

Department of Legislative Services  
Maryland General Assembly  
2014 Session

FISCAL AND POLICY NOTE  
Revised

Senate Bill 415

(Senator Klausmeier, *et al.*)

Education, Health, and Environmental Affairs

Health and Government Operations

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Morticians and Funeral Directors - Pre-Need Contracts

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This bill specifies the contents of a disclosure statement that must be included in a pre-need contract. A disclosure statement must clearly state that “not all charges that may be required to be paid at the time of need are listed in this contract” and inform a buyer whether the contract is a “guaranteed contract,” a “guaranteed in part contract,” or a “nonguaranteed contract.” A pre-need contract must include, rather than the total price of the services and merchandise agreed on, a line totaling the guaranteed amount paid and the amount for nonguaranteed items that are considered to be only a down payment toward future total cost. The bill also specifies that a pre-need escrow or trust account may not be deemed an asset of the individual licensee or the licensed funeral establishment.

The bill takes effect July 1, 2014.

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Fiscal Summary

**State Effect:** Any additional workload associated with enforcement can be handled using existing resources. Revenues are not affected.

**Local Effect:** None.

**Small Business Effect:** Potential meaningful. Small business funeral establishments could benefit from authority to enter into nonguaranteed or guaranteed in part pre-need contracts.

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## Analysis

**Bill Summary:** A “guaranteed contract” guarantees *in whole* the price of goods, services, and cash advance items specified in the contract, while a “guaranteed in part contract” guarantees *in part* the price of such goods, services, and items. A “nonguaranteed contract” is one (1) that *does not* guarantee the price of any specific goods, services, or cash advance items and (2) 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). All three categories of contract are written pre-need contracts and must be signed by the consumer and a licensee of a licensed funeral establishment.

If the contract is a “guaranteed in part contract,” the required disclosure statement must list the funeral goods, services, or cash advance items included in the guarantee and identify in at least 14-point bold face type above each section of the contract whether the section is fully guaranteed or not guaranteed. If disclosure is made as required by the bill, a pre-need contract may be a guaranteed contract, a guaranteed in part contract, or a nonguaranteed contract and include cash advance items or goods and services that are not guaranteed.

A pre-need contract, regardless of whether it is guaranteed, guaranteed in part, or nonguaranteed, may be funded by a life insurance policy or annuity contract under specified circumstances. However, agreement by a seller to accept the benefits payable under a life insurance policy or annuity contract as payment in full is repealed as an acceptable condition under which a pre-need contract may be funded by a life insurance policy or annuity contract.

A pre-need escrow or trust account with a banking institution or savings and loan association must be established using the name, address, and Social Security number of the buyer and held in trust for the licensed funeral establishment. A buyer for whom a pre-need escrow or trust account is established must receive a statement regarding the escrow or trust account at least annually. This requirement may be satisfied by a statement issued by the banking institution or savings and loan association and sent to the buyer.

**Current Law:** Only a licensed mortician, funeral director, or holder of a surviving spouse license may offer or agree to provide services or merchandise under a pre-need contract. A licensed mortician or 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.

Pre-need contracts must contain certain information, including (1) the name of each party and any beneficiary; (2) a description of any service or merchandise to be provided; (3) the total price of the services and merchandise agreed on; and (4) the method of payment. Pre-need contracts also must include a disclosure statement that clearly states that all funeral costs may not be covered under the contract and 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.

Within 10 days after receipt of payment, the seller of a pre-need contract must deposit payment into a specified account. A seller is prohibited from withdrawing funds from the account unless the services and merchandise have been provided as agreed in the contract. Unlawful withdrawal of funds from a pre-need account is an unfair or deceptive trade practice. A buyer may demand in writing a refund of all payments under specified circumstances. The buyer of a pre-need contract has the option, at any time, to establish an irrevocable trust with respect to all or any portion of the payment made under the pre-need contract.

A pre-need contract is ended and a seller must return all payments and interest if (1) the buyer or legal representative demands a refund in writing; (2) the business of the seller is discontinued or sold; (3) the seller is unable to perform under the terms of the contract; or (4) the buyer fails to pay the entire contract price before the death of the beneficiary and the seller considers the contract void.

A pre-need contract may be funded by a life insurance policy or annuity contract if (1) the seller is not the owner or beneficiary of the life insurance policy or annuity contract; (2) an assignment of benefits to the seller may be revoked at any time by the owner of the life insurance policy or annuity contract; (3) the seller agrees to accept the benefits payable under the life insurance policy or annuity contract as payment in full; and (4) 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, are paid to the beneficiary of the life insurance policy or annuity contract.

**Background:** In a pre-need contract, a consumer purchases funeral goods and services for him or herself or another beneficiary in advance at then-prevailing market prices. Such contracts may contain nonguaranteed price items for which, at the time of need, surviving family members are asked to pay the difference between the contract price and the current market price.

On March 1, 2013, the Attorney General issued a formal opinion as to whether Maryland law permits a licensed mortician or funeral director to enter into money-trusted pre-need funeral contracts in which the price of some of the goods and services agreed upon is not guaranteed (*See* 198 Op. Att’y Gen 3 (2013)). The opinion concluded that money-trusted

pre-need accounts must include the total price of the goods and services agreed upon; thus, the price terms of the contract must be guaranteed. A pre-need contract may include estimated prices for those goods and services reasonably expected to be required at the time of need but not included in the contract, but the licensed mortician or funeral director may not accept prepayment for such nonincluded goods and services.

The opinion noted that allowing nonguaranteed pre-need contracts would alter the economic incentives of the contracting parties in a manner that is inconsistent with the consumer protection purpose of the statute. By paying the “total price” for goods and services at the time of the contract, buyers are able to lock in the price of those goods and services at the then-prevailing rate, eliminating uncertainty about the cost of those goods and services at the time of death. Allowing sellers to include nonguaranteed price terms insulates the seller from all inflation risk and instead places it on the buyer.

According to the opinion, most states allow nonguaranteed provisions in pre-need contracts, but they do so expressly, with statutory or regulatory language that requires the pre-need contract to disclose whether a particular good or service is guaranteed.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 593 (Delegate Krebs, *et al.*) – Health and Government Operations.

**Information Source(s):** Department of Health and Mental Hygiene, Attorney General’s Office, Department of Legislative Services

**Fiscal Note History:** First Reader - February 4, 2014  
jc/ljm Revised - Senate Third Reader - March 20, 2014

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