



February 9, 1999

HOUSE BILL No. 1758

DIGEST OF HB 1758 (Updated February 2, 1999 2:47 pm - DI 101)

Citations Affected: IC 30-2.

Synopsis: Prepaid funeral services. Makes various amendments to provisions concerning the payment of funeral expenses, burial services, or merchandise in advance of need. Provides that if the division of family and children has a claim against the estate of a purchaser of prepaid services or merchandise, for the recovery of assistance paid to the purchaser during the purchaser's lifetime, the following is subject to recovery by the division of family and children: (1) Money that remains in a trust account and is retained by the seller of the prepaid services or merchandise. (2) Money that remains in a trust account and is returned by the seller to an individual designated by the purchaser or to the purchaser's estate.

Effective: July 1, 1999.

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January 26, 1999, read first time and referred to Committee on Commerce and Economic Development.
February 8, 1999, amended, reported — Do Pass.

HB 1758—LS 7662/DI 92+



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February 9, 1999

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

HOUSE BILL No. 1758

A BILL FOR AN ACT to amend the Indiana Code concerning trusts and fiduciaries.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 30-2-13-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. **(a) Except as**
3 **provided in subsection (b), this chapter applies to any written**
4 **agreement between a purchaser and a seller that obligates the**
5 **seller to provide prepaid services or merchandise, or both, for a**
6 **named individual in conjunction with the death, funeral, burial, or**
7 **final disposition of the individual.**

8 ~~(a)~~ **(b)** Except as provided in subsections ~~(b)~~ **(c)** and ~~(c)~~ **(d)**, this
9 chapter does not apply to the following:

- 10 (1) Perpetual care funds under IC 23-14-1.
11 (2) The sale of burial rights. However, this chapter applies to the
12 sale of services or merchandise sold in conjunction with the sale
13 of burial rights and to the use of free or discounted burial rights
14 as an inducement for a purchaser to transfer sellers.
15 (3) A contract between a purchaser and a seller that requires
16 delivery of prepaid services or merchandise, or both, not later
17 than one (1) year after the date of final payment and for

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1 circumstances other than death.

2 ~~(b)~~ (c) The annual reporting requirements of section 31 of this
3 chapter apply to a perpetual care fund.

4 ~~(c)~~ (d) The solicitation requirements of section 24 of this chapter
5 and the provisions concerning inducement in section 13(h) of this
6 chapter apply to the sale of burial rights.

7 SECTION 2. IC 30-2-13-5 IS AMENDED TO READ AS
8 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 5. As used in this
9 chapter, "delivery" means the time when:

10 (1) services are performed in connection with the funeral or other
11 disposition of the purchaser or the individual for whom services
12 are to be provided under the contract; ~~or~~

13 (2) **except for merchandise described in section 8(1)(A) and**
14 **8(1)(C) of this chapter, the merchandise is:**

15 (A) in the possession of the purchaser or used for the intended
16 purpose of the merchandise; or

17 (B) permanently installed on or in cemetery property, the
18 burial rights to which have been transferred or granted to the
19 purchaser or individual for whose interment the merchandise
20 is to be used; or

21 (3) except for merchandise described in section 8(1)(A) and
22 8(1)(C) of this chapter, the merchandise is:

23 (A) **purchased by the seller and** stored in manufactured form,
24 in a manner and number equal to all merchandise sold, on the
25 premises where the merchandise is to be used or installed and
26 specifically identified in the name of the purchaser, although
27 any applicable installation or final finishing fees remain
28 subject to the terms of the contract made under this chapter; or
29 (B) permanently identified with the name of the purchaser or
30 individual for whom the merchandise is to be provided and
31 delivered to a warehouse, with both title to the merchandise
32 and a warehouse receipt delivered to the purchaser, and
33 notification to and acceptance of delivery acknowledged in
34 writing by the purchaser.

35 SECTION 3. IC 30-2-13-5.5 IS ADDED TO THE INDIANA CODE
36 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**
37 **1, 1999]: Sec. 5.5. As used in this chapter, "escrow agent" means a**
38 **trustee as defined in section 11 of this chapter.**

39 SECTION 4. IC 30-2-13-8 IS AMENDED TO READ AS
40 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 8. As used in this
41 chapter, "prepaid services or merchandise" or "services or
42 merchandise" includes personal property or services:



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- 1 (1) typically sold or provided in connection with the final
 2 disposition or memorialization of human remains, including:
 3 (A) caskets or other primary containers, including rental,
 4 temporary, or disposable caskets or containers;
 5 (B) outer burial containers;
 6 (C) cremation or transportation containers;
 7 (D) funeral clothing or accessories;
 8 (E) monuments;
 9 (F) grave markers;
 10 (G) cremation urns;
 11 (H) embalming services;
 12 (I) funeral directing services provided at the time of death and
 13 in connection with the final disposition of human remains;
 14 (J) ~~opening and closing fees~~;
 15 ~~(K)~~ final date carving fees, including carving fees for double
 16 monuments;
 17 ~~(L)~~ (K) cremation;
 18 ~~(M)~~ (L) cremation services; and
 19 ~~(N)~~ (M) other funeral and burial items, including items of
 20 service or merchandise that may be rented or leased; and
 21 (N) **services or merchandise otherwise described as cash**
 22 **advance items under section 11.5 of this chapter but**
 23 **provided directly by the seller; and**
 24 (2) purchased in advance of need to be provided or delivered after
 25 the death of the ~~individual named~~ **purchaser or individual for**
 26 **whom services or merchandise are to be provided** in the
 27 contract.
- 28 SECTION 5. IC 30-2-13-9 IS AMENDED TO READ AS
 29 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 9. (a) Except as
 30 provided in subsection (b), as used in this chapter, "purchaser" means
 31 a person or firm contracting with a seller for services or merchandise
 32 to be provided or delivered for a named individual.
- 33 (b) As used in section 13(b) of this chapter, "purchaser" means:
 34 (1) an individual described in subsection (a);
 35 (2) the attorney in fact, appointed under IC 30-5, of an individual
 36 described in subsection (a);
 37 (3) the guardian, appointed under IC 29-3, of an individual
 38 described in subsection (a); or
 39 (4) if an individual described in subsection (a) is deceased:
 40 (A) the surviving spouse of the individual;
 41 (B) if there is no surviving spouse, the adult children of the
 42 individual; ~~or~~



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1 **(C) if there are no surviving adult children, the surviving**
 2 **parent or parents of the individual; or**

3 ~~(D)~~ **(D) if there is neither a surviving spouse nor adult**
 4 **children, nor a surviving parent,** the personal representative
 5 (as defined in IC 29-1-1-3) of the individual.

6 SECTION 6. IC 30-2-13-10 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 10. As used in this
 8 chapter, "seller" means a person **doing business as a sole proprietor,**
 9 a firm, a limited liability company, a corporation, an association, or a
 10 partnership contracting to provide services or merchandise, or both, to
 11 a named individual. ~~or contracting to provide or sell both a contract and~~
 12 ~~a funding mechanism to be used in conjunction with the purchase of~~
 13 ~~services or merchandise.~~

14 SECTION 7. IC 30-2-13-11 IS AMENDED TO READ AS
 15 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 11. (a) As used in this
 16 chapter, "trustee" means a:

- 17 (1) bank;
 18 (2) trust company;
 19 (3) savings association; ~~or~~
 20 (4) credit union; **or**

21 **(5) building and loan association;**

22 that maintains an office in Indiana and is qualified under state or
 23 federal law to serve as a trustee.

24 (b) For a contract using a life insurance policy as consideration, the
 25 term also includes a life insurance company **or other entity** that
 26 establishes a trust for the purposes of holding and administering life
 27 insurance policies ~~and annuity contracts~~ issued by ~~the~~ **an insurance**
 28 company to fund contracts under this chapter. **Notwithstanding any**
 29 **other law to the contrary, a life insurance company or other entity**
 30 **acting as a trustee shall comply with this chapter.**

31 (c) **For a contract using a previously issued life insurance policy**
 32 **as consideration, the seller is considered to be a qualified trustee if**
 33 **ownership is irrevocably assigned to the seller in conjunction with**
 34 **an assignment of death benefits.**

35 SECTION 8. IC 30-2-13-11.5 IS ADDED TO THE INDIANA
 36 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
 37 [EFFECTIVE JULY 1, 1999]: **Sec. 11.5. (a) As used in this chapter,**
 38 **"cash advance item" means an item of property or services or**
 39 **merchandise that is not provided directly by a seller and is**
 40 **described to a purchaser as one (1) of the following:**

- 41 **(1) A cash advance.**
 42 **(2) An accommodation.**



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- 1 (3) A cash disbursement.
 2 (4) An estimated future charge by a third party.
 3 (5) A similar term.
 4 (b) The term also refers to a service or property obtained from
 5 a third party for which the seller collects an estimated payment to
 6 be held in trust or escrow until services or merchandise subject to
 7 a contract are delivered because the cost of the service or property
 8 can only be estimated at the time the contract is made.
 9 (c) Cash advance items include the following:
 10 (1) Cemetery or crematory services.
 11 (2) Pallbearers.
 12 (3) Public transportation.
 13 (4) Clergy honoraria.
 14 (5) Flowers.
 15 (6) Musicians or singers.
 16 (7) Nurses.
 17 (8) Obituary notices.
 18 (9) Gratuities.
 19 (10) Death Certificates.
 20 (11) Sales tax.
 21 (12) Foreign language interpreters.
 22 (13) Religious commemorative services.
 23 (14) Fees charged for the following:
 24 (A) Interment.
 25 (B) Opening a grave or crypt.
 26 (C) Closing a grave or crypt.
 27 (d) If property or services are not cash advance items under this
 28 section, they are services or merchandise under section 8 of this
 29 chapter.
 30 SECTION 9. IC 30-2-13-12.1 IS AMENDED TO READ AS
 31 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 12.1. (a) This section
 32 applies to contracts for prepaid services or merchandise, or both,
 33 entered into under this chapter after December 31, 1995, **and before**
 34 **July 1, 1999.**
 35 (b) A purchaser may enter into more than one (1) contract under this
 36 chapter for prepaid services or merchandise, or both. Each contract
 37 may be funded with cash, either in a lump sum or installment
 38 payments, or an insurance policy, or both. The purchaser may revoke
 39 the contract if the purchaser sends the seller written notice of the
 40 revocation within thirty (30) days after the contract is signed by the
 41 purchaser and seller. If a purchaser revokes a contract, the seller shall
 42 refund to the purchaser, without interest, all property used to fund the

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1 contract. If the seller receives payment of at least five hundred dollars
 2 (\$500) in cash that must ultimately be placed in trust or escrow under
 3 this section, the seller shall, not more than five (5) days after receiving
 4 the payment, deposit the payment in escrow pending irrevocable
 5 deposit to trust or escrow authorized by either subsection (h) or (i).
 6 Thirty (30) days after the contract is signed all property paid or
 7 delivered to the seller to fund each contract shall be irrevocably
 8 deposited by the seller to trust or escrow authorized by either
 9 subsection (h) or (i). Except for installment contracts funded with cash
 10 and contracts funded with a newly issued insurance policy that has a
 11 limited or qualified death benefit period, all sellers shall guarantee the
 12 provision of all services and merchandise sold under a contract
 13 authorized by this chapter. At delivery, a seller may not impose
 14 additional charges to recover a difference between the original contract
 15 retail prices or current retail prices for services and merchandise that
 16 are sold under the contract, whichever is greater, and the amount on
 17 deposit in trust or escrow.

18 (c) If a contract under this chapter is funded with an insurance
 19 policy, the ownership of the insurance policy must be irrevocably
 20 assigned to a trustee. The seller may not borrow against, pledge,
 21 withdraw, or impair the cash value of the policy.

22 (d) A finance charge may be assessed on a contract sold on an
 23 installment basis, and the seller shall disclose to the purchaser all the
 24 applicable requirements under federal and state law.

25 (e) A seller or successor seller who has accepted cash or an
 26 insurance policy, or both as full payment of a contract under subsection
 27 (b) is responsible for providing all contracted prepaid services and
 28 merchandise if the insurance company or trust company used to fund
 29 the contract is insolvent.

30 (f) A purchaser who purchases a contract with cash or through an
 31 insurance contract shall make the payment for the contract payable only
 32 to the seller or insurer, respectively.

33 (g) A seller may not accept or deposit to trust or escrow cash, an
 34 insurance policy, or any other property as consideration for services or
 35 merchandise to be provided in the future except in connection with a
 36 contract authorized by this chapter.

37 (h) A trust account authorized and established under this chapter
 38 must:

- 39 (1) be irrevocable and require the seller to deposit to trust all
- 40 sums or property received from the purchaser;
- 41 (2) designate the seller as settlor and the seller as beneficiary;
- 42 (3) designate a trustee qualified under this chapter and authorize



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- 1 the trustee to charge a reasonable fee for services;
 2 (4) require that a separate account be maintained in the name of
 3 each purchaser;
 4 (5) require that interest earned on the account be added to the
 5 principal and reinvested;
 6 (6) permit assets of the separate accounts of several purchasers to
 7 be commingled for investment; and
 8 (7) require that on delivery of services or merchandise the trustee
 9 shall remit to the seller the amount on deposit in the purchaser's
 10 trust.

11 Upon full delivery of all services and merchandise under the contract,
 12 if the amount on deposit in the trust is greater than the seller's total
 13 current retail price of all services and merchandise under the contract,
 14 the remaining amount may but need not be returned to the individual,
 15 if any, designated by the purchaser to receive the remainder, or to the
 16 purchaser's estate.

17 (i) An escrow account authorized and established under this chapter
 18 must:

- 19 (1) be irrevocable and require the seller to deposit to escrow all
 20 sums or property received from the purchaser;
 21 (2) designate the seller as settlor and beneficiary;
 22 (3) designate a trustee qualified under this chapter and authorize
 23 the trustee to charge a reasonable fee for services;
 24 (4) require that the escrow account be maintained in the name of
 25 the seller and serve as a depository for all cash or other property
 26 received by the seller to fund contracts sold by the seller;
 27 (5) permit the commingling of cash for investment;
 28 (6) permit the seller to withdraw from the escrow account the
 29 current retail value of prepaid services or merchandise delivered
 30 under this chapter; and
 31 (7) permit any interest earned or appreciation in value of money
 32 or other property deposited in escrow to be paid to the seller not
 33 more frequently than monthly, to the extent that the total value of
 34 the escrow account after a payment under this subdivision is not
 35 less than the current retail value of all services and merchandise
 36 under the contracts that remain undelivered.

37 (j) A trust account or an escrow account established under this
 38 chapter:

- 39 (1) must include the provisions set forth in either subsection (h)
 40 or (i);
 41 (2) may be included as an integral part of a seller's contract
 42 through the execution of an adoption agreement that references

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- 1 the trust account or escrow account; and
 2 (3) is not required to be represented by a separate trust or escrow
 3 document for each contract.
- 4 (k) The entire value of an irrevocable trust or an escrow established
 5 under this chapter may not be considered as a resource in determining
 6 a person's eligibility for Medicaid under IC 12-15-2-17.
- 7 (l) A contract for prepaid services or merchandise, or both, entered
 8 into after June 30, 1997, must contain a statement that:
- 9 (1) the purchaser may revoke the contract under subsection (b)
 10 within thirty (30) days after the contract is signed; and
 11 (2) after thirty (30) days, the contract is irrevocable.
- 12 (m) This chapter does not prohibit a purchaser from immediately
 13 making the trust or escrow required under this chapter irrevocable and
 14 assigning ownership of an insurance policy used to fund a contract to
 15 obtain favorable consideration for Medicaid, Supplemental Security
 16 Income, or another public assistance program under federal or state
 17 law.
- 18 SECTION 10. IC 30-2-13-12.5 IS ADDED TO THE INDIANA
 19 CODE AS A NEW SECTION TO READ AS FOLLOWS
 20 [EFFECTIVE JULY 1, 1999]: **Sec. 12.5. (a) This section applies to
 21 the following contracts entered into or established under this
 22 chapter after June 30, 1999:**
- 23 (1) **Contracts for prepaid services.**
 24 (2) **Contracts for prepaid merchandise.**
 25 (3) **Trusts or escrows established to hold consideration paid
 26 for services or merchandise subject to a contract entered into
 27 under this chapter.**
- 28 (b) **A contract between a purchaser and a seller must:**
- 29 (1) **specify that the consideration for the contract is:**
- 30 (A) **cash, payable either in lump sum or installments; or**
 31 (B) **an insurance policy that is:**
- 32 (i) **newly issued in conjunction with and integral to the
 33 contract;**
 34 (ii) **issued previously in a transaction separate and
 35 distinct from the contract; or**
 36 (iii) **both.**
- 37 **If a contract is funded with an insurance policy, the
 38 ownership of the policy must be irrevocably assigned to a
 39 trustee and the seller may not borrow against, pledge,
 40 withdraw, or impair the cash value of the policy;**
- 41 (2) **specify that only the purchaser, acting by written notice to
 42 the seller, may revoke the contract within thirty (30) days**

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1 after the date the contract is signed by the purchaser and the
 2 seller and that the contract becomes irrevocable upon the
 3 expiration of the thirty (30) day period;

4 (3) specify that, if the contract is revoked, the seller shall
 5 refund and return to the purchaser, without interest, the cash
 6 or insurance policy used to fund the contract;

7 (4) specify that not more than thirty (30) days after the
 8 contract is signed by the purchaser and the seller, the whole
 9 of the cash or insurance policy serving as consideration for
 10 the contract must be deposited into a trust or escrow
 11 authorized by subsection (c) or (d). However, a seller may
 12 elect to serve as trustee of a previously existing life insurance
 13 contract;

14 (5) except as provided in subsection (f), unconditionally
 15 require that the seller shall deliver all services or
 16 merchandise, or both, specified in the contract and receive as
 17 consideration for the delivery of services or merchandise, or
 18 both, only the cash or insurance policy held in trust or escrow
 19 without regard to the solvency of the insurer or the adequacy
 20 or loss in value of any cash deposit or insurance policy used to
 21 fund a contract;

22 (6) except as provided in subsection (f), prohibit a seller from
 23 imposing additional charges to recover any shortage or
 24 difference between the retail prices for services or
 25 merchandise, or both, in effect on the date of delivery of the
 26 services or merchandise, or both, and the value of the trust or
 27 escrow applicable to the contract on the date of delivery;

28 (7) require that a seller accepting the transfer of a contract
 29 permitted under section 13 of this chapter shall honor the
 30 requirements and obligations of the contract;

31 (8) permit the seller to assess a finance charge on a contract
 32 sold on an installment basis and require that the seller
 33 disclose to the purchaser the applicable requirements of
 34 federal and Indiana law;

35 (9) provide that the contract must comply with the following
 36 requirements:

37 (A) The contract must be made in a form that is:

- 38 (i) written in clear and understandable language; and
- 39 (ii) printed in a size and style of type that is easy to read.

40 (B) The contract must describe the services, merchandise,
 41 or cash advance items being purchased.

42 (C) The contract must identify the following by name,

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address, and telephone number:

- (i) The seller.
- (ii) The purchaser.
- (iii) The contract beneficiary if the beneficiary is an individual other than the purchaser.

(D) The contract must contain the seller's certificate of authority number and the date of the contract.

(E) The contract must provide that if an item of the particular services or merchandise specified in the contract is unavailable at the time of delivery, the seller shall deliver services or merchandise similar in style, quality, and of equal value to the unavailable item in the place of the item.

(F) The contract must disclose the precise manner in which the contract is to be funded by:

- (i) identifying the consideration for the contract;
- (ii) identifying the name, number, and issuer of any insurance policy used to fund the contract; and
- (iii) including the identity and location of the trustee who is to hold the trust or escrow.

(G) The contract must disclose that the seller reserves the right to assess an extra charge for:

- (i) transportation costs;
- (ii) services or merchandise incurred in the transport of human remains a distance greater than twenty-five (25) miles from the seller's place of business; and
- (iii) service charges necessarily incident to the transport of human remains and in excess of those service charges specified in the contract.

(10) specify that a purchaser has the unrestricted right to designate one (1) or more successor sellers to whom the contract may be transferred under section 13 of this chapter, but that such a transfer is effective with the consent of the newly designated seller and upon the fulfillment of the other requirements of section 13 of this chapter;

(11) specify that if cash advance items are funded in the contract, the seller agrees to deliver the cash advance items under one (1) of the following alternatives:

- (A) Delivery is unconditionally guaranteed at the option of the seller.
- (B) Delivery is conditionally guaranteed for a seller and will be equal in value to the total value of the trust or escrow account maintained for the purchaser multiplied by

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- 1 the percentage of the total original contract price
2 represented by cash advance items;
- 3 (12) specify that a release from trust or escrow shall occur
4 only upon the seller's delivery of services or merchandise, or
5 both;
- 6 (13) permit, at the option of the seller, the incorporation of the
7 trust or escrow language contained in subsection (c) or (d)
8 directly into the contract;
- 9 (14) prohibit the seller from charging any service, transaction,
10 or other type of fee or charge unless the fee is:
- 11 (A) authorized under sections 12.5(c)(8) and 27 of this
12 chapter; or
- 13 (B) included within the definitions contained in section 8 or
14 11.5 of this chapter.
- 15 (c) A trust account authorized and established under this
16 chapter must:
- 17 (1) be irrevocable and require that the seller deposit all cash
18 or the insurance policy used to fund the contract into the trust
19 account;
- 20 (2) designate the seller as the beneficiary of the trust;
- 21 (3) designate a trustee qualified under this chapter and
22 authorize the trustee to assess the charges authorized under
23 section 18 of this chapter;
- 24 (4) require that a separate account be maintained in the name
25 of each purchaser;
- 26 (5) require that any interest, dividend, or accumulation in the
27 account be reinvested and added to the principal;
- 28 (6) permit the assets of the several, separate accounts to be
29 commingled for investment purposes;
- 30 (7) require that on delivery of services or merchandise the
31 trustee shall remit to the seller an amount equal to the seller's
32 current retail price for the services or merchandise delivered
33 to the extent the trust assets permit;
- 34 (8) on the day following the date the contract becomes
35 irrevocable, and at the sole discretion of the seller, permit the
36 seller of a contract funded with cash to deliver services
37 provided and to receive from trust an amount not to exceed
38 twenty percent (20%) of the sellers nondeclinable basic
39 professional funeral services fee; and
- 40 (9) permit the seller to retain the remaining amount if the
41 amount in the trust account is greater than the seller's total
42 current retail price of all services and merchandise subject to



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1 the contract at the time of delivery of all services or
2 merchandise subject to the contract. However, the seller may
3 opt to return the remaining amount to the individual
4 designated by the purchaser to receive the remainder or to the
5 purchaser's estate.

6 (d) An escrow account authorized and established under this
7 chapter must:

8 (1) be irrevocable and require that the seller deposit all cash
9 or the insurance policy used to fund the contract into the trust
10 account;

11 (2) designate the seller as the beneficiary of the trust;

12 (3) designate a trustee qualified under this chapter to act as
13 escrow agent and authorize the escrow agent to assess the
14 charges authorized under section 18 of this chapter;

15 (4) require that the escrow account be maintained in the name
16 of the seller and serve as a depository for all cash or insurance
17 policies used to fund contracts sold by the seller;

18 (5) permit the investment of and commingling of cash for
19 investment purposes;

20 (6) require that on delivery of services or merchandise, the
21 escrow agent shall remit to the seller an amount equal to the
22 seller's original retail price as set forth in the contract for the
23 services or merchandise delivered; and

24 (7) permit the seller to receive monthly payments of the
25 interest earned or the appreciation in the value of the escrow
26 assets to the extent that the total value of the escrow after a
27 payment authorized under this subdivision is not less than the
28 original contract value of all services or merchandise under
29 the contracts, or parts of the contracts that remain
30 undelivered.

31 (e) A trust account or an escrow account established under this
32 section must contain a concise written description of all the
33 provisions of this chapter that apply to the account.

34 (f) A seller's guarantee of delivery of all services or merchandise
35 subject to a contract sold by the seller or transferred to a seller is
36 unconditional except in the instance of one (1) of the following
37 circumstances:

38 (1) An installment contract funded with cash or an insurance
39 policy issued in conjunction with the contract is guaranteed to
40 the extent of the cash paid or death benefits available at the
41 time of death of the individual for whom services or
42 merchandise are to be provided.

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(2) A contract funded with an insurance policy issued previously and not in conjunction with the contract is guaranteed to the extent of the death benefit proceeds available at the time of the individual for whom services or merchandise are to be provided.

(3) A contract funded with an insurance policy issued in conjunction with the contract, but having a limited or qualified death benefit period, is guaranteed to the extent of the death benefit proceeds available at the time of the individual for whom services or merchandise are to be provided.

(4) A transportation expense incurred by the seller while transporting human remains a distance greater than twenty-five miles (25) from the seller's place of business, plus any charge for services or merchandise necessarily incident to the transport of the human remains.

(5) The seller agrees to conditionally guarantee the delivery of cash advance items under subsection (b)(11)(B).

In the instance of unguaranteed delivery, the seller may reduce the value or number of the services or merchandise subject to the contract or cash advance items delivered or deliver the services or merchandise in full on the condition that the seller receives adequate consideration to compensate the seller for the unguaranteed part of the contract.

(g) The entire value of an escrow or trust established under this chapter may not be considered as a resource in determining a person's eligibility for Medicaid under IC 12-15-2-17.

(h) This chapter does not prohibit a purchaser from immediately making the trust or escrow required under this chapter irrevocable and assigning ownership of an insurance policy used to fund a contract to obtain favorable consideration for Medicaid, Supplemental Security Income, or another public assistance program under federal or state law.

(i) A seller may not accept or deposit into a trust or escrow account cash, an insurance policy, or any other property as consideration for services or merchandise to be provided in the future except in conjunction with a contract authorized by this chapter.

(j) If the division of family and children has a claim against the purchaser's estate under IC 12-14-21, money that is:

- (1) retained by the seller under subsection (c)(9); or
- (2) returned to an individual designated by the purchaser or

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1 **to the purchaser's estate under subsection (c)(9);**
 2 **is subject to recovery by the division of family and children.**

3 SECTION 11. IC 30-2-13-13 IS AMENDED TO READ AS
 4 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 13. (a) Notwithstanding
 5 section 10 of this chapter, as used in this section, "seller" means ~~an~~
 6 ~~individual~~, **a person doing business as a sole proprietor**, a firm, a
 7 corporation, an association, **a limited liability company**, or a
 8 partnership

9 ~~(1) contracting to provide prepaid or at-need services or~~
 10 ~~merchandise, or both, to a named individual. or~~

11 ~~(2) contracting to provide or sell both a contract and a funding~~
 12 ~~mechanism to be used in conjunction with the purchase of prepaid~~
 13 ~~or at-need services or merchandise.~~

14 (b) A purchaser has the option to designate one (1) or more
 15 successor sellers to provide:

16 (1) prepaid services or merchandise; or

17 (2) at-need services or merchandise.

18 A purchaser who exercises the purchaser's option to designate a
 19 successor seller shall give written notice of the designation to the
 20 ~~original currently designated~~ seller, successor seller, and trustee. ~~or~~
 21 ~~escrow agent. Only a purchaser may exercise the option to~~
 22 ~~designate a new seller. However, the designation is ineffective~~
 23 ~~unless the newly designated seller consents to the designation.~~

24 (c) If a purchaser designates a successor seller, **and the successor**
 25 **seller consents to the designation**, not less than thirty (30) days after
 26 receiving notice under subsection (b), the seller who was previously
 27 designated shall:

28 (1) relinquish **and transfer** all rights under the contract;

29 (2) transfer to the successor the contract; and

30 (3) release from trust **or escrow for subsequent deposit to the**
 31 **successor seller's trust or escrow** all property being held as
 32 consideration for the contract, **together with an itemized**
 33 **statement disclosing all services or merchandise delivered as**
 34 **of the date of transfer. However, a seller using an escrow shall**
 35 **transfer ninety-five percent (95%) of the original contract**
 36 **price.**

37 The seller and the successor sellers shall cooperate to ensure that there
 38 is no forfeiture or loss of a right or benefit under the contract and that
 39 all contract terms are fulfilled. Except for out-of-state transfers, **for**
 40 **contracts funded with a life insurance policy and for contracts**
 41 **utilizing a trust and electing to deliver a part of services as**
 42 **authorized under section 12.5(c)(8) of this chapter, or for sellers**



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1 **experiencing a transfer due to suspension or revocation of a**
 2 **certificate of authority**, the seller who was previously designated may
 3 elect to charge a successor seller a transfer fee not to exceed five
 4 percent (5%) of the previously designated seller's **original** contract
 5 price, **less any services or merchandise delivered as of the date of**
 6 **notice of transfers**. If similar prepaid or at-need services or
 7 merchandise are purchased from one (1) or more sellers, the contract
 8 that is first in time prevails and is valid.

9 (d) The trustee shall confirm the transfer to the seller, successor
 10 seller, and purchaser by written notice confirming the identity and
 11 value of the property transferred.

12 (e) It is a violation of this chapter for a seller to knowingly induce
 13 a purchaser to breach an existing contract that provides for prepaid or
 14 at-need services or merchandise.

15 (f) This section does not abrogate the requirements of IC 25-15-4
 16 concerning contracting for or delivering at-need services and
 17 merchandise.

18 (g) It is a violation of this chapter for a seller to knowingly:

19 (1) induce a purchaser who has the right to designate a successor
 20 seller under subsection (b) to:

21 (A) make a designation of a successor seller;

22 (B) breach an existing contract for prepaid or at-need services
 23 or merchandise; or

24 (C) enter into an at-need or prepaid contract calling for the
 25 delivery of similar services or merchandise; or

26 (2) offer a monetary inducement or the exchange or substitution
 27 of free or discounted services or merchandise in an effort to
 28 induce a purchaser to effect a change in the designation of a seller
 29 of prepaid or at-need services or merchandise.

30 (h) It is a violation of this chapter for a seller to provide free or
 31 discounted burial rights:

32 (1) as an inducement or as consideration for the transfer of a
 33 contract; or

34 (2) in an effort to induce a purchaser to effect a change in the
 35 designation of a seller of prepaid or at-need services or
 36 merchandise.

37 SECTION 12. IC 30-2-13-14 IS AMENDED TO READ AS
 38 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 14. (a) A trust or an
 39 escrow agreement created under:

40 (1) IC 23-14-49-1;

41 (2) IC 30-2-9; or

42 (3) IC 30-2-10;



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1 may not be converted to a trust or an escrow agreement required by
2 section 12 or 12.5 of this chapter.

3 (b) A contract that has been funded with cash may not subsequently
4 be changed to be funded with **an insurance policy**.

5 (c) A contract that has been funded with **an insurance policy** may
6 not subsequently be changed to be funded with cash.

7 (d) **Unless the provisions of the contract require otherwise, a**
8 **new or successor trustee may not qualify and serve as trustee**
9 **without the written consent of the purchaser and the seller**
10 **designated to provide services or merchandise subject to a contract**
11 **under this chapter.**

12 SECTION 13. IC 30-2-13-15 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 15. (a) If a seller:

14 (1) ceases to have a certificate of authority or loses a professional
15 license required to provide services under this chapter;

16 (2) ceases to exist or operate;

17 (3) is incapable of performing the seller's obligations under an
18 unperformed contract for any reason; or

19 (4) sells or leases the seller's business, facilities, or assets;

20 the seller shall give notice to the board and to each purchaser for whom
21 funds are held in a trust under this chapter. **The notice shall specify**
22 **the reason for the issuance of the notice.**

23 (b) The seller's written notice under subsection (a) must be:

24 (1) addressed to the purchaser's last known address; and

25 (2) mailed within fifteen (15) days after the seller becomes
26 incapable of performing the obligations under the contract.

27 (c) A purchaser who receives a notice under subsection (a) has thirty
28 (30) days after the date the notice was mailed by the seller to select and
29 designate a new seller **under section 13 of this chapter** to become the
30 beneficiary of the trust. The first seller shall send written notice of the
31 designation of a new seller to the newly designated seller or to the
32 trustee.

33 (d) A seller shall transfer all unperformed contracts and funds held
34 in trust or escrow under this chapter to the seller who is the successor
35 owner or lessee of the transferring seller. The successor seller shall
36 perform all contracts transferred under this subsection.

37 (e) **If a purchaser fails to designate a new seller, the designation**
38 **shall be made by the board.**

39 SECTION 14. IC 30-2-13-16 IS AMENDED TO READ AS
40 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 16. (a) Except for sales
41 of stock or merchandise in the ordinary course of the seller's business,
42 a seller who has deposited money or an insurance policy ~~in trust~~ under

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1 **section 12 or 12.5** of this chapter may not:

2 (1) sell, consolidate, merge, or dispose of assets; or

3 (2) lease the seller's business, facilities, or assets;

4 without providing, as an integral part of the transaction or occurrence,
5 for the designation of a successor seller of the money or insurance
6 policy placed in trust. **For purposes of this section, a change in
7 control determines the seller's obligation.**

8 (b) If a seller acting as a trustee of an insurance policy fails to
9 designate a qualified successor seller, the board shall make the
10 designation. However, the designated successor must be willing to
11 accept the designation.

12 (c) This section does not restrict a purchaser's right to designate a
13 new seller in accordance with section 13 of this chapter.

14 SECTION 15. IC 30-2-13-18 IS AMENDED TO READ AS
15 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 18. A trustee ~~who~~
16 **administers a trust that is funded by a deposit of money or an escrow**
17 **agent** may be reimbursed for necessary expenses and be paid
18 reasonable compensation for those services from the trust. **A trustee**
19 **or an escrow agent shall also be permitted to withdraw from trust**
20 **any federal or state tax liability assessed against the purchasers'**
21 **interest in the trust or escrow.**

22 SECTION 16. IC 30-2-13-20 IS AMENDED TO READ AS
23 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 20. If an agent and a
24 purchaser execute a contract covering funeral services (as defined in
25 IC 25-15), the contract is valid only if the contract is ratified by a
26 funeral director licensed under IC 25-15 who is directly affiliated with
27 the seller as an agent when the contract is made. **A contract ratified**
28 **by an unaffiliated licensed funeral director is void.**

29 SECTION 17. IC 30-2-13-27 IS AMENDED TO READ AS
30 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 27. Each seller of a
31 prepaid contract under this chapter shall pay to the ~~board~~ **not later than**
32 **March 1** of each year from money not deposited in a trust the following
33 amounts for each contract written during the preceding calendar year:

34 (1) Two dollars and fifty cents (\$2.50) for each contract having a
35 total purchase price of less than one thousand dollars (\$1,000):

36 (2) Five dollars (\$5) for each contract having a total purchase
37 price of at least one thousand dollars (\$1,000): ~~trustee~~ **five**
38 **dollars (\$5) at the time the cash or an insurance policy used to**
39 **fund the contract is placed in the trust or escrow account. The**
40 **payment may be charged to the purchaser or, at the option of**
41 **the seller, paid by the seller. A trustee shall quarterly report**
42 **and remit to the board all payments received by the trustee**



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1 **from all sellers during the preceding quarter. The report must**
 2 **identify the name and address of each seller from whom the**
 3 **trustee received payments and the total amount of the**
 4 **payments. The payments are administered under section 28**
 5 **of this chapter.**

6 SECTION 18. IC 30-2-13-29 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 29. (a) Money in the
 8 fund may be used to provide restitution **to a seller who performs a**
 9 **defaulted contract**, to a purchaser, or to a purchaser's estate for
 10 pecuniary loss arising from a trust or an escrow required by:

- 11 (1) this chapter;
 12 (2) IC 23-14-49-1;
 13 (3) IC 30-2-9; or
 14 (4) IC 30-2-10.

15 The repeal of a statute cited in this subsection does not terminate the
 16 ability of a party to a contract made under the repealed statute to
 17 receive restitution under this chapter.

18 (b) The purchaser, **seller**, or other interested person must request
 19 restitution by filing a verified complaint with the board.

20 (c) The board may investigate any verified complaint. Within sixty
 21 (60) days after a verified complaint is filed, the board shall determine
 22 if a seller has defaulted on a contract. If the seller's obligation to
 23 perform under the contract cannot be collected from the seller, the
 24 board shall order the auditor of state to make restitution from the fund.

25 (d) The amount of restitution may not exceed the gross amount of
 26 the original contract plus interest, compounded annually, on the gross
 27 amount that is figured, for each year or part of a year for which
 28 restitution is owed, using the lesser of:

- 29 (1) the rate set forth in IC 24-4.6-1-101 in effect on January 1 of
 30 each year; or
 31 (2) the monthly average yield on United States Treasury
 32 Securities for the month of January of each year, adjusted to a
 33 constant maturity of one (1) year, as published by the Federal
 34 Reserve.

35 The fund may not be charged with court costs or the payment of legal
 36 or other fees. In computing the amount of restitution, the board shall
 37 give credit for:

- 38 (1) merchandise delivered; and
 39 (2) resources still existing in trust.

40 (e) When restitution is paid from the fund, the fund is subrogated to
 41 the amount of the restitution, and the board shall ask the attorney
 42 general to take all reasonable steps to collect the subrogated amount



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1 from the seller. Any amount collected shall be deposited in the fund.

2 (f) Money in the fund may only be used for a purpose that is
3 specified in this section.

4 (g) The payment of restitution from the fund is not a right, and a
5 purchaser does not have a vested right in the fund as a beneficiary of
6 the fund.

7 (h) The status of the fund shall be annually reviewed by the board.
8 If the board determines during its annual review that the fund balance
9 equals or exceeds one million dollars (\$1,000,000), the board shall
10 suspend payments to the fund until after the next annual review that the
11 board determines that the fund balance is less than one million dollars
12 (\$1,000,000).

13 SECTION 19. IC 30-2-13-36 IS AMENDED TO READ AS
14 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 36. The board may
15 suspend the certificate of authority of a seller who violates a provision
16 of this chapter. **The board shall suspend the certificate of authority
17 of a seller who intentionally violates section 12.5 of this chapter for
18 at least one (1) year. The board may assess a seller a fine of not
19 more than ten thousand dollars (\$10,000) for each violation of
20 section 12.5, 13, 15, 21, 23, 24, or 25 of this chapter.**

21 SECTION 20. IC 30-2-13-38 IS ADDED TO THE INDIANA
22 CODE AS A NEW SECTION TO READ AS FOLLOWS
23 [EFFECTIVE JULY 1, 1999]: Sec. 38. (a) **A seller who violates a
24 provision of this chapter commits an uncured deceptive act (as
25 defined in IC 24-5-0.5-2).**

26 (b) **A person, a firm, a limited liability company, a corporation,
27 an association, or a partnership that:**

28 (1) **sells or advertises prepaid services or merchandise and
29 services (as defined in section 8 of this chapter) and fails to
30 obtain the certificate of authority required by section 33 of
31 this chapter; or**

32 (2) **sells or advertises prepaid services or merchandise and
33 services (as defined in section 8 of this chapter) after the
34 entity's certificate of authority has:**

35 (A) **expired; or**

36 (B) **been rescinded, revoked, or suspended by the board;
37 commits a Class A misdemeanor.**

38 (c) **The following may maintain an action to enjoin an individual
39 or entity from continuing to violate this section:**

40 (1) **The board.**

41 (2) **The attorney general.**

42 (3) **The prosecuting attorney of a county in which a violation**

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1 **occurs.**
2 **(d) A purchaser has a private right of action against a seller who**
3 **commits an uncured deceptive act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Commerce and Economic Development, to which was referred House Bill 1758, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 3, delete "a" and insert "**any**".

Page 4, line 38, delete "a service, property," and insert "**an item of property or services**".

Page 4, line 39, delete "listed in subsection (c)".

Page 5, between lines 26 and 27, begin a new paragraph and insert:

"(d) If property or services are not cash advance items under this section, they are services or merchandise under section 8 of this chapter."

Page 8, line 21, after "for" insert "**prepaid**".

Page 13, delete lines 36 through 38, begin a new paragraph and insert:

"(j) If the division of family and children has a claim against the purchaser's estate under IC 12-14-21, money that is:

(1) retained by the seller under subsection (c)(9); or

(2) returned to an individual designated by the purchaser or to the purchaser's estate under subsection (c)(9);

is subject to recovery by the division of family and children."

and when so amended that said bill do pass.

(Reference is to HB 1758 as introduced.)

BOTTORFF, Chair

Committee Vote: yeas 14, nays 0.

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