

# HOUSE BILL 321

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CF SB 159

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By: **Delegates Cullison, Carr, Frush, Gaines, Gutierrez, Kelly, and Smith**

Introduced and read first time: February 5, 2015

Assigned to: Health and Government Operations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Funeral Establishments – Pre-Need Contracts – Reporting and Audit**  
3 **Requirements**

4 FOR the purpose of authorizing a certain buyer or beneficiary of a pre-need contract to  
5 contact the Maryland State Board of Morticians and Funeral Directors and request  
6 the Board to conduct an audit of certain licensees; requiring the Board to conduct a  
7 certain audit within a certain number of days after a certain request; requiring a  
8 certain disclosure statement for a pre-need contract to state that the buyer or  
9 beneficiary of the pre-need contract is authorized to contact the Board and request  
10 a certain audit; requiring certain funeral establishments to submit certain reports  
11 on certain pre-need contracts to the Board on or after a certain date; providing that  
12 certain reports are not public records and may be made available only to certain  
13 persons; establishing requirements for certain reports on certain pre-need contracts;  
14 and generally relating to reporting and audit requirements for pre-need contracts.

15 BY repealing and reenacting, without amendments,  
16 Article – Health Occupations  
17 Section 7-101(a), (d), (k), (p), and (v) and 7-405(a)  
18 Annotated Code of Maryland  
19 (2014 Replacement Volume)

20 BY repealing and reenacting, with amendments,  
21 Article – Health Occupations  
22 Section 7-205(b) and 7-405(b) and (c)  
23 Annotated Code of Maryland  
24 (2014 Replacement Volume)

25 BY adding to  
26 Article – Health Occupations  
27 Section 7-205(d) and 7-405(i)  
28 Annotated Code of Maryland

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2014 Replacement Volume)

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

4 **Article – Health Occupations**

5 7–101.

6 (a) In this title the following words have the meanings indicated.

7 (d) “Board” means the Maryland State Board of Morticians and Funeral  
8 Directors.

9 (k) “Funeral establishment” means any building, structure, or premises from  
10 which the business of practicing mortuary science is conducted.

11 (p) “Licensed funeral establishment” means, unless the context requires  
12 otherwise, a funeral establishment that is licensed by the Board.

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

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

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

20 7–205.

21 (b) **(1)** The Board may conduct an audit of a licensee that:

22 **[(1)] (I)** Receives pre–need funds;

23 **[(2)] (II)** Places pre–need funds in a trust; or

24 **[(3)] (III)** Enters into a pre–need contract.

25 **(2) (I) A BUYER OR BENEFICIARY OF A PRE–NEED CONTRACT MAY**  
26 **CONTACT THE BOARD AND REQUEST THE BOARD TO CONDUCT AN AUDIT OF A**  
27 **LICENSEE THAT:**

28 **1. RECEIVED PRE–NEED FUNDS FOR THE PRE–NEED**  
29 **CONTRACT;**

1                                   **2. PLACED PRE-NEED FUNDS IN A TRUST FOR THE**  
2 **PRE-NEED CONTRACT; OR**

3                                   **3. ENTERED INTO THE PRE-NEED CONTRACT.**

4                                   **(II) WITHIN 30 DAYS AFTER A REQUEST IS MADE IN**  
5 **ACCORDANCE WITH SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE BOARD SHALL**  
6 **CONDUCT THE AUDIT.**

7                                   **(D) (1) THE BOARD SHALL REQUIRE A LICENSED FUNERAL**  
8 **ESTABLISHMENT TO SUBMIT REPORTS IN ACCORDANCE WITH § 7-405(I) OF THIS**  
9 **TITLE.**

10                                   **(2) A REPORT SUBMITTED IN ACCORDANCE WITH § 7-405(I) OF THIS**  
11 **TITLE IS NOT A PUBLIC RECORD AND MAY BE MADE AVAILABLE ONLY TO:**

12                                   **(I) PARTIES TO THE CONTRACT FOR PRE-NEED SERVICES;**

13                                   **(II) HEIRS OF THE DECEASED;**

14                                   **(III) EXECUTORS OR ADMINISTRATORS OF THE ESTATE OF THE**  
15 **DECEASED; AND**

16                                   **(IV) COURTS OF COMPETENT JURISDICTION.**

17 7-405.

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

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

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

22                                   (4) “Guaranteed contract” means a written pre-need contract that:

23                                   (i) Is signed by the consumer and a licensee of a licensed funeral  
24 establishment; and

25                                   (ii) Guarantees in whole the price of goods and services and cash  
26 advance items specified in the contract.

27                                   (5) “Guaranteed in part contract” means a written pre-need contract that:

1 (i) Is signed by the consumer and a licensee of a licensed funeral  
2 establishment; and

3 (ii) Guarantees in part the price of goods and services and cash  
4 advance items specified in the contract.

5 (6) “Nonguaranteed contract” means a written pre–need contract:

6 (i) That is signed by the consumer and a licensee of a licensed  
7 funeral establishment;

8 (ii) That does not guarantee the price of any specific goods and  
9 services or cash advance items; and

10 (iii) For which any funds or benefits paid under the contract are only  
11 a deposit or partial payment to be applied toward the final cost, determined at the time of  
12 death, of the goods, services, or cash advance items.

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

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

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

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

25 (3) Any funeral establishment [on whose behalf] **FOR WHICH A** pre–need  
26 [contracts are] **CONTRACT IS** executed under this subsection must comply with the  
27 requirements of this section.

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

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

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

33 (iii) A disclosure statement that clearly:

1                                   1.     States that all funeral costs may not be covered under the  
2 pre-need contract;

3                                   2.     States that “not all charges that may be required to be paid  
4 at the time of need are listed in this contract”;

5                                   3.     Informs a buyer of whether the contract is a guaranteed  
6 contract, a guaranteed in part contract, or a nonguaranteed contract; [and]

7                                   4.     If the contract is a guaranteed in part contract:

8                                   A.     Lists the funeral goods and services or cash advance items  
9 included in the guarantee; and

10                                  B.     Identifies in at least 14 point bold face type above each  
11 section of the contract whether the section is fully guaranteed or not guaranteed; AND

12                                   **5.     STATES THAT THE BUYER OR BENEFICIARY OF THE**  
13 **PRE-NEED CONTRACT MAY CONTACT THE BOARD AND REQUEST AN AUDIT IN**  
14 **ACCORDANCE WITH § 7-205(B)(2) OF THIS TITLE;**

15                                  (iv)   A line totaling:

16                                   1.     The guaranteed amount paid; and

17                                   2.     The amount for nonguaranteed items that are considered  
18 to be only a down payment toward future total cost; and

19                                  (v)   The method of payment.

20                                  (2)   If disclosure is made in accordance with paragraph (1)(iii)3 and 4 of this  
21 subsection, a pre-need contract may:

22                                   (i)   Be a guaranteed contract, a guaranteed in part contract, or a  
23 nonguaranteed contract; and

24                                   (ii)   Include cash advance items or goods and services that are not  
25 guaranteed.

26                                  (3)   A pre-need contract shall be executed in duplicate and be signed by  
27 each party.

28                                  (4)   The seller shall give one of the duplicate originals of the pre-need  
29 contract to the buyer.

1           **(I) A LICENSED FUNERAL ESTABLISHMENT FOR WHICH A PRE-NEED**  
2 **CONTRACT IS EXECUTED ON OR AFTER OCTOBER 1, 2015, IN ACCORDANCE WITH**  
3 **SUBSECTION (B) OF THIS SECTION, SHALL SUBMIT ELECTRONICALLY THE**  
4 **FOLLOWING QUARTERLY REPORTS TO THE BOARD IN THE FORMAT AND MANNER**  
5 **SPECIFIED BY THE BOARD:**

6           **(1) FOR EACH QUARTER IN WHICH A PRE-NEED CONTRACT WAS**  
7 **EXECUTED THAT IS NOT AN INSTALLMENT CONTRACT, A REPORT THAT INCLUDES:**

8                   **(I) THE FUNERAL ESTABLISHMENT'S NAME AND LICENSE**  
9 **NUMBER; AND**

10                   **(II) FOR EACH PRE-NEED CONTRACT EXECUTED DURING THE**  
11 **PREVIOUS QUARTER:**

12                           **1. THE DATE OF THE PRE-NEED CONTRACT, THE NAME**  
13 **AND ADDRESS OF THE BUYERS OF THE CONTRACT, AND THE ENTIRE AMOUNT OF THE**  
14 **CONTRACT;**

15                           **2. THE NAME AND ADDRESS OF THE BANKING**  
16 **INSTITUTION OR INSURANCE COMPANY IN WHICH 100% OF THE MONEY RECEIVED**  
17 **ON THE CONTRACT HAS BEEN DEPOSITED; AND**

18                           **3. THE ACCOUNT NUMBER, THE ACCOUNT**  
19 **REGISTRATION TITLE, THE NAME OF THE PERSON FOR WHOM THE ACCOUNT IS**  
20 **ESTABLISHED, AND THE DATE THE ACCOUNT WAS ESTABLISHED AT THE BANKING**  
21 **INSTITUTION OR INSURANCE COMPANY;**

22           **(2) FOR EACH QUARTER IN WHICH A PRE-NEED CONTRACT WAS**  
23 **EXECUTED THAT IS AN INSTALLMENT CONTRACT OR IN WHICH A FUNERAL**  
24 **ESTABLISHMENT RECEIVED MONEY FOR AN INSTALLMENT CONTRACT, A REPORT**  
25 **THAT INCLUDES:**

26                   **(I) THE INFORMATION REQUIRED UNDER ITEM (1) OF THIS**  
27 **SUBSECTION;**

28                   **(II) WHETHER THE ENTIRE AMOUNT OF EACH CONTRACT HAS**  
29 **BEEN PAID; AND**

30                   **(III) THE TOTAL AMOUNT OF MONEY RECEIVED BY THE FUNERAL**  
31 **ESTABLISHMENT AND DEPOSITED IN ESCROW OR IN TRUST FOR EACH CONTRACT;**  
32 **AND**

1                   **(3) FOR EACH QUARTER IN WHICH A PRE-NEED CONTRACT**  
2 **EXECUTED ON OR AFTER OCTOBER 1, 2015, IS FULFILLED, A REPORT THAT**  
3 **INCLUDES:**

4                   **(I) THE FUNERAL ESTABLISHMENT'S NAME AND LICENSE**  
5 **NUMBER;**

6                   **(II) THE NAME OF THE DECEASED;**

7                   **(III) THE TOTAL AMOUNT OF FUNERAL GOODS AND SERVICES**  
8 **PROVIDED AND THE AMOUNT REFUNDED, IF ANY, TO THE CONTRACT PURCHASERS;**

9                   **(IV) THE DATE OF THE DEATH;**

10                   **(V) THE ACCOUNT NUMBER; AND**

11                   **(VI) THE NAME OF THE BANKING INSTITUTION OR INSURANCE**  
12 **COMPANY WHERE THE FUNDS HAD BEEN KEPT.**

13                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
14 October 1, 2015.