

HOUSE BILL No. 5080

October 18, 2011, Introduced by Rep. Lori and referred to the Committee on Regulatory Reform.

A bill to amend 1986 PA 255, entitled
"Prepaid funeral and cemetery sales act,"
by amending sections 12 and 13 (MCL 328.222 and 328.223), section
12 as amended by 2010 PA 327 and section 13 as amended by 2004 PA
21.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 12. (1) ~~Except~~ **BEFORE JANUARY 1, 2012, AND EXCEPT** as
2 otherwise provided in subsection (2), all funds received in
3 connection with a prepaid contract shall be held in escrow by an
4 escrow agent. ~~for the benefit of the contract beneficiary.~~

5 (2) ~~Funds~~ **BEFORE JANUARY 1, 2012, FUNDS** received by a cemetery
6 registered under the cemetery regulation act, 1968 PA 251, MCL
7 456.521 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) AFTER DECEMBER 31, 2011, 50% OF THE FUNDS RECEIVED FROM THE SALE OF FUNERAL SERVICES OR CEMETERY SERVICES SHALL BE HELD IN ESCROW BY AN ESCROW AGENT.

(4) AFTER DECEMBER 31, 2011, AN AMOUNT OF FUNDS RECEIVED FROM THE SALE OF MERCHANDISE DESCRIBED IN SECTION 4(1)(K) EQUAL TO 130% OF THE COST TO THE PROVIDER OF THE MERCHANDISE SHALL BE HELD IN ESCROW BY AN ESCROW AGENT.

(5) ~~(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

1 provider shall not exceed the rate of the commission charged in the
2 prepaid contract for each installment. On cancellation, a contract
3 buyer is entitled to a refund as provided in section 13(1) or (2).

4 (6) ~~(4)~~ Only the following persons may serve as the escrow
5 agent 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) If the prepaid contract is either a guaranteed or
10 nonguaranteed price contract, a depository, a trust company, or a
11 Michigan nonprofit corporation or association, in which the
12 majority interest is held by 250 or more funeral establishments
13 licensed under article 18 of the occupational code, 1980 PA 299,
14 MCL 339.1801 to 339.1812, or a Michigan nonprofit corporation or
15 association, in which the majority interest is held by ~~30~~ 20 or
16 more cemeteries registered and operated ~~pursuant to~~ UNDER 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 (7) ~~(5)~~ If the escrow agent is not the contract seller or
21 provider of a nonguaranteed price contract, the escrow agent shall
22 be 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 (8) ~~(6)~~—If the escrow agent is a person other than the person
5 to 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 (9) ~~(7)~~—Funds held by an escrow agent shall be held and
9 invested only as specified in the prepaid contract. A prepaid
10 contract may 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 7803 of the estates and protected individuals code, 1998 PA
17 386, MCL 700.7803, except that funds shall not be invested in a
18 company owned by, operated by, or affiliated in any way with a
19 contract seller or provider or an authorized agent of a contract
20 seller or provider or in loans to any person directly connected
21 with or employed by a contract seller or provider or an authorized
22 agent of a contract seller or provider.

23 (10) ~~(8)~~—Income shall be held and invested by the escrow agent
24 in the same manner as the principal except that the income may be
25 utilized to pay reasonable fees and expenses of the escrow agent in
26 addition to other costs specifically authorized by this act. The
27 expenses and fees paid to the escrow agent shall not exceed 1% of

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

16 (11) ~~(9)~~—Amounts of principal and income held by an escrow
17 agent other than the contract seller or provider of a nonguaranteed
18 price contract may be commingled with principal and income derived
19 from other prepaid accounts. However, a separate accounting of
20 principal and income shall be maintained for each prepaid contract
21 under the name of the contract beneficiary.

22 (12) ~~(10)~~—The escrow agent shall send to the contract buyer a
23 notice stating the date, amount of the deposit, and the name of the
24 escrow agent with whom the funds are deposited.

25 (13) ~~(11)~~—Upon the death of the contract beneficiary and upon
26 performance by the provider of its obligation to furnish
27 merchandise or funeral or cemetery services pursuant to the prepaid

1 contract, funds held by the escrow agent shall be disbursed as
2 follows:

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

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

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

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

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

26 (c) If the escrow agent is notified that there is a dispute as
27 to whether the provider has performed all its obligations under the

1 prepaid contract, the escrow agent shall file an action for
2 interpleader or shall obtain an impartial arbitrator to determine
3 the rights of the parties. Expenses of arbitration shall be shared
4 equally by the parties unless otherwise ordered by the arbitrator.

5 (14) ~~(12)~~—A Michigan nonprofit corporation or association, in
6 which the majority interest is held by 250 or more funeral
7 establishments **LICENSED UNDER ARTICLE 18 OF THE OCCUPATIONAL CODE,**
8 **1980 PA 299, MCL 339.1801 TO 339.1812,** or by ~~30~~ 20 or more
9 cemeteries registered and operated under the cemetery regulation
10 act, 1968 PA 251, MCL 456.521 to 456.543, may be designated as the
11 escrow agent under this section only if the contract buyer has
12 expressly authorized that designation in writing. If the contract
13 buyer authorizes the appointment as escrow agent of a Michigan
14 nonprofit corporation or association in the prepaid contract, the
15 authorization shall be set forth in a separate paragraph which
16 shall not be effective unless separately signed or initialed by a
17 contract buyer and which shall state that the contract buyer may
18 elect to require that a depository or a trust company be designated
19 as the escrow agent.

20 (15) ~~(13)~~—If a prepaid contract is canceled, the escrow agent
21 shall disburse the principal and income in accordance with section
22 13.

23 ~~—— (14) At least annually, unless waived in writing by a contract~~
24 ~~buyer, a contract buyer shall be furnished a statement indicating~~
25 ~~the current balance, the fees or expenses charged since the last~~
26 ~~statement, the amount of the refund to which a buyer is entitled if~~
27 ~~the contract is canceled, and the name and address of the escrow~~

1 ~~agent from whom additional information may be obtained about the~~
2 ~~account. The cost of the statement required by this subsection may~~
3 ~~be paid from the income and may be in addition to any other fee or~~
4 ~~charge authorized by this act.~~

5 Sec. 13. (1) ~~A~~ **FOR ALL NONGUARANTEED PREPAID CONTRACTS AND FOR**
6 **THOSE GUARANTEED PREPAID CONTRACTS ENTERED INTO BEFORE JANUARY 1,**
7 **2012, A** contract buyer may cancel a prepaid contract at any time
8 before the death of the contract beneficiary upon 30 days' prior
9 written notice to the contract seller of a nonguaranteed price
10 contract or to the provider designated to furnish merchandise or
11 funeral or cemetery services pursuant to a guaranteed price
12 contract. The contract seller or provider shall promptly notify the
13 escrow agent of the cancellation and of its effective date, if the
14 escrow agent is other than the contract seller or the provider.
15 After receipt of the notice of cancellation, except as otherwise
16 provided in subsection (2), the escrow agent shall disburse not
17 less than 90% of the principal and income in the escrow account to
18 the contract buyer pursuant to this subsection and shall disburse
19 the remainder of the principal and income, if any, to the contract
20 seller or the provider. The refund to the contract buyer shall be
21 determined as follows:

22 (a) If no commission has been charged pursuant to section
23 ~~12(1), 12,~~ at least 90% of the remaining balance of principal and
24 income in the escrow account or held by the trustee.

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

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

4 (2) In the case of funds received for cemetery merchandise by
5 a cemetery that has elected the escrowing option in section 12(2),
6 the escrow agent shall disburse the principal and income in the
7 account to the cemetery and the cemetery shall disburse to the
8 contract buyer 100% of the amount of the contract price paid by the
9 contract buyer plus an amount equal to any increase in the Detroit
10 consumer price index since the contract was executed.

11 (3) **FOR GUARANTEED PREPAID CONTRACTS ENTERED INTO AFTER**
12 **DECEMBER 31, 2011, A CONTRACT BUYER MAY CANCEL THE GUARANTEED**
13 **PREPAID CONTRACT UNTIL 12 MIDNIGHT OF THE THIRD BUSINESS DAY AFTER**
14 **THE DAY ON WHICH THE BUYER SIGNED THE GUARANTEED PREPAID CONTRACT.**
15 **CANCELLATION OCCURS WHEN THE CONTRACT BUYER MAILES OR HAND-DELIVERS**
16 **THE NOTICE OF CANCELLATION TO THE SELLER AT THE ADDRESS OF THE**
17 **SELLER LISTED ON THE GUARANTEED PREPAID CONTRACT. A CONTRACT BUYER**
18 **MAY NOT CANCEL THE GUARANTEED PREPAID CONTRACT IF THE SELLER IN**
19 **GOOD FAITH HAS MADE A SUBSTANTIAL BEGINNING OF PERFORMANCE OF THE**
20 **CONTRACT BEFORE THE CONTRACT BUYER GIVES NOTICE OF CANCELLATION.**
21 **UPON PROPER CANCELLATION, ALL FUNDS PAID BY THE CONTRACT BUYER TO**
22 **THE CONTRACT SELLER AND THE CONTRACT PROVIDER SHALL BE RETURNED TO**
23 **THE CONTRACT BUYER WITHIN 3 BUSINESS DAYS.**

24 (4) ~~(3)~~—A contract seller of a nonguaranteed price contract or
25 a provider designated to furnish merchandise or funeral or cemetery
26 services pursuant to a guaranteed price contract **ENTERED INTO**
27 **BEFORE JANUARY 1, 2012** may cancel a prepaid contract only if the

1 contract buyer of a guaranteed price contract is more than 90 days
2 delinquent in making any installment payment or partial payment, or
3 the contract buyer is otherwise in default as to any other
4 obligation under the contract. Upon cancellation, the contract
5 buyer shall receive a refund as determined ~~pursuant to~~ **UNDER**
6 subsection (1).

7 **(5) ~~(4) After~~ FOR ALL NONGUARANTEED PREPAID CONTRACTS AND FOR**
8 **GUARANTEED PREPAID CONTRACTS ENTERED INTO BEFORE JANUARY 1, 2012,**
9 **AFTER** the death of the contract beneficiary, the contract buyer or
10 the contract buyer's estate may cancel the prepaid contract only
11 where there are no remains of the deceased; where the remains of
12 the deceased cannot be recovered; or where a prepaid contract was
13 not utilized due to lack of knowledge by the person or persons
14 entitled to make funeral arrangements of the existence of the
15 prepaid contract. After such a cancellation, the contract buyer or
16 the contract buyer's estate shall receive a refund in accordance
17 with subsection (1) or (2) within 30 days after receipt by the
18 contract seller or the provider of a request for payment from the
19 contract buyer or the contract buyer's estate. Contracts may be
20 upgraded after the death of the contract beneficiary by a person on
21 behalf of the contract beneficiary's estate or by a person entitled
22 to make funeral or cemetery arrangements. This subsection does not
23 prevent the transfer of a contract from 1 provider to another
24 provider upon the request of those entitled to make funeral
25 arrangements.

26 **(6) ~~(5)~~** Prior to the death of the contract beneficiary and in
27 the case of a prepaid contract or multiple prepaid contracts

1 containing any of the merchandise or services escrowed under
2 section 12(1) together with cemetery merchandise escrowed under
3 section 12(2), the buyer may cancel that portion of the contract
4 pertaining to the cemetery merchandise alone, without canceling the
5 remaining portions. Such cancellation is subject to refund pursuant
6 to section 13(2). **UNDER SUBSECTION (2).**

7 (7) ~~(6)~~ A contract seller or a provider that assigns or
8 transfers its obligations under a prepaid contract to another
9 provider shall notify the contract buyer of the assignment in
10 writing. ~~If the contract buyer cancels the contract within 30 days~~
11 ~~of the notification of the assignment, the buyer shall be entitled~~
12 ~~to a refund of 100% of the remaining principal and income plus the~~
13 ~~commission, if any, charged in accordance with section 12(1) or~~
14 ~~(2). An assignment or transfer of a provider's obligations under a~~
15 ~~prepaid contract that is made in connection with the sale of a~~
16 ~~business is subject to this subsection only if more than 50% of the~~
17 ~~ownership interest in the business is transferred to another person~~
18 ~~or persons within a 12 month period. Upon sale of the business, the~~
19 ~~notice requirement of this subsection is the responsibility of the~~
20 ~~purchaser. This subsection does not apply to an assignment of a~~
21 ~~financial interest in an installment contract to a financial~~
22 ~~institution. At the time that the contract seller or provider~~
23 ~~receives payment in exchange for selling or assigning its financial~~
24 ~~interest in an installment contract to a financial institution, the~~
25 ~~contract seller or provider shall be required to place in escrow~~
26 ~~the amount required by this act. This subsection does not apply to~~
27 burial rights or other land interests, crypts, inscribed grave

1 memorials, or niches. ~~, for which no refunds are available.~~