## **SENATE BILL No. 1378**

## June 8, 2010, Introduced by Senators STAMAS, CROPSEY 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:

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.

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:

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

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60% of the funds received during that period from the sale of
 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.

(e) For the forty-ninth month after the effective date of the
amendatory act that added this subdivision and thereafter 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

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prepaid contract for each installment. A-ON CANCELLATION, A contract buyer upon cancellation is entitled to a refund as 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 by 30 or more cemeteries registered and operated pursuant to the 16 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.

(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

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designated to furnish the funeral services. If the prepaid contract
 does not include funeral services, the escrow agent shall be
 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:

(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.

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

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expenses and fees paid to the escrow agent shall not exceed 1% of 1 2 the aggregate balance of principal and prior earned income from each account annually. If a fee is charged for reasonable expenses 3 4 for the administration costs under an escrow agreement, the amount 5 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 6 of the contract. A cemetery that has elected the escrowing option 7 for cemetery merchandise provided in subsection (2) may provide by 8 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.

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(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.

26 (11) Upon the death of the contract beneficiary and upon27 performance by the provider of its obligation to furnish

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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:

(a) If the prepaid contract is a nonguaranteed price contract, 4 5 the principal and income shall first be disbursed by the escrow agent to the provider of the merchandise or funeral or cemetery 6 7 services in payment of all reasonable charges. Thereafter, not less than 90% of the remaining balance of principal and income, if any, 8 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. The amount paid to the person entitled to receive the surplus shall 13 14 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.

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.

(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.

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

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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.

6 (12) A Michigan nonprofit corporation or association, in which the majority interest is held by 250 or more funeral establishments 7 or by 30 or more cemeteries registered and operated under the 8 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 shall20 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 in the event IF the contract is canceled, and the name and address of the escrow agent from whom additional information may be obtained relative to ABOUT the account. The cost of the statement required

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