

Act No. 327  
Public Acts of 2010  
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**STATE OF MICHIGAN  
95TH LEGISLATURE  
REGULAR SESSION OF 2010**

Introduced by Senators Stamas, Cropsey and Clarke

# **ENROLLED SENATE BILL No. 1378**

AN ACT to amend 1986 PA 255, entitled "An act to regulate the sale and providing of funeral and cemetery merchandise and services and other related interests; to regulate the use of funds received by sellers and providers of certain merchandise, funeral and cemetery services, land or interests in land, and related other interests; to prescribe certain powers and duties of certain departments and certain other state and local officers; to provide for the promulgation of rules and establishment of fees; and to provide for penalties and remedies," by amending section 12 (MCL 328.222), as amended by 2004 PA 21.

*The People of the State of Michigan enact:*

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

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

(a) Before January 1, 2006, 60% of the funds received during that period from the sale of cemetery merchandise pursuant to prepaid contracts.

(b) After December 31, 2005 and before January 1, 2007, 65% of the funds received during that period from the sale of cemetery merchandise pursuant to prepaid contracts.

(c) After December 31, 2006 and before January 1, 2008, 70% of the funds received during that period from the sale of cemetery merchandise pursuant to prepaid contracts.

(d) After December 31, 2007 and before January 1, 2009, 75% of the funds received during that period from the sale of cemetery merchandise pursuant to prepaid contracts.

(e) After December 31, 2008, 80% of the funds received from the sale of cemetery merchandise pursuant to prepaid contracts.

(3) A prepaid contract may authorize the contract seller or provider to charge an additional commission of not more than 10% of the contract price which shall not be subject to the depository requirements of this section. If the contract price is paid in installments, the commission retained by the contract seller or the provider shall not exceed the rate of the commission charged in the prepaid contract for each installment. On cancellation, a contract buyer is entitled to a refund as provided in section 13(1) or (2).

(4) Only the following persons may serve as the escrow agent of funds under this section:

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

(b) If the prepaid contract is either a guaranteed or nonguaranteed price contract, a depository, a trust company, or a Michigan nonprofit corporation or association, in which the majority interest is held by 250 or more funeral

establishments licensed under article 18 of the occupational code, 1980 PA 299, MCL 339.1801 to 339.1812, or a Michigan nonprofit corporation or association, in which the majority interest is held by 30 or more cemeteries registered and operated pursuant to the cemetery regulation act, 1968 PA 251, MCL 456.521 to 456.543. If the prepaid contract is a guaranteed price contract, the contract seller or the provider shall not serve as the escrow agent.

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

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

(b) If the prepaid contract is a guaranteed price contract, the escrow agent shall be selected by the provider who has been designated to furnish the funeral services. If the prepaid contract does not include funeral services, the escrow agent shall be selected by any provider.

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

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

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

(b) If the prepaid contract is a guaranteed price contract, the principal and income may be invested only in accordance with section 7803 of the estates and protected individuals code, 1998 PA 386, MCL 700.7803, except that funds shall not be invested in a company owned by, operated by, or affiliated in any way with a contract seller or provider or an authorized agent of a contract seller or provider or in loans to any person directly connected with or employed by a contract seller or provider or an authorized agent of a contract seller or provider.

(8) Income shall be held and invested by the escrow agent in the same manner as the principal except that the income may be utilized to pay reasonable fees and expenses of the escrow agent in addition to other costs specifically authorized by this act. The expenses and fees paid to the escrow agent shall not exceed 1% of the aggregate balance of principal and prior earned income from each account annually. If a fee is charged for reasonable expenses for the administration costs under an escrow agreement, the amount may be paid to the escrow agent periodically or may be accumulated in the account and paid at the time of death or upon cancellation of the contract. A cemetery that has elected the escrowing option for cemetery merchandise provided in subsection (2) may provide by written agreement with the escrow agent to be paid accumulated income generated solely by the investment of funds received for the cemetery merchandise. Such payments to a cemetery may not be made more frequently than once in a 12-month period and shall not exceed the net amount of income earned in the previous 12 months less any amounts paid to the escrow agent for expenses and fees described in this subsection and an amount equal to any increase in the Detroit consumer price index.

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

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

(11) Upon the death of the contract beneficiary and upon performance by the provider of its obligation to furnish merchandise or funeral or cemetery services pursuant to the prepaid contract, funds held by the escrow agent shall be disbursed as follows:

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

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

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

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

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

(c) If the escrow agent is notified that there is a dispute as to whether the provider has performed all its obligations under the prepaid contract, the escrow agent shall file an action for interpleader or shall obtain an impartial arbitrator to determine the rights of the parties. Expenses of arbitration shall be shared equally by the parties unless otherwise ordered by the arbitrator.

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

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

(14) At least annually, unless waived in writing by a contract buyer, a contract buyer shall be furnished a statement indicating the current balance, the fees or expenses charged since the last statement, the amount of the refund to which a buyer is entitled if the contract is canceled, and the name and address of the escrow agent from whom additional information may be obtained about the account. The cost of the statement required by this subsection may be paid from the income and may be in addition to any other fee or charge authorized by this act.

This act is ordered to take immediate effect.

*Carol Morey Viventi*

Secretary of the Senate

*Richard J. Brown*

Clerk of the House of Representatives

Approved .....

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Governor