

House Bill 5203

Sponsor: Rep. Charles LaSata

Committee: Commerce

Complete to 11-3-03

A SUMMARY OF HOUSE BILL 5203 AS INTRODUCED 10-23-03-03

The bill would amend the Prepaid Funeral Contract Funding Act in a number of ways, effective January 1, 2004. A description of the bill follows.

Registration and Renewal Requirements. Under current law, a person cannot sell, provide, or promise prepaid funeral contracts without being registered with the Department of Consumer and Industry Services. Registrations are good for three years and can be renewed. The bill would make the expiration date for all registrations September 30. Certificates of registration would continue to be valid for three years, and the \$120 application fee would remain unchanged. The bill would require that applications for registration be accompanied by the appropriate ownership documentation, as required by the department. The bill would retain the current registration renewal application fee of \$30 and would clarify that renewal applications must be accompanied by a sworn statement that the registrant had an agreement with each escrow agent with which funds were deposited and by either a special report (as described later) on escrowed funds or an alternative sworn statement that there were no obligations with respect to a prepaid funeral contract. The certificate of registration of a person who did not file the required sworn statement or special report would expire on the printed date of the registration. The registration could be reinstated within 60 days of its expiration by submitting the sworn statement or special report and paying a renewal fee of \$30 and a late fee of \$20. A registrant could reinstate the registration within 60 days after its expiration by submitting a special report and paying an application fee of \$120 and a \$20 late fee. Further, the bill would specify that the department could deny registration to those who violated the act or Article 18 of the Occupational Code, which regulates the practice of mortuary science.

Records of Contracts. The bill would require, beginning January 1, 2004, that a registrant keep copies of all prepaid funeral contracts in sequential order, including all prepaid funeral contracts that had not been fully executed, contracts that had been canceled, and contracts that had been revoked. The registrant would also have to establish and maintain a record for each prepaid funeral contract sold containing the name and address of the buyer; the name and address of the contract beneficiary; the name of the escrow agent; the date funds were received for funeral goods and services; the date the funds were deposited in escrow; the contract number and whether the contract was guaranteed or nonguaranteed; the contract's total price exclusive of commission; the total commission charged on the contract; the date the contract was performed, canceled, or revoked; the amount of any refund paid to the buyer if the contract was canceled or revoked, and the date of the refund. (The law currently requires registrants to keep copies of all prepaid contracts, the amounts of payments, and information on buyers, beneficiaries, and agents, as well as other information as required by the department. The bill would require additional information be kept.) As now, these records would have to be maintained for at least 36 months after the performance of

all obligations under a contract or for at least 36 months after the filing of a special report that included all prepaid funeral contracts that had been performed.

Receipts Journal. Beginning January 1, 2004, a registrant would also have to establish and maintain a receipts journal with information about funds received, including a chronological sequence regarding funds received; the date funds were received; the amount of funds received for funeral goods and funeral services; the date funds were deposited in escrow; the name of the contract buyer; and the contract number.

Special Annual Report on Escrow Accounts. The bill would rewrite current provisions that require registrants to file a report every three years prepared by an independent certified public accountant in order to require an annual report. The bill would require that, beginning July 1, 2004 and then no later than July 1 of each succeeding year, registrants who serve as escrow agents or who deposit funds with escrow agents would be required to submit a special annual report on a prescribed form that would have to contain information that demonstrates compliance with the act regarding the escrowing of funds; the names and addresses of depositories, the account numbers, and escrow dates; and a signed statement by a licensed independent certified public accountant providing reasonable assurance that the information in the report is fairly presented. The bill would require that applicants submit the report before their certificate of registration expired (on September 30), even when they did not seek renewal of their registration. The bill would require the department to examine all special escrow reports, to audit any determined to be questionable, and it would require any audited registrant to reimburse the department for the actual cost of the audit, examination, or review of books and records. (As an alternative, a registrant can submit a sworn statement that no prepaid funeral contract had been sold, provided, or agreed to, and that there were no obligations with respect to a prepaid funeral contract outstanding.)

Other Provisions. The bill would include limited liability companies within the definition of “person” in the act. It also would specifically allow the department to issue cease and desist orders in response to an alleged violation of the act by a registration.

MCL 328.214 et al.

Analyst: C. Couch

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