



# Senate

General Assembly

**File No. 169**

February Session, 2002

Substitute Senate Bill No. 131

*Senate, March 26, 2002*

The Committee on General Law reported through SEN. COLAPIETRO of the 31st Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

## **AN ACT CONCERNING FULL DISCLOSURE OF PREPAID FUNERAL SERVICE CONTRACTS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 42-200 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2002*):

3 (a) For the purposes of this section and sections 42-201 to [42-206]  
4 42-207, inclusive, as amended by this act, a funeral service contract  
5 means a contract which requires the payment of money or the delivery  
6 of securities in exchange for the final disposition of a dead human  
7 body, including funeral, burial or other services, or the furnishing of  
8 personal property or funeral merchandise in connection with any such  
9 disposition, wherein the use or delivery of such services, property or  
10 merchandise is not required immediately.

11 (b) A funeral service contract shall contain: (1) A consumer notice as  
12 set forth in subsection (c) of this section; (2) the name, business address

13 and telephone number of the escrow agent who will administer the  
14 consumer's funds; (3) a statement advising the consumer to avoid  
15 fraud by contacting the escrow agent to verify the disposition of such  
16 funds (A) if the consumer has not received verification from the  
17 escrow agent as provided in section 42-202, as amended by this act, not  
18 later than forty-five days after signing the funeral service contract, that  
19 the escrow agent has deposited the consumer's funds, or (B) if the  
20 consumer fails to receive an annual statement of the consumer's  
21 account; (4) if applicable, a clear and conspicuous statement that the  
22 consumer may be liable for additional funds for such contracted  
23 services, property or merchandise; and (5) a clear and conspicuous  
24 statement as to whether the funeral service contract is revocable or  
25 irrevocable together with an explanation of the term revocable or  
26 irrevocable, as applicable.

27 (c) The consumer notice shall be on a separate page and in a form  
28 substantially similar to the following:

29 "A funeral service contract ensures, upon payment of a sum of  
30 money, that the funeral service establishment will provide certain  
31 funeral services, property or merchandise at a future date.

32 If you purchase a funeral service contract, you must receive (1)  
33 notice of the investment options offered by the funeral service  
34 establishment; (2) a statement of the fees charged by the escrow agent,  
35 the person who will be holding your funds, if any, to the escrow  
36 account or to you for investing and managing such funds; and (3) a  
37 statement concerning the transferability of the funds to other  
38 investment options and whether the funeral director, association of  
39 funeral directors or other entity may share compensation from the  
40 escrow agent.

41 An escrow agent must be either a bank, a licensed insurance  
42 company, a savings and loan association or a registered broker-dealer.

43 You must receive an annual statement of income and expenses for  
44 the escrow funds.

45 The funeral service contract must provide that if specified  
46 merchandise is not available, only merchandise of at least equal quality  
47 and similar style may be substituted.

48 It is important for you to:

49 (A) Verify the services, property and merchandise that are to be  
50 provided as part of the funeral;

51 (B) Ensure that the costs of the services, property and merchandise  
52 are explained;

53 (C) Verify whether you will need to provide any additional money  
54 for such services, property and merchandise;

55 (D) Determine who will receive any surplus funds in the event the  
56 funds in the escrow account exceed the cost of the contracted funeral  
57 services, property and merchandise;

58 (E) Obtain the name, address and telephone number of the person  
59 who will be holding your funds, known as an escrow agent;

60 (F) Contact the escrow agent if, by the forty-fifth day after you sign  
61 the funeral service contract, you do not receive verification that the  
62 escrow agent has received and deposited your funds."

63 Sec. 2. Section 42-201 of the general statutes is repealed and the  
64 following is substituted in lieu thereof (*Effective October 1, 2002*):

65 (a) No person, firm or corporation shall enter into a funeral service  
66 contract to provide such services, property or merchandise unless such  
67 person, firm or corporation is licensed in accordance with the  
68 provisions of chapter 385. No person may arrange, promote or sell any  
69 funeral service contract on behalf of a funeral service establishment  
70 unless such person is an embalmer or funeral director licensed in  
71 accordance with the provisions of chapter 385 and bonded in  
72 accordance with subsection (b) of this section.

73 (b) Each funeral service establishment that enters into a funeral

74 service contract to provide such services, property or merchandise or  
75 arranges, promotes or sells a funeral service contract shall obtain a  
76 bond written by a surety authorized to write such bonds in this state,  
77 of a sum of not less than fifty thousand dollars, except that any owner  
78 of not less than five nor more than nine funeral service establishments  
79 shall provide a bond or series of bonds of a sum not less than two  
80 hundred fifty thousand dollars and any owner of not less than ten nor  
81 more than fourteen funeral establishments shall provide a bond or  
82 series of bonds of a sum not less than five hundred thousand dollars  
83 and any owner of fifteen or more funeral establishments shall provide  
84 a bond or series of bonds of a sum of not less than one million dollars.  
85 Such bond or bonds shall be conditioned upon such establishment  
86 truly and faithfully accounting for all funds received relative to a  
87 funeral service contract.

88 (c) Any person damaged by the wrongful conversion of funds paid  
89 for a funeral service contract may proceed on such bond against the  
90 principal or surety thereon, or both, to recover damages, which shall  
91 include reasonable attorneys' fees.

92 Sec. 3. Section 42-202 of the general statutes is repealed and the  
93 following is substituted in lieu thereof (*Effective October 1, 2002*):

94 (a) A licensed funeral service establishment shall deposit any money  
95 or securities [which] that such establishment receives pursuant to a  
96 funeral service contract [, and within] not later than fifteen days [of]  
97 after its receipt of such money or securities, in one or more escrow  
98 accounts established in accordance with the provisions of this section.  
99 Not later than thirty days after receiving funds from a licensed funeral  
100 service establishment, the escrow agent shall send the consumer  
101 written verification that the funds have been deposited in accordance  
102 with the provisions of this section.

103 (b) (1) Each escrow account established pursuant to this section shall  
104 be administered and maintained by an escrow agent [. The funeral  
105 service establishment which deposits money or securities in such  
106 escrow account shall appoint such agent who] designated in the

107 funeral service contract.

108       (2) The funeral service establishment shall enter into a contract with  
109 the escrow agent designated in the funeral service contract, either  
110 directly or through an association of funeral directors or other entity.  
111 Such contract with the escrow agent shall contain provisions that (A)  
112 clearly indicate all fees to be charged by the escrow agent to the escrow  
113 account and whether or not any portion of such fees will be shared  
114 with any association of funeral directors or other entity, and (B)  
115 explain the duties and responsibilities of the escrow agent, including,  
116 but not limited to, a provision stating that the escrow agent may only  
117 invest such funds in accordance with the provisions of subsection (c) of  
118 this section and may only dispense such funds in accordance with the  
119 provisions of this chapter. A copy of the contract shall be provided to  
120 the purchaser of funeral services, property or merchandise upon  
121 request.

122       (3) A designated escrow agent shall be one of the following: [(1)] (A)  
123 A national banking association; [(2)] (B) a state bank and trust  
124 company; [(3)] (C) a federal or state chartered savings bank; [(4)] (D) a  
125 federal or state chartered savings and loan association; [(5)] (E) a  
126 licensed insurance company; [, or (6)] or (F) a registered broker-dealer.  
127 [No such institution shall be appointed as an agent unless such  
128 institution is authorized by law to act as an escrow agent.]

129       (c) Assets held in escrow accounts established pursuant to this  
130 section shall be invested in one or more of the following: (1) Deposit  
131 accounts insured by the Federal Deposit Insurance Corporation; (2)  
132 accounts insured against loss of principal by an agency or  
133 instrumentality of the United States government; (3) bonds in which  
134 savings banks in this state may, by law, invest; (4) bonds of the United  
135 States or any agency thereof or of this state or any municipality of this  
136 state; or (5) any other deposit account, insurance contract, or security  
137 of a quality, safety and expense comparable to those set forth in this  
138 subsection.

139       (d) All interest, dividends and other income earned on the amounts

140 deposited in an escrow account pursuant to this section shall be  
141 retained in such escrow account and credited, less any administration  
142 expenses, to the respective interests of those persons for whose benefit  
143 the escrow account is maintained. Amounts in an escrow account shall  
144 be removed from such account only as provided in sections 42-200 to  
145 [42-206] 42-207, inclusive, as amended by this act. Each party to a  
146 funeral service contract shall receive an annual statement of the  
147 [amount] amounts credited and the amount of all expenses charged to  
148 such party's escrow account, and the annual rate of return on such  
149 funds after expenses. Such statement shall include the name and  
150 address of the escrow agent.

151 (e) If a purchaser of funeral services, property or merchandise  
152 defaults in making payments required under the terms of such  
153 contract, or if the purchaser or the person responsible for making  
154 funeral arrangements for a deceased beneficiary under section 45a-318,  
155 as amended, fails to have the funeral service establishment provide  
156 services, the funeral service establishment may retain any origination  
157 fee and any costs actually and reasonably incurred by such  
158 establishment in the performance of the contract as liquidated  
159 damages, provided the sum of the amount retained as an origination  
160 fee and the amount retained to pay for costs incurred by the funeral  
161 establishment in the performance of the contract shall not exceed an  
162 amount equal to five per cent of the amount in the escrow account at  
163 the time the purchaser of funeral services defaults in making such  
164 payments, and provided further that the funeral service contract  
165 specifically allows for such liquidated damages. The balance of any  
166 amount remaining in the escrow account shall be paid by the escrow  
167 agent to such purchaser. [upon request.]

168 (f) A person, firm or corporation licensed in accordance with the  
169 provisions of chapter 385 which enters into a funeral service contract  
170 shall furnish the agent of an escrow account established in accordance  
171 with the provisions of this section with the name of the purchaser of  
172 such services, property or merchandise, the address and name of the  
173 beneficiary of the funeral service contract and the amount contracted

174 for, [, together with a copy of the contract listing the services, personal  
175 property or merchandise to be furnished by the funeral service  
176 establishment.] Nothing in this section shall prohibit the commingling  
177 within an escrow account of the money or securities received under  
178 more than one funeral service contract for the purpose of management  
179 and investment of funds in such escrow account provided the escrow  
180 agent maintains a separate accounting of each escrow account.

181 (g) A funeral service contract shall provide that, if the particular  
182 merchandise provided for in the contract is not available at the time of  
183 death, the funeral service establishment shall furnish merchandise  
184 similar in style and at least equal in quality of material and  
185 workmanship to the merchandise provided for in the contract.

186 Sec. 4. Section 42-203 of the general statutes is repealed and the  
187 following is substituted in lieu thereof (*Effective October 1, 2002*):

188 Funds held in an escrow account in accordance with the provisions  
189 of a funeral service contract shall remain intact unless such funds are  
190 commingled in accordance with the provisions of subsection (f) of  
191 section 42-202, as amended by this act, or the purchaser of funeral  
192 services, property or merchandise defaults in making payments  
193 required under the terms of the contract, as provided in subsection (e)  
194 of section 42-202, as amended by this act, or until the services  
195 contracted for have been performed or the contracted for property or  
196 merchandise has been delivered. Upon submission to the escrow  
197 agent, by the funeral service establishment, of [proof] an affidavit by  
198 the person responsible for making funeral service arrangements for a  
199 deceased beneficiary that the services, personal property and  
200 merchandise contracted for have been fully performed or delivered,  
201 the escrow agent shall pay to such funeral service establishment the  
202 amounts [deposited therein pursuant to such funeral service contract,  
203 and all income earned thereon and retained in the escrow account]  
204 duly charged for such rendered services, personal property or  
205 merchandise. The escrow agent shall transfer any surplus funds to the  
206 purchaser's estate unless the contract provides otherwise. If, for any

207 reason, the funeral service establishment which has entered into a  
208 funeral service contract for the sale of services, personal property, or  
209 merchandise and which has deposited the funds into an escrow  
210 account in accordance with the provisions of sections 42-200 to [42-206]  
211 42-207, inclusive, as amended by this act, fails to meet its obligation  
212 under such contract promptly after the death of the person to be  
213 benefited, the [family, the next of kin, or the legal representative of the  
214 deceased] person responsible for making funeral arrangements for a  
215 deceased beneficiary, having provided for such services, personal  
216 property or merchandise on behalf of the deceased person, [may] shall  
217 receive from the escrow agent the amount [of money in such escrow  
218 account] charged for such services, personal property or merchandise.  
219 An affidavit [which] that states [that] services have been performed or  
220 property delivered, signed by [a member of the family, next of kin, or  
221 legal representative of the deceased] the person responsible for making  
222 funeral arrangements for a deceased beneficiary, and by the funeral  
223 service establishment which has provided such services, personal  
224 property or merchandise, and which is delivered to the escrow agent  
225 shall be sufficient to authorize an escrow agent, acting alone, to make  
226 such payment without liability to the person making the deposit of  
227 such money into the escrow account or to any other person. Nothing  
228 contained in this section shall relieve the funeral service establishment  
229 of its liability for nonperformance.

230 Sec. 5. Section 42-207 of the general statutes is repealed and the  
231 following is substituted in lieu thereof (*Effective October 1, 2002*):

232 An irrevocable funeral service contract may be entered into in which  
233 the amount held in escrow may be disbursed only upon the death of  
234 the beneficiary and upon submission by the funeral service  
235 establishment of an affidavit by the person responsible for making  
236 funeral arrangements for a deceased beneficiary that the services,  
237 personal property or merchandise contracted for have been fully  
238 performed or delivered, provided such a contract does not exceed five  
239 thousand four hundred dollars and all interest accumulates to the  
240 escrow account and is inaccessible to the beneficiary. Such irrevocable



The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

## **OFA Fiscal Note**

### **State Impact:**

<b>Fund-Type</b>	<b>Agency Affected</b>	<b>Current FY \$</b>	<b>FY 03 \$</b>	<b>FY 04 \$</b>
GF - Cost	Consumer Protection, Dept.	-	54,465	71,350
GF - Revenue Gain	Consumer Protection, Dept.	-	Indeterminate	Indeterminate
GF - Minimal Cost	Attorney General	-	Minimal	Minimal

Note: GF=General Fund

**Municipal Impact:** None

### **Explanation**

This bill requires pre-paid funeral contracts to contain certain specified disclosures in order to protect consumers from fraud and to provide information to consumers regarding money paid for funeral services.

According to the Connecticut Funeral Home Association, there are approximately 44,000 existing pre-paid funeral service contracts with an increase of approximately 3,300 new prepaid funeral service contracts every year. In the last year, the Department of Consumer Protection (DCP) has received 84 written complaints regarding pre-paid funeral service contracts. The department anticipates that it will need to hire one (1) Special Investigator to handle the additional workload created by the bill under the Connecticut Unfair Trade Practices Act (CUPTA). The table below contains three-quarter year costs and annualized costs for FY 03 and FY 04, respectively. Moreover, FY 04 costs reflect a small inflationary increase. Other Expenses includes car rental, gasoline, annual phone/pager service and office supplies. Equipment costs for a personal computer, a desk

and chair and a file cabinet are one time costs reflected in FY 03 only.

<b>Account</b>	<b>FY 03</b>	<b>FY 04</b>
Personal Services	\$32,165	\$45,437
Fringe Benefits	13,602	19,538
Other Expenses	4,643	6,375
Equipment	4,055	- 0 -
<b>Total</b>	<b>\$54,465</b>	<b>\$71,350</b>

### **Connecticut Unfair Trade Practices ACT (CUPTA)**

A violation of provisions of this bill is deemed an unfair trade practice. Under the Unfair Trade Practices Act, the Department of Consumer Protection (DCP) has two methods for resolving complaints, 1) formal administrative hearings; or 2) forwarding the complaint to the Attorney General's office for litigation. If most of the cases are handled administratively by DCP, the workload increase to the Office of the Attorney General is expected to be minimal and can be handled within the agency's anticipated budgetary resources. Under the Unfair Trade Practices Act, civil penalties can be imposed for violations, the extent of the additional revenue cannot be determined, since it would depend upon the number of violations which occurred and the amount of the penalties that are imposed.

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**OLR Bill Analysis**

sSB 131

**AN ACT CONCERNING FULL DISCLOSURE OF PREPAID FUNERAL SERVICE CONTRACTS****SUMMARY:**

This bill requires:

1. funeral contracts entered into in advance of the furnishing of services and products (i.e., "pre-need" contracts) to contain specified disclosures to consumers;
2. funeral home owners, before selling the contracts, to post a bond, or series of bonds in varying amounts, depending on the number of homes they own;
3. escrow agents who administer the consumers' funds to notify consumers when homes deposit the funds or other transactions are completed;
4. a contract between the funeral home and the escrow agent and specifies its contents;
5. annual escrow account statements to disclose the amount of all expenses charged to the account and the annual rate of return, in addition to the amount, as required under current law; and
6. that funds remaining in the account after the funeral be turned over to the person responsible for making the funeral arrangements.

Finally, the bill makes minor and technical changes.

EFFECTIVE DATE: October 1, 2002

**CONTRACT DISCLOSURES**

The bill requires a pre-need funeral contract to contain:

1. a consumer notice as specified below;
2. the name, business address, and phone number of the escrow agent who will administer the funds;
3. a statement advising the consumer to avoid fraud by contacting the escrow agent to verify what has happened to the funds, if he does not receive (a) verification that the agent has deposited the funds

- within 45 days after the consumer signs the contract or (b) an annual account statement; and
4. clear and conspicuous statements, if applicable, (a) as to whether the contract is revocable or irrevocable and an explanation of these terms, and (b) that the consumer may owe additional funds for the contracted services or items.

## CONSUMER NOTICE

The bill requires the contract to contain a consumer notice on a separate page that uses boilerplate language specified in the bill or language substantially similar to it. The notice must describe what a funeral service contract is and information the consumer must receive, including investment options the home offers, and a statement of investment and management fees the escrow agent charges, either to the escrow account or the consumer. It must disclose whether the funds can be transferred to other investments and whether the funeral director, association of funeral directors, or other entity may share compensation from the escrow agent.

The notice must inform the consumer that (1) an escrow agent must be either a bank, a licensed insurance company, a savings and loan association, or a registered broker-dealer and (2) he must receive an annual statement of income and expenses for the escrow funds. It must also state that the contract must provide that if specified merchandise is not available, only merchandise of at least equal quality and similar style can be substituted.

The notice must state that it is important for the consumer to:

1. verify the services, property, and merchandise to be provided and ensure that their costs are explained;
2. verify whether he will need to pay any additional money for the services, property, and merchandise;
3. determine who will receive surplus funds, if the funds in the account exceed the contracted funeral cost;
4. obtain the escrow agent's name, address, and phone number; and
5. contact the escrow agent if, by the 45<sup>th</sup> day after signing the contract, the consumer does not receive verification that the agent has received and deposited the funds.

## SURETY BOND

The bill requires each funeral home to obtain a surety bond, or series of bonds, ranging from \$50,000 to \$1 million, depending on the number of homes they own, before entering into, arranging, promoting, or selling pre-need funeral service contracts, as listed below.

No. Funeral Homes Owned	Bond Amount
1 to 4	\$50,000
5 to 9	\$250,000
10 to 14	\$500,000
15 or more	\$1 million

The bonds must be conditioned on the funeral home truly and faithfully accounting for all funds it receives for such contracts. The bill gives anyone damaged by the wrongful conversion of such funds the right to sue on the bonds to recover damages, including reasonable attorneys' fees.

### **NEW ESCROW AGENT REQUIREMENTS**

The bill gives the escrow agent, who must be designated in the funeral contract, 30 days after receiving funds from a funeral home to send the consumer written verification that he has deposited the funds as required.

The bill requires the funeral home to contract with the designated escrow agent, either directly, through a funeral directors' association, or through another entity. Current law only requires a home to appoint an agent. Under the bill, this contract must contain provisions that:

1. clearly indicate all the escrow agent's fees and whether any funeral directors' association or other entity will share them and
2. explain the escrow agent's duties, including that the agent may only invest and disburse the funds according to existing statutory requirements.

Under the bill, the consumer must receive a copy of this contract upon request. The bill removes a requirement that the escrow agent receive a copy of the contract between the funeral home and the consumer listing the services, personal property, or merchandise the funeral home furnishes.

## **DEFAULT**

Under current law, if the purchaser defaults on the contract or fails to have the funeral home provide services, the funeral home can collect any origination fee and costs it reasonably incurs as damages, up to 5% of the amount in escrow. The bill allows this only if the contract specifically allows for such collection. By law, the balance must be returned to the purchaser. The bill specifies it is the escrow agent who must return the balance, and it eliminates the requirement that the purchaser ask for it.

## **COMMINGLING OF FUNDS**

Current law allows the escrow agent to commingle funds for more than one funeral contract within an escrow account. The bill continues to allow this, but it requires the agent to maintain a separate accounting for each escrow account.

## **ACCOUNT SURPLUS FUNDS**

Current law requires the escrow agent, when the funeral home submits proof that the services and items contracted for have been provided, to pay the principal and interest in the account to the home. The bill instead requires the agent to pay the funeral home only the amounts it charged for the services, personal property, or merchandise and requires him to transfer the remainder to the purchaser's estate, unless the contract provides otherwise. Further, the bill requires that the proof the funeral home offers be in the form of an affidavit by the person responsible for making the funeral arrangements.

If the funeral home fails to promptly provide the services required in the contract, the bill requires the escrow agent to give the amount charged for the services, property, or merchandise to the person who actually provided for them on behalf of the deceased. Current law permits the escrow agent to give the money in the escrow account to the deceased's family or next of kin in such a situation, but does not require it.

## **BACKGROUND**

### ***Pre-Need Funeral Contracts***

By law, funeral homes may contract with consumers in advance to provide services and products for a funeral. These contracts can be revocable or, if their value does not exceed \$5,400, irrevocable. The law requires funeral homes to place the money the consumer pays on such a contract in an escrow account administered by an escrow agent, which must be a bank, savings and loan association, insurance company, or registered broker-dealer. It places restrictions on what the funds can be invested in, requires each party to the contract to receive an annual statement, and sets other procedures for handling the escrow accounts and what to do in case of defaults on either side.

**COMMITTEE ACTION**

Select Committee on Aging

Joint Favorable Change of Reference  
Yea 12    Nay 0

General Law Committee

Joint Favorable Report  
Yea 16    Nay 0