

2A: 102-13

LEGISLATIVE HISTORY CHECKLIST
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(Funeral trusts--prepaid--
prohibit revocation)

NJSA: 2A:102-13

LAWS OF: 1991 CHAPTER: 502

BILL NO: A5134

SPONSOR(S): Doria and Charles

DATE INTRODUCED: August 1, 1991

COMMITTEE: ASSEMBLY: Health & Human Services
SENATE: Institutions, Health & Welfare

AMENDED DURING PASSAGE: Yes Amendments during passage denoted
by asterisks

DATE OF PASSAGE: ASSEMBLY: December 2, 1992
SENATE: January 6, 1992

DATE OF APPROVAL: January 18, 1992

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes
SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBG/pp

[FIRST REPRINT]
ASSEMBLY, No. 5130

STATE OF NEW JERSEY

INTRODUCED AUGUST 1, 1991

By Assemblymen DORIA and CHARLES

1 AN ACT concerning the trusting of prepaid funeral monies,
2 supplementing P.L.1957, c.182 (C.2A:102-13 et seq.) and
3 amending P.L.1985, c.147.

4

5 BE IT ENACTED *by the Senate and General Assembly of the*
6 *State of New Jersey:*

7 1. (New Section) Notwithstanding the provisions of P.L.1957,
8 c.182 (C.2A:102-13 et seq.) to the contrary, an agreement may
9 provide that the trust shall be irrevocable during the lifetime of
10 the beneficiary, if at the time of the signing of an agreement, the
11 beneficiary or grantor of the trust is:

12 a. An aged, blind or disabled applicant for, or recipient of,
13 benefits pursuant to the Supplemental Security Income Program
14 under P.L.1973, c.256 (C.44:7-85 et seq.) or any Medicaid
15 program under P.L.1968, c.413 (C.30:4D-1 et seq.) utilizing the
16 eligibility criteria of the Supplemental Security Income Program
17 in regard to burial spaces and funds set aside for burial expenses;
18 or

19 b. An aged, blind or disabled person who reasonably anticipates
20 applying for, or receiving, the benefits provided for in subsection
21 a. of this section within six months.

22 An irrevocable trust established pursuant to this section shall
23 not affect the selection of funeral goods or services or the
24 selection of the funeral home. If the beneficiary or grantor of
25 the trust enters into an agreement, reasonably anticipating that
26 the beneficiary or grantor will become an applicant for, or
27 recipient of, these programs within six months from the
28 execution of the agreement, the agreement shall provide that, in
29 the event the beneficiary or grantor of the trust does not become
30 an applicant for, or recipient of, any of these programs within the
31 six month period, the trust shall revert to a revocable trust.

32 As used in this section "agreement" means an agreement for
33 the sale of personal property to be used in connection with a
34 funeral or burial, or for the furnishing of personal services of a
35 funeral director or undertaker, wherein the personal property is
36 not to be delivered or the personal services are not to be
37 rendered until the occurrence of the death of the person for
38 whose funeral or burial the property or services are to be
39 furnished.

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate floor amendments adopted December 16, 1991.

1 2. Section 1 of P.L.1985, c.147 (C.3B:11-16) is amended to
2 read as follows:

3 1. Prepaid funeral expense monies may be deposited into a
4 pooled trust account in a federally insured State or federally
5 chartered bank, savings bank or savings and loan association
6 pursuant to a written trust agreement the beneficiaries of which
7 shall be the consumers advancing said monies. Any such trust
8 agreement shall assure that the following terms and conditions
9 are clearly and conspicuously disclosed in writing to those
10 consumer beneficiaries prior to the acceptance of any monies by
11 the trustees:

12 a. The right to immediately withdraw on demand any monies
13 plus accrued interest paid into the trust, except as provided in
14 section 1 of P.L. , c. (C.) (now pending before the
15 Legislature as this bill).

16 b. The right to receive periodic statements not less than once
17 per year reflecting the amount of principal and accrued interest,
18 if any, in the trust.

19 c. The amount or rate of commissions to be taken.

20 d. The identity and location of the trustees.

21 e. The location of the trust agreement and the conditions
22 under which it may be examined.

23 (cf: P.L.1985, c.147, s.1)

24 ^{13.} (New section) a. A person shall be guilty of a crime of the
25 fourth degree if he knowingly or purposefully solicits or induces
26 any person to execute an irrevocable trust pursuant to section 1
27 of P.L. , c. (C.) (now pending before the Legislature as
28 this bill) with an intent to collect or charge more than the fair
29 market value for funeral goods or services.

30 b. A person shall be guilty of a crime of the fourth degree if
31 the proceeds of the trust are expended on anything other than the
32 fair market value of the funeral goods or services.¹

33 ¹[3.] ^{4.}¹ This act shall take effect immediately.

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36 PUBLIC ASSISTANCE

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38 Exempts certain prepaid funeral trusts from revocability
39 requirement.

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13 plus accrued interest paid into the trust, except as provided in
14 section 1 of P.L. , c. (C.) (now pending before the
15 Legislature as this bill).

16 b. The right to receive periodic statements not less than once
17 per year reflecting the amount of principal and accrued interest,
18 if any, in the trust.

19 c. The amount or rate of commissions to be taken.

20 d. The identity and location of the trustees.

21 e. The location of the trust agreement and the conditions
22 under which it may be examined.

23 (cf: P.L.1985, c.147, s.1)

24 3. This act shall take effect immediately.

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STATEMENT

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29 Under current State law, prepaid funeral trusts must be
30 revocable, a condition generally desired for consumer protection.
31 In the case of Supplemental Security Income recipients and
32 certain Medicaid recipients, State and federal law permits
33 persons to set aside funds for funeral and burial expenses which
34 will not be counted in determining eligibility. However, because
35 of New Jersey's revocability requirements for prepaid funeral
36 trusts, these programs require compliance with detailed and
37 complex accounting procedures which are burdensome for the
38 social service system, the consumer, the funeral director and the
39 master trust administrators. By contrast, these programs would
40 not require these procedures if the prepaid funeral trusts were
41 irrevocable.

42 This bill provides for an exception to the prepaid funeral trust
43 law in New Jersey to allow irrevocable prepaid funeral trusts in
44 certain limited situations. This exception should eliminate the
45 burdensome procedures currently required by the Supplemental
46 Security Income Program and certain Medicaid programs for
47 persons wishing to set aside funds for funeral and burial
48 expenses. The exception applies to persons who are applicants
49 for, or recipients of, Supplemental Security Income and certain
50 Medicaid programs and persons who reasonably expect to be

1 applicants for, or recipients of, benefits under these programs
2 within six months.

3 Other than this limited exception, this bill maintains the
4 revocability of prepaid funeral trusts as a public policy intended
5 to ensure long term consumer protection in the area of prepaid
6 funerals.

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9 PUBLIC ASSISTANCE

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11 Exempts certain prepaid funeral trusts from revocability
12 requirement.

ASSEMBLY HEALTH AND HUMAN SERVICES COMMITTEE

STATEMENT TO

ASSEMBLY, No. 5130

STATE OF NEW JERSEY

DATED: AUGUST 22, 1991

The Assembly Health and Human Services Committee favorably reports Assembly Bill No. 5130.

This bill provides for an exception to the prepaid funeral trust law (P.L.1985, c.147; C.3B:11-16 et seq.) in New Jersey to allow irrevocable prepaid funeral trusts in certain limited situations. This exception should eliminate the burdensome procedures currently required by the Supplemental Security Income (SSI) program and certain Medicaid programs for persons wishing to set aside funds for funeral and burial expenses. The exception applies to persons who are applicants for, or recipients of, SSI and certain Medicaid programs and persons who reasonably expect to be applicants for, or recipients of, benefits under these programs within six months.

Other than this limited exception, this bill maintains the revocability of prepaid funeral trusts as a public policy intended to ensure long term consumer protection in the area of prepaid funerals.

Under P.L.1957, c.182 (C.2A:102-13 et seq.), prepaid funeral trusts must be revocable, a condition generally desired for consumer protection. In the case of SSI recipients and certain Medicaid recipients, State and federal law permits persons to set aside funds for funeral and burial expenses which will not be counted in determining eligibility. However, because of New Jersey's revocability requirements for prepaid funeral trusts, these programs require compliance with detailed and complex accounting procedures which are burdensome for the social service system, the consumer, the funeral director and the master trust administrators. By contrast, these programs would not require these procedures if the prepaid funeral trusts were irrevocable.

This bill is identical to Assembly Bill No. 3459, which this committee favorably reported on September 13, 1990. That bill passed both Houses but was conditionally vetoed by the Governor on January 24, 1991.

SENATE INSTITUTIONS, HEALTH AND WELFARE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 5130

STATE OF NEW JERSEY

DATED: DECEMBER 9, 1991

The Senate Institutions, Health and Welfare Committee favorably reports Assembly Bill No. 5130.

This bill provides for an exception to the prepaid funeral trust law in New Jersey (P.L.1957, c.182; C.2A:102-13 et seq.) to allow irrevocable prepaid funeral trusts in certain limited situations. This exception should eliminate the burdensome procedures currently required by the Supplemental Security Income Program and certain Medicaid programs for persons wishing to set aside funds for funeral and burial expenses. The exception applies to persons who are applicants for, or recipients of, Supplemental Security Income and certain Medicaid programs and persons who reasonably expect to be applicants for, or recipients of, benefits under these programs within six months.

Under current State law, prepaid funeral trusts must be revocable, a condition generally desired for consumer protection. In the case of Supplemental Security Income recipients and certain Medicaid recipients, State and federal law permits persons to set aside funds for funeral and burial expenses which will not be counted in determining eligibility. However, because of New Jersey's revocability requirements for prepaid funeral trusts, these programs require compliance with detailed and complex accounting procedures which are burdensome for the social service system, the consumer, the funeral director and the master trust administrators. By contrast, these programs would not require these procedures if the prepaid funeral trusts were irrevocable.

The committee considered and favorably reported an identical bill (Senate Bill No. 2609) on May 21, 1990. This bill was substituted by Assembly Bill No. 3459 (which passed the Assembly 70-1), and passed the Senate 32-0 on December 6, 1990. The Governor conditionally vetoed the bill and recommended that it be amended to limit the amount of an eligible trust to one which is not in excess of 200% of the federal burial set-aside allowance for the SSI program, that is, \$3,000. The sponsors of the Senate and Assembly bills did not agree with the Governor's recommendation and have reintroduced the original version of the bill. The Assembly bill is identical to Senate Bill No. 3736 (O'Connor), which the committee also reported favorably on this date.