

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 1777

H.P. 1248

House of Representatives, March 9, 1999

An Act to Update the Laws Concerning Prearranged Funerals.

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 204.

Reference to the Committee on Banking and Insurance suggested and ordered printed.

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

JOSEPH W. MAYO, Clerk

Presented by Representative SAXL of Bangor.
Cosponsored by Senator ABROMSON of Cumberland and
Representatives: MURPHY of Kennebunk, O'NEAL of Limestone, Senator: LaFOUNTAIN
of York.

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

3 **Sec. 1. 24-A MRSA §2176**, as amended by PL 1991, c. 885, Pt.
4 E, §27 and affected by §47, is further amended to read:

5 **§2176. Funeral and burial service contracts prohibited**

6 No An insurer may not contract or agree with any funeral
7 director, funeral establishment, mortuary establishment,
8 cemetery, cemetery corporation or association, crematorium,
9 mausoleum or columbarium or any representative of any of these
10 directors or establishments to the effect that the director or
11 establishment shall conduct the funeral, burial, or cremation or
12 other disposal of the remains of any individual insured by the
13 insurer. An insurer may not retain, utilize or employ any
14 director or establishment as a producer or agency of the insurer
15 and a director or establishment may not act as or purport to be
16 an insurance producer or engage in insurance producer
17 activities. Nothing in this section prevents compliance with
18 Title 39-A, section 216, or the use of an insurance policy,
19 including, subject to the provisions of section 2420, the
20 assignment of rights under life insurance contracts, to provide
21 security for the payment for a funeral, burial or cremation or,
22 subject to chapter 27, the naming of a funeral home or funeral
23 director as beneficiary under a life insurance policy to provide
24 payment for a funeral, burial or cremation. Nothing in this
25 section prohibits the use of an insurance policy as an investment
26 by a mortuary trustee pursuant to Title 32, section 1401.
27

28 **Sec. 2. 32 MRSA §1401**, as amended by PL 1989, c. 674, is
29 repealed and the following enacted in its place:

30 **§1401. Prearranged funerals or burial plans**

31 1. Plan requirements. Any prearranged funeral or burial
32 plan contracted or undertaken within this State must comply with
33 the following.

34 A. All money paid during a person's lifetime to any
35 individual, firm, association, partnership or corporation,
36 by that person or by someone on behalf of that person, under
37 an agreement that services will be performed or personal
38 property will be delivered in connection with the
39 disposition of that person's body after death must be
40 deposited by the payee within 10 days after receipt of the
41 money in a separate account in a financial institution or
42 credit union authorized to do business in this State, as
43 defined in Title 9-B, section 131, subsections 12-A and
44 17-A, in the name of the payee as mortuary trustee for the

2 person for whose benefit the payment was made and must be
3 held in that account together with interest if any.

4 B. The payee shall deposit the money in either a federally
5 insured deposit or share account or a trust account; the
6 type of account must be disclosed to the payor or the
7 payor's representative and a deposit in a trust account may
8 be invested only in the following:

10 (1) Federally insured deposit or share accounts;

12 (2) Securities issued, insured or guaranteed by the
13 United States or by any agency or corporate or other
14 instrumentality of the United States;

16 (3) Municipal securities that are exempt from
17 registration under Title 32, section 10502, subsection
18 1, paragraph A; and

20 (4) Insurance.

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

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

38 D. The agreement must be in writing and a copy must be
39 furnished to the payor or the payor's legal representative
40 by the payee when the agreement is executed. The agreement
41 may be revocable or irrevocable; however, if irrevocable,
42 there must be a provision to allow for the transfer of the
43 account by the appointment of successor trustees. The
44 agreement must clearly state terms providing for disposition
45 of excess funds after funeral goods and services have been
46 provided. The agreement must clearly state any fees that
47 may be charged against the account; fees must be reasonable,
48 as defined by the board, and may be charged only:

50

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

10 The payee shall maintain a complete record of the deposit of
12 all funds, including principal and interest. The record
14 must be available for inspection by the payor, the payor's
legal representative, a member of the board or an inspector
16 for the board and must contain the name and address of the
financial institution or credit union and the dates and
amounts of deposits.

18 E. The funds may be withdrawn, if otherwise lawful and
20 permitted by contract, by the payee on written instructions
of the payor or the payor's legal representative or on the
22 death of the person for whose benefit the funds were paid,
in which event they must be used in accordance with the
24 agreement.

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

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

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

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

38 D. Board inspection of trust agreements, account
information and any related documentation.

40 Rules adopted pursuant to this section are routine technical
42 rules under the Maine Revised Statutes, Title 5, chapter 375,
subchapter II-A.

44 3. Financial institution or credit union liability. The
46 financial institution or credit union is discharged from
liability for payment of the funds in an account under subsection
48 1 upon presentation of a written consent to withdrawal signed by
the payor or the payor's legal representative and by the payee or
50 upon presentation of proof of death of the person for whose
benefit the funds were paid.

