

# STATE OF NEW YORK

5677

2019-2020 Regular Sessions

## IN SENATE

May 10, 2019

Introduced by Sen. COMRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law and the public health law, in relation to financial liability and disclosure for funeral homes

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

1 Section 1. Paragraph (a) of subdivision 1 and subdivisions 8 and 10 of  
2 section 453 of the general business law, paragraph (a) of subdivision 1  
3 as amended by chapter 557 of the laws of 2001, subdivision 8 as amended  
4 by chapter 529 of the laws of 1993, and subdivision 10 as added by chap-  
5 ter 279 of the laws of 2007 are amended and three new subdivisions 12,  
6 13, and 14 are added to read as follows:

7 (a) Any and all moneys paid to a funeral firm, funeral director,  
8 undertaker, cemetery, or any other person, firm or corporation, under or  
9 in connection with an agreement, or any option to enter into an agree-  
10 ment, for the sale of merchandise to be used in connection with a funer-  
11 al or burial, or for the furnishing of personal services of a funeral  
12 director or undertaker, wherein the merchandise is not to be actually  
13 physically delivered or the personal services are not to be rendered  
14 until the occurrence of the death of the person for whose funeral or  
15 burial such merchandise or services are to be furnished shall continue  
16 to be the money of the person making such payment and shall be held in  
17 trust for such person by the funeral firm, funeral director, undertaker,  
18 cemetery or any other person, firm or corporation to whom such payment  
19 is made and shall, within ten business days of receipt, be deposited in  
20 an interest bearing account in a bank, national bank, federal savings  
21 bank, federal savings and loan association, savings bank, savings and  
22 loan association, credit union, or federal credit union within the state  
23 and duly authorized to receive deposits in the state of New York and  
24 which shall earn interest at a rate which shall be at not less than the  
25 prevailing rate of interest earned by other such deposits in such banks,

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

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1 savings banks, savings and loan associations, or credit unions under  
2 this section, or shall be placed in a trust company in an investment  
3 backed by the government of the United States and shall not be commin-  
4 gled with other moneys of the funeral firm, funeral director, undertak-  
5 er, cemetery, or other person, firm or corporation or become the funds  
6 of the funeral firm, funeral director, undertaker, cemetery, or other  
7 person, firm or corporation, and shall be so held on deposit, together  
8 with any interest thereon with interest earned being accrued daily and  
9 credited monthly, until said merchandise has been actually physically  
10 delivered and said personal services have been rendered, unless sooner  
11 repaid, in whole or in part. No funeral firm, funeral director, under-  
12 taker, cemetery or any other person, firm or corporation, shall  
13 discharge the obligation established under this section to deposit or  
14 place money with a bank, national bank, federal savings bank, federal  
15 savings and loan association, savings bank, savings and loan associ-  
16 ation, credit union, federal credit union or trust company within the  
17 state through a surety bond or other financial instrument unless  
18 expressly provided under this section.

19 8. Records required by this section to be maintained and true copies  
20 of agreements shall be retained for four years following the provisions  
21 of funeral merchandise and services or, if a preneed administrator, for  
22 four years after final payment is disbursed pursuant to the agreement.  
23 In the event the funds are returned to the person who deposited the  
24 money or their representative, such records, including the record of  
25 return of funds shall be retained for a period of four years after the  
26 sale, transfer, termination, cessation of operation or discontinuance of  
27 the funeral. For purposes of this section, records shall include, but  
28 not be limited to, a copy of the agreement, a death certificate and a  
29 copy of the check or other payment made pursuant to the agreement.  
30 Copies of such records shall be made available for inspection and shall  
31 be made available during ordinary business hours for copying upon writ-  
32 ten request by any state agency regulating the funeral firm, funeral  
33 director, undertaker, cemetery or other person, firm or corporation  
34 which received such money or enforcing the requirements of this section,  
35 provided a complaint, either oral or written, has been received, or an  
36 inspector has grounds to believe that serious or repeat violations of  
37 this section have occurred.

38 10. For the purposes of [~~subdivision eleven of~~] this section, "preneed  
39 administrator" means any person, partnership, firm, limited liability  
40 company or corporation, which is either domiciled in or doing business  
41 in the state of New York, and which has received money under or in  
42 connection with an agreement executed pursuant to this section; and  
43 "county" shall refer only to a county located within the state of New  
44 York. For the purposes of subdivision five of this section, "preneed  
45 administrator" shall also include any successor, assignee or transferee  
46 of funds held pursuant to this section.

47 12. A preneed administrator operating under this section shall conduct  
48 an audit of all of its accounts relating to preneed agreements as of the  
49 thirty-first of December of each calendar year. The audit shall include  
50 the following requirements:

51 (a) The audit shall be performed by a certified public accountant  
52 licensed to practice in New York state.

53 (b) The audit shall be completed and delivered to the preneed adminis-  
54 trator within one hundred twenty days of the end of such calendar year.

1 (c) The audit shall verify, by way of a representative sample, that  
2 the preneed administrator has a signed copy of the agreement for each  
3 account.

4 (d) The audit shall verify, by way of a representative sample, that  
5 appropriate income tax reports have been sent by the preneed administra-  
6 tor to the owner of each account.

7 (e) The audit shall verify that the investment of all funds for the  
8 agreements is in compliance with this section.

9 (f) The audit shall verify, by an appropriate sampling method, that  
10 the earnings on the investments are being properly applied to each  
11 account and that the earnings are credited to each account at least  
12 monthly.

13 (g) The audit shall express an opinion that the financial statements  
14 of the preneed administrator fairly represent the financial condition of  
15 the funds received in all material respects, and that all financial  
16 information distributed by the preneed administrator to consumers,  
17 funeral homes or other parties is accurate.

18 (h) The audit shall verify that the stated yield credited to the  
19 account for that fiscal year, as announced by the preneed administrator,  
20 is accurate.

21 13. (a) In no event shall the administrative fees charged under a  
22 preneed agreement in any calendar year exceed the net income credited to  
23 an account for such calendar year; that is, the account balance shall  
24 never be reduced in any calendar year because of administrative fees  
25 charged against the account.

26 (b) Any administrative fees otherwise payable in relation to preneed  
27 agreements which are not paid in any calendar year because of the limi-  
28 tations in paragraph (a) of this subdivision shall not be collected in  
29 any subsequent calendar year.

30 14. A preneed administrator operating under this section shall, at the  
31 end of each calendar year, have all assets valued and presented in  
32 accordance with generally accepted accounting principles.

33 § 2. Paragraph (1) of subdivision 1 of section 3450 of the public  
34 health law, as amended by chapter 557 of the laws of 2001, is amended to  
35 read as follows:

36 (1) has paid, given, has caused to be paid or given or offered to pay  
37 or to give to any person a commission or other valuable consideration  
38 for the solicitation or procurement, either directly or indirectly, of  
39 funeral patronage, or has accepted any consideration (including without  
40 limitation a commission, rebate, or discount or direct or indirect price  
41 reduction on merchandise from the current value thereof) from any finan-  
42 cial institution or trust company, or agent thereof, with whom the  
43 funeral director deposits funds paid for funeral services in advance of  
44 need pursuant to subdivision one of section four hundred fifty-three of  
45 the general business law except that the funeral director may accept,  
46 from the financial institution, trust company or agent thereof, up to  
47 twenty-five hundredths of one percent of the fee authorized under para-  
48 graph (b) of subdivision three of section four hundred fifty-three of  
49 the general business law for administrative services provided by the  
50 funeral director, or has accepted any consideration (including without  
51 limitation a commission or gift) from any insurer or agent thereof, to  
52 sell, offer or promote the sale of any policy of insurance payable,  
53 expressly or as marketed, at the death of the insured for funeral or  
54 burial expenses;

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

4 (1) has paid, given, has caused to be paid or given or offered to pay  
5 or to give to any person a commission or other valuable consideration  
6 for the solicitation or procurement, either directly or indirectly, of  
7 funeral patronage, or has accepted any consideration (including without  
8 limitation a commission, rebate, or discount or direct or indirect price  
9 reduction on merchandise from the current value thereof) from any finan-  
10 cial institution or trust company, or agent thereof, with whom the  
11 funeral director deposits funds paid for funeral services in advance of  
12 need pursuant to subdivision one of section four hundred fifty-three of  
13 the general business law except that the funeral director may accept,  
14 from the financial institution, trust company or agent thereof, up to  
15 twenty-five hundredths of one percent of the fee authorized under para-  
16 graph (b) of subdivision three of section four hundred fifty-three of  
17 the general business law for administrative services provided by the  
18 funeral director;

19 § 4. This act shall take effect on the ninetieth day after it shall  
20 have become a law, provided that the amendments to paragraph (1) of  
21 subdivision 1 of section 3450 of the public health law made by section  
22 two of this act shall be subject to the expiration and reversion of such  
23 paragraph pursuant to section 6 of chapter 557 of the laws of 2001, as  
24 amended, when upon such date the provisions of section three of this act  
25 shall take effect.