

# MAINE STATE LEGISLATURE

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# 125th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2012

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Legislative Document

No. 1716

H.P. 1269

House of Representatives, December 28, 2011

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**An Act To Require Funds for Prearranged Funerals To Be Invested  
Subject to the Requirements of the Maine Uniform Prudent Investor  
Act and To Update Related Provisions**

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Clerk of the House on December 23, 2011. Referred to the Committee on Insurance and Financial Services pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Clerk

Presented by Representative BECK of Waterville.  
Cosponsored by Senator SULLIVAN of York and  
Representatives: CORNELL du HOUX of Brunswick, DRISCOLL of Westbrook, MARTIN of Eagle Lake, MORISSETTE of Winslow, TUTTLE of Sanford, Senators: ALFOND of Cumberland, WHITTEMORE of Somerset.

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

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

4       **1. Plan requirements.** Except as provided in subsection 1-A, any prearranged  
5 funeral or burial plan contracted or undertaken within this State must comply with the  
6 following.

7       A. All money paid during a person's lifetime to any individual, firm, association,  
8 partnership or corporation, by that person or by someone on behalf of that person,  
9 under an agreement that services will be performed or personal property will be  
10 delivered in connection with the disposition of that person's body after death must be  
11 deposited by the payee within 10 days after receipt of the money in ~~a separate~~ an  
12 account in a financial institution or credit union authorized to do business in this  
13 State, as defined in Title 9-B, section 131, subsections 12-A and 17-A, or in a  
14 national banking institution authorized to act as a fiduciary pursuant to 12 United  
15 States Code, Section 92a (2011) and the regulations of the federal Office of the  
16 Comptroller of the Currency, in the name of the payee as mortuary trustee for the  
17 person for whose benefit the payment was made and must be held in that account  
18 together with interest if any. If money is paid by check, share draft or money order,  
19 the payee shall instruct the payor to make the instrument payable to the financial  
20 institution ~~or~~, credit union or national banking institution into which it is to be  
21 deposited and to include on the instrument the name of the mortuary trustee and the  
22 person for whose benefit the payment was made.

23       B. The payee shall deposit the money in ~~either a federally insured deposit or share~~  
24 ~~account or a trust account; the type of account must be disclosed to the payor or the~~  
25 ~~payor's representative and a deposit in a trust account may be invested in or used to~~  
26 ~~purchase only the following:~~ an account in a financial institution or credit union  
27 authorized to do business in this State, as defined in Title 9-B, section 131,  
28 subsections 12-A and 17-A, or in a national banking institution authorized to act as a  
29 fiduciary pursuant to 12 United States Code, Section 92a (2011) and the regulations  
30 of the federal Office of the Comptroller of the Currency. The money must be  
31 invested consistent with the requirements of the Maine Uniform Prudent Investor  
32 Act.

33       ~~(1) Federally insured deposit or share accounts;~~

34       ~~(2) Securities issued, insured or guaranteed by the United States or by any~~  
35 ~~agency or corporate or other instrumentality of the United States;~~

36       ~~(3) Municipal securities that are exempt from registration under Title 32, section~~  
37 ~~16201, subsection 1; and~~

38       ~~(4) Permanent life insurance, other than variable life insurance and annuities,~~  
39 ~~from an insurer authorized to transact insurance in this State, subject to the~~  
40 ~~provisions of Title 24-A, chapter 27. A payee or mortuary trustee may not~~  
41 ~~receive any commission, fee or other consideration from an insurer in connection~~  
42 ~~with the procurement or purchase of insurance permitted by this subparagraph.~~

1 ~~Except for fees allowed by this section, all investments made with trust assets remain~~  
2 ~~trust assets.~~

3 C. Within 30 days after the deposit of funds by the payee, the financial institution ~~or~~  
4 credit union or national banking institution shall provide a written confirmation of the  
5 deposit, including the amount deposited, to the payor or the payor's legal  
6 representative. Nothing in this section may be construed to prevent the direct transfer  
7 of these funds to another financial institution ~~or~~ credit union or national banking  
8 institution by payee transfer, by financial institution ~~or~~ credit union or national  
9 banking institution merger or consolidation or by operation of law, ~~provided that as~~  
10 long as within 30 days after the direct transfer of the funds, the recipient financial  
11 institution ~~or~~ credit union shall provide or national banking institution provides a  
12 written confirmation of the deposit, including the amount deposited, to the payor or  
13 the payor's legal representative.

14 D. The agreement must be in writing and a copy must be furnished to the payor or  
15 the payor's legal representative by the payee when the agreement is executed. The  
16 agreement may be revocable or irrevocable; however, if irrevocable, there must be a  
17 provision to allow for the transfer of the account by the appointment of successor  
18 trustees. The agreement must clearly state the name of the initial financial institution  
19 ~~or~~ credit union or national banking institution into which the money will be  
20 deposited and must direct the payor to send a copy of the agreement to the named  
21 financial institution ~~or~~ credit union or national banking institution. The agreement  
22 must clearly state terms providing for disposition of excess funds after funeral goods  
23 and services have been provided. The agreement must clearly state any fees that may  
24 be charged against the account; fees must be reasonable, as defined by the board, and  
25 may be charged only:

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

29 The payee shall maintain a complete record of the deposit of all funds, including  
30 principal and interest. The record must be available for inspection by the payor, the  
31 payor's legal representative, the commissioner's designee or an inspector for the board  
32 and must contain the name and address of the financial institution ~~or~~ credit union or  
33 national banking institution currently in possession of the funds and the dates and  
34 amounts of deposits.

35 E. The funds may be directed by the payee to another financial institution ~~or~~ credit  
36 union or national banking institution or directed back to the payor or the payor's legal  
37 representative, if otherwise lawful and permitted by contract, on written instructions  
38 of the payor or the payor's legal representative. The funds may only be withdrawn by  
39 the payee on presentation of a certified copy of the death certificate of the person for  
40 whose benefit the funds were paid, in which event they must be used in accordance  
41 with the agreement.

42 **Sec. 2. 32 MRSA §1401, sub-§3**, as amended by PL 1999, c. 590, §2, is further  
43 amended to read:

