

**PREPAID FUNERAL AND CEMETERY SALES ACT (EXCERPT)**  
**Act 255 of 1986**

**328.215 Definitions; N to U.**

Sec. 5.

As used in this act:

(a) "Nonguaranteed price contract" means a prepaid contract under which funds received are held pursuant to an escrow agreement between a contract seller or provider and a contract buyer and are applied to the cost of the merchandise or funeral or cemetery services, which merchandise or funeral or cemetery services may be selected by the contract buyer at the time the contract is signed or as selected by a person legally authorized to procure merchandise or funeral or cemetery services at the time of death of the contract beneficiary. A nonguaranteed price contract does not obligate the contract beneficiary's estate or the person who is legally entitled to make funeral or cemetery arrangements for a deceased contract beneficiary to purchase specific merchandise or funeral or cemetery services which were selected before the contract beneficiary's death and does not obligate either the contract beneficiary's estate or the person who is entitled to make funeral or cemetery arrangements for a deceased contract beneficiary to expend a specific amount on merchandise or funeral or cemetery services.

(b) "Person" means an individual, group of individuals, sole proprietorship, partnership, limited liability company, association, corporation, government agency, cemetery, or a combination of these legal entities.

(c) "Physical delivery and retention" means actual control and possession of merchandise that has been permanently relinquished by a contract seller or a provider, or the agent of either, to the contract buyer or the contract beneficiary. In the case of a grave memorial or urn, physical delivery and retention means that the grave memorial or urn has been permanently inscribed with the name of the person being memorialized. Physical delivery and retention does not occur if the contract seller or provider takes either of the following actions:

(i) Arranges or induces the buyer to arrange for the storage or warehousing of merchandise ordered pursuant to a prepaid contract, with or without evidence that legal title has passed.

(ii) Acquires or reacquires actual or constructive possession or control of merchandise after initial delivery to the contract buyer or contract beneficiary.

(d) "Prepaid contract" means a contract requiring payment in advance for funeral or cemetery services or merchandise, physical delivery and retention of which would occur after death under a guaranteed price contract or a nonguaranteed price contract. Prepaid contracts do not include a contract for the sale of merchandise or funeral or cemetery services entered into after the death of the contract beneficiary.

(e) "Principal" means the money or other consideration actually deposited in the escrow or trust accounts required by this act.

(f) "Provider" means any person who furnishes or agrees to furnish merchandise or funeral or cemetery services pursuant to a prepaid contract, whether or not that person is the contract seller. In the case of merchandise, provider means the person who arranges for delivery of the merchandise at the time of the death of the contract beneficiary and not the manufacturer of the merchandise. In the case of funeral services, provider means a person who possesses all licenses necessary to perform the funeral services specified in the prepaid contract. In the case of cemetery services, provider means a person who possesses all licenses and registrations necessary to provide the cemetery services specified in the prepaid contract.

(g) "Registrant" means a person who has registered with the department pursuant to section 6.

(h) "Urn" means a container used to preserve the ashes of a dead human body.

**History:** 1986, Act 255, Eff. July 1, 1987 ;-- Am. 2004, Act 21, Eff. Jan. 1, 2005

**Compiler's Notes:** For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.