



January 13, 2000

# SENATE BILL No. 204

DIGEST OF SB0204 (Updated January 11, 2000 12:23 PM - DI 75)

**Citations Affected:** IC 30-2.

**Synopsis:** Prepaid funeral contracts. Provides that if a contract for prepaid funeral services is funded by an insurance policy, any policy amounts remaining in trust after the funeral services or merchandise are paid for must be paid to the entity or individual named as the beneficiary of the insurance death benefit proceeds. Specifies that the seller may not qualify as a beneficiary of the remaining amount. Eliminates a provision that allows a seller of prepaid or at-need funeral services or merchandise to charge an in-state successor seller of prepaid or at-need funeral services or merchandise a transfer fee not to exceed 5% of the contract price.

**Effective:** July 1, 2000.

**Meeks R**

January 10, 2000, read first time and referred to Committee on Commerce and Consumer Affairs.  
January 12, 2000, reported favorably — Do Pass.

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SB 204—LS 6690/DI 87+



January 13, 2000

Second Regular Session 111th General Assembly (2000)

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 1999 General Assembly.

## SENATE BILL No. 204

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 30-2-13-12.5, AS ADDED BY P.L.114-1999,  
2 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2000]: Sec. 12.5. (a) This section applies to the following  
4 contracts entered into or established under this chapter after June 30,  
5 1999:
- 6 (1) Contracts for prepaid services.
  - 7 (2) Contracts for prepaid merchandise.
  - 8 (3) Trusts or escrows established to hold consideration paid for  
9 services or merchandise subject to a contract entered into under  
10 this chapter.
- 11 (b) A contract between a purchaser and a seller must:
- 12 (1) specify that the consideration for the contract is:
    - 13 (A) cash, payable either in lump sum or installments; or
    - 14 (B) an insurance policy that is:
      - 15 (i) newly issued in conjunction with and integral to the  
16 contract;
      - 17 (ii) issued previously in a transaction separate and distinct

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- 1 from the contract; or  
2 (iii) both.
- 3 If a contract is funded with an insurance policy, the ownership  
4 of the policy must be irrevocably assigned to a trustee, and the  
5 seller may not borrow against, pledge, withdraw, or impair the  
6 cash value of the policy;
- 7 (2) specify that only the purchaser, acting by written notice to the  
8 seller, may revoke the contract within thirty (30) days after the  
9 date the contract is signed by the purchaser and the seller and that  
10 the contract becomes irrevocable upon the expiration of the thirty  
11 (30) day period;
- 12 (3) specify that, if the contract is revoked, the seller shall refund  
13 and return to the purchaser, without interest, the cash or insurance  
14 policy used to fund the contract;
- 15 (4) specify that not more than thirty (30) days after the contract is  
16 signed by the purchaser and the seller, the whole of the cash or  
17 insurance policy serving as consideration for the contract must be  
18 deposited into a trust or escrow authorized by subsection (c) or  
19 (d). However, a seller may elect to serve as trustee of a previously  
20 existing life insurance contract;
- 21 (5) except as provided in subsection (f), unconditionally require  
22 that the seller shall deliver all services or merchandise, or both,  
23 specified in the contract and receive as consideration for the  
24 delivery of services or merchandise, or both, only the cash or  
25 insurance policy held in trust or escrow without regard to the  
26 solvency of the insurer or the adequacy or loss in value of any  
27 cash deposit or insurance policy used to fund a contract;
- 28 (6) except as provided in subsection (f), prohibit a seller from  
29 imposing additional charges to recover any shortage or difference  
30 between the retail prices for services or merchandise, or both, in  
31 effect on the date of delivery of the services or merchandise, or  
32 both, and the value of the trust or escrow applicable to the  
33 contract on the date of delivery;
- 34 (7) require that a seller accepting the transfer of a contract  
35 permitted under section 13 of this chapter shall honor the  
36 requirements and obligations of the contract;
- 37 (8) permit the seller to assess a finance charge on a contract sold  
38 on an installment basis and require that the seller disclose to the  
39 purchaser the applicable requirements of federal and Indiana law;
- 40 (9) provide that the contract must comply with the following  
41 requirements:
- 42 (A) The contract must be made in a form that is:

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- 1 (i) written in clear and understandable language; and
- 2 (ii) printed in a size and style of type that is easy to read.
- 3 (B) The contract must describe the services, merchandise, or
- 4 cash advance items being purchased.
- 5 (C) The contract must identify the following by name, address,
- 6 and telephone number:
- 7 (i) The seller.
- 8 (ii) The purchaser.
- 9 (iii) The contract beneficiary if the beneficiary is an
- 10 individual other than the purchaser.
- 11 (D) The contract must contain the seller's certificate of
- 12 authority number and the date of the contract.
- 13 (E) The contract must provide that if an item of the particular
- 14 services or merchandise specified in the contract is
- 15 unavailable at the time of delivery, the seller shall deliver
- 16 services or merchandise similar in style, quality, and of equal
- 17 value to the unavailable item in the place of the item.
- 18 (F) The contract must disclose the precise manner in which the
- 19 contract is to be funded by:
- 20 (i) identifying the consideration for the contract;
- 21 (ii) identifying the name, number, if known, and issuer of
- 22 any insurance policy used to fund the contract; and
- 23 (iii) including the identity and location of the trustee or
- 24 escrow agent who is to hold the trust or escrow.
- 25 (G) The contract must disclose that the seller reserves the right
- 26 to assess an extra charge for:
- 27 (i) transportation costs;
- 28 (ii) services or merchandise incurred in the transport of
- 29 human remains a distance greater than twenty-five (25)
- 30 miles from the seller's place of business; and
- 31 (iii) service charges necessarily incident to the transport of
- 32 human remains and in excess of those service charges
- 33 specified in the contract.
- 34 (H) The contract must disclose the following:
- 35 (i) The amount, if any, the seller has elected to receive under
- 36 subsection (c)(1) or subsection (d)(6).
- 37 (ii) That a commission or fee may be paid to the seller or the
- 38 seller's agent on a contract funded under subsection
- 39 (b)(1)(B)(i).
- 40 (10) specify that a purchaser has the unrestricted right to
- 41 designate one (1) or more successor sellers to whom the contract
- 42 may be transferred under section 13 of this chapter, but that such

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1 a transfer is effective only with the consent of the newly  
 2 designated seller and upon the fulfillment of the other  
 3 requirements of section 13 of this chapter;

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

7 (A) Delivery is unconditionally guaranteed at the option of the  
 8 seller.

9 (B) Delivery is conditionally guaranteed for a seller and will  
 10 be equal in value to the total value of the trust or escrow  
 11 account maintained for the purchaser multiplied by the  
 12 percentage of the total original contract price represented by  
 13 cash advance items;

14 (12) specify that a release from trust or escrow shall occur only  
 15 upon the seller's delivery of services or merchandise, or both;

16 (13) permit, at the option of the seller, the incorporation of the  
 17 trust or escrow language contained in subsection (c) or (d)  
 18 directly into the contract;

19 (14) prohibit the seller from charging any service, transaction, or  
 20 other type of fee or charge unless the fee is:

21 (A) authorized under subsections (c)(1) and (d)(6) and section  
 22 27 of this chapter; or

23 (B) included within the definitions contained in section 8 or  
 24 11.5 of this chapter.

25 (c) A trust account authorized and established under this chapter  
 26 must do all of the following:

27 (1) Be irrevocable and require either of the following:

28 (A) The seller deposit the insurance policy used to fund the  
 29 contract into the trust account. However, for contracts funded  
 30 after June 30, 1995, with a previously issued insurance policy,  
 31 the seller may serve instead of a trustee if the seller is qualified  
 32 to do so under section 11(c) of this chapter.

33 (B) The seller deposit the cash used to fund the contract into  
 34 the trust account. However, as consideration for the sale of the  
 35 contract and any expense incurred by the seller in conjunction  
 36 with the sale of the contract, the contract must permit the seller  
 37 to notify, within a ten (10) day period following the date the  
 38 contract becomes irrevocable, the trustee of its election to  
 39 receive only up to ten percent (10%) of the seller's original  
 40 contract price for services or merchandise, or both.

41 (2) Designate the seller as the beneficiary of the trust.

42 (3) Designate a trustee qualified under this chapter and authorize

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- 1 the trustee to assess the charges authorized under section 18 of  
 2 this chapter.
- 3 (4) Require that a separate account be maintained in the name of  
 4 each purchaser.
- 5 (5) Require that any interest, dividend, or accumulation in the  
 6 account be reinvested and added to the principal.
- 7 (6) Permit the assets of the several, separate accounts to be  
 8 commingled for investment purposes.
- 9 (7) Require that on receipt of the seller's proof of delivery of  
 10 services or merchandise the trustee shall remit to the seller the  
 11 full amount in trust applicable to the purchaser's contract and all  
 12 of the accumulated interest.
- 13 (8) Permit the seller to retain the remaining amount if the amount  
 14 in the trust account is greater than the seller's total current retail  
 15 price of all services and merchandise subject to the contract at the  
 16 time of delivery of all services or merchandise subject to the  
 17 contract. However, in the case of a contract funded under  
 18 subsection (b)(1)(B)(ii), the seller may not retain the remaining  
 19 amount but must pay the remaining amount to the ~~designated~~  
 20 **beneficiary. entity or individual designated by the insured as**  
 21 **the beneficiary of the death benefit proceeds. The seller may**  
 22 **not qualify as a beneficiary of the remaining amount or the**  
 23 **insurance death benefit.** In the case of all other contracts funded  
 24 under this chapter, the seller may opt to return the remaining  
 25 amount to the individual designated by the purchaser to receive  
 26 the remainder or to the purchaser's estate.
- 27 (d) An escrow account authorized and established under this chapter  
 28 must do all of the following:
- 29 (1) Be irrevocable and require that the seller deposit all cash or  
 30 the insurance policy used to fund the contract into the escrow  
 31 account.
- 32 (2) Designate the seller as the recipient of the escrow funds.
- 33 (3) Designate an escrow agent qualified under this chapter to act  
 34 as escrow agent and authorize the escrow agent to assess the  
 35 charges authorized under section 18 of this chapter.
- 36 (4) Require that the escrow account be maintained in the name of  
 37 the seller and serve as a depository for all cash or insurance  
 38 policies used to fund contracts sold by the seller.
- 39 (5) Permit the investment of and commingling of cash for  
 40 investment purposes.
- 41 (6) Permit the seller to receive an administrative or service fee at  
 42 the option of the seller. The seller may opt to receive the fee after

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1 the day following the date the contract becomes irrevocable. The  
 2 amount of the fee may not exceed ten percent (10%) of the seller's  
 3 total contract price for services or merchandise or both.

4 (7) Require that on delivery of services or merchandise, the  
 5 escrow agent shall remit to the seller an amount equal to:

6 (A) the seller's original retail price as set forth in the contract  
 7 for the services or merchandise delivered; minus

8 (B) the amount, if any, received by the seller under subdivision  
 9 (6).

10 (8) Permit the seller to receive monthly payments of the interest  
 11 earned and the appreciation in the value of the escrow assets to  
 12 the extent that the total value of the escrow after a payment  
 13 authorized under this subdivision is not less than:

14 (A) the original contract value of all services or merchandise  
 15 under the contracts, or parts of the contracts that remain  
 16 undelivered; minus

17 (B) the amounts, if any, received by the seller under  
 18 subdivision (6).

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

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

26 (1) An installment contract funded with cash or an insurance  
 27 policy issued in conjunction with the contract is guaranteed to the  
 28 extent of the cash paid or death benefits available at the time of  
 29 death of the individual for whom services or merchandise are to  
 30 be provided.

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

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

40 (4) A transportation expense incurred by the seller while  
 41 transporting human remains a distance greater than twenty-five

42 (25) miles from the seller's place of business, plus any charge for

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- 1 services or merchandise necessarily incident to the transport of  
 2 the human remains.
- 3 (5) The seller agrees to conditionally guarantee the delivery of  
 4 cash advance items under subsection (b)(11)(B).
- 5 In the instance of unguaranteed delivery, the seller may reduce the  
 6 value or number of the services or merchandise subject to the contract  
 7 or cash advance items delivered or deliver the services or merchandise  
 8 in full on the condition that the seller receives adequate consideration  
 9 to compensate the seller for the unguaranteed part of the contract.
- 10 (g) The entire value of an escrow or trust established under this  
 11 chapter may not be considered as a resource in determining a person's  
 12 eligibility for Medicaid under IC 12-15-2-17.
- 13 (h) This chapter does not prohibit a purchaser from immediately  
 14 making the trust or escrow required under this chapter irrevocable and  
 15 assigning ownership of an insurance policy used to fund a contract to  
 16 obtain favorable consideration for Medicaid, Supplemental Security  
 17 Income, or another public assistance program under federal or state  
 18 law.
- 19 (i) A seller may not accept or deposit into a trust or escrow account  
 20 cash, an insurance policy, or any other property as consideration for  
 21 services or merchandise to be provided in the future except in  
 22 conjunction with a contract authorized by this chapter.
- 23 SECTION 2. IC 30-2-13-13, AS AMENDED BY P.L.114-1999,  
 24 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 25 JULY 1, 2000]: Sec. 13. (a) Notwithstanding section 10 of this chapter,  
 26 as used in this section, "seller" means an individual, a person doing  
 27 business as a sole proprietor, a firm, a corporation, an association, a  
 28 limited liability company, or a partnership:
- 29 (1) contracting to provide prepaid or at-need services or  
 30 merchandise, or both, to a named individual; and  
 31 (2) holding a certificate of authority under this chapter.
- 32 (b) A purchaser has the option to designate one (1) or more  
 33 successor sellers to provide:
- 34 (1) prepaid services or merchandise; or  
 35 (2) at-need services or merchandise.
- 36 A purchaser who exercises the purchaser's option to designate a  
 37 successor seller shall give written notice of the designation to the  
 38 currently designated seller, successor seller, and trustee or escrow  
 39 agent. Only a purchaser may exercise the option to designate a new  
 40 seller. However, the designation is ineffective unless the newly  
 41 designated seller consents to the designation.
- 42 (c) If a purchaser designates a successor seller, and the successor

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1 seller consents to the designation, not less than thirty (30) days after  
 2 receiving notice under subsection (b), the seller who was previously  
 3 designated shall:

- 4 (1) relinquish and transfer all rights under the contract;  
 5 (2) transfer to the successor the contract; and  
 6 (3) release from trust or escrow for subsequent deposit to the  
 7 successor seller's trust or escrow all property being held as  
 8 consideration for the contract, together with an itemized statement  
 9 disclosing all services or merchandise delivered as of the date of  
 10 transfer.

11 The seller and the successor sellers shall cooperate to ensure that there  
 12 is no forfeiture or loss of a right or benefit under the contract and that  
 13 all contract terms are fulfilled. ~~Except for out-of-state transfers, the~~  
 14 ~~seller who was previously designated may elect to charge a successor~~  
 15 ~~seller a transfer fee not to exceed five percent (5%) of the previously~~  
 16 ~~designated seller's contract price.~~ If similar prepaid or at-need services  
 17 or merchandise are purchased from one (1) or more sellers, the contract  
 18 that is first in time prevails and is valid.

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

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

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

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

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

- 31 (A) make a designation of a successor seller;  
 32 (B) breach an existing contract for prepaid or at-need services  
 33 or merchandise; or  
 34 (C) enter into an at-need or prepaid contract calling for the  
 35 delivery of similar services or merchandise; or

36 (2) offer a monetary inducement or the exchange or substitution  
 37 of free or discounted services or merchandise in an effort to  
 38 induce a purchaser to effect a change in the designation of a seller  
 39 of prepaid or at-need services or merchandise.

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

42 (1) as an inducement or as consideration for the transfer of a

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1 contract; or  
2 (2) in an effort to induce a purchaser to effect a change in the  
3 designation of a seller of prepaid or at-need services or  
4 merchandise.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Commerce and Consumer Affairs, to which was referred Senate Bill No. 204, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 204 as introduced.)

MILLS, Chairperson

Committee Vote: Yeas 7, Nays 0.

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