

MAINE STATE LEGISLATURE

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132nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2025

Legislative Document

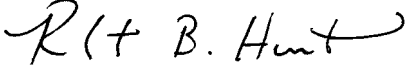
No. 867

H.P. 553

House of Representatives, March 4, 2025

An Act Regarding Pre-need Funeral Insurance

Reference to the Committee on Health Coverage, Insurance and Financial Services suggested and ordered printed.


ROBERT B. HUNT
Clerk

Presented by Representative MORRIS of Turner.
Cosponsored by Senator BALDACCI of Penobscot and
Representatives: FLYNN of Albion, MASTRACCIO of Sanford, Senator: HAGGAN of
Penobscot.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 24-A MRSA §711** is enacted to read:

3 **§711. "Pre-need insurance" defined**

4 For the purposes of this Title, "pre-need insurance" means any life insurance policy or
5 certificate that is issued with an assignment of the proceeds of the policy or certificate as
6 consideration for a prearranged funeral service or plan as described in Title 32, section
7 1402 to be provided at the time of and following the death of the insured. Goods and
8 services contracted for in a prearranged funeral service or plan may include, but are not
9 limited to, embalming, cremation, body preparation, viewing, visitation, coffin, urn,
10 memorial stone and transportation of the deceased. The status of the policy or certificate as
11 pre-need insurance is determined at the time the pre-need insurance policy or certificate is
12 signed and the policy is assigned.

13 **Sec. 2. 24-A MRSA §1420-F, sub-§1, ¶A**, as enacted by PL 2001, c. 259, §24, is
14 amended to read:

15 A. Life, which is insurance coverage on human lives, including ~~benefits of endowment~~
16 ~~and annuities, and may include benefits in the event of death or dismemberment by~~
17 ~~accident and benefits for disability income;~~ but not limited to:

18 (1) Benefits of endowment;

19 (2) Annuities;

20 (3) Benefits in the event of death or dismemberment by accident;

21 (4) Benefits for disability income; or

22 (5) Pre-need insurance, except that only a person who is licensed as a funeral
23 director pursuant to Title 32, chapter 21 may be issued a license for the authority
24 under this subparagraph;

25 **Sec. 3. 24-A MRSA §2176**, as amended by PL 1999, c. 258, §1, is further amended
26 to read:

27 **§2176. Funeral and burial service contracts prohibited**

28 An insurer may not contract or agree with any funeral director, funeral establishment,
29 mortuary establishment, cemetery, cemetery corporation or association, crematorium,
30 mausoleum or columbarium or any representative of any of these directors or
31 establishments to the effect that the director or establishment ~~shall~~ will conduct the funeral,
32 burial; or cremation or other disposal of the remains of any individual insured by the
33 insurer. An insurer may ~~not~~ retain, utilize or employ any director ~~or establishment~~
34 ~~as a~~ producer ~~or agency~~ of the insurer, and a director ~~or establishment~~ may ~~not~~ act as ~~or purport~~
35 ~~to be~~ an insurance producer ~~or~~ and engage in insurance producer activities as long as the
36 director is licensed as an insurance producer with life insurance authority pursuant to
37 section 1420-F, subsection 1, paragraph A, subparagraph (5). Nothing in this section
38 prevents compliance with Title 39-A, section 216; or the use of an insurance policy,
39 including, subject to the provisions of section 2420, the assignment of rights under life
40 insurance contracts, to provide security for the payment for a funeral, burial or cremation
41 or, subject to chapter 27, the naming of a funeral home or funeral director as beneficiary
42 under a life insurance policy to provide payment for a funeral, burial or cremation. Nothing

1 in this section prohibits the use of an insurance policy as an investment by a mortuary
2 trustee pursuant to Title 32, section 1401.

3 **Sec. 4. 24-A MRSA §2176-A** is enacted to read:

4 **§2176-A. Disclosures required for the sale of pre-need funeral insurance**

5 At the time an application is made, and prior to accepting the applicant's initial
6 premium or deposit, for a prearranged funeral service or plan as described in Title 32,
7 section 1402 that is funded or to be funded by a pre-need insurance policy, a producer shall
8 adequately disclose the following information:

9 **1. Funding prearranged funeral service or plan.** The fact that a pre-need insurance
10 policy is involved or being used to fund a prearranged funeral service or plan;

11 **2. Applicable relationships.** The nature of the relationship among the soliciting
12 producer, the provider of the funeral or cemetery merchandise or services, the administrator
13 and any other person;

14 **3. Relationship of policy to funding; guarantees.** The relationship of the pre-need
15 insurance policy to the funding of the prearranged funeral service or plan and the nature
16 and existence of any guarantees relating to the prearranged funeral service or plan;

17 **4. Goods and services; price.** A list of the goods and services that are applied or
18 contracted for in the prearranged funeral service or plan and all relevant information
19 concerning the price of the funeral services, including an indication that the purchase price
20 is either guaranteed at the time of purchase or to be determined at the time of need;

21 **5. Proceeds may not exceed contract.** The fact that the proceeds of a pre-need
22 insurance policy may not exceed the maximum amount of the goods and services that are
23 contracted for in the prearranged funeral service or plan;

24 **6. Difference between proceeds and funding total.** All relevant information
25 concerning what occurs and whether any entitlements or obligations arise if there is a
26 difference between the proceeds of the pre-need insurance policy and the amount actually
27 needed to fund the prearranged funeral service or plan;

28 **7. Penalties or restrictions.** Any penalties or restrictions, including, but not limited
29 to, geographic restrictions or the inability of the provider to perform, on the delivery of
30 merchandise or services or the prearranged funeral service or plan guarantee; and

31 **8. Sales commission; compensation.** Whether a sales commission or other form of
32 compensation is being paid and the identity of the individual or entity to whom it is paid.

33 **Sec. 5. 32 MRSA §1401, sub-§1**, as amended by PL 2007, c. 402, Pt. J, §1, is
34 further amended to read:

35 **1. Plan requirements.** Except as provided in ~~subsection~~ subsections 1-A and 1-B,
36 any a prearranged funeral or burial plan contracted or undertaken within this State must
37 comply with the following.

38 A. All money paid during a person's lifetime to any individual, firm, association,
39 partnership or corporation, by that person or by someone on behalf of that person, under
40 an agreement that services will be performed or personal property will be delivered in
41 connection with the disposition of that person's body after death must be deposited by
42 the payee within 10 days after receipt of the money in a separate account in a financial

1 institution or credit union authorized to do business in this State, as defined in Title
2 9-B, section 131, subsections 12-A and 17-A, in the name of the payee as mortuary
3 trustee for the person for whose benefit the payment was made and must be held in that
4 account together with interest if any. If money is paid by check, share draft or money
5 order, the payee shall instruct the payor to make the instrument payable to the financial
6 institution or credit union into which it is to be deposited and to include on the
7 instrument the name of the mortuary trustee and the person for whose benefit the
8 payment was made.

9 B. The payee shall deposit the money in either a federally insured deposit or share
10 account or a trust account; the type of account must be disclosed to the payor or the
11 payor's representative and a deposit in a trust account may be invested in or used to
12 purchase only the following:

- 13 (1) Federally insured deposit or share accounts;
- 14 (2) Securities issued, insured or guaranteed by the United States or by any agency
15 or corporate or other instrumentality of the United States;
- 16 (3) Municipal securities that are exempt from registration under Title 32, section
17 16201, subsection 1; and
- 18 (4) Permanent life insurance, other than variable life insurance and annuities, from
19 an insurer authorized to transact insurance in this State, subject to the provisions
20 of Title 24-A, chapter 27. A payee or mortuary trustee may not receive any
21 commission, fee or other consideration from an insurer in connection with the
22 procurement or purchase of insurance permitted by this subparagraph.

23 Except for fees allowed by this section, all investments made with trust assets remain
24 trust assets.

25 C. Within 30 days after the deposit of funds by the payee, the financial institution or
26 credit union shall provide a written confirmation of the deposit, including the amount
27 deposited, to the payor or the payor's legal representative. Nothing in this section may
28 be construed to prevent the direct transfer of these funds to another financial institution
29 or credit union by payee transfer, by financial institution or credit union merger or
30 consolidation or by operation of law, provided that within 30 days after the direct
31 transfer of the funds, the recipient financial institution or credit union shall provide a
32 written confirmation of the deposit, including the amount deposited, to the payor or the
33 payor's legal representative.

34 D. The agreement must be in writing and a copy must be furnished to the payor or the
35 payor's legal representative by the payee when the agreement is executed. The
36 agreement may be revocable or irrevocable; however, if irrevocable, there must be a
37 provision to allow for the transfer of the account by the appointment of successor
38 trustees. The agreement must clearly state the name of the initial financial institution
39 or credit union into which the money will be deposited and must direct the payor to
40 send a copy of the agreement to the named financial institution or credit union. The
41 agreement must clearly state terms providing for disposition of excess funds after
42 funeral goods and services have been provided. The agreement must clearly state any
43 fees that may be charged against the account; fees must be reasonable, as defined by
44 the board, and may be charged only:

- 1 (1) Upon transfer of the account by the appointment of a successor trustee;
- 2 (2) Upon revocation of the agreement if the agreement is revocable; and
- 3 (3) For the actual financial and tax administration of the account.

4 The payee shall maintain a complete record of the deposit of all funds, including
5 principal and interest. The record must be available for inspection by the payor, the
6 payor's legal representative, the commissioner's designee or an inspector for the board
7 and must contain the name and address of the financial institution or credit union
8 currently in possession of the funds and the dates and amounts of deposits.

9 E. The funds may be directed by the payee to another financial institution or credit
10 union or directed back to the payor or the payor's legal representative, if otherwise
11 lawful and permitted by contract, on written instructions of the payor or the payor's
12 legal representative. The funds may only be withdrawn by the payee on presentation
13 of a certified copy of the death certificate of the person for whose benefit the funds
14 were paid, in which event they must be used in accordance with the agreement.

15 **Sec. 6. 32 MRSA §1401, sub-§1-B** is enacted to read:

16 **1-B. Plan funded with proceeds of pre-need insurance policy.** A prearranged
17 funeral service or plan may be funded with proceeds of a pre-need insurance policy in
18 accordance with this subsection.

19 A. During a person's lifetime, a person or that person's legal representative may enter
20 into an agreement that services will be performed or personal property will be delivered
21 in connection with the disposition of that person's body after death by the assignment
22 of proceeds of a pre-need insurance policy to the funeral establishment upon that
23 person's death.

24 B. The proceeds of a pre-need insurance policy may not exceed the maximum amount
25 of the goods and services that are contracted for in the prearranged funeral service or
26 plan agreement.

27 C. An agreement under paragraph A must be in writing and a copy must be furnished
28 to the person or the person's legal representative by the funeral establishment when the
29 agreement is executed. The agreement must identify the parties to the agreement and
30 must be signed by an authorized representative of the funeral establishment.

31 The receipt of a commission for the sale of pre-need insurance does not constitute a
32 violation of section 1455-B, subsection 5.

33 This subsection may not be construed to alter the terms of a pre-need insurance policy or
34 supersede any law governing the regulation of life insurance policies.

35 For the purposes of this subsection, "pre-need insurance" has the same meaning as in Title
36 24-A, section 711.

37 **Sec. 7. 32 MRSA §1401, sub-§2**, as enacted by PL 1999, c. 258, §2 and affected
38 by §3, is amended to read:

39 **2. Rulemaking.** The board shall adopt rules regarding prearranged funeral
40 agreements, including, but not limited to:

- 41 A. The form, format and content of trust agreements;

1 B. Standards regarding when service contracts are required in conjunction with trust
2 agreements and the form, format and content of the service contracts;

3 C. The establishment of reasonable fees that may be charged only pursuant to
4 subsection 1, paragraph D; and

5 D. Inspection of trust agreements, account information and any related
6 documentation; and

7 E. The form, format and content of prearranged funeral service or plan agreements
8 funded by pre-need insurance.

9 Rules adopted pursuant to this section are routine technical rules under ~~the Maine Revised~~
10 ~~Statutes~~, Title 5, chapter 375, subchapter H-A 2-A.

11 **Sec. 8. 32 MRSA §1402**, as amended by PL 1983, c. 413, §55, is repealed and the
12 following enacted in its place:

13 **§1402. Solicitation of prearranged funerals and funeral business**

14 **1. Solicitation generally prohibited.** Except as provided in subsection 2, a funeral
15 home, funeral establishment or person holding a license under this chapter may not as, or
16 through, an agent or principal solicit a prearranged funeral service or plan for any person
17 or persons. "Prearranged funeral service or plan" as used in this section means any funeral
18 service or plan that is arranged, planned or determined prior to the death of a person or
19 persons for whom the funeral service is to be performed. A funeral home, funeral
20 establishment or licensee under this chapter may enter into contracts or agreements for
21 prearranged funeral services or plans as long as they do not in any manner either as, or
22 through, principals or agents solicit such contract or agreement. Nothing in this section
23 prohibits the sale of pre-need insurance as defined in Title 24-A, section 711 and as set
24 forth in section 1401, subsection 1-B to a consumer who has contacted a funeral home to
25 prearrange a funeral.

26 **2. Permitted contact and advertising.** A funeral home, funeral establishment or
27 licensee under this chapter may:

28 A. Directly or indirectly contact an individual in a hospital, rest home, nursing home
29 or other similar facility for the purpose of soliciting a prearranged funeral service or
30 plan if that contact has been specifically requested by the individual;

31 B. Contact by telephone or visit a personal residence of an individual for the purpose
32 of soliciting a prearranged funeral service or plan if that contact or visit has been
33 requested by the individual or a family member residing at the residence;

34 C. Engage in general advertising for the purpose of soliciting a prearranged funeral
35 service or plan, including the use of direct mail or other communication; and

36 D. Solicit an individual who initiates discussion of a prearranged funeral service or
37 plan or who responds to a general advertisement or other communication made for the
38 purpose of soliciting a prearranged funeral service or plan.

39 **3. Commission or gratuity for securing business prohibited.** A funeral home,
40 funeral establishment or licensee under this chapter may not pay or cause to be paid,
41 directly or indirectly, any money or other thing of value to a person not responsible for

1 payment for the funeral as a commission or gratuity for the securing of business for the
2 funeral home, establishment or licensee.

3 **4. Violation.** Any person who violates this section is guilty of a Class E crime.

4 **SUMMARY**

5 This bill provides for a type of insurance for prearranged funeral services or plans. The
6 bill:

7 1. Defines pre-need insurance and permits its sale in the State;

8 2. Permits a funeral director to sell pre-need insurance to a consumer who has
9 approached a funeral home to preplan a funeral as long as the funeral director is licensed
10 as an insurance producer;

11 3. Prohibits so-called cold-calling to solicit prearranged funeral agreements;

12 4. Requires that the proceeds of pre-need insurance may not exceed the goods and
13 services contracted for in a prearranged funeral service or plan agreement;

14 5. Requires certain disclosures to applicants with regard to the sale of pre-need
15 insurance; and

16 6. Authorizes the payment of commissions in connection with the sale of pre-need
17 insurance.