



HOUSE BILL No. 5172

November 2, 1993, Introduced by Reps. Randall, Palamara, Alley, Rhead, Bankes, Joe Young, Jr. and London and referred to the Committee on Business and Finance.

A bill to amend sections 4 and 5 of Act No. 255 of the Public Acts of 1986, entitled "Prepaid funeral contract funding act," being sections 328.214 and 328.215 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 4 and 5 of Act No. 255 of the Public
2 Acts of 1986, being sections 328.214 and 328.215 of the Michigan
3 Compiled Laws, are amended to read as follows:

4 Sec. 4. (1) "Depository" means a state or national bank
5 which is a member of the federal deposit insurance corporation, a
6 state or federal savings and loan association which is a member
7 of the federal savings and loan insurance corporation, or a state
8 or federally chartered credit union which is insured by the

1 national credit union administration, or a trust company
2 authorized to do business in this state. Depository includes the
3 trust department, if any, of an entity referred to in this
4 subsection.

5 (2) "Escrow agent" means a person who holds, invests, and
6 disburses principal and income from the funds received under a
7 prepaid funeral contract.

8 (3) "Funds" means all money or other consideration actually
9 received from a contract buyer by a contract seller or provider
10 or an assignee from the contract buyer in connection with any
11 aspect of the sale of a prepaid funeral contract including
12 finance charges, but does not include late payment penalties,
13 payments required to be made to a governmental agency at the time
14 the contract is entered into, or a commission authorized by sec-
15 tion 12(1).

16 (4) "Funeral goods" means items of merchandise sold or
17 offered for sale or lease to consumers which will be used in con-
18 nection with a funeral or an alternative to a funeral or final
19 disposition of human remains including, but not limited to, cas-
20 kets, combination units, and catafalques. FUNERAL GOODS INCLUDES
21 CEMETERY BURIAL VAULTS OR OTHER OUTSIDE CONTAINERS, MARKERS, MON-
22 UMENTS, URNS, AND MERCHANDISE ITEMS USED FOR THE PURPOSE OF MEMO-
23 RIALIZING A DECEDENT. Funeral goods ~~shall~~ DOES not include land
24 or interests in land, crypts, lawn crypts, mausoleum crypts, or
25 niches that are sold by a cemetery which complies with the endow-
26 ment care fund requirements of the cemetery regulation act, Act
27 No. 251 of the Public Acts of 1968, being sections 456.521 to

1 456.543 of the Michigan Compiled Laws. ~~In addition, funeral~~
2 ~~goods shall not include cemetery burial vaults or other outside~~
3 ~~containers, markers, monuments, urns, and merchandise items used~~
4 ~~for the purpose of memorializing a decedent and placed on or in~~
5 ~~proximity to a place of interment or entombment of a casket, cat-~~
6 ~~afalque, or vault or to a place of inurnment which are sold by a~~
7 ~~cemetery which deposits at least 138% of the cost of these items~~
8 ~~in a merchandise trust account established and operated in~~
9 ~~accordance with the cemetery regulation act, Act No. 251 of the~~
10 ~~Public Acts of 1968, being sections 456.521 to 456.543 of the~~
11 ~~Michigan Compiled Laws.~~

12 (5) "Funeral services" means services customarily performed
13 by a mortuary science licensee who is licensed pursuant to
14 ~~sections 1801 to 1812~~ ARTICLE 18 of the occupational code, Act
15 No. 299 of the Public Acts of 1980, being sections 339.1801 to
16 339.1812 of the Michigan Compiled Laws. ~~Further, funeral~~
17 FUNERAL services includes, but is not limited to, care of dead
18 human remains, embalming, preparation of dead human remains for
19 final disposition, professional services relating to a funeral or
20 an alternative to a funeral or final disposition of dead human
21 remains, transportation of dead human remains, limousine serv-
22 ices, use of facilities or equipment for viewing dead human
23 remains, visitation, memorial services, or services which are
24 used in connection with a funeral or alternative to a funeral,
25 coordinating or conducting funeral rites or ceremonies, and other
26 services provided in connection with a funeral, alternative to a
27 funeral, or final disposition of dead human remains.

1 (6) "Guaranteed price contract" means a prepaid funeral
2 contract under which funds received are held pursuant to an
3 escrow agreement. The contract has a guaranteed fixed price for
4 which specified funeral goods or funeral services are required to
5 be sold to or made available for a contract buyer or for a con-
6 tract beneficiary, regardless of the cost or value of the funeral
7 goods or funeral services at the time of death of the contract
8 beneficiary. Under the guaranteed price contract additional con-
9 sideration shall not be charged for the originally contracted for
10 funeral goods and funeral services at the time of delivery of the
11 funeral goods and funeral services contracted for.

12 (7) "Income" means the money earned by the investment of the
13 principal, including, but not limited to, interest, dividends,
14 and gains or losses on the sale of, deposit of, or exchange of,
15 property using invested principal amounts.

16 Sec. 5. (1) "Nonguaranteed price contract" means a prepaid
17 funeral contract under which funds received are held pursuant to
18 an escrow agreement between a contract seller or provider and a
19 contract buyer. Under the terms of this contract, a contract
20 seller or provider agrees to apply the principal and income to
21 the cost of the funeral goods or funeral services, which funeral
22 goods and funeral services may be selected by the contract buyer
23 at the time the contract is signed or as selected by a person
24 legally authorized to procure funeral goods and funeral services
25 at the time of death of the contract beneficiary. ~~However,~~
26 ~~this~~ A NONGUARANTEED PRICE contract ~~shall~~ DOES not obligate
27 the contract beneficiary's estate or the person who is legally

1 entitled to make funeral arrangements for a deceased contract
2 beneficiary to purchase specific FUNERAL goods and FUNERAL serv-
3 ices which were selected before the contract beneficiary's death,
4 nor shall this contract obligate either the contract
5 beneficiary's estate or the person who is entitled to make
6 funeral arrangements for a deceased contract beneficiary OR to
7 expend a specific amount OF MONEY on funeral goods or funeral
8 services.

9 (2) "Person" means an individual, group of individuals, sole
10 proprietorship, partnership, association, corporation, a govern-
11 mental agency, or a combination of these legal entities.

12 (3) "PHYSICAL DELIVERY AND RETENTION" MEANS ACTUAL CONTROL
13 AND POSSESSION OF FUNERAL GOODS THAT HAVE BEEN PERMANENTLY RELIN-
14 QUISHED BY A CONTRACT SELLER OR A PROVIDER, OR THE AGENT OF
15 EITHER, TO THE CONTRACT BUYER OR THE CONTRACT BENEFICIARY.
16 PHYSICAL DELIVERY AND RETENTION DOES NOT OCCUR IF THE CONTRACT
17 SELLER OR PROVIDER TAKES EITHER OF THE FOLLOWING ACTIONS:

18 (A) ARRANGES OR INDUCES THE BUYER TO ARRANGE FOR THE STORAGE
19 OR WAREHOUSING OF FUNERAL GOODS ORDERED PURSUANT TO A PREPAID
20 FUNERAL CONTRACT, WITH OR WITHOUT EVIDENCE THAT LEGAL TITLE HAS
21 PASSED.

22 (B) ACQUIRES OR REACQUIRES ACTUAL OR CONSTRUCTIVE POSSESSION
23 OR CONTROL OF FUNERAL GOODS AFTER THEIR INITIAL DELIVERY TO THE
24 CONTRACT BUYER OR CONTRACT BENEFICIARY.

25 (4) ~~(3)~~ "Prepaid funeral contract" means a contract
26 requiring payment in advance for funeral services or for funeral
27 goods, physical delivery and retention of which would occur after

1 death OF A CONTRACT BENEFICIARY under a guaranteed price contract
2 or a nonguaranteed price contract. Prepaid funeral contracts
3 ~~shall~~ DO not include a contract for the sale of funeral goods
4 or funeral services which is entered into after the death of the
5 ~~person for whose benefit the goods or services are acquired~~
6 CONTRACT BENEFICIARY. PREPAID FUNERAL CONTRACT INCLUDES A CON-
7 TRACT WHERE PHYSICAL DELIVERY AND RETENTION OF THE FUNERAL GOODS
8 HAS NOT BEEN MADE PRIOR TO THE DEATH OF THE CONTRACT BENEFICIARY
9 AND, AS SUCH, THE MONEY PAID PURSUANT TO THE CONTRACT IS SUBJECT
10 TO THIS ACT.

11 (5) ~~(4)~~ "Principal" means the money, finance charges, or
12 other consideration actually deposited in the escrow accounts
13 required by section 12.

14 (6) ~~(5)~~ "Provider" means any person who furnishes or
15 agrees to furnish funeral goods or funeral services pursuant to a
16 prepaid funeral contract, whether or not that person is the con-
17 tract seller. In the case of funeral goods, provider ~~shall~~
18 ~~mean~~ MEANS the person who arranges for delivery of the funeral
19 goods at the time of the death of the contract beneficiary ~~and~~
20 BUT DOES not INCLUDE the manufacturer of the FUNERAL goods. In
21 the case of funeral services, provider ~~shall mean~~ MEANS a
22 person licensed pursuant to section 1806(3) of the occupational
23 code, Act No. 299 of the Public Acts of 1980, being section
24 ~~339.1806(3)~~ 339.1806 of the Michigan Compiled Laws.

25 (7) ~~(6)~~ "Registrant" means a person who has registered
26 with the department pursuant to section 6.

1 Section 2. This amendatory act shall not take effect unless
2 Senate Bill No. _____ or House Bill No. 5173 (request
3 no. 04088'93) of the 87th Legislature is enacted into law.