STATE OF NEW YORK

7838--A

2017-2018 Regular Sessions

IN ASSEMBLY

May 16, 2017

Introduced by M. of A. CUSICK, MAGNARELLI, STIRPE, LUPARDO -- read once and referred to the Committee on Consumer Affairs and Protection -- recommitted to the Committee on Consumer Affairs and Protection in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, the insurance law and the public health law, in relation to preneed insurance; and providing for the repeal of such provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph (a) of subdivision 1 of section 453 of the general business law, as amended by chapter 557 of the laws of 2001, is amended to read as follows:

(a) Any and all moneys paid to a funeral firm, funeral director, undertaker, cemetery, or any other person, firm or corporation, under or in connection with an agreement, or any option to enter into an agreement, for the sale of merchandise to be used in connection with a funeral or burial, or for the furnishing of personal services of a funeral director or undertaker, wherein the merchandise is not to be actually physically delivered or the personal services are not to be rendered until the occurrence of the death of the person for whose funeral or burial such merchandise or services are to be furnished shall continue to be the money of the person making such payment and shall be held in trust for such person by the funeral firm, funeral director, undertaker, cemetery or any other person, firm or corporation to whom such payment is made and shall, within ten business days of receipt, be deposited in an interest bearing account in a bank, national bank, federal savings bank, federal savings and loan association, savings bank, savings and loan association, credit union, or federal credit union within the state and duly authorized to receive deposits in the state of New York and

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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which shall earn interest at a rate which shall be at not less than the prevailing rate of interest earned by other such deposits in such banks, savings banks, savings and loan associations, or credit unions under this section, or shall be placed in a trust company in an investment backed by the government of the United States and shall not be commingled with other moneys of the funeral firm, funeral director, undertaker, cemetery, or other person, firm or corporation or become the funds of the funeral firm, funeral director, undertaker, cemetery, or other person, firm or corporation, and shall be so held on deposit, together with any interest thereon, until said merchandise has been actually physically delivered and said personal services have been rendered, unless sooner repaid, in whole or in part**; provided, however, that any and all money paid to a life insurance company as premium for preneed life insurance as defined in section one hundred seven of the insurance law shall be considered as premium paid to an insurer**. No funeral firm, funeral director, undertaker, cemetery or any other person, firm or corporation, shall discharge the obligation established under this section to deposit or place money with a bank, national bank, federal savings bank, federal savings and loan association, savings bank, savings and loan association, credit union, federal credit union or trust company within the state through a surety bond or other financial instrument unless expressly provided under this section.

§ 2. Subsection (a) of section 107 of the insurance law is amended by adding a new paragraph 55 to read as follows:

(55) "Preneed life insurance" means any life insurance policy or certificate that is issued in combination with, in support of, with an assignment to, or as a guarantee for, a prearrangement agreement for goods and services, or other benefits, to be provided at the time of and immediately following the death of the insured. Goods and services may include embalming, cremation, body preparation, viewing or visitation, coffin or urn, memorial stone, and transportation of the deceased. The status of the policy or certificate as preneed life insurance is determined at the time of issue in accordance with the policy form filing.

§ 3. Subsection (d) of section 3208 of the insurance law is amended to read as follows:

(d) No person, firm, association, society, or corporation engaged in this state in the business of providing for the payment of funeral, burial or other expenses of deceased members, whether or not it be subject to the other provisions of this chapter, and no insurer shall:

(1) deliver or issue for delivery in this state any contract or policy whereby the benefit or any part thereof accruing under such contract or policy, upon the death of such member or of the person insured, shall be payable to a designated or restricted funeral director or funeral directing concern or other person engaged in such trade or business, or to any official or designated group of them**, provided, however, that the insured may, pursuant to paragraph one of subsection (b) of section three thousand two hundred five of this article, immediately assign a contract or policy so procured or effectuated to a designated funeral home so long as the assignment is contingent upon the provision of funeral goods and services by the assignee at the time of death of the insured**; or

(2) pay any such benefit or any part thereof to any funeral director or funeral directing concern or other person engaged in such trade or business or to any official or designated group of them, without the consent of the person or persons entitled to such benefits**, subject however, to any contingent assignment, the contingency of which has been**

satisfied through the provision of funeral goods and services by the assignee; or

(3) in any way deprive the personal representative or family of the deceased of the advantages of competition in procuring and purchasing supplies and services in connection with the burial of such deceased; or

(4) permit the seller or provider of the preneed life insurance policy to be named as the owner or beneficiary of the policy of preneed life insurance; or

(5) sell or offer to sell any contract or policy of preneed life insurance with a face value greater than twenty thousand dollar, plus an annual percentage increase based on the Annual Consumer Price Index compiled by the United States Department of Labor, beginning with the Annual Consumer Price Index announced by the United States Department of Labor for two thousand nineteen.

§ 4. Section 3208 of the insurance law is amended by adding a new subsection (e) to read as follows:

(e) The following information shall be adequately disclosed at the time an application is made, prior to accepting the applicant's initial premium or deposit, for any contract or policy of preneed life insurance:

(1) The fact that a life insurance policy is involved or be used to fund a prearrangement;

(2) The nature of the relationship among the soliciting agent or agents, the provider of the funeral or cemetery merchandise services, the administrator and any other person;

(3) The relationship of the life insurance policy to the funding of the prearrangement and the nature and existence of any guarantees relating to the prearrangement;

(4) The impact on the prearrangement of any:

(A) Changes in the life insurance policy including but not limited to, changes in the assignment, beneficiary designation or use of the proceeds;

(B) Penalties to be incurred by the policy holder as a result of failure to make premium payments;

(C) Penalties to be incurred or monies to be received as a result of cancellation or surrender of the life insurance policy;

(5) A list of the merchandise and services which are applied or contracted for in the prearrangement and all relevant information concerning the price of the funeral services, including and indication that the purchase price is either guaranteed at the time of purchase or to be determined at the time of need;

(6) The fact that the applicant has the right to surrender the life insurance policy, together with a written request for cancellation, to the insurer during a period of not less than ten days nor more that thirty days from the date the policy was delivered to the policy owner for a refund of premium paid pursuant to paragraph eleven of subsection (a) of section three thousand two hundred three of this article;

(7) All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the proceeds of the life insurance policy and the amount actually needed to fund the prearrangement;

(8) Any penalties or restrictions, including but not limited to geographic restrictions or the inability of the provider to perform, on the delivery of merchandise, services or the prearrangement guarantee;

(9) If so, the fact that a sales commission or other form of compensation is being paid and the identity of the individuals or entities to whom is it paid.

§ 5. Paragraph (l) of subdivision 1 of section 3450 of the public health law, as amended by chapter 560 of the laws of 1998, is amended to read as follows:

(l) has paid, given, has caused to be paid or given or offered to pay or to give to any person a commission**, excluding a commission authorized pursuant to article twenty-one of the insurance law,** or other valuable consideration for the solicitation or procurement, either directly or indirectly, of funeral patronage, or has accepted any consideration (including without limitation a commission, **excluding a commission authorized pursuant to article twenty-one of the insurance law,** rebate, or discount or direct or indirect price reduction on merchandise from the current value thereof) from any financial institution or trust company, or agent thereof, with whom the funeral director deposits funds paid for funeral services in advance of need pursuant to subdivision one of section four hundred fifty-three of the general business law;

§ 6. This act shall take effect immediately and shall expire June 1, 2023 when upon such date the provisions of this act shall be deemed repealed; provided, however, that:

a. the amendments to paragraphs 2 and 3 of subsection (d) of section 3208 of the insurance law made by section three of this act shall take effect on the same date as the reversion of such paragraphs pursuant to section 6 of chapter 557 of the laws of 2001, as amended;

b. the amendments to paragraph (l) of subdivision 1 of section 3450 of the public health law made by section five of this act shall take effect on the same date as the reversion of such paragraph pursuant to section 6 of chapter 557 of the laws of 2001, as amended; and

c. if such reversion pursuant to section 6 of chapter 557 of the laws of 2001, as amended, shall have occurred prior to the effective date of this act, section three and five of this act shall take effect immediately.