

45:7-82 to 45:7-94

**LEGISLATIVE HISTORY CHECKLIST**  
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(Prepaid funeral arrangements--  
regulate)

**NJ:** 45:7-82 to 45:7-94

**LA OF:** 1993 **CHAPTER:** 147

**BI NO:** S1012

**SPSOR (S)** Brown

**DA INTRODUCED:** June 29, 1992

**COMTEE:** **ASSEMBLY:** Commerce

**SENATE:** Commerce

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**FORGING STATEMENTS ARE ATTACHED IF AVAILABLE:**

**SDR STATEMENT:** Yes

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**SENATE:** Yes

**F. NOTE:** No

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§§1-13  
C.45:7-82 to  
45:7-94  
§19  
C.2A:102-18  
§22  
C.3B:11-16.1  
§24  
C.17B:17-5.1  
§25  
Note to §§1-24

P.L.1993, CHAPTER 147, approved June 24, 1993  
1992 Senate No. 1012 (First Reprint)

1 AN ACT concerning prepaid funeral agreements and revising  
2 parts of the statutory law.

3  
4 BE IT ENACTED by the Senate and General Assembly of the  
5 State of New Jersey:

6 1. (New section) As used in this act, in P.L.1952, c.340  
7 (C.45:7-32 et seq.) and in section 18 of P.L.1960, c.184  
8 (C.45:7-65.3):

9 "At need funeral arrangements" means funeral arrangements  
10 made with the survivors or personal representative of a person  
11 who has already died for that person's funeral.

12 "Board" means the State Board of Mortuary Science of New  
13 Jersey.

14 "Credit life insurance" means insurance on the life of a debtor  
15 pursuant to or in connection with a specific loan or other credit  
16 transaction.

17 "Deliver" or "delivery" means the conveyance of actual  
18 control and possession of prepaid funeral goods that have been  
19 permanently relinquished by a provider, <sup>1</sup>or other person, firm or  
20 corporation,<sup>1</sup> or an agent thereof, to the purchaser <sup>1</sup>or person  
21 paying the moneys,<sup>1</sup> or personal representative of the intended  
22 funeral recipient. Delivery has not been made if the provider <sup>1</sup>,  
23 or other person, firm or corporation, or an agent thereof<sup>1</sup>:

24 (1) Arranges or induces the purchaser <sup>1</sup>or person paying the  
25 moneys<sup>1</sup> to arrange for the storage or warehousing of prepaid  
26 funeral goods ordered pursuant to a prepaid funeral agreement,  
27 with or without evidence that legal title has passed; or

28 (2) Acquires or reacquires actual or constructive possession or  
29 control of prepaid funeral goods after their initial delivery to the  
30 purchaser <sup>1</sup>or person paying the moneys<sup>1</sup> or personal  
31 representative of the intended funeral recipient.

32 This definition of delivery shall apply to this term as used in  
33 this act, notwithstanding the provisions set forth in the Uniform  
34 Commercial Code, Title 12A of the New Jersey Statutes.

35 "Funeral arrangements" means funeral and burial plans made  
36 through a mortuary, including the selection of plans for the  
37 furnishing of funeral goods and services pursuant to a completed  
38 plan of bodily disposition and the act of offering the opportunity  
39 to purchase or to enroll in a prepaid funeral agreement by the  
40 mortuary.

41 "Funeral insurance policy" means any insurance policy or  
42 annuity contract that, at the time of issue, was intended to

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:

<sup>1</sup> Senate SCR committee amendments adopted January 25, 1993.

1 provide, or which was explicitly marketed for the purpose of  
2 providing, funds to the provider, whether directly or indirectly, at  
3 the time of the insured's death in connection with a prepaid  
4 funeral agreement.

5 "Funeral trust" means a commingled or non-commingled  
6 account held in a pooled trust or P.O.D. account, established in  
7 accordance with P.L.1957, c.182 (C.2A:102-13 et seq.) or  
8 P.L.1985, c.147 (C.3B:11-16 et seq.), which is intended as the  
9 depository for cash payments connected with a prepaid funeral  
10 agreement.

11 "Guaranteed price agreement" means a prepaid funeral  
12 agreement under which, in exchange for the proceeds of a funeral  
13 trust or funeral insurance policy, the provider agrees to provide  
14 the stated goods and services in the future, regardless of whether  
15 or not the retail value of those goods and services exceeds the  
16 funds available from the funeral trust or funeral insurance policy  
17 at the time of death of the intended funeral recipient.

18 "Intended funeral recipient" means the person named in a  
19 prepaid funeral agreement for whose bodily disposition the  
20 prepaid funeral agreement is intended to provide. The intended  
21 funeral recipient may or may not be the purchaser.

22 "Non-guaranteed price agreement" means a prepaid funeral  
23 agreement funded with a funeral trust or funeral insurance  
24 policy, the proceeds of which the provider will apply to the  
25 current retail value of the prepaid funeral goods and services  
26 previously selected at the time of death of the intended funeral  
27 recipient, but which agreement shall not bind the provider to  
28 provide the goods and services if the value thereof exceeds the  
29 funds available at the time of death of the intended funeral  
30 recipient.

31 "Payable on death account" or "P.O.D. account" means an  
32 account payable, on request to the purchaser or intended funeral  
33 recipient<sup>1</sup>, of a prepaid funeral agreement during the lifetime  
34 of the intended funeral recipient and on his death, to a provider  
35 of funeral goods and services.

36 "Pooled trust" means a pooled trust account established  
37 pursuant to P.L.1985, c.147 (C.3B:11-16 et seq.).

38 "Preneed funeral arrangements" means funeral arrangements  
39 made with an intended funeral recipient or his guardian, agent or  
40 next of kin, for the funeral of the intended funeral recipient.

41 "Prepaid funeral agreement" means a written agreement and  
42 all documents related thereto made by a purchaser with a  
43 provider prior to the death of the intended funeral recipient, with  
44 which there is connected a provisional means of paying for  
45 preneed funeral arrangements upon the death of the intended  
46 funeral recipient by the use of a funeral trust or funeral  
47 insurance policy, made payable to a provider and in return for  
48 which the provider promises to furnish, make available or provide  
49 the prepaid funeral goods or services, or both, specified in the  
50 agreement, the delivery of which occurs after the death of the  
51 intended funeral recipient.

52 "Prepaid funeral goods" means personal property typically sold  
53 or provided in connection with a funeral, or the final disposition  
54 of human remains, including, but not limited to, caskets or other

1 primary containers, cremation or transportation containers, outer  
2 burial containers, vaults, as defined in N.J.S.8A:1-2, memorials  
3 as defined in N.J.S.8A:1-2, funeral clothing or accessories,  
4 monuments, cremation urns, and similar funeral or burial items,  
5 which goods are purchased in advance of need and which will not  
6 be delivered until the death of the intended funeral recipient  
7 named in a prepaid funeral agreement. <sup>1</sup>Prepaid funeral goods  
8 shall not mean the sale of interment spaces and related personal  
9 property offered or sold by a cemetery company as provided for  
10 in N.J.S.8A:1-1 et seq.<sup>1</sup>

11 "Prepaid funeral services" means those services typically  
12 provided in connection with a funeral, or the final disposition of  
13 human remains, including, but not limited to, funeral directing  
14 services, embalming services, care of human remains, preparation  
15 of human remains for final disposition, transportation of human  
16 remains, use of facilities or equipment for viewing human  
17 remains, visitation, memorial services or services which are used  
18 in connection with a funeral or the disposition of human remains,  
19 coordinating or conducting funeral rites or ceremonies and  
20 similar funeral or burial services, including limousine services  
21 provided in connection therewith, which services are purchased in  
22 advance of need and which will not be provided or delivered until  
23 the death of the intended funeral recipient named in a prepaid  
24 funeral agreement. <sup>1</sup>Prepaid funeral services shall not mean the  
25 sale of services incidental to the provision of interment spaces or  
26 any related personal services offered or sold by a cemetery  
27 company as provided for in N.J.S. 8A:1-1 et seq.<sup>1</sup>

28 "Provider" means a person, firm or corporation duly licensed  
29 and registered<sup>1</sup> pursuant to the "Mortuary Science Act,"  
30 P.L.1952, c.340 (C.45:7-32 et seq.) to engage in the business and  
31 practice of funeral directing or mortuary science, or an individual  
32 serving as an agent thereof and so licensed:

33 (1) Operating a duly registered mortuary in accordance with  
34 P.L.1952, c.340 (C.45:7-32 et seq.) and the regulations  
35 promulgated thereunder;

36 (2) Having his or its business and practice based within the  
37 physical confines of the registered mortuary; and

38 (3) Engaging in the practice of making preneed funeral  
39 arrangements, including, but not limited to, offering the  
40 opportunity to purchase or enroll in prepaid funeral agreements.

41 "Purchaser" means the person named in a prepaid funeral  
42 agreement who purchases the prepaid funeral goods and services  
43 to be provided thereunder. The purchaser may or may not be the  
44 intended funeral recipient. If the purchaser is different than the  
45 intended funeral recipient, it is understood that the relationship  
46 of the purchaser to the intended funeral recipient includes a  
47 means to provide administrative control over the <sup>1</sup>[arrangements]  
48 agreement<sup>1</sup> on behalf of the intended funeral recipient.

49 "Retail installment contract" means an agreement to pay the  
50 purchase price of goods or services in two or more installments  
51 over a period of time.

52 "Statement of funeral goods and services" means the itemized  
53 written statement required to be given to each person making  
54 funeral arrangements in accordance with the regulations of the

1 Federal Trade Commission (16 C.F.R. 453.2) and the board  
2 (N.J.A.C.13:36-9.8).

3 2. (New section) a. No person, firm or corporation shall sell,  
4 or offer to sell, or make or offer to make at need funeral  
5 arrangements, preneed funeral arrangements or prepaid funeral  
6 agreements, unless that person, firm or corporation:

7 (1) is duly licensed <sup>1</sup>and registered<sup>1</sup> pursuant to the "Mortuary  
8 Science Act," P.L.1952, c.340 (C.45:7-32 et seq.), to engage in  
9 the business and practice of funeral directing or mortuary  
10 science; and

11 (2) has his or its business and practice based within the  
12 physical confines of the registered mortuary.

13 b. No person, firm or corporation, shall engage in the business  
14 and practice of funeral directing or mortuary science at any  
15 permanent facility that is not a registered mortuary.

16 c. Notwithstanding the foregoing, this section shall not be  
17 construed to prohibit an otherwise qualified person, firm or  
18 corporation from acting as a provider operating under a trade  
19 name or other assumed name or through a subsidiary of a  
20 corporation duly licensed <sup>1</sup>and registered<sup>1</sup> pursuant to P.L.1952,  
21 c.340 (C.45:7-32 et seq.) to engage in the business and practice of  
22 funeral directing or mortuary science.

23 3. (New section) No provider shall enter into, or offer to enter  
24 into, a prepaid funeral agreement, or provide or offer to provide  
25 a funeral trust or funeral insurance policy in connection  
26 therewith, unless:

27 a. At the same time he makes preneed funeral arrangements  
28 for the intended funeral recipient on a statement of funeral goods  
29 and services; <sup>1</sup>[and]<sup>1</sup>

30 b. He meets all requirements with respect to the making of at  
31 need funeral arrangements as otherwise required by law <sup>1</sup>;

32 c. The insurance policy or annuity contract to be provided or  
33 offered as a funeral insurance policy complies with the provisions  
34 of section 24 of P.L. , c. (C. ) (now pending before the  
35 Legislature as this bill).

36 d. If a funeral insurance policy is provided or offered, he is  
37 duly licensed as an insurance producer pursuant to P.L.1987,  
38 c.293 (C.17:22A-1 et seq.)<sup>1</sup>.

39 4. (New section) Every prepaid funeral agreement executed in  
40 this State shall:

41 a. Be signed by the provider, and the purchaser or the intended  
42 funeral recipient or the intended funeral recipient's guardian,  
43 agent or next of kin.

44 b. Include at least the following information:

45 (1) the name, address and telephone number of the mortuary to  
46 be utilized;

47 (2) the name of the individual licensee acting as or on behalf  
48 of the provider and the license number of that individual;

49 (3) the purchaser's name and address;

50 (4) the name of the intended funeral recipient;

51 (5) whether the agreement is a guaranteed price agreement or  
52 non-guaranteed price agreement, which term, as applicable, shall  
53 be defined in the agreement in accordance with section 1 of this  
54 act;

1 (6) how the agreement is to be funded; and

2 (7) a statement of funeral goods and services or, if not  
3 included as part of the agreement, that a statement of funeral  
4 goods and services shall be provided.

5 c. Provide that all funeral arrangements are revocable, and  
6 that all funeral funding arrangements are severable from those  
7 funeral arrangements by the purchaser if alive, and if not, then  
8 by the intended funeral recipient, where they are different  
9 persons. Upon the death of both the purchaser and the intended  
10 funeral recipient, the intended funeral recipient's next of kin, in  
11 the order provided in N.J.S.8A:5-18, shall have the right to  
12 revoke the funeral arrangements and to sever the funeral funding  
13 arrangements from the funeral arrangements. Notwithstanding  
14 the above, a prepaid funeral agreement may provide that the  
15 funeral trust shall be irrevocable during the lifetime of the  
16 intended funeral recipient pursuant to section 1 of P.L.1991,  
17 c.502 (C.2A:102-16.1).

18 In those instances where a revocable prepaid funeral agreement  
19 is revoked, the monies used to fund the agreement shall be paid  
20 to the purchaser, if alive, and if not, then to the personal  
21 representative or estate of the deceased purchaser if the  
22 agreement is funded through a trust or, if the agreement is  
23 funded through a funeral insurance policy, to the named  
24 beneficiaries on the insurance policy or annuity.

25 d. Provide that, unless otherwise specified therein, a prepaid  
26 funeral agreement anticipates the provision of prepaid funeral  
27 goods and services in the area served by the provider. The  
28 agreement shall further provide that, if the intended funeral  
29 recipient's place of death is in a location other than that served  
30 by the provider, alternative funeral arrangements will be  
31 necessary.

32 e. Provide for the provider's substitution of any goods or  
33 services to be furnished or rendered thereunder for goods of equal  
34 quality, value and workmanship or services of equal quality and  
35 value in the event of the unavailability of any goods or services  
36 set forth in the agreement. Any changes in the price of the  
37 agreement resulting from such substitution of goods or services  
38 shall be reflected in the statement of funeral goods and services  
39 rendered.

40 f. Provide that, in the case of an agreement funded through a  
41 funeral trust, if the purchaser predeceases the intended funeral  
42 recipient where they are different persons, then the intended  
43 funeral recipient shall automatically assume the legal right to  
44 administer the funeral trust as purchaser, including the right to  
45 withdraw any and all funds held in the funeral trust, along with  
46 all other rights formerly held by the purchaser.

47 g. Provide that, upon the death of the intended funeral  
48 recipient, the provider shall calculate the current retail prices of  
49 the preneed funeral arrangements, and:

50 (1) in the case of a non-guaranteed prepaid funeral agreement,  
51 if there are insufficient funds to pay for the current retail prices  
52 of the prepaid funeral goods and services requested, the provider  
53 shall consult with the appropriate representative for the  
54 supplementation of the funds or the modification of the funeral

1 arrangements set forth in the agreement prior to performance  
2 under the agreement.

3 (2) in the case of an agreement funded through a funeral trust,  
4 whether a guaranteed or non-guaranteed price agreement, if the  
5 provider determines that the funds or proceeds available exceed  
6 the current retail prices of the prepaid funeral goods and services  
7 to be provided, the surplus funds shall be paid to the purchaser, if  
8 alive, and if not, then to the personal representative of the estate  
9 of the deceased.

10 (3) in the case of an agreement funded through a funeral  
11 insurance policy, whether a guaranteed or non-guaranteed price  
12 agreement, if the provider determines that the funds or proceeds  
13 available exceed the current retail prices of the prepaid funeral  
14 goods and services to be provided, the surplus funds shall be paid  
15 to the named beneficiaries of the funeral insurance policy.

16 h. Provide that, upon completion of performance under the  
17 agreement, the provider shall present a final bill.

18 1i. Provide that if a prepaid funeral agreement is a guaranteed  
19 price agreement, the price guarantee is a guarantee and liability  
20 of the provider and not the guarantee and liability of the insurer  
21 issuing the funeral insurance policy when a funeral insurance  
22 policy is used or the trust depository administering the funeral  
23 trust when a funeral trust is used.<sup>1</sup>

24 5. (New section) In addition to those provisions required in  
25 section 4 of this act, agreements connecting a funeral insurance  
26 policy to a prepaid funeral agreement shall provide that:

27 a. Cancellation of the funeral arrangements will not cancel or  
28 otherwise invalidate the funeral insurance policy;

29 b. Cancellation, withdrawal of, or loans made against, the  
30 proceeds or cash value of the policy shall void any price  
31 guarantees and indicate, therefore, the likelihood that inadequate  
32 funds will exist to pay for the original arrangements as intended;  
33 and

34 c. Cancellation of the prepaid funeral agreement will not  
35 result in the refund of premiums paid.

36 6. (New section) In addition to the other requirements of this  
37 act, with respect to prepaid funeral agreements and the preneed  
38 funeral arrangements made in connection therewith:

39 a. If the provider is unable to provide the prepaid goods and  
40 services requested due to the revocation of the prepaid funeral  
41 agreement or funding arrangements or due to impossibility of  
42 performance, the moneys used to fund the agreement shall be  
43 paid to the purchaser, if alive, and if not, then to the personal  
44 representative of the deceased purchaser or his estate if the  
45 agreement is funded through a funeral trust or, if the agreement  
46 is funded through a funeral insurance policy, to the named  
47 beneficiaries of the policy.

48 b. As a condition to the performance of the agreement, the  
49 provider or an agent thereof shall deliver the prepaid funeral  
50 goods to the purchaser or personal representative of the intended  
51 funeral recipient, regardless of whether the agreement  
52 specifically provides therefor.

53 c. Unless the intended funeral recipient's next of kin inquires  
54 about the prepaid funeral goods and services arranged for, the

1 provider shall be entitled to presume that the arrangements on  
2 file are those intended.

3 7. (New section) No provider shall knowingly permit, in  
4 conjunction with a prepaid funeral agreement, the naming of  
5 himself or itself as beneficiary of a policy, except that nothing in  
6 this section shall be construed to prohibit the assignment of  
7 proceeds to a provider as payment for a funeral bill, or such other  
8 mechanism that provides payments to providers for the <sup>1</sup>[amount  
9 of]<sup>1</sup> goods or services rendered, and that provides for any excess  
10 proceeds to be paid to a named beneficiary or beneficiaries.

11 8. (New section) Where a provider, with the written consent  
12 of the purchaser, replaces a funeral trust used to fund a prepaid  
13 funeral agreement with a funeral insurance policy or converts an  
14 agreement funded by a funeral trust to one which is funded by a  
15 funeral insurance policy, the provider shall give to the purchaser  
16 a written statement which sets forth the material differences  
17 between the original and the new funding arrangements and which  
18 discloses the provider's earning of a commission based upon that  
19 transaction.

20 9. (New section) No person shall:

21 a. Advertise "discounts," "rebates" or other price reduction  
22 incentives:

23 (1) which are not actual reductions of the retail prices of a  
24 provider's current general price list; or

25 (2) which are based solely on a funeral insurance policy's  
26 premium rate tables.

27 b. In offering to provide preneed funeral arrangements or  
28 prepaid funeral agreements, use the word "trust" or "trust  
29 funded" in any name, advertisement or solicitation in a  
30 misleading manner.

31 c. Fund or finance preneed funeral arrangements or a prepaid  
32 funeral agreement through retail installment contracts or credit  
33 life insurance, or in any manner other than a funeral trust or  
34 funeral insurance policy.

35 d. Waive any provision of this act in any agreement in which a  
36 person pays money under, or in connection with, a prepaid funeral  
37 agreement. Any agreement to waive any portion of this act shall  
38 render the agreement voidable by the purchaser.

39 10. (New section) A person is guilty of a crime of the fourth  
40 degree if he knowingly or purposefully solicits or induces any  
41 person to make a prepaid funeral agreement, whether funded with  
42 a funeral insurance policy or a funeral trust, with the intent to  
43 collect or charge more than the fair market value for prepaid  
44 funeral goods or services when the purchaser or intended funeral  
45 recipient is:

46 a. an aged, blind or disabled applicant for, or recipient of,  
47 benefits pursuant to the Supplemental Security Income Program  
48 under P.L.1973, c.256 (C.44:7-85 et seq.) or any Medicaid  
49 program under P.L.1988, c.413 (C.30:4D-1 et seq.) utilizing the  
50 eligibility criteria of the Supplemental Security Income Program  
51 in regard to burial spaces and funds set aside for burial expenses;  
52 or

53 b. an aged, blind or disabled person who reasonably anticipates  
54 applying for, or receiving, the benefits specified in subsection a.



1 of this section.

2 11. (New section) All prepaid funeral agreements executed on  
3 or after the effective date of this <sup>1</sup>[1992] <sup>1</sup>1993<sup>1</sup> amendatory and  
4 supplementary act <sup>1</sup>[and funded through a funeral trust]<sup>1</sup> shall be  
5 governed pursuant to <sup>1</sup>the applicable provisions of<sup>1</sup> P.L.1957,  
6 c.182 (C.2A:102-13 et seq.), P.L.1985, c.147 (C.3B:11-16 et seq.)  
7 and <sup>1</sup>[the applicable provisions of]<sup>1</sup> this act.

8 12. <sup>1</sup>[New section]<sup>1</sup> a. This act applies to the sale of prepaid  
9 funeral goods or services and the offering of those goods or  
10 services for sale by providers.

11 b. This act shall not apply to the sale of <sup>1</sup>[lots or graves by a  
12 cemetery] interment spaces or related personal property or  
13 personal services by a cemetery company as provided for in  
14 N.J.S. 8A:1-1 et seq<sup>1</sup>.

15 13. (New section) The State Board of Mortuary Science of  
16 New Jersey shall have jurisdiction to enforce the provisions of  
17 this act. The board is authorized to adopt such rules and  
18 regulations, pursuant to the "Administrative Procedure Act,"  
19 P.L.1968, c.410 (C.52:14B-1 et seq.), as may be necessary to  
20 effectuate the purposes of this act.

21 14. Section 3 of P.L.1952, c.340 (C.45:7-34) is amended to  
22 read as follows:

23 3. As used in this act:

24 (a) "Board" means the State Board of Mortuary Science of  
25 New Jersey.

26 (b) "Embalming" means the disinfecting or preservation of a  
27 dead human body, entirely or in part by the use of chemical  
28 substances, fluids or gases in the body, or by introduction of the  
29 same into the body by vascular or hypodermic injection, or by  
30 direct application into the organs or cavities.

31 (c) "Funeral directing" means (1) the engaging in or conducting  
32 or holding one's self out as being engaged in or conducting the  
33 preparation (other than embalming) for burial or disposal and the  
34 direction or supervision of burial or disposal of dead human  
35 bodies; or (2) maintaining, using or operating a mortuary; or (3) in  
36 connection with one's name or mortuary using the words  
37 "mortician" or "funeral director" or "undertaker" or any other  
38 words or title of like import or signification.

39 "Funeral directing" also means the engaging in or making, or  
40 holding one's self out as being engaged in or making, funeral  
41 arrangements, including at need funeral arrangements or preneed  
42 funeral arrangements; or the offering or holding one's self out as  
43 offering the opportunity to purchase or enroll in a prepaid funeral  
44 agreement. As used in this definition, "funeral arrangements,"  
45 "at need funeral arrangements," "preneed funeral arrangements"  
46 and "prepaid funeral agreement" shall have the same meaning as  
47 they are defined in section 1 of P.L. , c. (C. ) (now pending  
48 before the Legislature as this bill).

49 (d) "Mortuary science" means embalming and funeral  
50 directing, as the same are herein defined.

51 (e) "Embalmer" means a qualified person who practices or  
52 engages in embalming, as the same is herein defined.

53 (f) "Funeral director" includes "undertaker" and "mortician"  
54 and means a qualified person who practices or engages in funeral

1 directing, as the same is herein defined.

2 (g) "Practitioner of mortuary science" means a qualified  
3 person who practices or engages in mortuary science, as the same  
4 is herein defined and who (1) shall be licensed under the  
5 provisions of this act as a practitioner of mortuary science, or (2)  
6 holds a license as both an embalmer and a funeral director under  
7 the provisions of any prior law or laws of this State, or (3) holds  
8 a license as an embalmer under the provisions of any prior law or  
9 laws of this State and shall have been licensed under the  
10 provisions of section 21 of [chapter 340,] P.L.1952, c.340  
11 (C.45:7-52) as a funeral director, or (4) holds a license as a  
12 funeral director under the provisions of any prior law or laws of  
13 this State and shall have been licensed under the provisions of  
14 section 21 of [chapter 340,] P.L.1952, c.340 (C.45:7-52) as an  
15 embalmer.

16 (h) "Mortuary" means any place or premises devoted to or used  
17 in the care and preparation for burial, disposition, or  
18 transportation of dead human bodies, or any specifically  
19 designated location or address where any person or persons shall  
20 hold forth that he, she, or they are engaged in the practice of  
21 mortuary science, embalming or funeral directing, and shall mean  
22 and include any premises of any kind whatsoever in which  
23 mortuary science in any of its branches is practiced or in which  
24 more than 5 funerals may be conducted in any calendar year,  
25 except publicly owned buildings, places of worship and meeting  
26 places of fraternal organizations.

27 (i) "Registered trainee" means a person who is duly registered  
28 with the board and who is engaged in the State of New Jersey in  
29 learning to practice as a practitioner of mortuary science under  
30 the personal instruction and supervision of a person duly licensed  
31 as a practitioner of mortuary science and who has an annual case  
32 volume as hereinafter provided in section 18 of this act.

33 (cf: P.L.1960, c.184, s.2)

34 15. Section 18 of P.L.1960, c.184 (C.45:7-65.3) is amended to  
35 read as follows:

36 18. a. No person, firm or corporation [shall solicit in person] ,  
37 or [through] solicitors, agents [or] , canvassers, employees or  
38 other persons acting on behalf of that person, firm or  
39 corporation, for the purpose of selling or contracting to sell or  
40 provide any service or services commonly furnished or performed  
41 by an embalmer or funeral director, including, but not limited to,  
42 prepaid funeral agreements and the making of at need or preneed  
43 funeral arrangements, shall:

44 (1) Directly or indirectly <sup>1</sup>[call upon] solicit<sup>1</sup> persons in  
45 hospitals, rest homes, nursing homes or similar health care  
46 facilities by telephone or in person without first having been  
47 specifically requested to do so by that person;

48 (2) Directly or indirectly employ any agent, employee,  
49 assistant <sup>1,1</sup> independent contractor or other person to <sup>1</sup>[call  
50 upon] solicit<sup>1</sup> persons in hospitals, rest homes, nursing homes or  
51 similar health care facilities by telephone or in person without  
52 first having been specifically requested to do so by that person;

53 (3) Solicit relatives of persons whose death is apparently  
54 pending or whose death has recently occurred for the purpose of

1 providing any of those services for that person;

2 (4) Solicit, accept, offer to pay or pay any commission, bonus  
 3 or rebate in consideration of recommending or causing any person  
 4 to use the services of a particular funeral director, or the  
 5 services of a particular crematory, mausoleum or cemetery; or

6 (5) Solicit persons at their residences in person or by telephone  
 7 unless that solicitation is in response to a previous request for or  
 8 expression of interest in a funeral director's services made by  
 9 the person solicited or by a member of that person's family.

10 b. Nothing in this section shall be construed to restrict the  
 11 right of a funeral director or an agent or employee of the funeral  
 12 director, to communicate, by direct mail or in any other way not  
 13 specifically prohibited by this section, with persons or provide  
 14 them with information regarding the services of the funeral  
 15 director, or to solicit the business of any person responding to  
 16 that communication and explicitly requesting further information  
 17 by personal visit or telephone, or otherwise initiating further  
 18 discussion of those services, or to provide services or information  
 19 to persons in connection with services previously rendered.

20 c. Nothing in this section shall be construed to prohibit general  
 21 advertising by a funeral director.

22 d. <sup>1</sup>Nothing in this section shall be deemed to prohibit the  
 23 payment of commissions, bonuses or other compensation to a  
 24 licensed cemetery salesman for the sale of cemetery goods or  
 25 services.

26 e. <sup>1</sup> As used in this section, "at need funeral arrangements,"  
 27 "preneed funeral arrangements" and "prepaid funeral agreement"  
 28 shall have the same meaning as they are defined in section 1 of  
 29 P.L. , c. (C. ) (now pending before the Legislature as this  
 30 bill).

31 (cf: P.L.1960, c.184, s.18)

32 16. Section 1 of P.L.1957, c.182 (C.2A:102-13) is amended to  
 33 read as follows:

34 1. Any and all moneys paid to a funeral director, undertaker,  
 35 cemetery, or any other person, firm or corporation, under or in  
 36 connection with [an] <sup>1</sup>[a prepaid funeral agreement or any other]  
 37 <sup>an</sup> agreement for the sale of [personal property to be used in  
 38 connection with a funeral or burial] <sup>1</sup>[prepaid funeral goods]  
 39 personal property to be used in connection with a funeral or  
 40 burial<sup>1</sup>, or for the furnishing of [personal] <sup>1</sup>[prepaid funeral]  
 41 personal<sup>1</sup> services [of a funeral director or undertaker, wherein  
 42 the personal property is] <sup>1</sup>[in which all or part of the prepaid  
 43 funeral goods are] of a funeral director or undertaker, wherein  
 44 the personal property is<sup>1</sup> not to be delivered or <sup>1</sup>[all or part of]<sup>1</sup>  
 45 the [personal] <sup>1</sup>[prepaid funeral] personal<sup>1</sup> services are not to be  
 46 rendered until the occurrence of the death of the [person for  
 47 whose funeral or burial such property or services are to be  
 48 furnished] <sup>1</sup>[intended funeral recipient] person for whose funeral  
 49 or burial such property or services are to be furnished<sup>1</sup>, shall be  
 50 trust funds <sup>1</sup>[held in a pooled trust or a P.O.D. account]<sup>1</sup> in the  
 51 possession of such funeral director, undertaker, cemetery, or  
 52 other person, firm or corporation, and shall be deposited by him  
 53 or it within 30 days after receipt thereof in a special account  
 54 maintained exclusively for the deposit of such moneys in a

1 federally insured State or federally chartered bank, savings bank  
 2 or savings and loan association; or, if the [person paying the  
 3 moneys] <sup>1</sup>[purchaser] person paying the moneys<sup>1</sup> requests, in a  
 4 pooled trust account established pursuant to P.L.1985, c.147  
 5 (C.3B:11-16 et seq.) and chosen by the [person paying the moneys]  
 6 <sup>1</sup>[purchaser] person paying the moneys<sup>1</sup>, and shall be so held on  
 7 deposit, together with any interest thereon, until [said personal  
 8 property has] <sup>1</sup>[the prepaid funeral goods have] said personal  
 9 property has<sup>1</sup> been delivered and [said personal] <sup>1</sup>[the prepaid  
 10 funeral] said personal<sup>1</sup> services have been rendered, unless sooner  
 11 repaid, in whole or in part. No depository institution shall be  
 12 liable for the misuse, misapplication or improper withdrawal by  
 13 any such funeral director, undertaker, cemetery or other person,  
 14 firm or corporation, of any moneys deposited in such depository  
 15 institution pursuant to this act.

16 <sup>1</sup>[All such agreements] Any agreement for funeral goods or  
 17 funeral services, or both,<sup>1</sup> executed on or after the effective  
 18 date of this <sup>1</sup>[1992] 1993<sup>1</sup> amendatory and supplementary act <sup>1</sup>by  
 19 a provider<sup>1</sup> shall comply with the provisions set forth in sections  
 20 1 through 13 of P.L. , c. (C. ) (now pending before the  
 21 Legislature as this bill).

22 (cf: P.L.1985, c.147, s.4)

23 <sup>1</sup>[17. Section 2 of P.L.1957, c.182 (C.2A:102-14) is amended to  
 24 read as follows:

25 The amount of any and all moneys paid under or in connection  
 26 with such an agreement, together with interest, if any, accrued  
 27 thereon while on deposit as so required shall be repaid on demand  
 28 at any time prior to the delivery of the [personal property]  
 29 prepaid funeral goods or the rendering of the [personal] prepaid  
 30 funeral services , except as otherwise provided in section 1 of  
 31 P.L.1991, c.502 (C.2A:102-16.1).

32 (cf: P.L.1957, c.182, s.2)<sup>1</sup>

33 <sup>1</sup>[18.] 17.<sup>1</sup> Section 4 of P.L.1957 c.182 (C.2A:102-16) is  
 34 amended to read as follows:

35 4. Any person, firm or corporation who or which, having  
 36 received any moneys under or in connection with such an  
 37 agreement, shall fail to deposit or keep on deposit , misapply or  
 38 misappropriate or to repay any and all such moneys as provided in  
 39 this act, [shall be] is guilty of [a misdemeanor] theft by failure to  
 40 make the required disposition of property received pursuant to  
 41 N.J.S.2C:20-9.

42 Any person, firm or corporation receiving moneys under  
 43 P.L.1957, c.182 (C.2A:102-13 et seq.) is presumed:

44 a. to know his or its obligations relevant to criminal liability  
 45 under this section; and

46 b. to have dealt with property as his or its own if he or it fails  
 47 to pay or account upon lawful demand or if an audit reveals a  
 48 shortage or falsification of accounts.

49 (cf: P.L.1957, c.182, s.4)

50 <sup>1</sup>[19.] 18.<sup>1</sup> Section 5 of P.L.1957, c.182 (C.2A:102-17) is  
 51 amended to read as follows:

52 5. This act shall not apply to

53 a. the sale of lots or graves by a cemetery; or

54 b. the use of individually issued insurance policies as funding

1 vehicles for prepaid funeral agreements.

2 (cf: P.L.1957, c.182, s.5)

3 <sup>1</sup>[20.] <sup>1</sup>19. (New section) As used in P.L.1957, c.182  
4 (C.2A:102-13 et seq.):

5 "Deliver" or "delivery" means the conveyance of actual  
6 control and possession of prepaid funeral goods that have been  
7 permanently relinquished by a provider <sup>1</sup>, or other person, firm or  
8 corporation<sup>1</sup>, or an agent thereof, to the purchaser <sup>1</sup> or person  
9 paying the moneys<sup>1</sup>, or personal representative of the intended  
10 funeral recipient. Delivery has not been made if the provider <sup>1</sup>,  
11 or other person, firm or corporation, or an agent thereof<sup>1</sup>:

12 (1) Arranges or induces the purchaser <sup>1</sup> or person paying the  
13 moneys<sup>1</sup> to arrange for the storage or warehousing of prepaid  
14 funeral goods ordered pursuant to a prepaid funeral agreement,  
15 with or without evidence that legal title has passed; or

16 (2) Acquires or reacquires actual or constructive possession or  
17 control of prepaid funeral goods after their initial delivery to the  
18 purchaser <sup>1</sup> or person paying the moneys<sup>1</sup> or personal  
19 representative of the intended funeral recipient.

20 This definition of delivery shall apply to this term as used in  
21 P.L.1957, c.182 (C.2A:102-13 et seq.), notwithstanding the  
22 provisions set forth in the Uniform Commercial Code, Title 12A  
23 of the New Jersey Statutes.

24 "Funeral insurance policy" means any insurance policy or  
25 annuity contract that, at the time of issue, was intended to  
26 provide, or which was explicitly marketed for the purpose of  
27 providing, funds to the provider, whether directly or indirectly, at  
28 the time of the insured's death in connection with a prepaid  
29 funeral agreement.

30 "Funeral trust" means a commingled or non-commingled  
31 account held in a pooled trust or P.O.D. account, established in  
32 accordance with P.L.1957, c.182 (C.2A:102-13 et seq.) or  
33 P.L.1985, c.147 (C.3B:11-16 et seq.), which is intended as the  
34 depository for cash payments connected with a prepaid funeral  
35 agreement.

36 "Intended funeral recipient" means the person named in a  
37 prepaid funeral agreement for whose bodily disposition the  
38 prepaid funeral agreement is intended to provide. The intended  
39 funeral recipient may or may not be the purchaser.

40 "Payable on death account" or "P.O.D. account" means an  
41 account payable on request to the purchaser or intended funeral  
42 recipient of a prepaid funeral agreement, during the lifetime of  
43 the intended funeral recipient and on his death, to a provider of  
44 funeral goods and services.

45 "Pooled trust" means a pooled trust account established  
46 pursuant to P.L.1985, c.147 (C.3B:11-16 et seq.).

47 "Preneed funeral arrangements" means funeral arrangements  
48 made with an intended funeral recipient or his guardian, agent or  
49 next of kin, for the funeral of the intended funeral recipient.

50 "Prepaid funeral agreement" means a written agreement and  
51 all documents related thereto made by a purchaser with a  
52 provider prior to the death of the intended funeral recipient, with  
53 which there is connected a provisional means of paying for  
54 preneed funeral arrangements upon the death of the intended

1 funeral recipient by the use of a funeral trust or funeral  
2 insurance policy, made payable to a provider and in return for  
3 which the provider promises to furnish, make available or provide  
4 the prepaid funeral goods or services, or both, specified in the  
5 agreement, the delivery of which occurs after the death of the  
6 intended funeral recipient.

7 "Prepaid funeral goods" means personal property typically sold  
8 or provided in connection with a funeral, or the final disposition  
9 of human remains, including, but not limited to, caskets or other  
10 primary containers, cremation or transportation containers, outer  
11 burial containers, vaults, as defined in N.J.S.8A:1-2, memorials  
12 as defined in N.J.S.8A:1-2, funeral clothing or accessories,  
13 monuments, cremation urns, and similar funeral or burial items,  
14 which goods are purchased in advance of need and which will not  
15 be delivered until the death of the intended funeral recipient  
16 named in a prepaid funeral agreement. <sup>1</sup>Prepaid funeral goods  
17 shall not mean the sale of interment spaces and related personal  
18 property offered or sold by a cemetery company as provided for  
19 in N.J.S.8A:1-1 et seq.<sup>1</sup>

20 "Prepaid funeral services" means those services typically  
21 provided in connection with a funeral, or the final disposition of  
22 human remains, including, but not limited to, funeral directing  
23 services, embalming services, care of human remains, preparation  
24 of human remains for final disposition, transportation of human  
25 remains, use of facilities or equipment for viewing human  
26 remains, visitation, memorial services or services which are used  
27 in connection with a funeral or the disposition of human remains,  
28 coordinating or conducting funeral rites or ceremonies and  
29 similar funeral or burial services, including limousine services  
30 provided in connection therewith, which services are purchased in  
31 advance of need and which will not be provided or delivered until  
32 the death of the intended funeral recipient named in a prepaid  
33 funeral agreement. <sup>1</sup>Prepaid funeral services shall not mean the  
34 sale of services incidental to the provision of interment spaces or  
35 any related personal services offered or sold by a cemetery  
36 company as provided for in N.J.S.8A:1-1 et seq.<sup>1</sup>

37 "Provider" means a person, firm or corporation duly licensed  
38 and registered<sup>1</sup> pursuant to the "Mortuary Science Act,"  
39 P.L.1952, c.340 (C.45:7-32 et seq.) to engage in the business and  
40 practice of funeral directing or mortuary science, or an individual  
41 serving as an agent thereof and so licensed:

42 (1) Operating a duly registered mortuary in accordance with  
43 P.L.1952, c.340 (C.45:7-32 et seq.) and the regulations  
44 promulgated thereunder;

45 (2) Having his or its business and practice based within the  
46 physical confines of the registered mortuary; and

47 (3) Engaging in the practice of making preneed funeral  
48 arrangements, including, but not limited to, offering the  
49 opportunity to purchase or enroll in prepaid funeral agreements.

50 "Purchaser" means the person named in a prepaid funeral  
51 agreement who purchases the prepaid funeral goods and services  
52 to be provided thereunder. The purchaser may or may not be the  
53 intended funeral recipient. If the purchaser is different than the  
54 intended funeral recipient, it is understood that the relationship

1 of the purchaser to the intended funeral recipient includes a  
2 means to provide administrative control over the <sup>1</sup>[arrangements]  
3 agreement<sup>1</sup> on behalf of the intended funeral recipient.

4 <sup>1</sup>[21.] 20.<sup>1</sup> Section 1 of P.L.1985, c.147 (C.3B:11-16) is  
5 amended to read as follows:

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

17 a. The right to immediately withdraw on demand any monies  
18 plus accrued interest paid into the trust, except as provided in  
19 section 1 of P.L.1991, c.501 (C.2A:102-16.1).

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

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

24 d. The identity and location of the trustees.

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

27 All such trust agreements <sup>1</sup>[executed] entered into by a  
28 provider<sup>1</sup> on or after the effective date of this <sup>1</sup>[1992] 1993<sup>1</sup>  
29 amendatory and supplementary act shall comply with the  
30 provisions set forth in sections 1 through 13 of P.L. , c.  
31 (C. ) (now pending before the Legislature as this bill):

32 (cf: P.L.1991, c.502, s.2)

33 <sup>1</sup>[22.] 21.<sup>1</sup> Section 2 of P.L.1985, c.147 (C.3B:11-17) is  
34 amended to read as follows:

35 2. The trustees of a pooled trust fund established pursuant to  
36 section 1 of this act for the benefit of not less than 200  
37 [individual consumers] purchasers or intended funeral recipients  
38 shall be entitled to a commission of not more than 1% per annum  
39 of the corpus of the trust fund. The trustees of a pooled trust  
40 fund for the benefit of less than 200 [individual consumers]  
41 purchasers or intended funeral recipients shall not be entitled to  
42 any commission. All expenses incurred in the administration of  
43 such a trust or the services rendered thereby shall be deducted  
44 from income received by the trustees and in no event shall the  
45 trustees invade the corpus of the trust funds.

46 (cf: P.L.1985, c.147, s.2)

47 <sup>1</sup>[23.] 22.<sup>1</sup> (New section) As used in P.L.1985, c.147  
48 (C.3B:11-16 et seq.):

49 "Deliver" or "delivery" means the conveyance of actual  
50 control and possession of prepaid funeral goods that have been  
51 permanently relinquished by a provider, <sup>1</sup>or other person, firm or  
52 corporation<sup>1</sup> or an agent thereof, to the purchaser <sup>1</sup>or person  
53 paying the moneys<sup>1</sup>, or personal representative of the intended  
54 funeral recipient. Delivery has not been made if the provider <sup>1</sup>,

1 or other person, firm or corporation, or an agent thereof<sup>1</sup>:

2 (1) Arranges or induces the purchaser or person paying the  
3 moneys<sup>1</sup> to arrange for the storage or warehousing of prepaid  
4 funeral goods ordered pursuant to a prepaid funeral agreement,  
5 with or without evidence that legal title has passed; or

6 (2) Acquires or reacquires actual or constructive possession or  
7 control of prepaid funeral goods after their initial delivery to the  
8 purchaser or person paying the moneys<sup>1</sup> or personal  
9 representative of the intended funeral recipient.

10 This definition of delivery shall apply to this term as used in  
11 P.L.1985, c.147 (C.3B:11-16 et seq.), notwithstanding the  
12 provisions set forth in the Uniform Commercial Code, Title 12A  
13 of the New Jersey Statutes.

14 "Funeral insurance policy" means any insurance policy or  
15 annuity contract that, at the time of issue, was intended to  
16 provide, or which was explicitly marketed for the purpose of  
17 providing, funds to the provider, whether directly or indirectly, at  
18 the time of the insured's death in connection with a prepaid  
19 funeral agreement.

20 "Funeral trust" means a commingled or non-commingled  
21 account held in a pooled trust or P.O.D. account, established in  
22 accordance with P.L.1957, c.182 (C.2A:102-13 et seq.) or  
23 P.L.1985, c.147 (3B:11-16 et seq.), which is intended as the  
24 depository for cash payments connected with a prepaid funeral  
25 agreement.

26 "Intended funeral recipient" means the person named in a  
27 prepaid funeral agreement for whose bodily disposition the  
28 prepaid funeral agreement is intended to provide. The intended  
29 funeral recipient may or may not be the purchaser.

30 "Payable on death account" or "P.O.D. account" means an  
31 account payable on request to the purchaser or intended funeral  
32 recipient of a prepaid funeral agreement, during the lifetime of  
33 the intended funeral recipient and on his death, to a provider of  
34 funeral goods and services.

35 "Pooled trust" means a pooled trust account established  
36 pursuant to P.L.1985, c.147 (C.3B:11-16 et seq.).

37 "Preneed funeral arrangements" means funeral arrangements  
38 made with an intended funeral recipient or his guardian, agent or  
39 next of kin, for the funeral of the intended funeral recipient.

40 "Prepaid funeral agreement" means a written agreement and  
41 all documents related thereto made by a purchaser with a  
42 provider prior to the death of the intended funeral recipient, with  
43 which there is connected a provisional means of paying for  
44 preneed funeral arrangements upon the death of the intended  
45 funeral recipient by the use of a funeral trust or funeral  
46 insurance policy, made payable to a provider and in return for  
47 which the provider promises to furnish, make available or provide  
48 the prepaid funeral goods or services, or both, specified in the  
49 agreement, the delivery of which occurs after the death of the  
50 intended funeral recipient.

51 "Prepaid funeral goods" means personal property typically sold  
52 or provided in connection with a funeral, or the final disposition  
53 of human remains, including, but not limited to, caskets or other  
54 primary containers, cremation or transportation containers, outer



1 burial containers, vaults, as defined in N.J.S.8A:1-2, memorials  
 2 as defined in N.J.S.8A:1-2, funeral clothing or accessories,  
 3 monuments, cremation urns, and similar funeral or burial items,  
 4 which goods are purchased in advance of need and which will not  
 5 be delivered until the death of the intended funeral recipient  
 6 named in a prepaid funeral agreement. <sup>1</sup>Prepaid funeral goods  
 7 shall not mean the sale of interment spaces and related personal  
 8 property offered or sold by a cemetery company as provided for  
 9 in N.J.S.8A:1-1 et seq.<sup>1</sup>

10 "Prepaid funeral services" means those services typically  
 11 provided in connection with a funeral, or the final disposition of  
 12 human remains, including, but not limited to, funeral directing  
 13 services, embalming services, care of human remains, preparation  
 14 of human remains for final disposition, transportation of human  
 15 remains, use of facilities or equipment for viewing human  
 16 remains, visitation, memorial services or services which are used  
 17 in connection with a funeral or the disposition of human remains,  
 18 coordinating or conducting funeral rites or ceremonies and  
 19 similar funeral or burial services, including limousine services  
 20 provided in connection therewith, which services are purchased in  
 21 advance of need and which will not be provided or delivered until  
 22 the death of the intended funeral recipient named in a prepaid  
 23 funeral agreement. <sup>1</sup>Prepaid funeral services shall not mean the  
 24 sale of services incidental to the provision of interment spaces or  
 25 any related personal services offered or sold by a cemetery  
 26 company as provided for in N.J.S.8A:1-1 et seq.<sup>1</sup>

27 "Provider" means a person, firm or corporation duly licensed  
 28 <sup>1</sup>and registered<sup>1</sup> pursuant to the "Mortuary Science Act,"  
 29 P.L.1952, c.340 (C.45:7-32 et seq.) to engage in the business and  
 30 practice of funeral directing or mortuary science, or an individual  
 31 serving as an agent thereof and so licensed:

32 (1) Operating a duly registered mortuary in accordance with  
 33 P.L.1952, c.340 (C.45:7-32 et seq.) and the regulations  
 34 promulgated thereunder;

35 (2) Having his or its business and practice based within the  
 36 physical confines of the registered mortuary; and

37 (3) Engaging in the practice of making preneed funeral  
 38 arrangements, including, but not limited to, offering the  
 39 opportunity to purchase or enroll in prepaid funeral agreements.

40 "Purchaser" means the person named in a prepaid funeral  
 41 agreement who purchases the prepaid funeral goods and services  
 42 to be provided thereunder. The purchaser may or may not be the  
 43 intended funeral recipient. If the purchaser is different than the  
 44 intended funeral recipient, it is understood that the relationship  
 45 of the purchaser to the intended funeral recipient includes a  
 46 means to provide administrative control over the <sup>1</sup>[arrangements]  
 47 agreement<sup>1</sup> on behalf of the intended funeral recipient.

48 <sup>1</sup>[24.] <sup>1</sup>23. <sup>1</sup>N.J.S.8A:5-18 is amended to read as follows:

49 8A:5-18. Disposition of remains of deceased person; right to  
 50 control; priorities

51 The <sup>1</sup>[person who shall have the]<sup>1</sup> right to control the  
 52 disposition of the remains of a deceased person, <sup>1</sup>[including, but  
 53 not limited to, the making of funeral arrangements therefor,]<sup>1</sup>  
 54 unless other directions have been <sup>1</sup>[specifically]<sup>1</sup> given by the

1 decedent <sup>1</sup>, through a will or other properly executed writing by  
2 the decedent,<sup>1</sup> or by a court of competent jurisdiction shall be in  
3 the following order:

- 4 a. The surviving spouse.
- 5 b. A majority of the surviving children of the decedent or the  
6 surviving child if one.
- 7 c. The surviving parent or parents of the decedent.
- 8 d. A majority of the brothers and sisters of the decedent if no  
9 child or parent is living.
- 10 e. Other next of kin according to the degree of consanguinity.

11 <sup>1</sup>[In the event of a conflict between the provisions of this  
12 section and the laws of intestate succession pursuant to chapter 5  
13 of Title 3B of the New Jersey Statutes, with respect to the  
14 disposition of the remains of a deceased person, or the making of  
15 funeral arrangements therefor, this section shall be controlling.]

16 A prepaid funeral agreement or a preneed funeral arrangement,  
17 as defined in section 1 of P.L. , c. (C. )(now pending  
18 before the Legislature as this bill), shall not constitute "other  
19 directions" for the purposes of this section, nor shall it bind those  
20 with the right to control the disposition of the remains.<sup>1</sup>

21 (cf: N.J.S.8A:5-18)

22 <sup>124.</sup> (New section) a. As used in this section:

23 "At need funeral arrangements" means funeral arrangements  
24 made with the survivors or personal representative of a person  
25 who has already died for that person's funeral.

26 "Funeral arrangements" means funeral and burial plans made  
27 through a mortuary, including the selection of plans for the  
28 furnishing of funeral goods and services pursuant to a completed  
29 plan of bodily disposition and the act of offering the opportunity  
30 to purchase or to enroll in a prepaid funeral agreement by the  
31 mortuary.

32 "Funeral insurance policy" means any insurance policy or  
33 annuity contract that, at the time of issue, was intended to  
34 provide, or which was explicitly marketed for the purpose of  
35 providing, funds to the provider, whether directly or indirectly, at  
36 the time of the insured's death in connection with a prepaid  
37 funeral agreement.

38 "Intended funeral recipient" means the person named in a  
39 prepaid funeral agreement for whose bodily disposition the  
40 prepaid funeral agreement is intended to provide. The intended  
41 funeral recipient may or may not be the purchaser.

42 "Preneed funeral arrangements" means funeral arrangements  
43 made with an intended funeral recipient or his guardian, agent or  
44 next of kin, for the funeral of the intended funeral recipient.

45 "Prepaid funeral agreement" means a written agreement and  
46 all documents related thereto made by a purchaser with a  
47 provider prior to the death of the intended funeral recipient, with  
48 which there is connected a provisional means of paying for  
49 preneed funeral arrangements upon the death of the intended  
50 funeral recipient by the use of a funeral trust or funeral  
51 insurance policy, made payable to a provider and in return for  
52 which the provider promises to furnish, make available or provide  
53 the prepaid funeral goods or services, or both, specified in the  
54 agreement, the delivery of which occurs after the death of the

1 intended funeral recipient.

2 "Prepaid funeral goods" means personal property typically sold  
3 or provided in connection with a funeral, or the final disposition  
4 of human remains, including, but not limited to, caskets or other  
5 primary containers, cremation or transportation containers, outer  
6 burial containers, vaults, as defined in N.J.S.8A:1-2, memorials  
7 as defined in N.J.S.8A:1-2, funeral clothing or accessories,  
8 monuments, cremation urns, and similar funeral or burial items,  
9 which goods are purchased in advance of need and which will not  
10 be delivered until the death of the intended funeral recipient  
11 named in a prepaid funeral agreement. Prepaid funeral goods  
12 shall not mean the sale of interment spaces and related personal  
13 property offered or sold by a cemetery company as provided for  
14 in N.J.S.8A:1-1 et seq.

15 "Prepaid funeral services" means those services typically  
16 provided in connection with a funeral, or the final disposition of  
17 human remains, including, but not limited to, funeral directing  
18 services, embalming services, care of human remains, preparation  
19 of human remains for final disposition, transportation of human  
20 remains, use of facilities or equipment for viewing human  
21 remains, visitation, memorial services or services which are used  
22 in connection with a funeral or the disposition of human remains,  
23 coordinating or conducting funeral rites or ceremonies and  
24 similar funeral or burial services, including limousine services  
25 provided in connection therewith, which services are purchased in  
26 advance of need and which will not be provided or delivered until  
27 the death of the intended funeral recipient named in a prepaid  
28 funeral agreement. Prepaid funeral services shall not mean the  
29 sale of services incidental to the provision of interment spaces or  
30 any related personal services offered or sold by a cemetery  
31 company as provided for in N.J.S.8A:1-1 et seq.

32 "Provider" means a person, firm or corporation duly licensed  
33 and registered pursuant to the "Mortuary Science Act," P.L.1952,  
34 c.340 (C.45:7-32 et seq.) to engage in the business and practice of  
35 funeral directing or mortuary science, or an individual serving as  
36 an agent thereof and so licensed:

37 (1) Operating a duly registered mortuary in accordance with  
38 P.L.1952, c.340 (C.45:7-32 et seq.) and the regulations  
39 promulgated thereunder;

40 (2) Having his or its business and practice based within the  
41 physical confines of the registered mortuary; and

42 (3) Engaging in the practice of making preneed funeral  
43 arrangements, including, but not limited to, offering the  
44 opportunity to purchase or enroll in prepaid funeral agreements.

45 "Purchaser" means the person named in a prepaid funeral  
46 agreement who purchases the prepaid funeral goods and services  
47 to be provided thereunder. The purchaser may or may not be the  
48 intended funeral recipient. If the purchaser is different than the  
49 intended funeral recipient, it is understood that the relationship  
50 of the purchaser to the intended funeral recipient includes a  
51 means to provide administrative control over the agreement on  
52 behalf of the intended funeral recipient.

53 b. The issuance and marketing of any funeral insurance policy  
54 shall meet all of the terms and conditions specified by the

1 Department of Insurance as would apply to any life insurance or  
2 annuity contract, and shall in addition meet the standards and  
3 requirements specified in sections 1 through 13 of P.L. , c.  
4 (C. )(now pending before the Legislature as this bill).  
5 c. Any insurance policy or annuity contract used as a funeral  
6 insurance policy on or after the effective date of P.L. , c  
7 (C. )(now pending before the Legislature as this bill), whether  
8 issued within the State or outside of the State, whether on a  
9 group or individual basis, and any certificates, policies, contracts,  
10 applications, forms and related material, shall be subject to all  
11 the laws and regulations of this State and the terms and  
12 conditions of the Department of Insurance, as though issued in  
13 this State, and shall at the time of filing be designated as being  
14 intended for use as a funeral insurance policy.  
15 d. The Commissioner of Insurance shall adopt rules and  
16 regulations to implement the provisions of this section, including  
17 a regulation establishing the loss ratio for funeral insurance  
18 policies.<sup>1</sup>  
19 25. This act shall take effect on the 180th day following  
20 enactment, but, on or after the date of enactment, the State  
21 Board of Mortuary Science of New Jersey <sup>1</sup>and the Department  
22 of Insurance<sup>1</sup> may promulgate rules and regulations to implement  
23 the provisions of this act in anticipation of it taking effect.  
24  
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26  
27  
28 Regulates the offering and making of prepaid funeral agreements.

- 1 a. The surviving spouse.  
2 b. A majority of the surviving children of the decedent or the  
3 surviving child if one.  
4 c. The surviving parent or parents of the decedent.  
5 d. A majority of the brothers and sisters of the decedent if no  
6 child or parent is living.  
7 e. Other next of kin according to the degree of consanguinity.  
8 In the event of a conflict between the provisions of this section  
9 and the laws of intestate succession pursuant to chapter 5 of  
10 Title 3B of the New Jersey Statutes, with respect to the  
11 disposition of the remains of a deceased person, or the making of  
12 funeral arrangements therefor, this section shall be controlling.  
13 (cf: N.J.S.8A:5-18)

14 25. This act shall take effect on the 180th day following  
15 enactment, but, on or after the date of enactment, the State  
16 Board of Mortuary Science of New Jersey may promulgate rules  
17 and regulations to implement the provisions of this act in  
18 anticipation of it taking effect.  
19  
20

### 21 SPONSOR'S STATEMENT

22  
23 This bill regulates the offering and making of prepaid funeral  
24 agreements by funeral directors and consumers. Prepaid funeral  
25 agreements are agreements for the purchase of funeral goods and  
26 services prior to the death of the person whose funeral is being  
27 planned, with which there is connected a provisional means of  
28 paying for the funeral arrangements.

29 The bill defines for the first time the vocabulary already  
30 broadly used within the funeral service industry with respect to  
31 "preneed" arrangements. It sets minimum standards for the  
32 content of prepaid funeral agreements and prohibits the financing  
33 of an agreement unless the preneed arrangements have also been  
34 made. It prevents "unjust enrichment" for funeral directors by  
35 requiring the return of any proceeds of a financing arrangement  
36 in excess of what is required to comply with the preneed  
37 arrangements made and articulates the criminal liability for the  
38 misappropriation of prepaid funeral funds.

39 In addition, the bill reinforces existing laws and regulations  
40 which restrict preneed solicitation and sales to licensed funeral  
41 directors and prohibits "cold calling" at residences, nursing  
42 homes and hospitals, as well as remuneration for referrals. It  
43 also prohibits funeral directors from knowingly permitting  
44 themselves to be made the beneficiary of an insurance policy in  
45 conjunction with a prepaid arrangement and prohibits the funding  
46 of agreements through retail installment contracts or credit life  
47 insurance.  
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Regulates the offering and making of prepaid funeral agreements.

**ASSEMBLY COMMERCE AND REGULATED  
PROFESSIONS COMMITTEE**

**STATEMENT TO**

**[FIRST REPRINT]**

**SENATE, No. 1012**

**STATE OF NEW JERSEY**

**DATED: MARCH 22, 1993**

The Assembly Commerce and Regulated Professions Committee reports favorably Senate Bill No. 1012 [1R].

This bill regulates the offering and making of prepaid funeral agreements between funeral directors and consumers. Prepaid funeral agreements are agreements for the purchase of funeral goods and services prior to the death of the person whose funeral is being planned, with which there is connected a provisional means of paying for the funeral arrangements.

The bill defines for the first time the vocabulary already used within the funeral industry and statutes and regulations of this State.

The bill prohibits any person, other than a licensed funeral director with his business based within a registered mortuary (known as a provider), from selling or offering to sell at need funeral arrangements (funerals of persons who have already died), preneed funeral arrangements (funeral arrangements for living persons), or prepaid funeral agreements. A provider may not enter into a prepaid funeral agreement or provide a funeral trust or insurance policy in connection therewith unless he makes preneed funeral arrangements for the intended funeral recipient.

Among other provisions, every prepaid funeral agreement must: be in writing and contain certain specified information required under the bill; provide that all funeral arrangements are revocable and that all funeral funding arrangements are severable from those funeral arrangements, unless the prepaid funeral agreement provides that the funeral trust is irrevocable during the lifetime of the intended funeral recipient; provide, unless otherwise specified therein, that the prepaid funeral goods and services will be provided in the area served by the provider; provide for substitution of any goods or services that are unavailable with goods or services of equal quality and value; and provide, upon the death of the intended funeral recipient, that the provider must calculate the current retail prices of the preneed funeral arrangements and, in the case of a non-guaranteed prepaid funeral agreement in which there are insufficient funds, the provider must seek more funds or modification of funeral arrangements, and in the case of an agreement funded through a funeral trust or funeral insurance policy, whether a guaranteed or non-guaranteed price agreement, the provider must return any proceeds in excess of the then current retail prices, and present a final bill upon performance of the agreement.

If a prepaid funeral agreement is funded by a funeral insurance policy, cancellation of the funeral arrangement would not cancel or invalidate the policy but cancellation of the policy or loans made

against the proceeds or cash value of the policy would void any price guarantees. If the provider is unable to provide the prepaid goods and services requested due to the revocation of the prepaid funeral agreement or funding arrangements or due to the impossibility of performance, the moneys used to fund the agreement must be refunded.

There are numerous prohibitions provided in the bill. No provider shall: knowingly permit the naming of himself as beneficiary of a policy in regard to a prepaid funeral agreement; advertise discounts or rebates which are not actual reductions of the retail prices of the provider's current general price list; or finance prepaid funeral arrangements or prepaid funeral agreements through retail installment contracts or credit life insurance. A waiver of any provision of this act is prohibited and would render any agreement voidable by the purchaser. The bill also prohibits a funeral director or his agents from: soliciting persons in hospitals, rest homes, nursing homes or other health care facilities by telephone or in person without first having been specifically requested to do so by the person; soliciting relatives of persons whose death is pending or has occurred; paying any remuneration for funeral referrals; or soliciting persons at their residence in person or by telephone unless requested by that person or a member of that person's family.

A provider or any other person would be guilty of a crime of the fourth degree if he knowingly induces a person, who is aged, blind or disabled and receives Supplemental Security Income benefits or medicaid, to make a prepaid funeral agreement with the intent of collecting more than the fair market value for prepaid funeral goods or services.

The bill specifies that prepaid funeral goods and services do not include the sale of interment spaces and related personal property or services incidental to the provision of interment spaces and any related personal services offered or sold by a cemetery company and provides for the uniform applicability of standards and underwriting criteria for funeral insurance policies sold in this State.

The State Board of Mortuary Science of New Jersey will enforce the provisions of this bill, except that the Department of Insurance will enforce those provisions of this bill concerning funeral insurance policies.

**SENATE COMMERCE COMMITTEE**

**STATEMENT TO**

**SENATE, No. 1012**

with committee amendments

**STATE OF NEW JERSEY**

**DATED: JANUARY 25, 1993**

The Senate Commerce Committee reports favorably and with committee amendments Senate Bill No. 1012.

This bill, as amended by the committee, regulates the offering and making of prepaid funeral agreements between funeral directors and consumers. Prepaid funeral agreements are agreements for the purchase of funeral goods and services prior to the death of the person whose funeral is being planned, with which there is connected a provisional means of paying for the funeral arrangements.

The bill defines for the first time the vocabulary already used within the funeral industry and statutes and regulations of this State.

The bill prohibits any person, other than a licensed funeral director with his business based within a registered mortuary (known as a provider), from selling or offering to sell at need funeral arrangements (funerals of persons who have already died), preneed funeral arrangements (funeral arrangements for living persons), or prepaid funeral agreements. A provider may not enter into a prepaid funeral agreement or provide a funeral trust or insurance policy in connection therewith unless he makes preneed funeral arrangements for the intended funeral recipient.

Among other provisions, every prepaid funeral agreement must: be in writing and contain certain specified information required under the bill; provide that all funeral arrangements are revocable and that all funeral funding arrangements are severable from those funeral arrangements, unless the prepaid funeral agreement provides that the funeral trust is irrevocable during the lifetime of the intended funeral recipient; provide, unless otherwise specified therein, that the prepaid funeral goods and services will be provided in the area served by the provider; provide for substitution of any goods or services that are unavailable with goods or services of equal quality and value; and provide, upon the death of the intended funeral recipient, that the provider must calculate the current retail prices of the preneed funeral arrangements and, in the case of a non-guaranteed prepaid funeral agreement in which there are insufficient funds, the provider must seek more funds or modification of funeral arrangements, and in the case of an agreement funded through a funeral trust or funeral insurance policy, whether a guaranteed or non-guaranteed price agreement, the provider must return any proceeds in excess of the then current retail prices, and present a final bill upon performance of the agreement.

If a prepaid funeral agreement is funded by a funeral insurance policy, cancellation of the funeral arrangement would not cancel or



invalidate the policy but cancellation of the policy or loans made against the proceeds or cash value of the policy would void any price guarantees. If the provider is unable to provide the prepaid goods and services requested due to the revocation of the prepaid funeral agreement or funding arrangements or due to the impossibility of performance, the moneys used to fund the agreement must be refunded.

There are numerous prohibitions provided in the bill. No provider shall: knowingly permit the naming of himself as beneficiary of a policy in regard to a prepaid funeral agreement; advertise discounts or rebates which are not actual reductions of the retail prices of the provider's current general price list; or finance preneed funeral arrangements or prepaid funeral agreements through retail installment contracts or credit life insurance. A waiver of any provision of this act is prohibited and would render any agreement voidable by the purchaser. The bill also prohibits a funeral director or his agents from: soliciting persons in hospitals, rest homes, nursing homes or other health care facilities by telephone or in person without first having been specifically requested to do so by the person; soliciting relatives of persons whose death is pending or has occurred; paying any remuneration for funeral referrals; or soliciting persons at their residence in person or by telephone unless requested by that person or a member of that person's family.

A provider or any other person would be guilty of a crime of the fourth degree if he knowingly induces a person, who is aged, blind or disabled and receives Supplemental Security Income benefits or medicaid, to make a prepaid funeral agreement with the intent of collecting more than the fair market value for prepaid funeral goods or services.

The committee amended the bill to clarify that prepaid funeral goods and services do not include the sale of interment spaces and related personal property or services incidental to the provision of interment spaces and any related personal services offered or sold by a cemetery company and to provide the uniform applicability of standards and underwriting criteria for funeral insurance policies sold in this State.

The State Board of Mortuary Science of New Jersey will enforce the provisions of this bill, except that the Department of Insurance will enforce those provisions of this bill concerning funeral insurance policies.

*Submitted on 1/17/93  
17B-25A-1  
17B-17-5.1*

SENATE SCM COMMITTEE

AMENDMENTS

to

SENATE, No. 1012

(Sponsored by Senator Brown)

ADOPTED  
JAN 25 1993

REPLACE SECTION 1 TO READ:

1. (New section) As used in this act, in P.L.1952, c.340 (C.45:7-32 et seq.) and in section 18 of P.L.1960, c. 184 (C.45:7-65.3):<sup>OK</sup>

"At need funeral arrangements" means funeral arrangements made with the survivors or personal representative of a person who has already died for that person's funeral.

"Board" means the State Board of Mortuary Science of New Jersey.

"Credit life insurance" means insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction.

"Deliver" or "delivery" means the conveyance of actual control and possession of prepaid funeral goods that have been permanently relinquished by a provider, <sup>1</sup>or other person, firm or corporation,<sup>1</sup> or an agent thereof, to the purchaser <sup>1</sup>or person paying the moneys,<sup>1</sup> or personal representative of the intended funeral recipient. Delivery has not been made if the provider <sup>1</sup>, or other person, firm or corporation, or an agent thereof<sup>1</sup>:

(1) Arranges or induces the purchaser <sup>1</sup>or person paying the moneys<sup>1</sup> to arrange for the storage or warehousing of prepaid funeral goods ordered pursuant to a prepaid funeral agreement, with or without evidence that legal title has passed; or

(2) Acquires or reacquires actual or constructive possession or control of prepaid funeral goods after their initial delivery to the purchaser <sup>1</sup>or person paying the moneys<sup>1</sup> or personal representative of the intended funeral recipient.

This definition of delivery shall apply to this term as used in this act, notwithstanding the provisions set forth in the Uniform Commercial Code, Title 12A of the New Jersey Statutes.

"Funeral arrangements" means funeral and burial plans made through a mortuary, including the selection of plans for the furnishing of funeral goods and services pursuant to a completed plan of bodily disposition and the act of offering the opportunity to purchase or to enroll in a prepaid funeral agreement by the mortuary.

"Funeral insurance policy" means any insurance policy or annuity contract that, at the time of issue, was intended to provide, or which was explicitly marketed for the purpose of providing, funds to the provider, whether directly or indirectly, at the time of the insured's death in connection with a prepaid funeral agreement.

"Funeral trust" means a commingled or non-commingled account held in a pooled trust or P.O.D. account, established in accordance with P.L.1957, c.182 (C.2A:102-13 et seq.) or P.L.1985, c.147 (C.3B:11-16 et seq.), which is intended as the depository for cash payments connected with a prepaid funeral agreement.

"Guaranteed price agreement" means a prepaid funeral agreement under which, in exchange for the proceeds of a funeral trust or funeral insurance policy, the provider agrees to provide the stated goods and services in the future, regardless of whether or not the retail value of those goods and services exceeds the funds available from the funeral trust or funeral insurance policy at the time of death of the intended funeral recipient.

"Intended funeral recipient" means the person named in a prepaid funeral agreement for whose bodily disposition the prepaid funeral agreement is intended to provide. The intended funeral recipient may or may not be the purchaser.

"Non-guaranteed price agreement" means a prepaid funeral agreement funded with a funeral trust or funeral insurance policy, the proceeds of which the provider will apply to the current retail value of the prepaid funeral goods and services previously selected at the time of death of the intended funeral recipient, but which agreement shall not bind the provider to provide the goods and services if the value thereof exceeds the funds available at the time of death of the intended funeral recipient.

"Payable on death account" or "P.O.D. account" means an account payable, on request to the purchaser or intended funeral recipient, of a prepaid funeral agreement during the lifetime of the intended funeral recipient and on his death, to a provider of funeral goods and services.

"Pooled trust" means a pooled trust account established pursuant to P.L.1985, c.147 (C.3B:11-16<sup>o/c</sup> et seq.).

"Preneed funeral arrangements" means funeral arrangements made with an intended funeral recipient or his guardian, agent or next of kin, for the funeral of the intended funeral recipient.

"Prepaid funeral agreement" means a written agreement and all documents related thereto made by a purchaser with a provider prior to the death of the intended funeral recipient, with which there is connected a provisional means of paying for preneed funeral arrangements upon the death of the intended funeral recipient by the use of a funeral trust or funeral insurance policy, made payable to a provider and in return for which the provider promises to furnish, make available or provide the prepaid funeral goods or services, or both, specified in the agreement, the delivery of which occurs after the death of the intended funeral recipient.

"Prepaid funeral goods" means personal property typically sold or provided in connection with a funeral, or the final disposition of human remains, including, but not limited to, caskets or other primary containers, cremation or transportation containers, outer burial containers, vaults, as defined in N.J.S.8A:1-2, memorials as defined in N.J.S.8A:1-2, funeral clothing or accessories,

monuments, cremation urns, and similar funeral or burial items, which goods are purchased in advance of need and which will not be delivered until the death of the intended funeral recipient named in a prepaid funeral agreement. <sup>1</sup>Prepaid funeral goods shall not mean the sale of interment spaces and related personal property offered or sold by a cemetery company as provided for in N.J.S. 8A:1-1 et seq.<sup>1</sup>

"Prepaid funeral services" means those services typically provided in connection with a funeral, or the final disposition of human remains, including, but not limited to, funeral directing services, embalming services, care of human remains, preparation of human remains for final disposition, transportation of human remains, use of facilities or equipment for viewing human remains, visitation, memorial services or services which are used in connection with a funeral or the disposition of human remains, coordinating or conducting funeral rites or ceremonies and similar funeral or burial services, including limousine services provided in connection therewith, which services are purchased in advance of need and which will not be provided or delivered until the death of the intended funeral recipient named in a prepaid funeral agreement. <sup>1</sup>Prepaid funeral services shall not mean the sale of services incidental to the provision of interment spaces or any related personal services offered or sold by a cemetery company as provided for in N.J.S. 8A:1-1 et seq.<sup>1</sup>

"Provider" means a person, firm or corporation duly licensed <sup>1</sup>and registered<sup>1</sup> pursuant to the "Mortuary Science Act," P.L.1952, c.340 (C.45:7-32 et seq.) to engage in the business and practice of funeral directing or mortuary science, or an individual serving as an agent thereof and so licensed:

(1) Operating a duly registered mortuary in accordance with P.L.1952, c.340 (C.45:7-32 et seq.) and the regulations promulgated thereunder;

(2) Having his or its business and practice based within the physical confines of the registered mortuary; and

(3) Engaging in the practice of making preneed funeral arrangements, including, but not limited to, offering the opportunity to purchase or enroll in prepaid funeral agreements.

"Purchaser" means the person named in a prepaid funeral agreement who purchases the prepaid funeral goods and services to be provided thereunder. The purchaser may or may not be the intended funeral recipient. If the purchaser is different than the intended funeral recipient, it is understood that the relationship of the purchaser to the intended funeral recipient includes a means to provide administrative control over the <sup>1</sup>[arrangements] agreement<sup>1</sup> on behalf of the intended funeral recipient.

"Retail installment contract" means an agreement to pay the purchase price of goods or services in two or more installments over a period of time.

"Statement of funeral goods and services" means the itemized written statement required to be given to each person making funeral arrangements in accordance with the regulations of the Federal Trade Commission (16 C.F.R. 453.2) and the board (N.J.A.C.13:36-9.8).

**REPLACE SECTION 2 TO READ:**

2. (New section) a. No person, firm or corporation shall sell, or offer to sell, or make or offer to make at need funeral arrangements, preneed funeral arrangements or prepaid funeral agreements, unless that person, firm or corporation:

(1) is duly licensed pursuant to the "Mortuary Science Act," P.L.1952, c.340 (C.45:7-32 et seq.), to engage in the business and practice of funeral directing or mortuary science; and

(2) has his or its business and practice based within the physical confines of the registered mortuary.

b. No person, firm or corporation, shall engage in the business and practice of funeral directing or mortuary science at any permanent facility that is not a registered mortuary.

c. Notwithstanding the foregoing, this section shall not be construed to prohibit an otherwise qualified person, firm or corporation from acting as a provider operating under a trade name or other assumed name or through a subsidiary of a corporation duly licensed <sup>1</sup>and registered<sup>1</sup> pursuant to P.L.1952, c.340 (C.45:7-32 et seq.) to engage in the business and practice of funeral directing or mortuary science.

**REPLACE SECTION 3 TO READ:**

3. (New section) No provider shall enter into, or offer to enter into, a prepaid funeral agreement, or provide or offer to provide a funeral trust or funeral insurance policy in connection therewith, unless:

a. At the same time he makes preneed funeral arrangements for the intended funeral recipient on a statement of funeral goods and services; and

b. He meets all requirements with respect to the making of at need funeral arrangements as otherwise required by law;

c. The insurance policy or annuity contract to be provided or offered as a funeral insurance policy complies with the provisions of section 24 of P.L. , c. (C. ) (now pending before the Legislature as this bill).

d. If a funeral insurance policy is provided or offered, he is duly licensed as an insurance producer pursuant to P.L. 1987, c. 293 (C. 17:22A-1 et seq.).<sup>1</sup>

4. (New section) Every prepaid funeral agreement executed in this State shall:

a. Be signed by the provider, and the purchaser or the intended funeral recipient or the intended funeral recipient's guardian, agent or next of kin.

b. Include at least the following information:

(1) the name, address and telephone number of the mortuary to be utilized;

(2) the name of the individual licensee acting or on behalf of the provider and the license number of that individual;

(3) the purchaser's name and address;

(4) the name of the intended funeral recipient;

(5) whether the agreement is a guaranteed price agreement or non-guaranteed price agreement, which term, as applicable, shall be defined in the agreement in accordance with section 1 of this act;

REPLACE SECTION 4 TO 50-16.

(6) how the agreement is to be funded; and

(7) a statement of funeral goods and services or, if not included as part of the agreement, that a statement of funeral goods and services shall be provided.

c. Provide that all funeral arrangements are revocable, and that all funeral funding arrangements are severable from those funeral arrangements by the purchaser if alive, and if not, then by the intended funeral recipient, where they are different persons. Upon the death of both the purchaser and the intended funeral recipient, the intended funeral recipient's next of kin, in the order provided in N.J.S.8A:5-18, shall have the right to revoke the funeral arrangements and to sever the funeral funding arrangements from the funeral arrangements. Notwithstanding the above, a prepaid funeral agreement may provide that the funeral trust shall be irrevocable during the lifetime of the intended funeral recipient pursuant to section 1 of P.L.1991, c. 502 (C. 2A:102-16.1). O/C

In those instances where a revocable prepaid funeral agreement is revoked, the monies used to fund the agreement shall be paid to the purchaser, if alive, and if not, then to the personal representative or estate of the deceased purchaser if the agreement is funded through a trust or, if the agreement is funded through a funeral insurance policy, to the named beneficiaries on the insurance policy or annuity.

d. Provide that, unless otherwise specified therein, a prepaid funeral agreement anticipates the provision of prepaid funeral goods and services in the area served by the provider. The agreement shall further provide that, if the intended funeral recipient's place of death is in a location other than that served by the provider, alternative funeral arrangements will be necessary.

e. Provide for the provider's substitution of any goods or services to be furnished or rendered thereunder for goods of equal quality, value and workmanship or services of equal quality and value in the event of the unavailability of any goods or services set forth in the agreement. Any changes in the price of the agreement resulting from such substitution of goods or services shall be reflected in the statement of funeral goods and services rendered.

f. Provide that, in the case of an agreement funded through a funeral trust, if the purchaser predeceases the intended funeral recipient where they are different persons, then the intended funeral recipient shall automatically assume the legal right to administer the funeral trust as purchaser, including the right to withdraw any and all funds held in the funeral trust, along with all other rights formerly held by the purchaser.

g. Provide that, upon the death of the intended funeral recipient, the provider shall calculate the current retail prices of the preneed funeral arrangements, and:

(1) in the case of a non-guaranteed prepaid funeral agreement, if there are insufficient funds to pay for the current retail prices of the prepaid funeral goods and services requested, the provider shall consult with the appropriate representative for the supplementation of the funds or the modification of the funeral

arrangements set forth in the agreement prior to performance under the agreement.

(2) in the case of an agreement funded through a funeral trust, whether a guaranteed or non-guaranteed price agreement, if the provider determines that the funds or proceeds available exceed the current retail prices of the prepaid funeral goods and services to be provided, the surplus funds shall be paid to the purchaser, if alive, and if not, then to the personal representative of the estate of the deceased.

(3) in the case of an agreement funded through a funeral insurance policy, whether a guaranteed or non-guaranteed price agreement, if the provider determines that the funds or proceeds available exceed the current retail prices of the prepaid funeral goods and services to be provided, the surplus funds shall be paid to the named beneficiaries of the funeral insurance policy.

h. Provide that, upon completion of performance under the agreement, the provider shall present a final bill.

<sup>1</sup>i. Provide that when a prepaid funeral agreement is a guaranteed price agreement, the price guarantee is a guarantee and liability of the ~~funeral~~ provider and not the guarantee and liability of the insurer issuing the funeral insurance policy when a funeral insurance policy is used or the trust depository administering the funeral trust when a funeral trust is used.<sup>1</sup>

REPLACE SECTION 7 TO READ:

7. (New section) No provider shall knowingly permit, in conjunction with a prepaid funeral agreement, the naming of himself or itself as beneficiary of a policy, except that nothing in this section shall be construed to prohibit the assignment of proceeds to a provider as payment for a funeral bill, or such other mechanism that provides payments to providers for the <sup>1</sup>[amount of]<sup>1</sup> goods or services rendered, and that provides for any excess proceeds to be paid to a named beneficiary or beneficiaries.

REPLACE SECTION 11 TO READ:

11. (New section) All prepaid funeral agreements executed on or after the effective date of this <sup>1</sup>[1992] <sup>1</sup>1993<sup>1</sup> amendatory and supplementary act <sup>1</sup>[and funded through a funeral trust]<sup>1</sup> shall be governed pursuant to <sup>1</sup>the applicable provisions of<sup>1</sup> P.L.1957, c.182 (C.2A:102-13 et seq.), P.L.1985, c.147 (C.3B:11-16 et seq.) and <sup>1</sup>[the applicable provisions of]<sup>1</sup> this act.

REPLACE SECTION 12 TO READ:

12. <sup>1</sup>[New section]<sup>1</sup> a. This act applies to the sale of prepaid funeral goods or services and the offering of those goods or services for sale by providers.

b. This act shall not apply to the sale of <sup>1</sup>[lots or graves by a cemetery] interment spaces or related personal property or personal services by a cemetery company as provided for in N.J.S. 8A:1-1 et seq<sup>1</sup>.

REPLACE SECTION 15 TO READ:

15. Section 18 of P.L.1980, c.164 (C.45:7-65.3) is amended to read as follows:

18. a. No person, firm or corporation (shall solicit in person), or (through) solicitors, agents (or), canvassers, employees or other persons acting on behalf of that person, firm or corporation, for the purpose of selling or contracting to sell or provide any service or services commonly furnished or performed

by an embalmer or funeral director, including, but not limited to, prepaid funeral agreements and the making of at need or preneed funeral arrangements, shall:

(1) Directly or indirectly <sup>1</sup>[call upon] solicit<sup>1</sup> persons in hospitals, rest homes, nursing homes or similar health care facilities by telephone or in person without first having been specifically requested to do so by that person;

(2) Directly or indirectly employ any agent, employee, assistant <sup>1,1</sup> independent contractor or other person to <sup>1</sup>[call upon] solicit<sup>1</sup> persons in hospitals, rest homes, nursing homes or similar health care facilities by telephone or in person without first having been specifically requested to do so by that person;

(3) Solicit relatives of persons whose death is apparently pending or whose death has recently occurred for the purpose of providing any of those services for that person;

(4) Solicit, accept, offer to pay or pay any commission, bonus or rebate in consideration of recommending or causing any person to use the services of a particular funeral director, or the services of a particular crematory, mausoleum or cemetery; or

(5) Solicit persons at their residences in person or by telephone unless that solicitation is in response to a previous request for or expression of interest in a funeral director's services made by the person solicited or by a member of that person's family.

b. Nothing in this section shall be construed to restrict the right of a funeral director or an agent or employee of the funeral director, to communicate, by direct mail or in any other way not specifically prohibited by this section, with persons or provide them with information regarding the services of the funeral director, or to solicit the business of any person responding to that communication and explicitly requesting further information by personal visit or telephone, or otherwise initiating further discussion of those services, or to provide services or information to persons in connection with services previously rendered.

c. Nothing in this section shall be construed to prohibit general advertising by a funeral director.

d. <sup>1</sup>Nothing in this section shall be deemed to prohibit the payment of commissions, bonuses or other compensation to a licensed cemetery salesman for the sale of cemetery goods or services.

e. <sup>1</sup> As used in this section, "at need funeral arrangements," "preneed funeral arrangements" and "prepaid funeral agreement" shall have the same meaning as they are defined in section 1 of P.L. , c. (C. ) (now pending before the Legislature as this bill).

(cf: P.L.1960, c.184, s.18) 0/←

REPLACE SECTION TO READ:

16. Section 1 of P.L.1957, c.182 (C.2A:102-13) is amended to read as follows:

1. Any and all moneys paid to a funeral director, undertaker, cemetery, or any other person, firm or corporation, under or in connection with [an] <sup>1</sup>[a prepaid funeral agreement or any other] <sup>1</sup>an<sup>1</sup> agreement for the sale of [personal property to be used in



connection with a funeral or burial] <sup>1</sup>[prepaid funeral goods] personal property to be used in connection with a funeral or burial<sup>1</sup>, or for the furnishing of [personal] <sup>1</sup>[prepaid funeral] personal<sup>1</sup> services [of a funeral director or undertaker, wherein the personal property is] <sup>1</sup>[in which all or part of the prepaid funeral goods are] of a funeral director or undertaker, wherein the personal property is<sup>1</sup> not to be delivered or <sup>1</sup>[all or part of]<sup>1</sup> the [personal] <sup>1</sup>[prepaid funeral] personal<sup>1</sup> services are not to be rendered until the occurrence of the death of the [person for whose funeral or burial such property or services are to be furnished] <sup>1</sup>[intended funeral recipient] person for whose funeral or burial such property or services are to be furnished<sup>1</sup>, shall be trust funds <sup>1</sup>[held in a pooled trust or a P.O.D. account]<sup>1</sup> in the possession of such funeral director, undertaker, cemetery, or other person, firm or corporation, and shall be deposited by him or it within 30 days after receipt thereof in a special account maintained exclusively for the deposit of such moneys in a federally insured State or federally chartered bank, savings bank or savings and loan association; or, if the [person paying the moneys] <sup>1</sup>[purchaser] person paying the moneys<sup>1</sup> requests, in a pooled trust account established pursuant to P.L.1985, c.147 (C.3B:11-16 et seq.) and chosen by the [person paying the moneys] <sup>1</sup>[purchaser] person paying the moneys<sup>1</sup>, and shall be so held on deposit, together with any interest thereon, until [said personal property has] <sup>1</sup>[the prepaid funeral goods have] said personal property has<sup>1</sup> been delivered and [said personal] <sup>1</sup>[the prepaid funeral] said personal<sup>1</sup> services have been rendered, unless sooner repaid, in whole or in part. No depository institution shall be liable for the misuse, misapplication or improper withdrawal by any such funeral director, undertaker, cemetery or other person, firm or corporation, of any moneys deposited in such depository institution pursuant to this act.

<sup>1</sup>[All such agreements] Any agreement for funeral goods or funeral services, or both,<sup>1</sup> executed on or after the effective date of this <sup>1</sup>[1992] <sup>1</sup>1993<sup>1</sup> amendatory and supplementary act <sup>1</sup>by a provider<sup>1</sup> shall comply with the provisions set forth in sections 1 through 13 of P.L. , c. (C. ) (now pending before the Legislature as this bill).

(cf: P.L.1985, c.147, s.4)

**OMIT SECTION 17 IN ENTIRETY**

**RENUMBER SECTIONS 18 AND 19 AS SECTIONS 17 AND 18**

**REPLACE SECTION 20 TO READ:**

<sup>1</sup>[20.] <sup>1</sup>19.<sup>1</sup> (New section) As used in P.L.1957, c.182 (C.2A:102-13 et seq.):

"Deliver" or "delivery" means the conveyance of actual control and possession of prepaid funeral goods that have been permanently relinquished by a provider <sup>1</sup>, or other person, firm or corporation<sup>1</sup>, or an agent thereof, to the purchaser <sup>1</sup>or person paying the moneys,<sup>1</sup> or personal representative of the intended funeral recipient. Delivery has not been made if the provider <sup>1</sup>, or other person, firm or corporation, or an agent thereof<sup>1</sup>:

(1) Arranges or induces the purchaser <sup>1</sup>or person paying the moneys<sup>1</sup> to arrange for the storage or warehousing of prepaid

funeral goods ordered pursuant to a prepaid funeral agreement, with or without evidence that legal title has passed; or

(2) Acquires or reacquires actual or constructive possession or control of prepaid funeral goods after their initial delivery to the purchaser 1or person paying the moneys<sup>1</sup> or personal representative of the intended funeral recipient.

This definition of delivery shall apply to this term as used in P.L.1957, c.182 (C.2A:102-13 et seq.), notwithstanding the provisions set forth in the Uniform Commercial Code, Title 12A of the New Jersey Statutes.

"Funeral insurance policy" means any insurance policy or annuity contract that, at the time of issue, was intended to provide, or which was explicitly marketed for the purpose of providing, funds to the provider, whether directly or indirectly, at the time of the insured's death in connection with a prepaid funeral agreement.

"Funeral trust" means a commingled or non-commingled account held in a pooled trust or P.O.D. account, established in accordance with P.L.1957, c.182 (C.2A:102-13 et seq.) or P.L.1985, c.147 (C.3B:11-16 et seq.), which is intended as the depository for cash payments connected with a prepaid funeral agreement.

"Intended funeral recipient" means the person named in a prepaid funeral agreement for whose bodily disposition the prepaid funeral agreement is intended to provide. The intended funeral recipient may or may not be the purchaser.

"Payable on death account" or "P.O.D. account" means an account payable on request to the purchaser or intended funeral recipient of a prepaid funeral agreement, during the lifetime of the intended funeral recipient and on his death, to a provider of funeral goods and services.

"Pooled trust" means a pooled trust account established pursuant to P.L.1985, c.147 (C.3B:11-16 et seq.).

"Preneed funeral arrangements" means funeral arrangements made with an intended funeral recipient or his guardian, agent or next of kin, for the funeral of the intended funeral recipient.

"Prepaid funeral agreement" means a written agreement and all documents related thereto made by a purchaser with a provider prior to the death of the intended funeral recipient, with which there is connected a provisional means of paying for preneed funeral arrangements upon the death of the intended funeral recipient by the use of a funeral trust or funeral insurance policy, made payable to a provider and in return for which the provider promises to furnish, make available or provide the prepaid funeral goods or services, or both, specified in the agreement, the delivery of which occurs after the death of the intended funeral recipient.

"Prepaid funeral goods" means personal property typically sold or provided in connection with a funeral, or the final disposition of human remains, including, but not limited to, caskets or other primary containers, cremation or transportation containers, outer burial containers, vaults, as defined in N.J.S.8A:1-2, memorials as defined in N.J.S.8A:1-2, funeral clothing or accessories, monuments, cremation urns, and similar funeral or burial items,

which goods are purchased in advance of need and which will not be delivered until the death of the intended funeral recipient named in a prepaid funeral agreement. <sup>1</sup>Prepaid funeral goods shall not mean the sale of interment spaces and related personal property offered or sold by a cemetery company as provided for in N.J.S. 8A:1-1 et seq.<sup>1</sup>

"Prepaid funeral services" means those services typically provided in connection with a funeral, or the final disposition of human remains, including, but not limited to, funeral directing services, embalming services, care of human remains, preparation of human remains for final disposition, transportation of human remains, use of facilities or equipment for viewing human remains, visitation, memorial services or services which are used in connection with a funeral or the disposition of human remains, coordinating or conducting funeral rites or ceremonies and similar funeral or burial services, including limousine services provided in connection therewith, which services are purchased in advance of need and which will not be provided or delivered until the death of the intended funeral recipient named in a prepaid funeral agreement. <sup>1</sup>Prepaid funeral services shall not mean the sale of services incidental to the provision of interment spaces or any related personal services offered or sold by a cemetery company as provided for in N.J.S. 8A:1-1 et seq.<sup>1</sup>

"Provider" means a person, firm or corporation duly licensed <sup>1</sup>and registered<sup>1</sup> pursuant to the "Mortuary Science Act," P.L.1952, c.340 (C.45:7-32 et seq.) to engage in the business and practice of funeral directing or mortuary science, or an individual serving as an agent thereof and so licensed:

(1) Operating a duly registered mortuary in accordance with P.L.1952, c.340 (C.45:7-32 et seq.) and the regulations promulgated thereunder;

(2) Having his or its business and practice based within the physical confines of the registered mortuary; and

(3) Engaging in the practice of making preneed funeral arrangements, including, but not limited to, offering the opportunity to purchase or enroll in prepaid funeral agreements.

"Purchaser" means the person named in a prepaid funeral agreement who purchases the prepaid funeral goods and services to be provided thereunder. The purchaser may or may not be the intended funeral recipient. If the purchaser is different than the intended funeral recipient, it is understood that the relationship of the purchaser to the intended funeral recipient includes a means to provide administrative control over the <sup>1</sup>[arrangements] agreement<sup>1</sup> on behalf of the intended funeral recipient.

REPLACE SECTION 21 TO READ:

<sup>1</sup>[21.] 20.<sup>1</sup> Section 1 of P.L.1985, c.147 (C:3B:11-16) is amended to read as follows:

1. Prepaid funeral expense monies used to fund a prepaid funeral agreement may be deposited into a pooled trust account in a federally insured State or federally chartered bank, savings bank or savings and loan association pursuant to a written trust agreement the beneficiaries of which shall be (the consumers

advancing said monies] the purchasers or intended funeral recipients. Any such trust agreement shall assure that the following terms and conditions are clearly and conspicuously disclosed in writing to [those consumer beneficiaries] purchasers and intended funeral recipients prior to the acceptance of any monies by the trustees:

a. The right to immediately withdraw on demand any monies plus accrued interest paid into the trust, except as provided in section 1 of P.L.1991, c.501 (C.2A:102-16.1).

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

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

d. The identity and location of the trustees.

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

All such trust agreements <sup>1</sup>[executed] entered into by a provider<sup>1</sup> on or after the effective date of this <sup>1</sup>[1992] 1993<sup>1</sup> amendatory and supplementary act shall comply with the provisions set forth in sections 1 through 13 of P.L. , c. (C. ) (now pending before the Legislature as this bill).

(cf: P.L.1991, c.502, s.2)

**RENUMBER SECTION 22 AS SECTION 21**

**REPLACE SECTION 23 TO READ:**

<sup>1</sup>[23.] 22.<sup>1</sup> (New section) As used in P.L.1985, c.147 (C.3B:11-16 et seq.):

"Deliver" or "delivery" means the conveyance of actual control and possession of prepaid funeral goods that have been permanently relinquished by a provider, <sup>1</sup>or other person, firm or corporation,<sup>1</sup> or an agent thereof, to the purchaser <sup>1</sup>or person paying the moneys,<sup>1</sup> or personal representative of the intended funeral recipient. Delivery has not been made if the provider <sup>1</sup>, or other person, firm or corporation, or an agent thereof<sup>1</sup>:

(1) Arranges or induces the purchaser <sup>1</sup>or person paying the moneys<sup>1</sup> to arrange for the storage or warehousing of prepaid funeral goods ordered pursuant to a prepaid funeral agreement, with or without evidence that legal title has passed; or

(2) Acquires or reacquires actual or constructive possession or control of prepaid funeral goods after their initial delivery to the purchaser <sup>1</sup>or person paying the moneys<sup>1</sup> or personal representative of the intended funeral recipient.

This definition of delivery shall apply to this term as used in P.L.1985, c.147 (C.3B:11-16 et seq.), notwithstanding the provisions set forth in the Uniform Commercial Code, Title 12A of the New Jersey Statutes.

"Funeral insurance policy" means any insurance policy or annuity contract that, at the time of issue, was intended to provide, or which was explicitly marketed for the purpose of providing, funds to the provider, whether directly or indirectly, at the time of the insured's death in connection with a prepaid funeral agreement.

"Funeral trust" means a commingled or non-commingled account held in a pooled trust or P.O.D. account, established in accordance with P.L.1957, c.182 (C.2A:102-13 et seq.) or

P.L.1985, c.147 (3B:11-16 et seq.), which is intended as the depository for cash payments connected with a prepaid funeral agreement.

"Intended funeral recipient" means the person named in a prepaid funeral agreement for whose bodily disposition the prepaid funeral agreement is intended to provide. The intended funeral recipient may or may not be the purchaser.

"Payable on death account" or "P.O.D. account" means an account payable on request to the purchaser or intended funeral recipient of a prepaid funeral agreement, during the lifetime of the intended funeral recipient and on his death, to a provider of funeral goods and services.

"Pooled trust" means a pooled trust account established pursuant to P.L.1985, c.147 (C.3B:11-16 et seq.).

"Preneed funeral arrangements" means funeral arrangements made with an intended funeral recipient or his guardian, agent or next of kin, for the funeral of the intended funeral recipient.

"Prepaid funeral agreement" means a written agreement and all documents related thereto made by a purchaser with a provider prior to the death of the intended funeral recipient, with which there is connected a provisional means of paying for preneed funeral arrangements upon the death of the intended funeral recipient by the use of a funeral trust or funeral insurance policy, made payable to a provider and in return for which the provider promises to furnish, make available or provide the prepaid funeral goods or services, or both, specified in the agreement, the delivery of which occurs after the death of the intended funeral recipient.

"Prepaid funeral goods" means personal property typically sold or provided in connection with a funeral, or the final disposition of human remains, including, but not limited to, caskets or other primary containers, cremation or transportation containers, outer burial containers, vaults, as defined in N.J.S.8A:1-2, memorials as defined in N.J.S.8A:1-2, funeral clothing or accessories, monuments, cremation urns, and similar funeral or burial items, which goods are purchased in advance of need and which will not be delivered until the death of the intended funeral recipient named in a prepaid funeral agreement. <sup>1</sup>Prepaid funeral goods shall not mean the sale of interment spaces and related personal property offered or sold by a cemetery company as provided for in N.J.S. 8A:1-1 et seq.<sup>1</sup>

"Prepaid funeral services" means those services typically provided in connection with a funeral, or the final disposition of human remains, including, but not limited to, funeral directing services, embalming services, care of human remains, preparation of human remains for final disposition, transportation of human remains, use of facilities or equipment for viewing human remains, visitation, memorial services or services which are used in connection with a funeral or the disposition of human remains, coordinating or conducting funeral rites or ceremonies and similar funeral or burial services, including limousine services provided in connection therewith, which services are purchased in advance of need and which will not be provided or delivered until

the death of the intended funeral recipient named in a prepaid funeral agreement. <sup>1</sup>Prepaid funeral services shall not mean the sale of services incidental to the provision of interment spaces or any related personal services offered or sold by a cemetery company as provided for in N.J.S. 8A:1-1 et seq.<sup>1</sup>

"Provider" means a person, firm or corporation duly licensed <sup>1</sup>and registered<sup>1</sup> pursuant to the "Mortuary Science Act," P.L.1952, c.340 (C.45:7-32 et seq.) to engage in the business and practice of funeral directing or mortuary science, or an individual serving as an agent thereof and so licensed:

(1) Operating a duly registered mortuary in accordance with P.L.1952, c.340 (C.45:7-32 et seq.) and the regulations promulgated thereunder;

(2) Having his or its business and practice based within the physical confines of the registered mortuary; and

(3) Engaging in the practice of making preneed funeral arrangements, including, but not limited to, offering the opportunity to purchase or enroll in prepaid funeral agreements.

"Purchaser" means the person named in a prepaid funeral agreement who purchases the prepaid funeral goods and services to be provided thereunder. The purchaser may or may not be the intended funeral recipient. If the purchaser is different than the intended funeral recipient, it is understood that the relationship of the purchaser to the intended funeral recipient includes a means to provide administrative control over the <sup>1</sup>[arrangements] agreement<sup>1</sup> on behalf of the intended funeral recipient.

REPLACE SECTION 24 TO READ:

<sup>1</sup>[24.] 23.<sup>1</sup> N.J.S.8A:5-18 is amended to read as follows:

8A:5-18. Disposition of remains of deceased person; right to control; priorities

The <sup>1</sup>[person who shall have the]<sup>1</sup> right to control the disposition of the remains of a deceased person, <sup>1</sup>[including, but not limited to, the making of funeral arrangements therefor,]<sup>1</sup> unless other directions have been <sup>1</sup>[specifically]<sup>1</sup> given by the decedent <sup>1</sup>[, through a will or other properly executed writing by the decedent,]<sup>1</sup> or by a court of competent jurisdiction shall be in the following order:

- a. The surviving spouse.
- b. A majority of the surviving children of the decedent or the surviving child if one.
- c. The surviving parent or parents of the decedent.
- d. A majority of the brothers and sisters of the decedent if no child or parent is living.
- e. Other next of kin according to the degree of consanguinity.

<sup>1</sup>[In the event of a conflict between the provisions of this section and the laws of intestate succession pursuant to chapter 5 of Title 3B of the New Jersey Statutes, with respect to the disposition of the remains of a deceased person, or the making of funeral arrangements therefor, this section shall be controlling.]

A prepaid funeral agreement or a preneed funeral arrangement, as defined in section 1 of P.L. , c. (C. ) (now pending

before the Legislature as this bill, shall not constitute "other directions" for the purposes of this section, nor shall it bind those with the right to control the disposition of the remains.<sup>1</sup>

(cf: N.J.S.8A:5-10)

**INSERT NEW SECTION 24 TO READ:**

24. (New section) a. As used in this section:

"At need funeral arrangements" means funeral arrangements made with the survivors or personal representative of a person who has already died for that person's funeral.

"Funeral arrangements" means funeral and burial plans made through a mortuary, including the selection of plans for the furnishing of funeral goods and services pursuant to a completed plan of bodily disposition and the act of offering the opportunity to purchase or to enroll in a prepaid funeral agreement by the mortuary.

"Funeral insurance policy" means any insurance policy or annuity contract that, at the time of issue, was intended to provide, or which was explicitly marketed for the purpose of providing, funds to the provider, whether directly or indirectly, at the time of the insured's death in connection with a prepaid funeral agreement.

"Intended funeral recipient" means the person named in a prepaid funeral agreement for whose bodily disposition the prepaid funeral agreement is intended to provide. The intended funeral recipient may or may not be the purchaser.

"Preneed funeral arrangements" means funeral arrangements made with an intended funeral recipient or his guardian, agent or next of kin, for the funeral of the intended funeral recipient.

"Prepaid funeral agreement" means a written agreement and all documents related thereto made by a purchaser with a provider prior to the death of the intended funeral recipient, with which there is connected a provisional means of paying for preneed funeral arrangements upon the death of the intended funeral recipient by the use of a funeral trust or funeral insurance policy, made payable to a provider and in return for which the provider promises to furnish, make available or provide the prepaid funeral goods or services, or both, specified in the agreement, the delivery of which occurs after the death of the intended funeral recipient.

"Prepaid funeral goods" means personal property typically sold or provided in connection with a funeral, or the final disposition of human remains, including, but not limited to, caskets or other primary containers, cremation or transportation containers, outer burial containers, vaults, as defined in N.J.S.8A:1-2, memorials as defined in N.J.S.8A:1-2, funeral clothing or accessories, monuments, cremation urns, and similar funeral or burial items, which goods are purchased in advance of need and which will not be delivered until the death of the intended funeral recipient named in a prepaid funeral agreement. Prepaid funeral goods shall not mean the sale of interment spaces and related personal property offered or sold by a cemetery company as provided for in N.J.S. 8A:1-1 et seq.

"Prepaid funeral services" means those services typically

provided in connection with a funeral, or the final disposition of human remains, including, but not limited to, funeral directing services, embalming services, care of human remains, preparation of human remains for final disposition, transportation of human remains, use of facilities or equipment for viewing human remains, visitation, memorial services or services which are used in connection with a funeral or the disposition of human remains, coordinating or conducting funeral rites or ceremonies and similar funeral or burial services, including limousine services provided in connection therewith, which services are purchased in advance of need and which will not be provided or delivered until the death of the intended funeral recipient named in a prepaid funeral agreement. Prepaid funeral services shall not mean the sale of services incidental to the provision of interment spaces or any related personal services offered or sold by a cemetery company as provided for in N.J.S. 8A:1-1 et seq.

"Provider" means a person, firm or corporation duly licensed and registered pursuant to the "Mortuary Science Act," P.L.1952, c.340 (C.45:7-32 et seq.) to engage in the business and practice of funeral directing or mortuary science, or an individual serving as an agent thereof and so licensed:

(1) Operating a duly registered mortuary in accordance with P.L.1952, c.340 (C.45:7-32 et seq.) and the regulations promulgated thereunder;

(2) Having his or its business and practice based within the physical confines of the registered mortuary; and

(3) Engaging in the practice of making preneed funeral arrangements, including, but not limited to, offering the opportunity to purchase or enroll in prepaid funeral agreements.

"Purchaser" means the person named in a prepaid funeral agreement who purchases the prepaid funeral goods and services to be provided thereunder. The purchaser may or may not be the intended funeral recipient. If the purchaser is different than the intended funeral recipient, it is understood that the relationship of the purchaser to the intended funeral recipient includes a means to provide administrative control over the agreement on behalf of the intended funeral recipient.

b. The issuance and marketing of any funeral insurance policy shall meet all of the terms and conditions specified by the Department of Insurance as would apply to any life insurance and annuity contract, and shall in addition meet the standards and requirements specified in sections 1 through 13 of P.L. , c. (C. ) (now pending before the Legislature as this bill).

c. Any insurance policy or annuity contract used as a funeral insurance policy on or after the effective date of P.L. , c. (C. ) (now pending before the Legislature as this bill), whether issued within the State or outside of the State, whether on a group or individual basis, and any certificates, policies, contracts, applications, forms and related material, shall be subject to all the laws and regulations of this State and the terms and conditions of the Department of Insurance, as though issued in



this State, and shall at the time of filing be designated as being intended for use as a funeral insurance policy.

d. The Commissioner of Insurance shall adopt rules and regulations to implement the provisions of this section, including a regulation establishing the loss ratio for funeral insurance policies.<sup>1</sup>

**REPLACE SECTION 25 TO READ:**

25. This act shall take effect on the 180th day following enactment, but, on or after the date of enactment, the State Board of Mortuary Science of New Jersey <sup>1</sup>and the Department of Insurance<sup>1</sup> may promulgate rules and regulations to implement the provisions of this act in anticipation of it taking effect.