



Funeral Consumers Alliance of Maryland and Environs

Protecting a consumer's right to a meaningful, dignified, and affordable funeral.

HB 593 - Favorable with amendments

Testimony for the House Committee on Health and Government Operations Of the Maryland General Assembly

March 5, 2014

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Chairman Hammen, Vice Chair Pendergrass and Members of the Committee:

Thank you for the opportunity to provide testimony from the Funeral Consumers Alliance of Maryland and Environs (FCAME) in support of House Bill 593 if amended.

FCAME is the volunteer-run, regional chapter of the Funeral Consumers Alliance (FCA), the oldest and largest non-profit watchdog organization protecting the rights (and wallets) of grieving consumers. FCA's many chapters across the country are dedicated to: helping consumers be more informed about death care options, and protecting the public from fraud and abuse in cremation, funeral and burial transactions. FCA and its chapters take no money from the death care industry or government, and act as a voice for consumer interests.

House Bill 593 would change language in statute 7-405 of the Health Occupations Article which now requires that money-trusted pre-need funeral contracts guarantee the total price of the goods and services agreed on when the contract is signed.

HB 593 as written clearly favors the funeral industry and removes one of the primary benefits that pre-need contracts now provide to consumers - inflation protection.

At present, a pre-need contract allows the buyer to lock-in current market prices as a way to protect against inflation, just as pre-paid tuition for college allows parents to lock in today's tuition rates. Such a guarantee prevents a funeral establishment from seeking to increase the contract price once the beneficiary dies.

Current law on pre-need contracts also avoids having surviving family members asked by a funeral establishment to make up the difference between the contract price and the market price at the time of death when the family already is having a difficult time. It also removes any uncertainty about the kind of funeral the family could afford in the event that costs have increased between when the pre-need contract is signed and the time of death.

The seller benefits under the current law by being able to essentially lock-in future business, which can aid long-term business planning as well as provide greater financial stability and predictability. The pre-need funds also offer the seller operating capital as well as the prospect of greater profits since the seller gets to keep whatever interest or dividends are earned on pre-need trust money prior to performance of the contract.

According to the legislative history surrounding the 1999 amendments to this statute (7-405) that authorized the use of insurance-funded pre-need contracts (*as stated in the Attorney General's opinion of March 1, 2013 relating to pre-need contracts*), the view held by legislators and industry

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representatives alike at that time was that one of the principal consumer benefits of pre-need funeral contracts is that they allow the buyer to “lock-in” the contract price.

Further evidence of this is the Board of Morticians & Funeral Directors’ regulations relating to pre-need. One of the list of circumstances that provide grounds for termination of a pre-need contract is that, “The seller is unable to perform under the terms and conditions of the pre-need contract *for reasons other than an increase in the cost of good and services* (COMAR10.29.06.06C(3) (emphasis added.)

For all these reasons, it’s understandable why the law affecting pre-need contracts reads as it does now, and why one could argue that HB 593 should be opposed because it clearly favors the funeral industry at the expense of the consumer.

Having said that, it should be acknowledged that with interest rates so low in recent years, funeral establishments have been unable to earn much money in interest from pre-need trusts they’ve sold which limits their ability to guarantee prices on certain goods and services they sell.

A number of funeral establishments in the state now are saying they will no longer accept payment (for certain items in a pre-need contract) from a consumer who wants to “spend down” his/her assets to qualify for Medicaid benefits (that restrict eligibility to those with limited funds). Why? The funeral establishments assert they can no longer afford to guarantee the cost of items over which they have no control.

If a consumer is unable to use his/her “spend down” money to fully fund an irrevocable trust at a funeral establishment to cover funeral expenses, the families of these consumers will be forced to pay funeral expenses from their own funds at the time of death, which places an unnecessary burden on them.

For these reasons, FCAME joins with the Maryland Board of Morticians and Funeral Directors in saying HB 593 could be supported IF a number of amendments are made to the bill that provide more transparency and clarity to the consumer on which items in pre-need contracts have a guaranteed price.

For example, if a “guaranteed contract” guarantees the price of goods and services and cash advance items specified in the contract, the contract should list the specific funeral goods and services or cash advance items included in the guarantee as well as those items whose price is not guaranteed.

Also, just as a pre-need contract should include the total price of the services and merchandise agreed on, the contract should also specify the total amount received for “non guaranteed” items that serves as a down payment toward future costs.

Since the statute (7-405) governing pre-need contracts would be amended by HB 593, it makes sense to use this opportunity to address other aspects of pre-need contracts in need of clarification. For example, language should be added to the statute stating that pre-need trust accounts can never be deemed an asset of an individual licensee or the licensed funeral establishment.

Also, an irrevocable assignment of benefits to a funeral establishment may be transferred at any time by the owner of the life insurance policy or annuity contract to any other licensed establishment.

In summary, the Funeral Consumers Alliance of Maryland & Environs supports HB 593 only if amendments are made to it that protect the consumer, such as are proposed by the Maryland Board of Morticians and Funeral Directors.

