Chapter 497

(Senate Bill 415)

AN ACT concerning

Morticians and Funeral Directors – Pre–Need Contracts

FOR the purpose of requiring that certain disclosure statements in pre–need contracts inform a buyer of whether the contract is a guaranteed contract, guaranteed in part contract, or nonguaranteed contract and, under certain circumstances, list the funeral goods and services or cash advance items that are not guaranteed; requiring certain disclosure statements to contain a certain statement and certain amounts paid under certain contracts; repealing a requirement that the disclosure statements contain a certain price; providing that if certain disclosures are made, pre–need contracts may be guaranteed contracts, guaranteed in part contracts, or nonguaranteed contracts and may include cash advance items or goods and services that are not guaranteed; providing that a pre–need escrow or trust account may not be deemed an asset of certain licensees; requiring certain escrow and trust accounts to be established and held in a certain manner; requiring certain buyers to receive certain statements; altering the circumstances under which a pre–need contract may be funded by a life insurance policy or an annuity contract; repealing a certain provision of law requiring morticians, funeral directors, or surviving spouses to agree to accept certain benefits as certain payment for certain services and merchandise; defining certain terms; making a conforming change; and generally relating to morticians and funeral directors and pre–need contracts.

BY repealing and reenacting, without amendments,
Article – Health Occupations
Section 7–101(v)
Annotated Code of Maryland
(2009 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, with amendments,
Article – Health Occupations
Section 7–405
Annotated Code of Maryland
(2009 Replacement Volume and 2013 Supplement)

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

Article – Health Occupations

7–101.

(v) "Pre–need contract" means an agreement between a consumer and a licensed funeral director, licensed mortician, or surviving spouse to provide any goods and services purchased prior to the time of death. Goods and services shall include:

(1) A service, including any form of preservation and disposition or cremation, that a mortician normally provides in the ordinary course of business; or

(2) Merchandise, including a casket, vault, or clothing, that a mortician normally provides in the ordinary course of business.

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) "GUARANTEED CONTRACT" MEANS A WRITTEN PRE–NEED CONTRACT THAT:

(I) IS SIGNED BY THE CONSUMER AND A LICENSEE OF A LICENSED FUNERAL ESTABLISHMENT; AND

(II) ~~GUARANTEES~~ GUARANTEES IN WHOLE ~~OR IN PART~~ THE PRICE OF GOODS AND SERVICES AND CASH ADVANCE ITEMS SPECIFIED IN THE CONTRACT.

(5) "GUARANTEED IN PART CONTRACT" MEANS A WRITTEN PRE–NEED CONTRACT THAT:

(I) IS SIGNED BY THE CONSUMER AND A LICENSEE OF A LICENSED FUNERAL ESTABLISHMENT; AND

(II) GUARANTEES IN PART THE PRICE OF GOODS AND SERVICES AND CASH ADVANCE ITEMS SPECIFIED IN THE CONTRACT.

~~(5)~~ (6) "NONGUARANTEED CONTRACT" MEANS A WRITTEN PRE–NEED CONTRACT:

(I) THAT IS SIGNED BY THE CONSUMER AND A LICENSEE OF A LICENSED FUNERAL ESTABLISHMENT;

~~(I)~~ (II) THAT DOES NOT GUARANTEE THE PRICE OF ANY SPECIFIC GOODS AND SERVICES OR CASH ADVANCE ITEMS; AND

~~(II)~~ (III) FOR WHICH ANY FUNDS OR BENEFITS PAID UNDER THE CONTRACT ARE ONLY A DEPOSIT OR PARTIAL PAYMENT TO BE APPLIED TOWARD THE FINAL COST, DETERMINED AT THE TIME OF DEATH, OF THE GOODS, ~~MERCHANDISE~~ SERVICES, OR CASH ADVANCE ITEMS.

[(4)**]** **~~(6)~~ (7)** "Seller" means a person who agrees to provide services or merchandise, directly or indirectly, under a pre–need contract.

[(5)**]** **~~(7)~~ (8)** "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.

(b) (1) Only a licensed mortician, a licensed funeral director, or a holder of a surviving spouse license may offer or agree, directly or indirectly, to provide services or merchandise under a pre–need contract.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, a licensed mortician or a licensed funeral director who is employed by a funeral establishment may execute pre–need contracts on behalf of the funeral establishment with which the mortician or funeral director is employed.

(3) Any funeral establishment on whose behalf pre–need contracts are executed under this subsection must comply with the requirements of this section.

(c) (1) A pre–need contract shall contain:

(i) The name of each party to the contract and, if the beneficiary is an individual other than the buyer, the name of the beneficiary of the contract;

(ii) A description of any service or merchandise to be provided under the pre–need contract;

(iii) A disclosure statement that clearly:

1. States that all funeral costs may not be covered under the pre–need contract; **[**and**]**

2. ~~Lists all funeral goods and services that are reasonably expected to be required at the time of need, but are not included in the~~

~~contract~~ STATES THAT "NOT ALL CHARGES THAT MAY BE REQUIRED TO BE PAID AT THE TIME OF NEED ARE LISTED IN THIS CONTRACT";

3. INFORMS A BUYER OF WHETHER THE CONTRACT IS A GUARANTEED CONTRACT, A GUARANTEED IN PART CONTRACT, OR A NONGUARANTEED CONTRACT; AND

4. IF ~~A GUARANTEED CONTRACT IS GUARANTEED ONLY IN PART, LISTS~~ THE CONTRACT IS A GUARANTEED IN PART CONTRACT:

A. LISTS THE FUNERAL GOODS AND SERVICES OR CASH ADVANCE ITEMS INCLUDED IN THE GUARANTEE; AND

B. IDENTIFIES IN AT LEAST 14 POINT BOLD FACE TYPE ABOVE EACH SECTION OF THE CONTRACT WHETHER THE SECTION IS FULLY GUARANTEED OR NOT GUARANTEED; ~~AND~~

[(iv) The total price of the services and merchandise agreed on; and]

(IV) A LINE TOTALING:

1. THE GUARANTEED AMOUNT PAID; AND

2. THE AMOUNT FOR NONGUARANTEED ITEMS THAT ARE CONSIDERED TO BE ONLY A DOWN PAYMENT TOWARD FUTURE TOTAL COST; AND

[(v)] ~~(IV)~~ (V) The method of payment.

(2) IF DISCLOSURE IS MADE IN ACCORDANCE WITH ~~ITEMS~~ *PARAGRAPH* (1)(III)3 AND 4 OF THIS SUBSECTION, A PRE–NEED CONTRACT MAY:

(I) BE A GUARANTEED CONTRACT, A GUARANTEED IN PART CONTRACT, OR A NONGUARANTEED CONTRACT; AND

(II) INCLUDE CASH ADVANCE ITEMS OR GOODS AND SERVICES THAT ARE NOT GUARANTEED.

[(2)] (3) A pre–need contract shall be executed in duplicate and be signed by each party.

[(3)] (4) The seller shall give one of the duplicate originals of the pre–need contract to the buyer.

(d) (1) Within 10 days after receiving a payment under a pre–need contract, the seller shall deposit into an interest bearing, escrow or trust account:

(i) For services, 100% of the payment under the pre–need contract; and

(ii) For goods:

1. An amount from the payment that is equal to 80% of the selling price of a casket or casket vault under the pre–need contract; and

2. 100% of the payment that is for all other goods under the pre–need contract.

(2) The interest bearing, escrow or trust account shall be with:

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

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

(3) **(I)** ~~A seller need not have a separate escrow or trust account for each pre–need contract~~ **A PRE–NEED ESCROW OR TRUST ACCOUNT MAY NOT BE DEEMED AN ASSET OF:**

1. THE INDIVIDUAL LICENSEE; OR

2. THE LICENSED FUNERAL ESTABLISHMENT.

(II) A PRE–NEED ESCROW OR TRUST ACCOUNT WITH A BANKING INSTITUTION OR SAVINGS AND LOAN ASSOCIATION DESCRIBED IN PARAGRAPH (2) OF THIS SUBSECTION SHALL BE:

1. ESTABLISHED USING THE NAME, ADDRESS, AND SOCIAL SECURITY NUMBER OF THE BUYER; AND

2. HELD IN TRUST FOR THE LICENSED FUNERAL ESTABLISHMENT.

(III) 1. A BUYER FOR WHOM A MONETARY PRE–NEED ESCROW OR TRUST ACCOUNT IS ESTABLISHED UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH SHALL RECEIVE A STATEMENT REGARDING THE ESCROW OR TRUST ACCOUNT AT LEAST ANNUALLY.

2. THE REQUIREMENT UNDER SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH MAY BE SATISFIED BY A STATEMENT THAT IS:

A. ISSUED BY THE BANKING INSTITUTION OR SAVINGS AND LOAN ASSOCIATION AT WHICH THE ESCROW OR TRUST ACCOUNT IS ESTABLISHED; AND

B. SENT TO THE BUYER.

(4) (i) Any interest or dividends earned by the escrow or trust account prior to service being rendered belong to the buyers of the pre–need contracts.

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

(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 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.

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

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

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

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

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

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

(iii) The disposition of the trust funds if:

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

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

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

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

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

(f) (1) A pre–need contract is not subject to the Retail Installment Sales Act.

(2) The making of a pre–need contract by a licensed mortician, a licensed funeral director, or a holder of a surviving spouse license is not the practice of insurance business.

(3) (i) A pre–need contract **THAT IS A GUARANTEED CONTRACT, A GUARANTEED IN PART CONTRACT, OR A NONGUARANTEED CONTRACT** may be funded by a life insurance policy or an annuity contract if:

1. The mortician, funeral director, **LICENSED FUNERAL ESTABLISHMENT,** or surviving spouse is not the owner of or beneficiary under the life insurance policy or annuity contract;

2. An **IRREVOCABLE** assignment of benefits to the ~~mortician, funeral director, or surviving spouse~~ **LICENSED FUNERAL ESTABLISHMENT:**

A. ~~may~~ **MAY** be ~~revoked~~ **TRANSFERRED** at any time by the owner of the life insurance policy or annuity contract **TO ANY OTHER LICENSED FUNERAL ESTABLISHMENT; AND**

B. MAY NOT BE TRANSFERRED TO THE CONSUMER; AND

[3. Subject to item 4 of this subparagraph, the mortician, funeral director, or surviving spouse agrees to accept the benefits payable under the life insurance policy or annuity contract as payment in full for the services and merchandise agreed on in the pre–need contract; and]

[4.] **3.** Any benefits payable under the life insurance policy or annuity contract in excess of the amount necessary to pay the total price, as determined at the time of death of the insured, of the services and merchandise agreed on in the pre–need contract are paid to the beneficiary under the life insurance policy or annuity contract.

(ii) A pre–need contract that is funded by a life insurance policy or an annuity contract shall terminate if the assignment of benefits to the mortician, funeral director, or surviving spouse is revoked by the owner of the life insurance policy or annuity contract.

(iii) 1. The offer, sale, or assignment of a life insurance policy or annuity contract to fund a pre–need contract is not subject to this section.

2. A pre–need contract funded by a life insurance policy or an annuity contract is not subject to subsection (d) or (e) of this section.

(g) A seller of a pre–need contract shall provide the buyer with a general price list for the buyer to keep of the goods and services offered by the seller.

(h) A seller of a pre–need contract shall disclose to the consumer the buyer's cancellation and refund rights under subsection (d) of this section.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2014.

Approved by the Governor, May 15, 2014.