

SENATE No. 440

The Commonwealth of Massachusetts

PRESENTED BY:

Michael O. Moore

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to consumer protection for preneed funerals.

PETITION OF:

NAME:

Michael O. Moore

DISTRICT/ADDRESS:

SENATE No. 440

By Mr. Moore, a petition (accompanied by bill, Senate, No. 440) of Michael O. Moore for legislation relative to consumer protection for preneed funerals. Financial Services.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to consumer protection for preneed funerals.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. As used in this Act the following definitions shall apply.

2 (a) "Board" means the Massachusetts Board of Registration of Funeral Directors and
3 Embalmers;

4 (b) "Financial institution" means a bank, credit union, trust company, savings bank, or
5 savings and loan association authorized by law to do business in this State;

6 (c) "Insurance company" means any corporation, limited liability company, association,
7 partnership, society, order, individual or aggregation of individuals engaging in or proposing or
8 attempting to engage as principals in any kind of insurance business, including the exchanging of
9 reciprocal or inter-insurance contracts between individuals, partnerships, and corporations;

10 (d) "Legal representative" means the person authorized by statute who would be
11 otherwise authorized to dispose of the remains of the preneed funeral contract beneficiary.

(e) "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 preneed funeral contract or an insurance-funded funeral or burial prearrangement, the insured or annuitant being the person for whose service the funds were paid;

(d) "Preneed funeral contract" 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 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, but does not mean the furnishing of a cemetery lot, crypt, niche, or mausoleum;

(e) "Preneed funeral contract beneficiary" means the person upon whose death the preneed funeral contract will be performed; this person may also be the purchaser of the preneed funeral contract;

(f) "Preneed funeral funds" means all payments of cash made to any person, partnership, association, corporation, or other entity upon any preneed funeral contract or any other agreement, contract, or prearrangement insurance policy, or any series or combination of preneed funeral contracts or any other agreements, contracts, or prearrangement insurance policies, but excluding the furnishing of cemetery lots, crypts, niches, and mausoleums, which have for a

purpose or which by operation provide for the furnishing or performance of funeral or burial 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, or the providing of the proceeds of any insurance policy for such use;

(g) "Preneed funeral planning" means offering to sell or selling preneed funeral contracts, or making other arrangements prior to death for the providing of funeral services or merchandise;

(h) "Preneed licensee" means a funeral establishment which has applied for and has been granted a license to sell preneed funeral contracts under MA Statute.

SECTION 2. If the preneed funeral contract purchaser chooses to fund the preneed funeral contract by a trust deposit or deposits, the preneed licensee shall deposit all funds in an insured account in a financial institution, in trust, in the preneed licensee's name as trustee within five business days. The preneed licensee, at the time of making the deposit as trustee, shall furnish to the financial institution the name of each preneed funeral contract purchaser and the amount of payment on each for which the deposit is being made. The preneed licensee may establish an individual trust fund for each preneed funeral contract or a common trust fund for all preneed funeral contracts. The trust accounts shall be carried in the name of the preneed licensee as trustee, but accounting records shall be maintained for each individual preneed funeral contract purchaser showing the amounts deposited and invested, and interest, dividends, increases, and accretions earned. Except as provided in this Act, all interest, dividends, increases, or accretions earned by the funds shall remain with the principal. The trust fund may be charged with applicable taxes and for reasonable charges paid by the trustee to itself or others for the

preparation of fiduciary tax returns. Penalties charged by a financial institution for early withdrawals caused by a transfer pursuant to statute shall be paid by the preneed licensee. Penalties charged as a result of other early withdrawals as permitted by this Article shall be paid from the trust fund, and the financial institution shall give the preneed funeral contract purchaser prompt notice of these penalties.

SECTION 3. Notwithstanding any other provision of law, if a preneed funeral contract is funded by a trust deposit or trust deposits, a preneed licensee may retain, free of the trust, up to ten percent (10%) of any payments made on a preneed funeral contract, provided that the preneed licensee fully discloses in writing in advance to the preneed funeral contract purchaser the percentage of the payments to be retained.

SECTION 4. If the preneed funeral contract purchaser chooses to fund the contract by a prearrangement insurance policy, the preneed licensee shall apply all funds received for this purpose to the purchase of the prearrangement insurance policy within five business days. The preneed licensee shall notify the insurance company of the name of each preneed funeral contract purchaser and the amount of each payment when the prearrangement insurance policy or policies are purchased.