

SENATE BILL No. 1378

June 8, 2010, Introduced by Senators STAMAS, CROSEY and CLARKE and referred to the Committee on Judiciary.

A bill to amend 1986 PA 255, entitled "Prepaid funeral and cemetery sales act," by amending section 12 (MCL 328.222), as amended by 2004 PA 21.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 12. (1) Except as otherwise provided in subsection (2),
2 all funds received in connection with a prepaid contract shall be
3 held in escrow by an escrow agent for the benefit of the contract
4 beneficiary.

5 (2) Funds received by a cemetery registered under the cemetery
6 regulation act, 1968 PA 251, MCL 456.521 to 456.543, for cemetery
7 merchandise may, in lieu of subsection (1), be escrowed as follows:

8 (a) ~~For the first 12 months after the effective date of the~~
9 ~~amendatory act that added this subdivision~~ **BEFORE JANUARY 1, 2006,**

1 60% of the funds received during that period from the sale of
2 cemetery merchandise pursuant to prepaid contracts.

3 ~~(b) For the thirteenth through twenty fourth month after the~~
4 ~~effective date of the amendatory act that added this subdivision~~
5 **AFTER DECEMBER 31, 2005 AND BEFORE JANUARY 1, 2007**, 65% of the
6 funds received during that period from the sale of cemetery
7 merchandise pursuant to prepaid contracts.

8 ~~(c) For the twenty fifth through the thirty sixth month after~~
9 ~~the effective date of the amendatory act that added this~~
10 ~~subdivision~~ **AFTER DECEMBER 31, 2006 AND BEFORE JANUARY 1, 2008**, 70%
11 of the funds received during that period from the sale of cemetery
12 merchandise pursuant to prepaid contracts.

13 ~~(d) For the thirty seventh through the forty eighth month~~
14 ~~after the effective date of the amendatory act that added this~~
15 ~~subdivision~~ **AFTER DECEMBER 31, 2007 AND BEFORE JANUARY 1, 2009**, 75%
16 of the funds received during that period from the sale of cemetery
17 merchandise pursuant to prepaid contracts.

18 ~~(e) For the forty ninth month after the effective date of the~~
19 ~~amendatory act that added this subdivision and thereafter~~ **AFTER**
20 **DECEMBER 31, 2008**, 80% of the funds received from the sale of
21 cemetery merchandise pursuant to prepaid contracts.

22 (3) A prepaid contract may authorize the contract seller or
23 provider to charge an additional commission of not more than 10% of
24 the contract price which shall not be subject to the depository
25 requirements of this section. If the contract price is paid in
26 installments, the commission retained by the contract seller or the
27 provider shall not exceed the rate of the commission charged in the

1 prepaid contract for each installment. ~~A-ON CANCELLATION, A~~
2 contract buyer ~~upon cancellation~~ is entitled to a refund as
3 provided in section 13(1) or (2).

4 (4) Only the following persons may serve as the escrow agent
5 of funds **UNDER THIS SECTION**:

6 (a) If the prepaid contract is a nonguaranteed price contract,
7 the contract seller or provider of that nonguaranteed price
8 contract.

9 (b) ~~In the case of~~ **IF THE PREPAID CONTRACT IS** either a
10 guaranteed or nonguaranteed price contract, a depository, a trust
11 company, or a Michigan nonprofit corporation or association, in
12 which the majority interest is held by 250 or more funeral
13 establishments licensed under article 18 of the occupational code,
14 1980 PA 299, MCL 339.1801 to 339.1812, or a Michigan nonprofit
15 corporation or association, in which the majority interest is held
16 by 30 or more cemeteries registered and operated pursuant to the
17 cemetery regulation act, 1968 PA 251, MCL 456.521 to 456.543. If
18 the prepaid contract is a guaranteed price contract, the contract
19 seller or the provider shall not serve as the escrow agent.

20 (5) If the escrow agent is not the contract seller or provider
21 of a nonguaranteed price contract, the escrow agent shall be
22 selected as follows:

23 (a) If the prepaid contract is a nonguaranteed price contract,
24 the escrow agent may be selected by either the contract seller or
25 the provider.

26 (b) If the prepaid contract is a guaranteed price contract,
27 the escrow agent shall be selected by the provider who has been

1 designated to furnish the funeral services. If the prepaid contract
 2 does not include funeral services, the escrow agent shall be
 3 selected by any provider.

4 (6) If the escrow agent is a person other than the person to
 5 whom the funds have been paid by the contract buyer, the funds
 6 shall be deposited with the escrow agent within 30 days after the
 7 receipt by the person to whom the funds are paid.

8 (7) Funds held by an escrow agent shall be held and invested
 9 only as specified in the prepaid contract. A prepaid contract may
 10 authorize investments only as follows:

11 (a) If the prepaid contract is a nonguaranteed price contract,
 12 the funds shall be invested in 1 or more interest-bearing accounts
 13 in a depository.

14 (b) If the prepaid contract is a guaranteed price contract,
 15 the principal and income may be invested only in accordance with
 16 section ~~7302-7803~~ of the estates and protected individuals code,
 17 1998 PA 386, MCL ~~700.7302, 700.7803~~, except that funds shall not be
 18 invested in a company owned by, operated by, or affiliated in any
 19 way with a contract seller or provider or ~~their~~**AN** authorized
 20 ~~agents,~~**AGENT OF A CONTRACT SELLER OR PROVIDER** or in loans to any
 21 person directly connected with or employed by a contract seller or
 22 provider or ~~their~~**AN** authorized ~~agents~~**AGENT OF A CONTRACT SELLER OR**
 23 **PROVIDER.**

24 (8) Income shall be held and invested by the escrow agent in
 25 the same manner as the principal except that the income may be
 26 utilized to pay reasonable fees and expenses of the escrow agent in
 27 addition to other costs specifically authorized by this act. The

1 expenses and fees paid to the escrow agent shall not exceed 1% of
2 the aggregate balance of principal and prior earned income from
3 each account annually. If a fee is charged for reasonable expenses
4 for the administration costs under an escrow agreement, the amount
5 may be paid to the escrow agent periodically or may be accumulated
6 in the account and paid at the time of death or upon cancellation
7 of the contract. A cemetery that has elected the escrowing option
8 for cemetery merchandise provided in subsection (2) may provide by
9 written agreement with the escrow agent to be paid accumulated
10 income generated solely by the investment of funds received for the
11 cemetery merchandise. Such payments to a cemetery may not be made
12 more frequently than once in a 12-month period and shall not exceed
13 the net amount of income earned in the previous 12 months less any
14 amounts paid to the escrow agent for expenses and fees described in
15 this subsection and an amount equal to any increase in the Detroit
16 consumer price index.

17 (9) Amounts of principal and income held by an escrow agent
18 other than the contract seller or provider of a nonguaranteed price
19 contract may be commingled with principal and income derived from
20 other prepaid accounts. However, a separate accounting of principal
21 and income shall be maintained for each prepaid contract under the
22 name of the contract beneficiary.

23 (10) The escrow agent shall send to the contract buyer a
24 notice stating the date, amount of the deposit, and the name of the
25 escrow agent with whom the funds are deposited.

26 (11) Upon the death of the contract beneficiary and upon
27 performance by the provider of its obligation to furnish

1 merchandise or funeral or cemetery services pursuant to the prepaid
2 contract, funds held by the escrow agent shall be disbursed as
3 follows:

4 (a) If the prepaid contract is a nonguaranteed price contract,
5 the principal and income shall first be disbursed by the escrow
6 agent to the provider of the merchandise or funeral or cemetery
7 services in payment of all reasonable charges. Thereafter, not less
8 than 90% of the remaining balance of principal and income, if any,
9 shall be disbursed to the person, other than the provider or the
10 contract seller, designated in the prepaid contract or authorized
11 by law to receive the surplus, and the remainder, if any, shall be
12 disbursed to the provider as final compensation for its services.
13 The amount paid to the person entitled to receive the surplus shall
14 be as follows:

15 (i) If no commission has been charged pursuant to this section,
16 at least 90% of the remaining balance of principal and income in
17 the escrow account.

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

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

24 (b) If the prepaid contract is a guaranteed price contract,
25 the principal and income held by the escrow agent shall be
26 disbursed to the provider, its designee, or its successor.

27 (c) If the escrow agent is notified that there is a dispute as

1 to whether the provider has performed all its obligations under the
2 prepaid contract, the escrow agent shall file an action for
3 interpleader or shall obtain an impartial arbitrator to determine
4 the rights of the parties. Expenses of arbitration shall be shared
5 equally by the parties unless otherwise ordered by the arbitrator.

6 (12) A Michigan nonprofit corporation or association, in which
7 the majority interest is held by 250 or more funeral establishments
8 or by 30 or more cemeteries registered and operated under the
9 cemetery regulation act, 1968 PA 251, MCL 456.521 to 456.543, may
10 be designated as the escrow agent **UNDER THIS SECTION** only if the
11 contract buyer has expressly authorized that designation in
12 writing. If the contract buyer authorizes the appointment as escrow
13 agent of a Michigan nonprofit corporation or association in the
14 prepaid contract, the authorization shall be set forth in a
15 separate paragraph which shall not be effective unless separately
16 signed or initialed by a contract buyer and which shall state that
17 the contract buyer may elect to require that a depository or a
18 trust company be designated as the escrow agent.

19 (13) If a prepaid contract is canceled, the escrow agent shall
20 disburse the principal and income in accordance with section 13.

21 (14) At least annually, unless waived in writing by a contract
22 buyer, a contract buyer shall be furnished a statement indicating
23 the current balance, the fees or expenses charged since the last
24 statement, the amount of the refund to which a buyer is entitled ~~in~~
25 ~~the event~~ **IF** the contract is canceled, and the name and address of
26 the escrow agent from whom additional information may be obtained
27 ~~relative to~~ **ABOUT** the account. The cost of the statement required

1 by this subsection may be paid from the income and may be in
2 addition to any other fee or charge authorized by this act.