

# SENATE BILL 415

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CF HB 593

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By: **Senators Klausmeier, Benson, Reilly, and Young**  
Introduced and read first time: January 24, 2014  
Assigned to: Education, Health, and Environmental Affairs

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Committee Report: Favorable with amendments  
Senate action: Adopted  
Read second time: March 10, 2014

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Morticians and Funeral Directors – Pre-Need Contracts**

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

22 BY repealing and reenacting, without amendments,  
23 Article – Health Occupations  
24 Section 7–101(v)

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### 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 Annotated Code of Maryland  
2 (2009 Replacement Volume and 2013 Supplement)

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

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

10 **Article – Health Occupations**

11 7–101.

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

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

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

19 7–405.

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

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

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

25 (4) **“GUARANTEED CONTRACT” MEANS A WRITTEN PRE–NEED**  
26 **CONTRACT THAT:**

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

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

1           **(5) “GUARANTEED IN PART CONTRACT” MEANS A WRITTEN**  
 2 **PRE-NEED CONTRACT THAT:**

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

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

7           ~~(5)~~ **(6) “NONGUARANTEED CONTRACT” MEANS A WRITTEN**  
 8 **PRE-NEED CONTRACT:**

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

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

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

17           **[(4)] ~~(6)~~ (7) “Seller” means a person who agrees to provide services or**  
 18 **merchandise, directly or indirectly, under a pre-need contract.**

19           **[(5)] ~~(7)~~ (8) “Trustee” means a person that has responsibility for making**  
 20 **pre-need arrangements in a manner that entitles the beneficiary to be eligible for**  
 21 **benefits that restrict assets.**

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

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

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

31           (c) (1) A pre-need contract shall contain:

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

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

6 (iii) A disclosure statement that clearly:

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

9 2. ~~Lists all funeral goods and services that are~~  
10 ~~reasonably expected to be required at the time of need, but are not included in the~~  
11 ~~contract~~ **STATES THAT "NOT ALL CHARGES THAT MAY BE REQUIRED TO BE PAID**  
12 **AT THE TIME OF NEED ARE LISTED IN THIS CONTRACT";**

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

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

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

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

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

25 **(IV) A LINE TOTALING:**

26 1. **THE GUARANTEED AMOUNT PAID; AND**

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

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

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

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

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

7                   **[(2)] (3)**     A pre-need contract shall be executed in duplicate and be  
 8 signed by each party.

9                   **[(3)] (4)**     The seller shall give one of the duplicate originals of the  
 10 pre-need contract to the buyer.

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

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

15                   (ii)    For goods:

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

18                           2.     100% of the payment that is for all other goods under  
 19 the pre-need contract.

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

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

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

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

28                           **1. THE INDIVIDUAL LICENSEE; OR**

29                           **2. THE LICENSED FUNERAL ESTABLISHMENT.**

1                   **(ii) A PRE-NEED ESCROW OR TRUST ACCOUNT WITH A**  
2 **BANKING INSTITUTION OR SAVINGS AND LOAN ASSOCIATION DESCRIBED IN**  
3 **PARAGRAPH (2) OF THIS SUBSECTION SHALL BE:**

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

6                   **2. HELD IN TRUST FOR THE LICENSED FUNERAL**  
7 **ESTABLISHMENT.**

8                   **(iii) 1. A BUYER FOR WHOM A MONETARY PRE-NEED**  
9 **ESCROW OR TRUST ACCOUNT IS ESTABLISHED UNDER SUBPARAGRAPH (II) OF**  
10 **THIS PARAGRAPH SHALL RECEIVE A STATEMENT REGARDING THE ESCROW OR**  
11 **TRUST ACCOUNT AT LEAST ANNUALLY.**

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

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

17                   **B. SENT TO THE BUYER.**

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

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

22                   (e) (1) (i) Except as may be provided in an irrevocable trust  
23 established under paragraph (4) of this subsection and in subparagraph (ii) of this  
24 paragraph, the banking institution or savings and loan association with which funds  
25 are deposited under this section is not responsible for the application of pre-need  
26 contract escrow or trust funds.

27                   (ii) Except as otherwise provided in this section, the banking  
28 institution or savings and loan association with which funds are deposited under this  
29 section may not release the funds to the seller unless the seller provides to the  
30 banking institution or savings and loan association:

31                   1. A copy of the death certificate of the beneficiary; or

32                   2. A notarized statement and withdrawal request from  
33 the buyer or the buyer's legal representative.

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

4                   (ii)   1.    Except as otherwise provided in this subsection, a  
5 seller may not withdraw from the account any money received from a buyer unless the  
6 seller provides to the banking institution or savings and loan association with which  
7 funds are deposited a copy of the beneficiary's death certificate.

8                           2.    A violation of subsubparagraph 1 of this  
9 subparagraph is an unfair or deceptive trade practice under Title 13 of the  
10 Commercial Law Article.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

4                    B.    MAY NOT BE TRANSFERRED TO THE CONSUMER;  
5 AND

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

10                    [4.] 3. Any benefits payable under the life insurance policy  
11 or annuity contract in excess of the amount necessary to pay the total price, as  
12 determined at the time of death of the insured, of the services and merchandise agreed  
13 on in the pre-need contract are paid to the beneficiary under the life insurance policy  
14 or annuity contract.

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

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

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

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

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

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