

STATE OF NEW YORK

5610

2021-2022 Regular Sessions

IN SENATE

March 12, 2021

Introduced by Sen. LANZA -- 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, 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:

1 Section 1. Paragraph (a) of subdivision 1 of section 453 of the general
2 business law, as amended by chapter 642 of the laws of 2019, is
3 amended to read as follows:

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

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

LBD06278-01-1

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

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

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

31 § 3. Subsection (d) of section 3208 of the insurance law, paragraphs 2
32 and 3 as amended by chapter 557 of the laws of 2001, is amended to read
33 as follows:

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

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

50 (2) pay any such benefit or any part thereof to any funeral director
51 or funeral directing concern or other person engaged in such trade or
52 business or to any official or designated group of them, without the
53 consent of the person or persons entitled to such benefits, subject
54 however, to any contingent assignment, the contingency of which has been
55 satisfied through the provision of funeral goods and services by the
56 assignee, or to pay any commission or other consideration to any funeral

1 director or funeral directing concern or employee thereof to induce such
2 person to sell or offer to sell any contract or policy of insurance
3 designated or marketed as payable for funeral or burial expenses upon
4 the death of the insured; or

5 (3) in any way deprive the personal representative or family of the
6 deceased of the advantages of competition in procuring and purchasing
7 supplies and services in connection with the funeral and burial arrange-
8 ments of such deceased; or

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

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

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

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

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

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

29 (3) The relationship of the life insurance policy to the funding of
30 the prearrangement and the nature and existence of any guarantees relat-
31 ing to the prearrangement;

32 (4) The impact on the prearrangement of any:

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

36 (B) Penalties to be incurred by the policy holder as a result of fail-
37 ure to make premium payments;

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

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

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

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

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

4 (9) If so, the fact that a sales commission or other form of compen-
5 sation is being paid and the identity of the individuals or entities to
6 whom is it paid.

7 § 5. Paragraph (1) of subdivision 1 of section 3450 of the public
8 health law, as amended by chapter 642 of the laws of 2019, is amended to
9 read as follows:

10 (1) has paid, given, has caused to be paid or given or offered to pay
11 or to give to any person a commission, excluding a commission authorized
12 pursuant to article twenty-one of the insurance law, or other valuable
13 consideration for the solicitation or procurement, either directly or
14 indirectly, of funeral patronage, or has accepted any consideration
15 (including without limitation a commission, excluding a commission
16 authorized pursuant to article twenty-one of the insurance law, rebate,
17 or discount or direct or indirect price reduction on merchandise from
18 the current value thereof) from any financial institution or trust
19 company, or agent thereof, with whom the funeral director deposits funds
20 paid for funeral services in advance of need pursuant to subdivision one
21 of section four hundred fifty-three of the general business law except
22 that the funeral director may accept, from the financial institution,
23 trust company or agent thereof, up to twenty-five hundredths of one
24 percent of the fee authorized under paragraph (b) of subdivision three
25 of section four hundred fifty-three of the general business law for
26 administrative services provided by the funeral director, or has
27 accepted any consideration (including without limitation a commission or
28 gift) from any insurer or agent thereof, to sell, offer or promote the
29 sale of any policy of insurance payable, expressly or as marketed, at
30 the death of the insured for funeral or burial expenses;

31 § 6. This act shall take effect immediately and shall expire June 1,
32 2026 when upon such date the provisions of this act shall be deemed
33 repealed.