

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 738
SENATE BILL 855

AN ACT TO REQUIRE DISCLOSURE OF PREARRANGEMENT INSURANCE
POLICY PROVISIONS AND TO AMEND THE FUNERAL AND BURIAL
TRUST FUNDS ACT.

The General Assembly of North Carolina enacts:

Section 1. Article 22A of Chapter 58 of the General Statutes is amended by adding the following new section to read:

"§ 58-213.13. Disclosure of prearrangement insurance policy provisions.

(a) As used in this section:

- (1) 'Prearrangement' means any contract, agreement, or mutual understanding, or any series or combination of contracts, agreements or mutual understandings, whether funded by trust deposits or prearrangement insurance policies, or any combination thereof, which has for a purpose the furnishing or performance of specific funeral services, or the furnishing or delivery of specific personal property, merchandise, or services of any nature in connection with the final disposition of a dead human body, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of, but does not mean the furnishing of a cemetery lot, crypt, niche, mausoleum, grave marker or monument.
- (2) 'Prearrangement insurance policy' means a life insurance policy, annuity contract, or other insurance contract, or any series of contracts or agreements in any form or manner, issued by an insurance company authorized by law to do business in this State, which, whether by assignment or otherwise, has for a purpose the funding of a specific preneed funeral contract or a specific insurance-funded funeral or burial prearrangement, the insured being the person for whose service the funds were paid.

(b) The following information shall be adequately disclosed by the insurance agent at the time an application is made, prior to accepting the applicant's initial premium, for a prearrangement insurance policy:

- (1) The fact that a prearrangement insurance policy is involved or being used to fund a prearrangement;
- (2) The nature of the relationship among the insurance agent or agents, the provider of the funeral or cemetery merchandise or services, the administrator, and any other person;

- (3) The relationship of the prearrangement insurance policy to the funding of the prearrangement and the nature and existence of any guarantees relating to the prearrangement;
- (4) The effect on the prearrangement of (i) any changes in the prearrangement insurance policy, including but not limited to, changes in the assignment, beneficiary designation, or use of the policy proceeds; (ii) any penalties to be incurred by the insured as a result of failure to make premium payments; and (iii) any penalties to be incurred or monies to be received as a result of cancellation or surrender of the prearrangement insurance policy;
- (5) All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the policy proceeds and the amount actually needed to fund the prearrangement; and
- (6) Any penalties or restrictions, including geographic restrictions or the inability of the provider to perform, on the delivery of merchandise, services, or the prearrangement guarantee."

Sec. 2. G.S. 90-210.31 reads as rewritten:

"§ 90-210.31. Deposit of trust funds.

(a) Except as provided in this section, all payments of money made to any person, partnership, association or corporation upon any agreement or contract, or any series or combination of agreements or contracts, but not including the furnishing of cemetery lots, crypts, niches, mausoleums, grave markers or monuments, which has for a purpose the furnishing or performance of funeral services, or the furnishing or delivery of personal property, merchandise, or services of any nature in connection with the final disposition of a dead human body, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of, are held to be trust funds. The person, partnership, association or corporation receiving the payments is declared to be a trustee thereof, and shall deposit all payments in a financial institution. All of the interest, dividends, increases or accretions of whatever nature earned by the funds deposited in a trust account shall remain with the principal of such account and become a part thereof, subject to all of the regulations concerning the principal of said fund herein contained. ~~The trust fund itself shall be solely liable for all taxes on said fund and its interest, dividends, increases and accretions.~~ Consistent with applicable tax laws, the trust fund may be charged with any taxes on said fund by reason of any interest, dividends, increases or accretions earned thereon, and for the reasonable charges paid by the trustee to itself or others for the preparation of fiduciary tax returns reporting such income. The trustee may establish an individual trust for each contract or a common trust fund for all contracts. The trust accounts shall be carried in the name of the person, partnership, association or corporation to whom pre-need payments are made, but accounting records shall be maintained showing the amounts deposited and invested, and interest, dividends, increases and accretions earned thereon, with respect to each purchaser's contract.

(a1) A funeral establishment licensed by the Commissioner may enter into an inflation-proof pre-need burial contract that establishes a fixed price for services and merchandise to be furnished at a future date regardless of changes in the cost of services and merchandise to the licensed funeral establishment. A licensed funeral establishment that enters into an inflation-proof pre-need burial contract may retain ten percent (10%) of all payments on the contract upon filing with the Commissioner a bond in the amount retained. The bond shall be in a form and with such surety or sureties, including a letter of credit issued by an insured financial institution, as may be required by the Commissioner, conditioned on compliance with G.S. 90-210.31(c1) and G.S. 90-210.32(b). In the event of noncompliance with G.S. 90-210.31(c1) the Commissioner shall disburse the proceeds of the bond in accordance with G.S. 90-210.31(c1), and in the event of noncompliance with G.S. 90-210.32(b) the Commissioner shall disburse the proceeds to the party who made the payments to the licensed funeral establishment. That portion of all payments on the contract not retained by the licensed funeral establishment shall be deposited in a trust fund as provided in subsection (a) of this section.

(b) All payments made under the agreement, contract or plan are and shall remain trust funds with the financial institution until the death of the person for whose service the funds were paid and until the delivery of all merchandise and full performance of all services called for by the agreement, contract or plan, except where payment is made pursuant to G.S. 90-210.32. The trust fund shall be established in an insured account in a financial institution and may be transferred from one approved financial institution to another.

(c) Upon the death of the beneficiary of a pre-need burial contract, the financial institution shall not pay funds it holds in trust under this section to the licensed funeral establishment until a certified statement is furnished to the financial institution that all terms and conditions of the contract have been fully performed by the licensed funeral establishment. Unless otherwise specified in the agreement, contract or plan, the said person, partnership, association or corporation shall have no obligation to deliver any merchandise or perform any services for which payment in full has not been deposited in the financial institution, and any amounts deposited which do not constitute payment in full shall be refunded to the estate of the deceased beneficiary of the plan or credited against the cost of merchandise or services contracted for by representatives of the deceased. Any balance remaining in the fund after payment for the merchandise and services as set forth in the agreement, contract or plan shall be paid to the estate of the beneficiary of the agreement, contract or plan.

(c1) In the event that a person, partnership, association, or corporation other than the contracting licensed funeral establishment to a pre-need burial contract provides the services, merchandise or personal property described in the contract for the beneficiary thereof, the funds deposited in a financial institution pursuant to G.S. 90-210.31(a) together with all interest, dividends, increases or accretions earned on such fund and any amount retained by the licensed funeral establishment pursuant to G.S. 90-210.31(a1) shall be paid to the provider of such services, merchandise or personal property upon submission to the financial institution and the licensed funeral establishment of a

certified copy of the death certificate of the beneficiary and a certified copy of the charges for the services, merchandise or personal property provided for the deceased. Any balance remaining in the financial institution or retained by the licensed funeral establishment after payment to the provider shall be paid to the estate of the beneficiary of the contract. Upon making payment pursuant to this subsection and giving notice of payment to the licensed funeral establishment, the financial institution shall be relieved from all further liability. Upon making payment pursuant to this subsection, the licensed funeral establishment shall be relieved from all further liability. This subsection shall not apply if the pre-need contract provides that it is irrevocable.

(d) Subsection (a) of this section does not apply to contracts for funeral service or merchandise sold as burial insurance policies which are regulated by Article 24A of Chapter 58 of the General Statutes.

(d1) This Article does not apply to pre-need burial contracts or prearrangements for funeral services or merchandise funded, at the direction of the purchaser, with the proceeds of any insurance policy regulated by Chapter 58 of the General Statutes.

(e) The Commissioner shall approve forms for pre-need burial contracts. All such contracts must be in writing, and no contract form shall be used without prior approval of the Commissioner. Any use or attempted use of an oral pre-need burial contract or any written pre-need burial contract in a form not approved by the Commissioner shall be deemed to be a violation of this Article by the person selling services or merchandise thereunder."

Sec. 3. G.S. 90-210.31(d1), set forth in Section 2 of this act, shall become effective retroactively from and after July 1, 1989. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of August, 1989.