

# MAINE STATE LEGISLATURE

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# 117th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1995

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Legislative Document

No. 762

H.P. 561

House of Representatives, March 7, 1995

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**An Act to Amend the Trust Fund Provisions of Cemeteries and  
Crematories.**

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Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative CAMPBELL of Holden.

Cosponsored by Representatives: AULT of Wayne, CAMERON of Rumford, DiPIETRO of South Portland, DONNELLY of Presque Isle, GUERRETTE of Pittston, KNEELAND of Easton, MAYO of Bath, MURPHY of Berwick, NADEAU of Saco, ROBICHAUD of Caribou, Senators: ABROMSON of Cumberland, CAREY of Kennebec, FERGUSON of Oxford, HALL of Piscataquis, HANLEY of Oxford, LAWRENCE of York, McCORMICK of Kennebec, RUHLIN of Penobscot, SMALL of Sagadahoc.

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

**Sec. 1. 13 MRSA §§1264 to 1267 are enacted to read:**

**§1264. Trust funds for services or property**

**1. Trust accounts.** Pre-need funds received for cemetery or crematory services or property to be delivered at or after the date of death must be placed in a cemetery or crematory trust account in a bank, trust company, credit union or savings institution. For purposes of this subsection, "pre-need funds" means all money paid during a person's lifetime to a cemetery or crematory by that person or by another person on that person's behalf under an agreement that services will be performed or property will be delivered in connection with the disposition of that person's body after that person's death.

**2. Trust agreement.** A trust agreement setting forth the following information must be signed by the payor and the payee and the original agreement must be given to the payor and a copy of that agreement must be given to the payee:

**A. The name and address of the individual for whose benefit services or property will be delivered;**

**B. The name of the entity acting as trustee;**

**C. The name and address of the payor;**

**D. The services or property that will be provided by the payee;**

**E. Statements that a full refund of the principal of the funds placed in trust must be made by the payee upon written request of the payor, the payor's attorney-in-fact or the payor's personal representative and that, in the absence of such a request, the payee may withdraw the funds only upon the death of the person for whose benefit the funds were paid and shall use the funds in accordance with the purposes identified in the trust agreement; and**

**F. A statement that interest on funds placed in trust will not be paid to the payor in the event of a refund of principal of trust funds and any interest that may accrue remains with the payee.**

**3. Services and property covered.** This section applies to cemetery or crematory services such as cremation fees, grave opening and closing charges and inscription of death dates. This section does not apply to the sale of cemetery lots or plots, monuments and memorials, garden crypts, lawn crypts, mausoleum crypts, cremation urns and niches, vaults, liners and similar

2 tangible personal property if title to and physical possession of  
4 the specific property has passed to the buyer. Any funds  
6 expended to purchase tangible personal property when that  
8 personal property is held by the payee until the time of need are  
10 not considered funds that must be placed in the trust account.

12 4. Refund provisions. A full refund of the principal of  
14 the funds placed in trust must be made by the payee upon written  
16 request of the payor, the payor's attorney-in-fact or the payor's  
18 personal representative. In the absence of such a request, the  
20 payee may withdraw the funds only upon the death of the person  
22 for whose benefit the funds were paid and shall use the funds in  
24 accordance with the purposes identified on the trust agreement.

26 5. Administrative fees. The payee may not charge the  
28 payor, the payor's attorney-in-fact or the payor's personal  
30 representative an administrative fee for funds or tangible  
32 personal property held in trust.

34 6. Application. The provisions of this section apply only  
36 to funds received by a payee of a trust account after the  
38 effective date of this section.

#### 24 **§1265. Tangible personal property**

26 Upon written request and payment of any reasonable  
28 out-of-pocket expenses, a cemetery or crematory shall deliver to  
30 a person, the person's attorney-in-fact or the person's personal  
32 representative any item of tangible personal property purchased  
34 by that person but remaining in the possession of the cemetery or  
36 crematory.

#### 34 **§1266. Solicitation of cemetery or crematory services or property**

36 Uninvited telephone or door-to-door solicitations for  
38 crematory or cemetery services or property are prohibited. This  
40 section may not be construed to limit the raising of funds for  
42 capital improvements as long as those funds are not raised  
44 through the purchase of cemetery or crematory services or  
46 property. Uninvited solicitations may not be construed to  
48 include solicitations resulting from uninvited good-faith  
50 personal referrals from individuals purchasing services or  
property from a cemetery or crematory.

#### 46 **§1267. Penalties**

48 Any person who violates section 1264 or 1265 commits theft  
50 according to the classifications set forth in Title 17-A, section  
362. Any person who violates section 1266 commits a civil  
violation and is subject to a fine of not less than \$100 and not  
more than \$500 or to imprisonment for not more than 30 days.

## STATEMENT OF FACT

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4           This bill requires cemetery corporations to place pre-need  
6 funds for cemetery or crematory services or property in cemetery  
8 trust accounts and for the parties to enter into a trust  
10 agreement. This requirement does not apply if title to and  
12 delivery of the specific property has passed to the buyer. Any  
14 funds used to purchase tangible personal property that is held by  
16 the payee until the time of need are not considered to be funds  
18 that must be placed in the trust account. A full refund of the  
principal of the trusted funds and delivery of all specific  
property purchased must be made by the cemetery or crematory upon  
written request of the payor or the payor's attorney-in-fact or  
personal representative. A violation of the refund provisions  
constitutes the crime of theft. This bill also prohibits  
uninvited telephone or door-to-door solicitations for crematory  
or cemetery services or property. A violation of the  
solicitation prohibition constitutes a civil violation.