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## PREPAID FUNERAL CONTRACT CAP

### House Bill 4603 (Substitute H-2) First Analysis (5-9-01)

**Sponsor: Rep. Stephen Ehardt**  
**Committee: Commerce**

#### ***THE APPARENT PROBLEM:***

The Prepaid Funeral Contract Funding Act, which took effect in 1987, regulates the sale of funeral goods and services under contracts that require payment in advance of the death of the contract beneficiary. It covers two types of prepaid funeral contracts, nonguaranteed price contracts and guaranteed price contracts. Under the second type, the contract fixes the price for specified funeral goods or services regardless of their value at the time of the death of the beneficiary. Under such a contract, there can be no additional charges for the goods and services originally contracted for. Section 19 of the act allows such a contract to be entered into by a potential recipient of assistance under the Social Welfare Act, including Medicaid. (The provision also applies to a patient or a legal guardian of a patient in a mental health facility.) If the Family Independence Agency (or Department of Community Health) determines that the contract is a fully paid guaranteed price contract of not more than \$2,000, and that the state is not liable for future funeral expenses, the contract is made irrevocable at the request of the contract beneficiary. Such an irrevocable contract is then not considered an asset in determining eligibility for assistance under Medicaid (or, to put it another way, the contract is not considered in the "asset inventory" for Medicaid purposes).

Funeral home directors say that because this prepaid funeral contract maximum is so low, customers who wish to prepay larger amounts of funeral costs while sheltering assets need to engage in a number of separate transactions. According to testimony before the House Commerce Committee, a customer might enter into a prepaid funeral contract (limited to \$2,000); then purchase a special funeral life insurance policy as permitted under the Insurance Code (also subject to a maximum) with the proceeds revocably assigned to a funeral home and subsequently transferred to a trust for the purchase of cemetery or funeral goods or services; and enter a third separate contract for the purchase of burial space-related items that are said to be specifically excluded (up to a certain amount) from the asset inventory for the purpose of Medicaid eligibility.

Funeral home directors say this requires a lot of paperwork and is confusing to customers.

Industry representatives have proposed streamlining the process by increasing the maximum allowable amount for a prepaid funeral contract to an amount not to exceed the current overall maximum for prepaid contracts and funeral life insurance combined. They say that this would allow customers to engage, if they chose, in one transaction to accomplish the same end that now requires several transactions.

#### ***THE CONTENT OF THE BILL:***

The bill would amend Section 19 of the Prepaid Funeral Contract Funding Act to raise the maximum allowable contract amount for a fully paid guaranteed price contract entered into by an applicant for or recipient of assistance under the Social Welfare Act (e.g., Medicaid, state disability assistance, family independence program assistance, or supplemental security income). The current maximum is \$2,000. Under the bill, the maximum would be \$9,837 as of June 1, 2001 (and would be adjusted annually based on changes in the consumer price index). Specifically, the bill refers to an amount "not more than the amount allowed under Section 2080(6)(g) of the Insurance Code, plus \$2000." (The bill's language appears to make the maximum apply to any combination of a life insurance death benefit and prepaid funeral contract, including presumably to an arrangement solely involving a prepaid funeral contract and with no life insurance death benefit.)

Section 2080(6)(g) of the Insurance Code applies to the pre-death assignment of the proceeds of a life insurance policy or annuity contract as payment for cemetery or funeral services or goods. Such an assignment is allowed if certain conditions and criteria are met. One of those is that the policy not exceed a set amount of money at the time the first premium is made. The figure was originally set at \$5,000, but is adjusted annually for inflation. The

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adjusted amount is set at \$7,565 for June 1, 2000 through May 31, 2001 and will be \$7,837 for June 1, 2001 through May 31, 2002, according to the Office of Financial and Insurance Services (OFIS).

[The actual language of the bill defines the maximum allowable contract amount by referring to a contract “which when added to the amount of a death benefit from an insurance policy or annuity contract, the proceeds of which have been assigned pursuant to Section 2080(6) of the Insurance Code . . . , as payment for funeral goods or services for the contract beneficiary that are not more than the amount allowed under Section 2080(6)(g) of the Insurance Code . . . , plus \$2,000.”]

The bill would also add a provision regarding the transferability of a prepaid contract from one funeral provider to another. It would specify that a contract seller or provider would have to assign an irrevocable prepaid funeral contract to another provider upon the written request of the contract beneficiary, his or her successor, or those legally entitled to make arrangements for the contract beneficiary so long as the written request was made before the provider’s obligations had been performed. A contract seller or provider who made such an assignment would be entitled to up to ten percent of the principal and up to ten percent of the income in the escrow account at the date of the assignment.

The bill also would make other technical changes to the act. It would update references so as to refer to the Department of Community Health and to the Family Independence Agency (rather than their predecessor agencies). Similarly, the term “mental health care facility” would be replaced by “community health care facility”.

MCL 328.229

### ***FISCAL IMPLICATIONS:***

There is no fiscal information at present.

### ***ARGUMENTS:***

#### ***For:***

Proponents say that raising the cap on the amount of a guaranteed price prepaid funeral contract that can be excluded from assets for Medicaid eligibility purposes will streamline funeral planning and financing to the benefit of customers, Medicaid case workers, and funeral home directors. The bill would raise the current limit so that a prepaid funeral

contract could be equal to the amount that can be currently be covered by combining such a contract and a special funeral-related life insurance policy. This would mean one transaction for customers where two or more are now required, say funeral directors, eliminating a lot of paperwork and confusion for customers. Funeral directors say that the total amount of funeral costs that can be provided for in advance will not change, only the manner in which the funds are set aside.

The bill also contains a provision regarding the portability of prepaid funeral contracts that allows a contract to be assigned to a new funeral provider. This would cover cases, among other things, when the contract beneficiary moves between the time the contract is entered into and he or she dies. The provision is said to be consistent with current practice but is not specifically covered in statute at present.

### ***POSITIONS:***

The Department of Consumer and Industry Services supports the bill. (5-8-01)

The Michigan Funeral Directors Association supports the bill. (5-8-01)

Analyst: C. Couch

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.