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## **An Act To Require Funds for Prearranged Funerals To Be Invested Subject to the Requirements of the Maine Uniform Prudent Investor Act and To Update Related Provisions**

**Be it enacted by the People of the State of Maine as follows:**

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

**1. Plan requirements.** Except as provided in subsection 1-A, any prearranged funeral or burial plan contracted or undertaken within this State must comply with the following.

A. All money paid during a person's lifetime to any individual, firm, association, partnership or corporation, by that person or by someone on behalf of that person, under an agreement that services will be performed or personal property will be delivered in connection with the disposition of that person's body after death must be deposited by the payee within 10 days after receipt of the money in ~~a separate~~an account in a financial institution or credit union authorized to do business in this State, as defined in Title 9-B, section 131, subsections 12-A and 17-A, or in a national banking institution authorized to act as a fiduciary pursuant to 12 United States Code, Section 92a (2011) and the regulations of the federal Office of the Comptroller of the Currency, in the name of the payee as mortuary trustee for the person for whose benefit the payment was made and must be held in that account together with interest if any. If money is paid by check, share draft or money order, the payee shall instruct the payor to make the instrument payable to the financial institution ~~or~~, credit union or national banking institution into which it is to be deposited and to include on the instrument the name of the mortuary trustee and the person for whose benefit the payment was made.

B. The payee shall deposit the money in either ~~a federally insured deposit or share account or a trust account; the type of account must be disclosed to the payor or the payor's representative and a deposit in a trust account may be invested in or used to purchase only the following:~~an account in a financial institution or credit union authorized to do business in this State, as defined in Title 9-B, section 131, subsections 12-A and 17-A, or in a national banking institution authorized to act as a fiduciary pursuant to 12 United States Code, Section 92a (2011) and the regulations of the federal Office of the Comptroller of the Currency. The money must be invested consistent with the requirements of the Maine Uniform Prudent Investor Act.

~~(1) Federally insured deposit or share accounts;~~

~~(2) Securities issued, insured or guaranteed by the United States or by any agency or corporate or other instrumentality of the United States;~~

~~(3) Municipal securities that are exempt from registration under Title 32, section 16201, subsection 1; and~~

~~(4) Permanent life insurance, other than variable life insurance and annuities, from an insurer authorized to transact insurance in this State, subject to the provisions of Title 24-A, chapter 27. A payee or mortuary trustee may not receive any commission, fee or other consideration from an insurer in connection with the procurement or purchase of insurance permitted by this subparagraph.~~

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

C. Within 30 days after the deposit of funds by the payee, the financial institution ~~or, credit union or national banking institution~~ shall provide a written confirmation of the deposit, including the amount deposited, to the payor or the payor's legal representative. Nothing in this section may be construed to prevent the direct transfer of these funds to another financial institution ~~or, credit union or national banking institution~~ by payee transfer, by financial institution ~~or, credit union or national banking institution~~ merger or consolidation or by operation of law, ~~provided that as long as~~ within 30 days after the direct transfer of the funds, the recipient financial institution ~~or, credit union shall provide or national banking institution provides~~ a written confirmation of the deposit, including the amount deposited, to the payor or the payor's legal representative.

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

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

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

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

**Sec. 2. 32 MRSA §1401, sub-§3**, as amended by PL 1999, c. 590, §2, is further amended to read:

**3. Financial institution, credit union or national banking institution liability.** The financial institution ~~or~~, credit union or national banking institution is discharged from liability for direct payment of the funds in an account under subsection 1 to another financial institution ~~or~~, credit union or national banking institution or to the payor, upon presentation of a written consent to withdrawal signed by the payor or the payor's legal representative and by the payee or upon withdrawal of the funds by the payee upon presentation of a certified copy of the death certificate of the person for whose benefit the funds were paid.

## SUMMARY

This bill requires that funds held in prearranged funeral and burial plans be invested and managed consistent with the prudent investor rule and related requirements of the Maine Uniform Prudent Investor Act. It also provides that such funds may be deposited in a national banking institution authorized to act as a fiduciary pursuant to federal law and the regulations of the federal Office of the Comptroller of the Currency.