing a certain
 13 lien in the favor of the State under certain circumstances; requiring the Board
 14 to take certain disciplinary action against a licensee under certain
 15 circumstances; repealing a certain requirement that a certain seller of pre-need
 16 goods and services annually file a certain report with the Board; providing that
 17 ~~the certain~~ provisions of this Act do not limit the authority of the Board to take
 18 certain action under certain circumstances; prohibiting certain banking
 19 institutions and savings and loan associations from releasing any money from a
 20 certain pre-need account unless certain proof is provided; prohibiting a certain
 21 seller from withdrawing money from a certain pre-need account unless certain
 22 proof is provided; providing that it is an unfair or deceptive trade practice under
 23 the Maryland Consumer Protection Act to violate certain provisions of this Act;
 24 requiring the Board to provide certain notice to each banking institution and
 25 savings and loan association in the State on or before a certain date; defining
 26 certain terms; providing for a delayed effective date for certain provisions of this
 27 Act; making certain technical changes; and generally relating to the Family
 28 Security Trust Fund and, the Family Security Trust Fund Advisory Committee,
 29 and pre-need contracts.

30 BY repealing and reenacting, with amendments,
 31 Article – Health Occupations
 32 Section 7-310(b)(1) ~~and 7-314(e)~~, 7-314(c), and 7-405(e)(1) and (2)
 33 Annotated Code of Maryland
 34 (2005 Replacement Volume and 2007 Supplement)

35 BY repealing and reenacting, without amendments,
 36 Article – Health Occupations
 37 Section 7-405(a), 7-405(e)(3), and 7-508
 38 Annotated Code of Maryland
 39 (2005 Replacement Volume and 2007 Supplement)

40 BY repealing
 41 Article – Health Occupations
 42 Section 7-405(i)
 43 Annotated Code of Maryland
 44 (2005 Replacement Volume and 2007 Supplement)

1 BY adding to
 2 Article – Health Occupations
 3 Section 7–4A–01 through 7–4A–13 to be under the new subtitle “Subtitle 4A.
 4 Family Security Trust Fund”
 5 Annotated Code of Maryland
 6 (2005 Replacement Volume and 2007 Supplement)

7 BY repealing and reenacting, with amendments,
 8 Article – Commercial Law
 9 Section 13–301(14)(xxii)
 10 Annotated Code of Maryland
 11 (2005 Replacement Volume and 2007 Supplement)

12 BY repealing and reenacting, without amendments,
 13 Article – Commercial Law
 14 Section 13–301(14)(xxiii)
 15 Annotated Code of Maryland
 16 (2005 Replacement Volume and 2007 Supplement)

17 BY adding to
 18 Article – Commercial Law
 19 Section 13–301(14)(xxiv)
 20 Annotated Code of Maryland
 21 (2005 Replacement Volume and 2007 Supplement)

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

24 **Article – Health Occupations**

25 7–310.

26 (b) (1) To apply for a funeral establishment license, an applicant shall:

27 (i) Submit an application to the Board on the form that the
 28 Board requires; and

29 (ii) Pay to the Board [an]:

30 **1. AN application fee set by the Board; AND**

31 **2. THE FEE ESTABLISHED UNDER § 7–4A–05(A) OF**
 32 **THIS TITLE.**

33 7–314.

1 (c) Except as otherwise provided in this section, before a license expires, the
2 licensee periodically may renew it for additional terms, if the licensee:

3 (1) Has met the qualifications for licensure and is not under a
4 suspension or revocation order of the Board;

5 (2) Except as otherwise provided under this title, pays to the Board a
6 renewal fee set by the Board;

7 (3) Submits to the Board a renewal application on the form that it
8 requires; [and]

9 (4) Submits to the Board satisfactory evidence of compliance with any
10 continuing education requirements the Board may adopt by regulation; **AND**

11 **(5) FOR A FUNERAL ESTABLISHMENT LICENSE, PROVIDES PROOF**
12 **OF ANY PAYMENT TO THE BOARD REQUIRED IN ACCORDANCE WITH §**
13 **7-4A-05(B) OF THIS TITLE.**

14 7-405.

15 [(i) A seller shall annually file a report with the Board which includes:

16 (1) A certification by a certified public accountant as to the seller's
17 compliance with the provisions of this section; and

18 (2) Any other information the Board deems necessary.]

19 **SUBTITLE 4A. FAMILY SECURITY TRUST FUND.**

20 **7-4A-01.**

21 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
22 **INDICATED.**

23 **(B) "ADVISORY COMMITTEE" MEANS THE FAMILY SECURITY TRUST**
24 **FUND ADVISORY COMMITTEE.**

25 **(C) "FUND" MEANS THE FAMILY SECURITY TRUST FUND.**

26 **7-4A-02.**

27 **THIS SUBTITLE DOES NOT LIMIT THE AUTHORITY OF THE BOARD TO:**

28 **(1) TAKE ANY ACTION AGAINST A LICENSEE UNDER THE**
29 **DISCIPLINARY PROVISIONS OF §§ 7-316 THROUGH 7-320 OF THIS TITLE; OR**

1 **(2) TAKE ANY OTHER DISCIPLINARY OR OTHER ACTION**
2 **AUTHORIZED UNDER THIS TITLE.**

3 **7-4A-03.**

4 **(A) THERE IS A FAMILY SECURITY TRUST FUND.**

5 **(B) THE BOARD SHALL:**

6 **(1) ADMINISTER THE FUND; AND**

7 **(2) OVER A REASONABLE PERIOD OF TIME, BUILD THE FUND TO A**
8 **LEVEL OF AT LEAST \$1,000,000 AND THEREAFTER MAINTAIN THE FUND AT**
9 **THAT LEVEL.**

10 **(C) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT SUBJECT**
11 **TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.**

12 **(D) (1) THE BOARD SHALL DEPOSIT ALL MONEY COLLECTED TO THE**
13 **CREDIT OF THE FUND WITH THE STATE TREASURER FOR PLACEMENT INTO A**
14 **SPECIAL ACCOUNT.**

15 **(2) (I) THE STATE TREASURER MAY INVEST OR REINVEST**
16 **MONEY IN THE FUND IN THE SAME MANNER AS MONEY IN THE STATE**
17 **RETIREMENT AND PENSION SYSTEM.**

18 **(II) THE INVESTMENT EARNINGS SHALL BE:**

19 **1. CREDITED TO THE FUND; AND**

20 **2. AVAILABLE FOR THE SAME PURPOSES AS THE**
21 **MONEY DEPOSITED INTO THE FUND.**

22 **(E) THE FUND IS NOT LIABLE TO ANY OTHER EXPENSES OR**
23 **OBLIGATIONS OF THE BOARD.**

24 **(F) (1) ACCOUNTING AND FINANCIAL REPORTS RELATED TO THE**
25 **FUND SHALL BE PUBLICLY AVAILABLE IN A TIMELY MANNER.**

26 **(2) THE LEGISLATIVE AUDITOR SHALL AUDIT THE ACCOUNTS**
27 **AND TRANSACTIONS OF THE FUND AS PROVIDED IN § 2-1220 OF THE STATE**
28 **GOVERNMENT ARTICLE.**

1 (G) (1) THE BOARD MAY RETAIN THE SERVICES OF APPROPRIATE
2 EXPERTS OR SERVICE PROVIDERS TO ADVISE ABOUT, OR ADMINISTER, THE
3 FUND.

4 (2) THE COSTS OF THE SERVICES DESCRIBED IN PARAGRAPH (1)
5 OF THIS SUBSECTION SHALL BE PAID OUT OF THE FUND.

6 (H) THE BOARD SHALL ADOPT REGULATIONS FOR THE
7 ADMINISTRATION AND CLAIMS PROCEDURES OF THE FUND.

8 **7-4A-04.**

9 (A) THERE IS A FAMILY SECURITY TRUST FUND ADVISORY
10 COMMITTEE.

11 (B) THE ADVISORY COMMITTEE CONSISTS OF THE FOLLOWING FIVE
12 MEMBERS:

13 (1) THREE MEMBERS OF THE BOARD, INCLUDING ONE
14 CONSUMER MEMBER, APPOINTED BY THE BOARD;

15 (2) ONE MEMBER DESIGNATED BY THE MARYLAND STATE
16 FUNERAL DIRECTORS ASSOCIATION; AND

17 (3) ONE MEMBER DESIGNATED BY THE FUNERAL DIRECTORS
18 AND MORTICIANS ASSOCIATION OF MARYLAND, INC.

19 (C) THE ADVISORY COMMITTEE MEMBERS MAY BE, BUT ARE NOT
20 REQUIRED TO BE, LICENSEES OF THE BOARD.

21 (D) (1) EXCEPT FOR THE INITIAL TERMS OF THE ADVISORY
22 COMMITTEE, THE TERM OF A MEMBER IS 4 YEARS.

23 (2) A MEMBER CONTINUES TO SERVE UNTIL A SUCCESSOR IS
24 APPOINTED AND QUALIFIES.

25 (3) THE TERMS OF THE INITIAL MEMBERS SHALL BE STAGGERED
26 EVENLY BETWEEN 3 YEARS AND 4 YEARS AS THE ADVISORY COMMITTEE SHALL
27 DETERMINE AT THE ADVISORY COMMITTEE'S FIRST MEETING.

28 (4) A MEMBER MAY NOT SERVE FOR MORE THAN TWO 4-YEAR
29 TERMS.

30 (E) THE ADVISORY COMMITTEE SHALL ELECT ANNUALLY A CHAIR,
31 VICE CHAIR, AND SECRETARY FROM AMONG ITS MEMBERS.

1 **(F) (1) THE ADVISORY COMMITTEE SHALL MEET AT THE CALL OF**
2 **THE CHAIR OR THE VICE CHAIR.**

3 **(2) THE ADVISORY COMMITTEE SHALL MEET AT LEAST TWICE**
4 **EACH YEAR AT THE TIMES AND PLACES THAT IT DETERMINES.**

5 **(G) THE PURPOSE OF THE ADVISORY COMMITTEE IS TO PROVIDE**
6 **NONBINDING COUNSEL AND ADVICE TO THE BOARD ON ANY FUND MATTERS**
7 **OTHER THAN PENDING INDIVIDUAL CLAIM MATTERS.**

8 **(H) THE BOARD SHALL:**

9 **(1) WORK WITH THE ADVISORY COMMITTEE IN A COOPERATIVE**
10 **MANNER; AND**

11 **(2) PROVIDE TO THE ADVISORY COMMITTEE, IN A TIMELY**
12 **MANNER:**

13 **(I) ALL APPROPRIATE FUND INFORMATION, OTHER THAN**
14 **INFORMATION INVOLVING PENDING CLAIM MATTERS; AND**

15 **(II) SUMMARY INFORMATION ABOUT THE OUTCOME OF ALL**
16 **CLOSED CLAIMS, INCLUDING ACTUAL AMOUNTS OF INDIVIDUAL AND TOTAL**
17 **CLAIM PAYMENTS.**

18 **(I) A MEMBER OF THE ADVISORY COMMITTEE:**

19 **(1) MAY NOT RECEIVE COMPENSATION AS A MEMBER OF THE**
20 **ADVISORY COMMITTEE; BUT**

21 **(2) MAY RECEIVE REIMBURSEMENT FOR EXPENSES UNDER THE**
22 **STANDARD STATE TRAVEL REGULATIONS, AS PROVIDED IN THE STATE**
23 **BUDGET.**

24 **7-4A-05.**

25 **(A) BEFORE THE BOARD ISSUES AN INITIAL FUNERAL ESTABLISHMENT**
26 **LICENSE, THE FUNERAL ESTABLISHMENT SHALL PAY, IN ADDITION TO ALL**
27 **OTHER APPLICABLE FEES, A FEE OF \$375 TO BE CREDITED TO THE FUND.**

28 **(B) (1) EACH FUNERAL ESTABLISHMENT SHALL PAY \$375 PER YEAR**
29 **INTO THE FUND, UNTIL THE FUND HAS ACCUMULATED A BALANCE OF**
30 **\$1,000,000.**

1 **(2) IF, AFTER THE FUND HAS ACCUMULATED A BALANCE OF**
2 **\$1,000,000, THE AMOUNT IN THE FUND FALLS BELOW \$1,000,000, THE BOARD**
3 **SHALL ASSESS EACH FUNERAL ESTABLISHMENT AN ADDITIONAL FEE IN AN**
4 **AMOUNT THAT WILL, OVER A REASONABLE PERIOD, RETURN THE FUND TO A**
5 **LEVEL OF AT LEAST \$1,000,000.**

6 **(3) THE BOARD MAY NOT ISSUE A RENEWAL FUNERAL**
7 **ESTABLISHMENT LICENSE IF THE FUNERAL ESTABLISHMENT HAS NOT PAID THE**
8 **FEE REQUIRED UNDER THIS SUBSECTION.**

9 **7-4A-06.**

10 **(A) SUBJECT TO THE PROVISIONS OF THIS SUBTITLE, A PERSON MAY**
11 **RECOVER COMPENSATION FROM THE FUND FOR AN ACTUAL PRE-NEED TRUST**
12 **FUND LOSS THAT OCCURRED ON OR AFTER JANUARY 1, 2010, AND IS BASED ON**
13 **AN ACT OR OMISSION AS DESCRIBED IN SUBSECTION (B) OF THIS SECTION.**

14 **(B) A CLAIM FOR THE LOSS SHALL:**

15 **(1) BE BASED ON AN ACT OR OMISSION THAT OCCURS IN THE**
16 **PROVISION OF FUNERAL PRE-NEED SERVICES BY:**

17 **(I) A LICENSED MORTICIAN;**

18 **(II) A LICENSED FUNERAL DIRECTOR;**

19 **(III) A LICENSED APPRENTICE MORTICIAN;**

20 **(IV) A LICENSED APPRENTICE FUNERAL DIRECTOR; OR**

21 **(V) AN UNLICENSED EMPLOYEE OF A LICENSED FUNERAL**
22 **ESTABLISHMENT;**

23 **(2) INVOLVE A TRANSACTION THAT RELATES TO PRE-NEED**
24 **FUNERAL PLANNING THAT OCCURRED IN THE STATE; AND**

25 **(3) BE BASED ON AN ACT OR OMISSION:**

26 **(I) IN WHICH PRE-NEED MONEY IS OBTAINED FROM A**
27 **PERSON BY THEFT, EMBEZZLEMENT, FALSE PRETENSES, OR FORGERY; OR**

28 **(II) THAT CONSTITUTES FRAUD OR MISREPRESENTATION.**

29 **(C) THE AMOUNT RECOVERED FOR ANY CLAIM AGAINST THE FUND:**

1 (1) **MAY NOT EXCEED THE ACTUAL MONETARY LOSS SUFFERED;**
2 **AND**

3 (2) **MAY NOT INCLUDE NONECONOMIC, CONSEQUENTIAL, OR**
4 **PUNITIVE DAMAGES.**

5 (D) **A FUNERAL ESTABLISHMENT SHALL INCLUDE IN EACH SALES**
6 **CONTRACT THAT IS PROVIDED BY THE FUNERAL ESTABLISHMENT A WRITTEN**
7 **NOTICE TO THE BUYER THAT THE BUYER MAY FILE A CLAIM WITH THE FUND.**

8 **7-4A-07.**

9 (A) **EACH CLAIM AGAINST THE FUND SHALL BE MADE IN ACCORDANCE**
10 **WITH THIS SECTION.**

11 (B) **EACH CLAIM SHALL:**

12 (1) **BE IN WRITING;**

13 (2) **BE MADE UNDER OATH;**

14 (3) **STATE THE AMOUNT OF LOSS CLAIMED;**

15 (4) **STATE THE FACTS ON WHICH THE CLAIM IS BASED; AND**

16 (5) **BE ACCOMPANIED BY ANY DOCUMENTATION OR OTHER**
17 **EVIDENCE THAT SUPPORTS THE CLAIM.**

18 **7-4A-08.**

19 (A) **THE BOARD SHALL ACT PROMPTLY ON A CLAIM MADE UNDER THIS**
20 **SUBTITLE.**

21 (B) **ON RECEIPT OF A CLAIM, THE BOARD SHALL:**

22 (1) **FORWARD A COPY OF THE CLAIM:**

23 (I) **TO EACH LICENSEE ALLEGED TO BE RESPONSIBLE FOR**
24 **THE ACT OR OMISSION GIVING RISE TO THE CLAIM;**

25 (II) **TO EACH UNLICENSED EMPLOYEE ALLEGED TO BE**
26 **RESPONSIBLE FOR THE ACT OR OMISSION GIVING RISE TO THE CLAIM; AND**

1 (III) TO EACH FUNERAL ESTABLISHMENT THAT EMPLOYS A
2 LICENSEE OR UNLICENSED EMPLOYEE ALLEGED TO BE RESPONSIBLE FOR THE
3 ACT OR OMISSION GIVING RISE TO THE CLAIM; AND

4 (2) REQUEST FROM EACH OF THE PERSONS LISTED IN ITEM (1)
5 OF THIS SUBSECTION A WRITTEN RESPONSE WITHIN 10 DAYS TO THE
6 ALLEGATIONS SET FORTH IN THE CLAIM.

7 (C) (1) THE BOARD:

8 (I) SHALL REVIEW THE CLAIM AND ANY RESPONSE TO THE
9 CLAIM; AND

10 (II) MAY CONDUCT AN INVESTIGATION OF THE CLAIM.

11 (2) ON THE BASIS OF ITS REVIEW AND ANY INVESTIGATION THAT
12 THE BOARD CONDUCTS, THE BOARD SHALL:

13 (I) SET THE MATTER FOR A HEARING; OR

14 (II) IF THE CLAIM IS FRIVOLOUS, MADE IN BAD FAITH, OR
15 LEGALLY INSUFFICIENT, DISMISS THE CLAIM.

16 (D) AT ANY CLAIM HEARING, THE BURDEN OF PROOF SHALL BE ON THE
17 CLAIMANT TO ESTABLISH THE VALIDITY OF THE CLAIM.

18 **7-4A-09.**

19 (A) THE BOARD SHALL GIVE THE FOLLOWING PERSONS NOTICE OF THE
20 HEARING AND AN OPPORTUNITY TO PARTICIPATE IN THE HEARING:

21 (1) THE CLAIMANT;

22 (2) EACH LICENSEE ALLEGED TO BE RESPONSIBLE FOR THE ACT
23 OR OMISSION GIVING RISE TO THE CLAIM;

24 (3) EACH UNLICENSED EMPLOYEE ALLEGED TO BE RESPONSIBLE
25 FOR THE ACT OR OMISSION GIVING RISE TO THE CLAIM; AND

26 (4) EACH FUNERAL ESTABLISHMENT THAT EMPLOYS A LICENSEE
27 OR UNLICENSED EMPLOYEE ALLEGED TO BE RESPONSIBLE FOR THE ACT OR
28 OMISSION GIVING RISE TO THE CLAIM.

29 (B) THE BOARD MAY NOT PROCEED WITH THE HEARING UNLESS THE
30 RECORDS OF THE BOARD SHOW THAT THE BOARD PROVIDED EACH NOTICE

1 REQUIRED UNDER THE PROVISIONS OF THIS SECTION AND § 7-4A-08 OF THIS
2 SUBTITLE.

3 **7-4A-10.**

4 (A) IF A CLAIM AGAINST THE FUND ALLEGES THAT THE ACT OR
5 OMISSION GIVING RISE TO THE CLAIM WAS PERFORMED BY A LICENSEE, THE
6 BOARD MAY JOIN THE PROCEEDING ON THE CLAIM WITH ANY DISCIPLINARY
7 PROCEEDING AGAINST THE LICENSEE UNDER THIS TITLE ARISING FROM THE
8 SAME FACTS ALLEGED IN THE CLAIM.

9 (B) (1) FOR THAT PART OF A HEARING ON CONSOLIDATED
10 PROCEEDINGS THAT RELATES TO DISCIPLINARY ACTION BUT DOES NOT RELATE
11 TO THE FUND CLAIM AGAINST A LICENSEE, THE CLAIMANT:

12 (I) MAY NOT BE A PARTY; AND

13 (II) MAY PARTICIPATE ONLY AS A WITNESS.

14 (2) FOR THAT PART OF A HEARING ON CONSOLIDATED
15 PROCEEDINGS THAT RELATES TO THE CLAIM AGAINST THE FUND, THE
16 CLAIMANT IS A PARTY.

17 **7-4A-11.**

18 (A) THE BOARD SHALL ORDER FULL OR PARTIAL PAYMENT OF A CLAIM
19 BY THE FUND IF, ON THE HEARING, THE CLAIMANT PROVES THAT THE
20 CLAIMANT HAS A VALID CLAIM UNDER THIS SUBTITLE.

21 (B) THE BOARD MAY ORDER FULL OR PARTIAL PAYMENT BY THE FUND
22 ONLY FOR THE ACTUAL MONETARY LOSS SUFFERED BY THE CLAIMANT AS A
23 RESULT OF THE CLAIM PROVEN BY THE CLAIMANT.

24 (C) A PAYMENT MAY NOT BE MADE BY THE FUND UNDER AN ORDER OF
25 THE BOARD UNTIL:

26 (1) THE EXPIRATION OF THE TIME PROVIDED UNDER TITLE 10,
27 SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE FOR SEEKING JUDICIAL
28 REVIEW OF THE BOARD'S ORDER; OR

29 (2) THE EXPIRATION OF ANY JUDICIAL STAY OF THE ORDER OF
30 THE BOARD.

31 (D) THE BOARD SHALL ORDER PAYMENT OF EACH CLAIM DUE IN THE
32 ORDER IN WHICH THE CLAIM WAS AWARDED.

1 **(E) IF, AT THE TIME A PAYMENT IS DUE, THE MONEY IN THE FUND IS**
2 **INSUFFICIENT TO SATISFY FULLY THE ORDER FOR PAYMENT, THE BOARD:**

3 **(1) IMMEDIATELY SHALL PAY TO THE CLAIMANT THE AMOUNT**
4 **THAT IS AVAILABLE IN THE FUND; AND**

5 **(2) WHEN SUFFICIENT FUNDS ARE AVAILABLE IN THE FUND,**
6 **SHALL PAY THE CLAIMANT THE BALANCE DUE ON THE ORDER.**

7 **7-4A-12.**

8 **(A) AFTER PAYMENT OF A CLAIM BY THE FUND, A LICENSEE WHO THE**
9 **BOARD FINDS RESPONSIBLE FOR THE ACT OR OMISSION THAT GAVE RISE TO**
10 **THE CLAIM SHALL REIMBURSE THE FUND IN FULL FOR:**

11 **(1) THE AMOUNT PAID BY THE FUND; AND**

12 **(2) INTEREST ON THE AMOUNT PAID BY THE FUND AT AN ANNUAL**
13 **RATE OF 6%.**

14 **(B) EACH LICENSEE WHO THE BOARD FINDS RESPONSIBLE FOR THE**
15 **ACT OR OMISSION THAT GAVE RISE TO A CLAIM IS JOINTLY AND SEVERALLY**
16 **LIABLE FOR THE CLAIM.**

17 **(C) IF A LICENSEE DOES NOT REIMBURSE THE FUND AS PROVIDED IN**
18 **SUBSECTION (A) OF THIS SECTION, THE BOARD OR THE STATE CENTRAL**
19 **COLLECTION UNIT, AS ASSIGNEE OF THE BOARD, MAY BRING AN ACTION**
20 **AGAINST THE LICENSEE FOR THE AMOUNT THAT HAS NOT BEEN REIMBURSED.**

21 **(D) THE BOARD OR THE STATE CENTRAL COLLECTION UNIT, AS**
22 **ASSIGNEE OF THE BOARD, SHALL BE ENTITLED TO A JUDGMENT FOR THE**
23 **AMOUNT THAT THE LICENSEE HAS NOT REIMBURSED THE FUND IF THE BOARD**
24 **PROVES THAT:**

25 **(1) PAYMENT WAS MADE BY THE FUND BASED ON AN ACT OR**
26 **OMISSION FOR WHICH THE BOARD FOUND THE LICENSEE WAS RESPONSIBLE;**

27 **(2) A PERIOD OF AT LEAST 30 DAYS HAS PASSED SINCE PAYMENT**
28 **WAS MADE BY THE FUND; AND**

29 **(3) THE LICENSEE HAS NOT REIMBURSED THE FUND FOR THE**
30 **AMOUNT FOR WHICH THE JUDGMENT IS SOUGHT.**

1 **(E) (1) IF A PERSON LIABLE FOR REIMBURSING THE FUND UNDER**
2 **THIS SECTION RECEIVES A DEMAND FOR REIMBURSEMENT AND FAILS TO**
3 **REIMBURSE THE FUND, THE REIMBURSEMENT AMOUNT AND ANY ACCRUED**
4 **INTEREST OR COST ARE A LIEN IN FAVOR OF THE STATE ON ANY REAL**
5 **PROPERTY OF THE PERSON IF THE LIEN IS RECORDED AND INDEXED AS**
6 **PROVIDED IN THIS SUBSECTION.**

7 **(2) (I) THE LIEN IN FAVOR OF THE STATE CREATED BY THIS**
8 **SUBSECTION MAY NOT ATTACH TO SPECIFIC PROPERTY UNTIL THE STATE**
9 **CENTRAL COLLECTION UNIT RECORDS WRITTEN NOTICE OF THE LIEN IN THE**
10 **OFFICE OF THE CLERK OF THE COURT FOR THE COUNTY IN WHICH THE**
11 **PROPERTY SUBJECT TO THE LIEN OR ANY PART OF THE PROPERTY IS LOCATED.**

12 **(II) THE NOTICE REQUIRED UNDER SUBPARAGRAPH (I) OF**
13 **THIS PARAGRAPH SHALL CONTAIN THE NAME AND ADDRESS OF THE PERSON**
14 **AGAINST WHOSE PROPERTY THE LIEN EXISTS, THE AMOUNT OF THE LIEN, A**
15 **DESCRIPTION OF OR REFERENCE TO THE PROPERTY SUBJECT TO THE LIEN,**
16 **AND THE DATE THE FUND PAID THE CLAIM GIVING RISE TO THE LIEN.**

17 **(3) THE LIEN IN FAVOR OF THE STATE CREATED BY THIS**
18 **SUBSECTION DOES NOT HAVE PRIORITY AS TO ANY SPECIFIC PROPERTY OVER**
19 **ANY PERSON WHO IS A LIENHOLDER OF RECORD AT THE TIME THE NOTICE**
20 **REQUIRED UNDER PARAGRAPH (2) OF THIS SUBSECTION IS RECORDED.**

21 **(4) ON PRESENTATION OF A RELEASE OF ANY LIEN IN FAVOR OF**
22 **THE STATE CREATED BY THIS SUBSECTION, THE CLERK OF THE COURT IN**
23 **WHICH THE LIEN IS RECORDED AND INDEXED SHALL RECORD AND INDEX THE**
24 **RELEASE AND SHALL NOTE IN THE LIEN DOCKET THE DATE THE RELEASE IS**
25 **FILED AND THE FACT THAT THE LIEN IS RELEASED.**

26 **(5) THE NOTICE REQUIRED UNDER PARAGRAPH (2) OF THIS**
27 **SUBSECTION AND ANY RELEASE FILED UNDER PARAGRAPH (4) OF THIS**
28 **SUBSECTION SHALL BE INDEXED WITH THE JUDGMENT LIEN RECORDS**
29 **MAINTAINED BY THE OFFICE OF THE CLERK OF THE COURT WHERE THE NOTICE**
30 **IS RECORDED.**

31 **(6) THE CLERK MAY COLLECT A REASONABLE FEE FOR**
32 **RECORDING AND INDEXING EACH NOTICE OF LIEN OR RELEASE OF ANY LIEN**
33 **UNDER THIS SUBSECTION.**

34 **(F) FOR THE PURPOSE OF EXCEPTING TO A DISCHARGE OF A LICENSEE**
35 **UNDER 11 U.S.C. § 523, THE BOARD OR THE STATE CENTRAL COLLECTION**
36 **UNIT, AS ASSIGNEE OF THE BOARD, IS A CREDITOR OF THE LICENSEE FOR THE**

1 AMOUNT THAT WAS PAID BY THE FUND BUT THAT HAS NOT BEEN REIMBURSED
2 BY THE LICENSEE.

3 **7-4A-13.**

4 (A) IF THE BOARD ORDERS PAYMENT BY THE FUND OF A CLAIM BASED
5 ON AN ACT OR OMISSION FOR WHICH A LICENSEE IS RESPONSIBLE, THE BOARD
6 IMMEDIATELY AND WITHOUT FURTHER PROCEEDINGS SHALL SUSPEND THE
7 LICENSE OF THE LICENSEE.

8 (B) THE BOARD MAY NOT REINSTATE A LICENSE THAT IS SUSPENDED
9 UNDER THIS SECTION UNTIL THE PERSON WHOSE LICENSE WAS SUSPENDED:

10 (1) REPAYS IN FULL:

11 (I) THE AMOUNT PAID BY THE FUND; AND

12 (II) THE INTEREST DUE UNDER § 7-4A-12(A)(2) OF THIS
13 SUBTITLE; AND

14 (2) APPLIES TO THE BOARD FOR REINSTATEMENT OF THE
15 LICENSE.

16 (C) REGARDLESS OF WHETHER THE DISCIPLINARY SANCTION WAS
17 IMPOSED FOR THE SAME ACT OR OMISSION THAT GAVE RISE TO THE CLAIM
18 AGAINST THE FUND, THE REIMBURSEMENT OF THE FUND BY A LICENSEE DOES
19 NOT AFFECT ANY SANCTION IMPOSED BY THE BOARD AGAINST A PERSON
20 UNDER THE DISCIPLINARY PROVISIONS OF §§ 7-316 THROUGH 7-320 OF THIS
21 TITLE.

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

24 Article - Commercial Law

25 13-301.

26 Unfair or deceptive trade practices include any:

27 (14) Violation of a provision of:

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

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

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

3 Article - Health Occupations

4 7-405.

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

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

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

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

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

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

20 (II) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION,
21 THE BANKING INSTITUTION OR SAVINGS AND LOAN ASSOCIATION WITH WHICH
22 FUNDS ARE DEPOSITED UNDER THIS SECTION MAY NOT RELEASE THE FUNDS TO
23 THE SELLER UNLESS THE SELLER PROVIDES TO THE BANKING INSTITUTION OR
24 SAVINGS AND LOAN ASSOCIATION:

25 1. A COPY OF THE DEATH CERTIFICATE OF THE
26 BENEFICIARY; OR

27 2. A NOTARIZED STATEMENT AND WITHDRAWAL
28 REQUEST FROM THE BUYER OR THE BUYER’S LEGAL REPRESENTATIVE.

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

32 (II) 1. EXCEPT AS OTHERWISE PROVIDED IN THIS
33 SUBSECTION, A SELLER MAY NOT WITHDRAW FROM THE ACCOUNT ANY MONEY

1 RECEIVED FROM A BUYER UNLESS THE SELLER PROVIDES TO THE BANKING
2 INSTITUTION OR SAVINGS AND LOAN ASSOCIATION WITH WHICH FUNDS ARE
3 DEPOSITED A COPY OF THE BENEFICIARY'S DEATH CERTIFICATE.

4 2. A VIOLATION OF SUBSUBPARAGRAPH 1 OF THIS
5 SUBPARAGRAPH IS AN UNFAIR OR DECEPTIVE TRADE PRACTICE UNDER TITLE
6 13 OF THE COMMERCIAL LAW ARTICLE.

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

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

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

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

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

16 7-508.

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

20 SECTION 3. AND BE IT FURTHER ENACTED, That, on or before October 1,
21 2008, the State Board of Morticians shall provide notice of the provisions of §
22 7-405(e)(1) and (2) of the Health Occupations Article, as enacted by Section 2 of this
23 Act, to each banking institution and savings and loan association in the State.

24 SECTION 4. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall
25 be construed to apply only prospectively and may not be applied or interpreted to have
26 any effect on or application to any pre-need contract entered into before January 1,
27 2009.

28 SECTION ~~2~~ 5. AND BE IT FURTHER ENACTED, That Sections 1, 2, and 4 of
29 this Act shall take effect January 1, 2009.

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