



# 132nd MAINE LEGISLATURE

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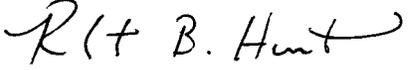
H.P. 553

House of Representatives, March 4, 2025

### An Act Regarding Pre-need Funeral Insurance

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

  
ROBERT B. HUNT  
Clerk

Presented by Representative MORRIS of Turner.  
Cosponsored by Senator BALDACCI of Penobscot and  
Representatives: FLYNN of Albion, MASTRACCIO of Sanford, Senator: HAGGAN 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. "Pre-need insurance" defined**

4 For the purposes of this Title, "pre-need insurance" means any life insurance policy or  
5 certificate that is issued with an assignment of the proceeds of the policy or certificate as  
6 consideration for a prearranged funeral service or plan as described in Title 32, section  
7 1402 to be provided at the time of and following the death of the insured. Goods and  
8 services contracted for in a prearranged funeral service or plan may include, but are not  
9 limited to, embalming, cremation, body preparation, viewing, visitation, coffin, urn,  
10 memorial stone and transportation of the deceased. The status of the policy or certificate as  
11 pre-need insurance is determined at the time the pre-need insurance policy or certificate is  
12 signed and the policy is assigned.

13 **Sec. 2. 24-A MRSA §1420-F, sub-§1, ¶A**, as enacted by PL 2001, c. 259, §24, is  
14 amended to read:

15 A. Life, which is insurance coverage on human lives, including ~~benefits of endowment~~  
16 ~~and annuities, and may include benefits in the event of death or dismemberment by~~  
17 ~~accident and benefits for disability income;~~ but not limited to:

18 (1) Benefits of endowment;

19 (2) Annuities;

20 (3) Benefits in the event of death or dismemberment by accident;

21 (4) Benefits for disability income; or

22 (5) Pre-need insurance, except that only a person who is licensed as a funeral  
23 director pursuant to Title 32, chapter 21 may be issued a license for the authority  
24 under this subparagraph;

25 **Sec. 3. 24-A MRSA §2176**, as amended by PL 1999, c. 258, §1, is further amended  
26 to read:

27 **§2176. Funeral and burial service contracts prohibited**

28 An insurer may not contract or agree with any funeral director, funeral establishment,  
29 mortuary establishment, cemetery, cemetery corporation or association, crematorium,  
30 mausoleum or columbarium or any representative of any of these directors or  
31 establishments to the effect that the director or establishment ~~shall~~ will conduct the funeral,  
32 burial; or cremation or other disposal of the remains of any individual insured by the  
33 insurer. An insurer may ~~not~~ retain, utilize or employ any director ~~or establishment~~  
34 ~~as a~~ producer ~~or agency~~ of the insurer, and a director ~~or establishment~~ may ~~not~~ act as ~~or purport~~  
35 ~~to be~~ an insurance producer ~~or~~ and engage in insurance producer activities as long as the  
36 director is licensed as an insurance producer with life insurance authority pursuant to  
37 section 1420-F, subsection 1, paragraph A, subparagraph (5). Nothing in this section  
38 prevents compliance with Title 39-A, section 216; or the use of an insurance policy,  
39 including, subject to the provisions of section 2420, the assignment of rights under life  
40 insurance contracts, to provide security for the payment for a funeral, burial or cremation  
41 or, subject to chapter 27, the naming of a funeral home or funeral director as beneficiary  
42 under a life insurance policy to provide payment for a funeral, burial or cremation. Nothing

1 in this section prohibits the use of an insurance policy as an investment by a mortuary  
2 trustee pursuant to Title 32, section 1401.

3 **Sec. 4. 24-A MRSA §2176-A** is enacted to read:

4 **§2176-A. Disclosures required for the sale of pre-need funeral insurance**

5 At the time an application is made, and prior to accepting the applicant's initial  
6 premium or deposit, for a prearranged funeral service or plan as described in Title 32,  
7 section 1402 that is funded or to be funded by a pre-need insurance policy, a producer shall  
8 adequately disclose the following information:

9 **1. Funding prearranged funeral service or plan.** The fact that a pre-need insurance  
10 policy is involved or being used to fund a prearranged funeral service or plan;

11 **2. Applicable relationships.** The nature of the relationship among the soliciting  
12 producer, the provider of the funeral or cemetery merchandise or services, the administrator  
13 and any other person;

14 **3. Relationship of policy to funding; guarantees.** The relationship of the pre-need  
15 insurance policy to the funding of the prearranged funeral service or plan and the nature  
16 and existence of any guarantees relating to the prearranged funeral service or plan;

17 **4. Goods and services; price.** A list of the goods and services that are applied or  
18 contracted for in the prearranged funeral service or plan and all relevant information  
19 concerning the price of the funeral services, including an indication that the purchase price  
20 is either guaranteed at the time of purchase or to be determined at the time of need;

21 **5. Proceeds may not exceed contract.** The fact that the proceeds of a pre-need  
22 insurance policy may not exceed the maximum amount of the goods and services that are  
23 contracted for in the prearranged funeral service or plan;

24 **6. Difference between proceeds and funding total.** All relevant information  
25 concerning what occurs and whether any entitlements or obligations arise if there is a  
26 difference between the proceeds of the pre-need insurance policy and the amount actually  
27 needed to fund the prearranged funeral service or plan;

28 **7. Penalties or restrictions.** Any penalties or restrictions, including, but not limited  
29 to, geographic restrictions or the inability of the provider to perform, on the delivery of  
30 merchandise or services or the prearranged funeral service or plan guarantee; and

31 **8. Sales commission; compensation.** Whether a sales commission or other form of  
32 compensation is being paid and the identity of the individual or entity to whom it is paid.

33 **Sec. 5. 32 MRSA §1401, sub-§1**, as amended by PL 2007, c. 402, Pt. J, §1, is  
34 further amended to read:

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

38 A. All money paid during a person's lifetime to any individual, firm, association,  
39 partnership or corporation, by that person or by someone on behalf of that person, under  
40 an agreement that services will be performed or personal property will be delivered in  
41 connection with the disposition of that person's body after death must be deposited by  
42 the payee within 10 days after receipt of the money in a separate account in a financial

1 institution or credit union authorized to do business in this State, as defined in Title  
2 9-B, section 131, subsections 12-A and 17-A, in the name of the payee as mortuary  
3 trustee for the person for whose benefit the payment was made and must be held in that  
4 account together with interest if any. If money is paid by check, share draft or money  
5 order, the payee shall instruct the payor to make the instrument payable to the financial  
6 institution or credit union into which it is to be deposited and to include on the  
7 instrument the name of the mortuary trustee and the person for whose benefit the  
8 payment was made.

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

- 13 (1) Federally insured deposit or share accounts;
- 14 (2) Securities issued, insured or guaranteed by the United States or by any agency  
15 or corporate or other instrumentality of the United States;
- 16 (3) Municipal securities that are exempt from registration under Title 32, section  
17 16201, subsection 1; and
- 18 (4) Permanent life insurance, other than variable life insurance and annuities, from  
19 an insurer authorized to transact insurance in this State, subject to the provisions  
20 of Title 24-A, chapter 27. A payee or mortuary trustee may not receive any  
21 commission, fee or other consideration from an insurer in connection with the  
22 procurement or purchase of insurance permitted by this subparagraph.

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

25 C. Within 30 days after the deposit of funds by the payee, the financial institution or  
26 credit union shall provide a written confirmation of the deposit, including the amount  
27 deposited, to the payor or the payor's legal representative. Nothing in this section may  
28 be construed to prevent the direct transfer of these funds to another financial institution  
29 or credit union by payee transfer, by financial institution or credit union merger or  
30 consolidation or by operation of law, provided that within 30 days after the direct  
31 transfer of the funds, the recipient financial institution or credit union shall provide a  
32 written confirmation of the deposit, including the amount deposited, to the payor or the  
33 payor's legal representative.

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

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

4 The payee shall maintain a complete record of the deposit of all funds, including  
5 principal and interest. The record must be available for inspection by the payor, the  
6 payor's legal representative, the commissioner's designee or an inspector for the board  
7 and must contain the name and address of the financial institution or credit union  
8 currently in possession of the funds and the dates and amounts of deposits.

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

15 **Sec. 6. 32 MRSA §1401, sub-§1-B** is enacted to read:

16 **1-B. Plan funded with proceeds of pre-need insurance policy.** A prearranged  
17 funeral service or plan may be funded with proceeds of a pre-need insurance policy in  
18 accordance with this subsection.

19 A. During a person's lifetime, a person or that person's legal representative may enter  
20 into an agreement that services will be performed or personal property will be delivered  
21 in connection with the disposition of that person's body after death by the assignment  
22 of proceeds of a pre-need insurance policy to the funeral establishment upon that  
23 person's death.

24 B. The proceeds of a pre-need insurance policy may not exceed the maximum amount  
25 of the goods and services that are contracted for in the prearranged funeral service or  
26 plan agreement.

27 C. An agreement under paragraph A must be in writing and a copy must be furnished  
28 to the person or the person's legal representative by the funeral establishment when the  
29 agreement is executed. The agreement must identify the parties to the agreement and  
30 must be signed by an authorized representative of the funeral establishment.

31 The receipt of a commission for the sale of pre-need insurance does not constitute a  
32 violation of section 1455-B, subsection 5.

33 This subsection may not be construed to alter the terms of a pre-need insurance policy or  
34 supersede any law governing the regulation of life insurance policies.

35 For the purposes of this subsection, "pre-need insurance" has the same meaning as in Title  
36 24-A, section 711.

37 **Sec. 7. 32 MRSA §1401, sub-§2**, as enacted by PL 1999, c. 258, §2 and affected  
38 by §3, is amended to read:

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

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

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

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

5 D. Inspection of trust agreements, account information and any related  
6 documentation; and

7 E. The form, format and content of prearranged funeral service or plan agreements  
8 funded by pre-need insurance.

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

11 **Sec. 8. 32 MRSA §1402**, as amended by PL 1983, c. 413, §55, is repealed and the  
12 following enacted in its place:

13 **§1402. Solicitation of prearranged funerals and funeral business**

14 **1. Solicitation generally prohibited.** Except as provided in subsection 2, a funeral  
15 home, funeral establishment or person holding a license under this chapter may not as, or  
16 through, an agent or principal solicit a prearranged funeral service or plan for any person  
17 or persons. "Prearranged funeral service or plan" as used in this section means any funeral  
18 service or plan that is arranged, planned or determined prior to the death of a person or  
19 persons for whom the funeral service is to be performed. A funeral home, funeral  
20 establishment or licensee under this chapter may enter into contracts or agreements for  
21 prearranged funeral services or plans as long as they do not in any manner either as, or  
22 through, principals or agents solicit such contract or agreement. Nothing in this section  
23 prohibits the sale of pre-need insurance as defined in Title 24-A, section 711 and as set  
24 forth in section 1401, subsection 1-B to a consumer who has contacted a funeral home to  
25 prearrange a funeral.

26 **2. Permitted contact and advertising.** A funeral home, funeral establishment or  
27 licensee under this chapter may:

28 A. Directly or indirectly contact an individual in a hospital, rest home, nursing home  
29 or other similar facility for the purpose of soliciting a prearranged funeral service or  
30 plan if that contact has been specifically requested by the individual;

31 B. Contact by telephone or visit a personal residence of an individual for the purpose  
32 of soliciting a prearranged funeral service or plan if that contact or visit has been  
33 requested by the individual or a family member residing at the residence;

34 C. Engage in general advertising for the purpose of soliciting a prearranged funeral  
35 service or plan, including the use of direct mail or other communication; and

36 D. Solicit an individual who initiates discussion of a prearranged funeral service or  
37 plan or who responds to a general advertisement or other communication made for the  
38 purpose of soliciting a prearranged funeral service or plan.

39 **3. Commission or gratuity for securing business prohibited.** A funeral home,  
40 funeral establishment or licensee under this chapter may not pay or cause to be paid,  
41 directly or indirectly, any money or other thing of value to a person not responsible for

1 payment for the funeral as a commission or gratuity for the securing of business for the  
2 funeral home, establishment or licensee.

3 **4. Violation.** Any person who violates this section is guilty of a Class E crime.

4 **SUMMARY**

5 This bill provides for a type of insurance for prearranged funeral services or plans. The  
6 bill:

7 1. Defines pre-need insurance and permits its sale in the State;

8 2. Permits a funeral director to sell pre-need insurance to a consumer who has  
9 approached a funeral home to preplan a funeral as long as the funeral director is licensed  
10 as an insurance producer;

11 3. Prohibits so-called cold-calling to solicit prearranged funeral agreements;

12 4. Requires that the proceeds of pre-need insurance may not exceed the goods and  
13 services contracted for in a prearranged funeral service or plan agreement;

14 5. Requires certain disclosures to applicants with regard to the sale of pre-need  
15 insurance; and

16 6. Authorizes the payment of commissions in connection with the sale of pre-need  
17 insurance.