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HEALTH COVERAGE, INSURANCE AND FINANCIAL SERVICES

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STATE OF MAINE HOUSE OF REPRESENTATIVES 132ND LEGISLATURE FIRST SPECIAL SESSION

COMMITTEE AMENDMENT “ ” to H.P. 553, L.D. 867, “An Act Regarding Pre-need Funeral Insurance”

Amend the bill by striking out everything after the enacting clause and inserting the following:

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

§2176. Funeral and burial service contracts ~~prohibited~~

An insurer may not contract or agree with any funeral ~~director~~ practitioner, funeral establishment, mortuary establishment, cemetery, cemetery corporation or association, crematorium, mausoleum or columbarium or any representative of any of these ~~directors~~ practitioners or establishments to the effect that the ~~director~~ practitioner or establishment ~~shall must~~ conduct the funeral, burial, or cremation or other disposal of the remains of any individual insured by the insurer. ~~An insurer may not retain, utilize or employ any director or establishment as a producer or agency of the insurer and a director or establishment may not act as or purport to be an insurance producer or engage in insurance producer activities. Nothing in this section prevents~~ This section does not prevent compliance with Title 39-A, section 216; or the use of an insurance policy, including, subject to the provisions of section 2420, the assignment of rights under life insurance contracts, to provide security for the payment for a funeral, burial or cremation or, subject to chapter 27, the naming of a funeral ~~home establishment~~ or funeral ~~director~~ practitioner as beneficiary under a life insurance policy to provide payment for a funeral, burial or cremation. ~~Nothing in this~~ This section prohibits ~~does not prohibit~~ the use of an insurance policy as an investment by a mortuary trustee pursuant to Title 32, section 1401.

Sec. 2. 24-A MRSA §2176-A is enacted to read:

§2176-A. Disclosures required for sale of pre-need insurance in connection with prearranged funerals

1 **1. Definition.** For purposes of this section, "pre-need insurance" means a type of life
2 insurance policy designed to cover the costs of funeral and burial services selected in a
3 statement of goods and services contract and for which the entire death benefit is paid
4 directly to the funeral establishment.

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

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

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

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

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

20 E. The fact that the face amount of the pre-need insurance policy may not exceed the
21 maximum amount of the goods and services that are contracted for in the prearranged
22 funeral service or plan;

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

26 G. Any penalties or restrictions, including, but not limited to, geographic restrictions
27 or the inability of the provider to perform, on the delivery of merchandise or services
28 or the prearranged funeral service or plan guarantee; and

29 H. Whether a sales commission or other form of compensation is being paid for the
30 sale of the pre-need insurance policy and the identity of the individual or entity to
31 whom it is paid.

32 **Sec. 3. 32 MRSA §1401, sub-§1,** as amended by PL 2007, c. 402, Pt. J, §1, is
33 further amended to read:

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

37 A. All money paid during a person's lifetime to any individual, firm, association,
38 partnership or corporation, by that person or by someone on behalf of that person, under
39 an agreement that services will be performed or personal property will be delivered in
40 connection with the disposition of that person's body after death must be deposited by
41 the payee within 10 days after receipt of the money in a separate account in a financial
42 institution or credit union authorized to do business in this State, as defined in Title
43 9-B, section 131, subsections 12-A and 17-A, in the name of the payee as mortuary

1 trustee for the person for whose benefit the payment was made and must be held in that
2 account together with interest if any. If money is paid by check, share draft or money
3 order, the payee shall instruct the payor to make the instrument payable to the financial
4 institution or credit union into which it is to be deposited and to include on the
5 instrument the name of the mortuary trustee and the person for whose benefit the
6 payment was made.

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

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

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

23 C. Within 30 days after the deposit of funds by the payee, the financial institution or
24 credit union shall provide a written confirmation of the deposit, including the amount
25 deposited, to the payor or the payor's legal representative. ~~Nothing in this~~ This section
26 may not be construed to prevent the direct transfer of these funds to another financial
27 institution or credit union by payee transfer, by financial institution or credit union
28 merger or consolidation or by operation of law, ~~provided that~~ as long as within 30 days
29 after the direct transfer of the funds, the recipient financial institution or credit union
30 ~~shall provide~~ provides a written confirmation of the deposit, including the amount
31 deposited, to the payor or the payor's legal representative.

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

- 43 (1) Upon transfer of the account by the appointment of a successor trustee;
- 44 (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 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 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. 4. 32 MRSA §1401, sub-§1-A, as enacted by PL 2003, c. 109, §3, is amended to read:

1-A. Plan funded with mortuary trust agreement and proceeds of life insurance policy. A prearranged funeral or burial plan agreement may be funded with a mortuary trust agreement that receives the proceeds of a life insurance policy in accordance with this subsection.

A. During a person's lifetime, a person or that person's legal representative may enter into 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 by:

(1) Assigning the mortuary trustee as owner and beneficiary of a life insurance policy payable to the mortuary trustee upon that person's death; or

(2) Designating the mortuary trustee as a beneficiary of a life insurance policy payable to the mortuary trustee upon that person's death.

B. An agreement under paragraph A must be in writing and a copy must be furnished to the person or the person's legal representative by the mortuary trustee when the agreement is executed. The agreement may be revocable or irrevocable; however, if the agreement is irrevocable, there must be a provision to allow for the transfer of the trust account by the appointment of successor trustees. 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 trust account. Fees must be reasonable, as defined by the board, and may be charged only:

(1) Upon transfer of a trust 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 trust account.

C. The mortuary trustee shall maintain a complete record of a trust account established under this subsection. The record must be available for inspection by the person, the person's legal representative, the commissioner's designee or an inspector for the board.

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

1 **Sec. 5. 32 MRSA §1401, sub-§1-B** is enacted to read:

2 **1-B. Plan funded with proceeds of pre-need life insurance policy.** A prearranged
3 funeral service or plan may be funded with proceeds of a pre-need insurance policy in
4 accordance with this subsection. For the purposes of this section, "pre-need insurance" has
5 the same meaning as in Title 24-A, section 2176-A, subsection 1.

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

11 B. The face amount of a pre-need insurance policy sold in connection with a
12 prearranged funeral service or plan as described in section 1402 may not exceed the
13 maximum amount of the goods and services that are contracted for in the prearranged
14 funeral service or plan.

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

19 The receipt of a commission for the sale of pre-need insurance by a licensee that is also
20 licensed as an insurance producer does not constitute a violation of section 1455-B,
21 subsection 5.

22 This subsection may not be construed to alter the terms of an insurance policy or supersede
23 any law governing the regulation of insurance policies.

24 **Sec. 6. 32 MRSA §1401, sub-§2**, as enacted by PL 1999, c. 258, §2 and affected
25 by §3, is amended to read:

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

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

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

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

33 D. Inspection of trust agreements, account information and any related
34 documentation; and

35 E. The form, format and content of agreements for prearranged funeral services or
36 plans as described in section 1402 funded by pre-need insurance.

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

39 **Sec. 7. 32 MRSA §1402, first ¶** is amended to read:

40 No A funeral home, funeral establishment or person holding a license under this
41 chapter ~~shall~~ may not as, or through, an agent or principal solicit a prearranged funeral

1 service or plan for any person or persons. "Prearranged funeral service or plan" ~~shall mean~~
2 means any funeral service or plan ~~which~~ that is arranged, planned or determined prior to
3 the demise of a person or persons for whom the funeral service is to be performed. Funeral
4 homes, funeral establishments and licensees under this chapter may enter into contracts or
5 agreements for prearranged funeral services or plans ~~provided that, as long as~~ they do not
6 in any manner either as, or through, principals or agents solicit ~~such~~ that contract or
7 agreement. This section does not prohibit the sale of insurance, in compliance with section
8 1401, subsection 1-B and Title 24-A, section 2176-A, to a consumer who has contacted a
9 funeral home, funeral establishment or licensee under this chapter to prearrange a funeral.'

10 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
11 number to read consecutively.

12 SUMMARY

13 This amendment replaces the bill and makes the following changes to the laws related
14 to the sale of insurance in connection with prearranged funeral services or plans.

15 1. It eliminates a prohibition against funeral practitioners becoming licensed to sell
16 insurance.

17 2. It requires certain disclosures about pre-need insurance used to fund funeral
18 arrangements.

19 3. It requires that the face amount of a pre-need insurance policy may not exceed the
20 maximum amount of goods and services contracted for in a prearranged funeral service or
21 plan.

22 4. It authorizes the payment of commissions in connection with the sale of pre-need
23 insurance to fund funeral arrangements.

24 FISCAL NOTE REQUIRED

25 (See attached)