

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

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Legislative Document

No. 1018

H.P. 716

House of Representatives, March 14, 2013

An Act Regarding Preneed Funeral Insurance

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative BECK of Waterville.
Cosponsored by Senator HASKELL of Cumberland and
Representatives: CRAFTS of Lisbon, DILL of Old Town, Senators: President ALFOND of
Cumberland, CUSHING 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. "Preneed insurance" defined**

4 For the purposes of this Title, "preneed insurance" means any life insurance policy or
5 certificate that is issued with an assignment as consideration for a prearrangement
6 agreement for goods and services to be provided at the time of and following the death of
7 the insured. Goods and services may include, but are not limited to, embalming,
8 cremation, body preparation, viewing, visitation, coffin, urn, memorial stone and
9 transportation of the deceased. The status of the policy or contract as preneed insurance
10 is determined at the time the preneed contract is signed and the policy is assigned.

11 **Sec. 2. 24-A MRSA §2176**, as amended by PL 1999, c. 258, §1, is further
12 amended to read:

13 **§2176. Funeral and burial service contracts prohibited**

14 An insurer may not contract or agree with any funeral director, funeral establishment,
15 mortuary establishment, cemetery, cemetery corporation or association, crematorium,
16 mausoleum or columbarium or any representative of any of these directors or
17 establishments to the effect that the director or establishment ~~shall~~ will conduct the
18 funeral, burial, or cremation or other disposal of the remains of any individual insured by
19 the insurer. ~~An insurer may not retain, utilize or employ any director or establishment as~~
20 ~~a producer or agency of the insurer and a director or establishment may not act as or~~
21 ~~purport to be an insurance producer or engage in insurance producer activities.~~ Nothing
22 in this section prevents compliance with Title 39-A, section 216, or the use of an
23 insurance policy, including, subject to the provisions of section 2420, the assignment of
24 rights under life insurance contracts, to provide security for the payment for a funeral,
25 burial or cremation ~~or, subject to chapter 27, the naming of a funeral home or funeral~~
26 ~~director as beneficiary under a life insurance policy to provide payment for a funeral,~~
27 ~~burial or cremation.~~ Nothing in this section prohibits the use of an insurance policy as an
28 investment by a mortuary trustee pursuant to Title 32, section 1401.

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

30 **§2176-A. Disclosures required for the sale of preneed insurance**

31 **1. Disclosures.** At the time an application is made, and prior to accepting the
32 applicant's initial premium or deposit, for a preneed funeral contract or prearrangement
33 that is funded or to be funded by a preneed insurance policy, an insurer, agent or broker
34 shall adequately disclose the following information:

35 A. The fact that a preneed insurance policy is involved or being used to fund a
36 prearrangement;

37 B. The nature of the relationship among the soliciting agent or agents, the provider of
38 the funeral or cemetery merchandise or services, the administrator and any other
39 person;

1 C. The relationship of the preneed insurance policy to the funding of the
2 prearrangement and the nature and existence of any guarantees relating to the
3 prearrangement;

4 D. The impact on the prearrangement:

5 (1) Of any changes in the preneed insurance policy, including, but not limited to,
6 changes in the assignment, beneficiary designation or use of the proceeds;

7 (2) Of any penalties to be incurred by the policyholder as a result of failure to
8 make premium payments; and

9 (3) Of any penalties to be incurred or money to be received by the policyholder
10 as a result of cancellation or surrender of the preneed insurance policy;

11 E. A list of the merchandise and services that are applied or contracted for in the
12 prearrangement and all relevant information concerning the price of the funeral
13 services, including an indication that the purchase price is either guaranteed at the
14 time of purchase or to be determined at the time of need;

15 F. All relevant information concerning what occurs and whether any entitlements or
16 obligations arise if there is a difference between the proceeds of the preneed
17 insurance policy and the amount actually needed to fund the prearrangement;

18 G. Any penalties or restrictions, including, but not limited to, geographic restrictions
19 or the inability of the provider to perform, on the delivery of merchandise or services
20 or the prearrangement guarantee; and

21 H. Whether a sales commission or other form of compensation is being paid and the
22 identity of the individual or entity to whom it is paid.

23 **Sec. 4. 32 MRSA §1401, sub-§1**, as amended by PL 2007, c. 402, Pt. J, §1, is
24 further amended to read:

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

28 A. All money paid during a person's lifetime to any individual, firm, association,
29 partnership or corporation, by that person or by someone on behalf of that person,
30 under an agreement that services will be performed or personal property will be
31 delivered in connection with the disposition of that person's body after death must be
32 deposited by the payee within 10 days after receipt of the money in a separate
33 account in a financial institution or credit union authorized to do business in this
34 State, as defined in Title 9-B, section 131, subsections 12-A and 17-A, in the name of
35 the payee as mortuary trustee for the person for whose benefit the payment was made
36 and must be held in that account together with interest if any. If money is paid by
37 check, share draft or money order, the payee shall instruct the payor to make the
38 instrument payable to the financial institution or credit union into which it is to be
39 deposited and to include on the instrument the name of the mortuary trustee and the
40 person for whose benefit the payment was made.

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

- 5 (1) Federally insured deposit or share accounts;
- 6 (2) Securities issued, insured or guaranteed by the United States or by any
7 agency or corporate or other instrumentality of the United States;
- 8 (3) Municipal securities that are exempt from registration under Title 32, section
9 16201, subsection 1; and
- 10 (4) Permanent life insurance, other than variable life insurance and annuities,
11 from an insurer authorized to transact insurance in this State, subject to the
12 provisions of Title 24-A, chapter 27. A payee or mortuary trustee may not
13 receive any commission, fee or other consideration from an insurer in connection
14 with the procurement or purchase of insurance permitted by this subparagraph.

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

17 C. Within 30 days after the deposit of funds by the payee, the financial institution or
18 credit union shall provide a written confirmation of the deposit, including the amount
19 deposited, to the payor or the payor's legal representative. Nothing in this section may
20 be construed to prevent the direct transfer of these funds to another financial
21 institution or credit union by payee transfer, by financial institution or credit union
22 merger or consolidation or by operation of law, provided that within 30 days after the
23 direct transfer of the funds, the recipient financial institution or credit union shall
24 provide a written confirmation of the deposit, including the amount deposited, to the
25 payor or the payor's legal representative.

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

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

40 The payee shall maintain a complete record of the deposit of all funds, including
41 principal and interest. The record must be available for inspection by the payor, the
42 payor's legal representative, the commissioner's designee or an inspector for the board

1 and must contain the name and address of the financial institution or credit union
2 currently in possession of the funds and the dates and amounts of deposits.

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

9 **Sec. 5. 32 MRSA §1401, sub-§1-B** is enacted to read:

10 **1-B. Plan funded with proceeds of preneed insurance policy.** A prearranged
11 funeral or burial plan agreement may be funded with proceeds of a preneed insurance
12 policy in accordance with this subsection.

13 A. During a person's lifetime, a person or that person's legal representative may enter
14 into an agreement that services will be performed or personal property will be
15 delivered in connection with the disposition of that person's body after death by the
16 assignment of proceeds of a preneed insurance policy to the funeral establishment
17 upon that person's death.

18 B. An agreement under paragraph A must be in writing and a copy must be furnished
19 to the person or the person's legal representative by the funeral establishment when
20 the agreement is executed. The agreement must identify the parties to the agreement
21 and must be signed by an authorized representative of the funeral establishment. The
22 agreement may or may not be guaranteed. The agreement may be revocable or
23 irrevocable; however, if the agreement is irrevocable, there must be a provision to
24 allow for the transfer of the life insurance proceeds to a successor funeral
25 establishment. The agreement must clearly state terms providing for disposition of
26 excess funds after funeral goods and services have been provided.

27 C. The receipt of a commission for the sale of preneed insurance does not constitute
28 a violation of section 1455-B, subsection 5.

29 This subsection may not be construed to alter the terms of a preneed insurance policy or
30 supersede any law governing the regulation of life insurance policies.

31 **Sec. 6. 32 MRSA §1401, sub-§2**, as enacted by PL 1999, c. 258, §2 and affected
32 by §3, is amended to read:

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

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

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

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

1 D. Inspection of trust agreements, account information and any related
2 documentation; and

3 E. The form, format and content of prearranged funeral agreements funded by
4 preneed insurance.

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

7 **Sec. 7. 32 MRSA §1402, first ¶** is amended to read:

8 ~~No~~ A funeral home, funeral establishment or person holding a license under this
9 chapter ~~shall~~ may not as, or through, an agent or principal solicit a prearranged funeral
10 service or plan for any person or persons. "Prearranged funeral service or plan" ~~shall~~
11 ~~mean~~ as used in this section means any funeral service or plan ~~which~~ that is arranged,
12 planned or determined prior to the demise of a person or persons for whom the funeral
13 service is to be performed. Funeral homes, funeral establishments and licensees under this
14 chapter may enter into contracts or agreements for prearranged funeral services or plans
15 ~~provided that~~ as long as they do not in any manner either as, or through, principals or
16 agents solicit such contract or agreement. Nothing in this section prohibits the sale of
17 preneed insurance as defined in Title 24-A, section 711 and as set forth in section 1401,
18 subsection 1-B to a consumer who has contacted a funeral home to prearrange a funeral.

19 **SUMMARY**

20 This bill:

- 21 1. Defines preneed insurance and permits its sale in the State;
- 22 2. Requires the State Board of Funeral Service to amend the rules governing
23 prearranged funeral agreements to provide the form, format and content of prearranged
24 funeral agreements funded by preneed insurance;
- 25 3. Permits a funeral director to sell preneed insurance to a consumer who has
26 approached a funeral home to preplan a funeral;
- 27 4. Requires disclosures with regard to the sale of preneed insurance that are
28 consistent with the National Association of Insurance Commissioners' life insurance
29 disclosure model; and
- 30 5. Authorizes the payment of commissions in connection with the sale of preneed
31 insurance.