

PREPAID FUNERAL AND CEMETERY SALES ACT (EXCERPT)
Act 255 of 1986

328.223 Cancellation of prepaid contract by contract buyer; notice; disbursement of principal and income; cancellation of contract by contract seller or provider; failure to use escrow account to make funeral arrangements; assignment or transfer of obligations.

Sec. 13. (1) A contract buyer may cancel a prepaid contract at any time before the death of the contract beneficiary upon 30 days' prior written notice to the contract seller of a nonguaranteed price contract or to the provider designated to furnish merchandise or funeral or cemetery services pursuant to a guaranteed price contract. The contract seller or provider shall promptly notify the escrow agent of the cancellation and of its effective date, if the escrow agent is other than the contract seller or the provider. After receipt of the notice of cancellation, except as otherwise provided in subsection (2), the escrow agent shall disburse not less than 90% of the principal and income in the escrow account to the contract buyer pursuant to this subsection and shall disburse the remainder of the principal and income, if any, to the contract seller or the provider. The refund to the contract buyer shall be determined as follows:

(a) If no commission has been charged pursuant to section 12(1), at least 90% of the remaining balance of principal and income in the escrow account or held by the trustee.

(b) If a commission of 5% or less of the contract price has been charged, at least 95% of the remaining principal and income in the escrow account.

(c) If a commission of greater than 5% of the contract price has been charged, 100% of the remaining principal and income in the escrow account.

(2) In the case of funds received for cemetery merchandise by a cemetery that has elected the escrowing option in section 12(2), the escrow agent shall disburse the principal and income in the account to the cemetery and the cemetery shall disburse to the contract buyer 100% of the amount of the contract price paid by the contract buyer plus an amount equal to any increase in the Detroit consumer price index since the contract was executed.

(3) A contract seller of a nonguaranteed price contract or a provider designated to furnish merchandise or funeral or cemetery services pursuant to a guaranteed price contract may cancel a prepaid contract only if the contract buyer of a guaranteed price contract is more than 90 days delinquent in making any installment payment or partial payment, or the contract buyer is otherwise in default as to any other obligation under the contract. Upon cancellation, the contract buyer shall receive a refund as determined pursuant to subsection (1).

(4) After the death of the contract beneficiary, the contract buyer or the contract buyer's estate may cancel the prepaid contract only where there are no remains of the deceased; where the remains of the deceased cannot be recovered; or where a prepaid contract was not utilized due to lack of knowledge by the person or persons entitled to make funeral arrangements of the existence of the prepaid contract. After such a cancellation, the contract buyer or the contract buyer's estate shall receive a refund in accordance with subsection (1) or (2) within 30 days after receipt by the contract seller or the provider of a request for payment from the contract buyer or the contract buyer's estate. Contracts may be upgraded after the death of the contract beneficiary by a person on behalf of the contract beneficiary's estate or by a person entitled to make funeral or cemetery arrangements. This subsection does not prevent the transfer of a contract from 1 provider to another provider upon the request of those entitled to make funeral arrangements.

(5) Prior to the death of the contract beneficiary and in the case of a prepaid contract or multiple prepaid contracts containing any of the merchandise or services escrowed under section 12(1) together with cemetery merchandise escrowed under section 12(2), the buyer may cancel that portion of the contract pertaining to the cemetery merchandise alone, without canceling the remaining portions. Such cancellation is subject to refund pursuant to section 13(2).

(6) A contract seller or a provider that assigns or transfers its obligations under a prepaid contract to another provider shall notify the contract buyer of the assignment in writing. If the contract buyer cancels the contract within 30 days of the notification of the assignment, the buyer shall be entitled to a refund of 100% of the remaining principal and income plus the commission, if any, charged in accordance with section 12(1) or (2). An assignment or transfer of a provider's obligations under a prepaid contract that is made in connection with the sale of a business is subject to this subsection only if more than 50% of the ownership interest in the business is transferred to another person or persons within a 12-month period. Upon sale of the business, the notice requirement of this subsection is the responsibility of the purchaser. This subsection does not apply to an assignment of a financial interest in an installment contract to a financial institution. At the time that the contract seller or provider receives payment in exchange for selling or assigning its financial interest in an installment contract to a financial institution, the contract seller or provider shall be required to

place in escrow the amount required by this act. This subsection does not apply to burial rights or other land interests, crypts, inscribed grave memorials, or niches, for which no refunds are available.

History: 1986, Act 255, Eff. July 1, 1987;—Am. 2004, Act 21, Eff. Jan. 1, 2005.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.