

STATE OF NEW YORK

5677--A

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

LBD11658-02-9

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

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

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

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

52 (a) Be performed by a certified public accountant licensed to practice
53 in New York state;

54 (b) Be completed and delivered to the preneed administrator within one
55 hundred twenty days of the end of such calendar year;

1 (c) Verify, by way of a representative sample, that the preneed admin-
2 istrator has a signed copy of the agreement for each account;

3 (d) Verify, by way of a representative sample, that appropriate income
4 tax reports have been sent by the preneed administrator to the owner of
5 each account;

6 (e) Verify that the investment of all funds for the agreements is in
7 compliance with this section;

8 (f) Verify, by an appropriate sampling method, that the earnings on
9 the investments are being properly applied to each account and that the
10 earnings are credited to each account at least monthly;

11 (g) Express an opinion that the financial statements of the preneed
12 administrator fairly represent the financial condition of the funds
13 received in all material respects, and that all financial information
14 distributed by the preneed administrator to consumers, funeral homes or
15 other parties is accurate; and

16 (h) Verify that the stated yield credited to the account for that
17 fiscal year, as announced by the preneed administrator, is accurate.

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

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

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

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

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

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

55 (1) has paid, given, has caused to be paid or given or offered to pay
56 or to give to any person a commission or other valuable consideration

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

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