

# HIGHLIGHTS OF SB 196

1. Additions to Priority List for Right of Disposition
  - a) Grandchildren
  - b) State and local government agencies
  
2. Re-Codify Preneed Law
  - a) Relocation to Chapter 47
  - b) Jurisdiction over insurance-funded contracts
  - c) Role of Departments of Commerce and Insurance
  - d) Role of the State Board
  
3. Codify Attorney General's Opinion
  - a) Insurance agent's activities
  
4. Preneed Contract Disclosures
  - a) Identification of parties
  - b) Goods and services purchased
  - c) Guaranteed or non-guaranteed
  - d) Irrevocable or revocable
  - e) Initial right to rescind
  - f) Substitution of goods
  - g) Funeral Rule disclosure
  - h) Confirmation of deposit or insurance purchase
  - i) Identity of trustee or insurance company
  - j) Disclosure of fees and tax liability
  - k) Payment options/defaults
  - l) Disclosure of transfer fees
  
5. Investment Requirements
  - a) Notification of trustee transfers
  - b) Restriction of insurance purchase
  - c) No constructive delivery
  
6. Portability and Transfer Fees
  - a) Right to transfer irrevocable contracts
  - b) Transfer fee
  - c) Cancellation fee
  
7. Surrender of Trust Funds
  
8. Effective Date
  
9. Receivership Powers
  
10. Felony Penalty

**OFDA SAMPLE PRENEED FUNERAL CONTRACT  
IRREVOCABLE AND GUARANTEED-PRICE**

1. **INTRODUCTION.** You, the Purchaser, are pre-paying for the funeral services and merchandise that will be provided by the Funeral Home in the future. This Agreement explains the terms of that purchase. If you have any questions about this purchase, please ask the Funeral Home before you sign the Agreement.
  
2. **PARTIES AND DEFINED TERMS.** The parties and other defined terms are listed below:

a) **Purchaser**

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone No.: \_\_\_\_\_

SS No.: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

c) **Funeral Home**

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone No.: \_\_\_\_\_

b) **Beneficiary**

If you are purchasing the funeral services and merchandise for a person other than yourself, that person is the "Beneficiary."

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone No.: \_\_\_\_\_

SS No.: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

d) **Trustee**

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone No.: \_\_\_\_\_

3. **FUNERAL SERVICES AND MERCHANDISE.** The funeral services and merchandise you are purchasing from the Funeral Home are listed on the attached Statement of Funeral Goods and Services Selected (the "Purchase Statement"). The Funeral Home will use all reasonable efforts to provide the funeral services and merchandise listed in the Purchase Statement when they are needed. However, since this Contract is to be carried out in the future, some of the items you have purchased may no longer be reasonably available to the Funeral Home. In that

case, the Funeral Home agrees to provide items of equal quality, value and workmanship in substitution for the unavailable items.

4. **DEPOSIT INTO TRUST.** The Funeral Home shall deposit all monies received from Purchaser (excepting only sales tax and amounts not required by law to be deposited to trust in connection with a burial vault or urn as noted in Section 5 below) into a common trust account (the "TRUST") with the Trustee listed on page 1.
5.  **VAULT AND URN.** If the box is checked, the Funeral Home agrees to deposit into the Trust 100% of all funds paid in connection with the purchase of a burial vault or urn. If the box is not checked, the Funeral Home will, as permitted under Ohio law, deposit into the Trust the greater of 30% of the retail price or 110% of the wholesale price of any vault or urn sold.
6. **GUARANTEED-PRICE AGREEMENT.** The Funeral Home has agreed to provide the funeral services and merchandise listed on the Purchase Statement (except for any cash advances) for the total price paid by the Purchaser and all of the interest earnings in the Trust. When the Funeral Home has provided the funeral services and merchandise listed on the Purchase Statement, it shall be paid all of the trust funds by the Trustee. However, this price guaranty does not include unexpected costs such as increases in the price of any cash advance item listed on the Purchase Statement, shipping expenses if the death occurs outside of the Funeral Home's service area and selection of different funeral services or merchandise by any person holding the right of disposition.
7. **IRREVOCABLE CONTRACT.** The Purchaser has the right to make this Contract irrevocable. The Purchaser directs that this Contract shall be irrevocable and cannot be subsequently revoked by the Purchaser.
8. **TRANSFER OF CONTRACT FUNDING.** Although the Purchaser does not have the right to revoke this Contract, the Purchaser has the right to transfer the funding for this Contract to another funeral home. In order to transfer the funding, the Purchaser must send written notice to the Funeral Home and the Trustee. The written notice must list the successor funeral home. Unless the Funeral Home waives or reduces the transfer fee, the Funeral Home shall collect a transfer fee equal to 10% of the amount in the Trust on the date that the funding is transferred to the successor funeral home.
9. **WITHDRAWALS FROM TRUST.** Periodic withdrawals of funds on deposit with the Trustee may be made for the purpose of paying fees, expenses and taxes incurred by the Trust. Upon the death of the Purchaser and the performance of the Funeral Home under this Contract, the Funeral Home shall be entitled to receive all funds on deposit with the Trustee.

10. OBLIGATION TO PAY TAXES. Income tax on interest and other earnings generated by the Trust will be paid as follows (*Check only one of the boxes below*):

The Trustee will use earnings from the Trust to pay all applicable taxes;

OR

The Purchaser will be responsible for payment of income tax on Trust earnings.

12. **NOTICE:** Under Ohio law, the person holding the right of disposition of the remains of the beneficiary of this Contract pursuant to Section 2108.70 or 2108.81 of the Revised Code will have the right to make funeral arrangements inconsistent with the arrangements set forth in this Contract. However, the beneficiary is encouraged to state his or her preference as to funeral arrangements in a declaration of the right of disposition pursuant to Section 2108.72 of the Revised Code, including that the arrangements set forth in this Contract shall be followed.
13. **NOTICE:** You, as the Purchaser of this Contract, will be notified in writing when the Trustee of this Contract has received the deposit of the funds you paid to the Funeral Home under this Contract. If you do not receive the notice within sixty days of the date which you paid the funds to the Funeral Home, you should contact the Trustee at the number listed on the front page of this Contract.
14. **NOTICE:** Under Ohio law, you, as the Purchaser of this Contract may rescind it and receive a refund of all payments you have made under this Contract. To rescind the Contract, you must notify the Funeral Home within seven days of signing the Contract.

**PURCHASER PLEASE NOTE:** You are to receive a signed copy of this Agreement with the attached Purchase Statement. Please make sure you have a complete copy.

**PURCHASER'S SIGNATURE**  
I have read this Agreement and agree to be bound by it.

**FUNERAL HOME SIGNATURE**  
The Funeral Home agrees to be bound by this Agreement.

\_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

**IRREVOCABLE AND NON-GUARANTEED-PRICE  
PRENEED FUNERAL CONTRACT FUNDED  
BY THE ASSIGNMENT OF INSURANCE**

1. **INTRODUCTION.** You, the Purchaser, are selecting the funeral services and merchandise that will be provided by the Funeral Home in the future. This Agreement explains the terms of that purchase. If you have any questions about this purchase, please ask the Funeral Home before you sign the Agreement.

2. **PARTIES.** The parties are listed below:

a) Purchaser

b) Funeral Home

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

Phone No.: \_\_\_\_\_

Phone No.: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

3. **ASSIGNMENT OF INSURANCE.** The Purchaser IRREVOCABLY ASSIGNS to the Funeral Home the ownership of the following insurance policy or policies (the "Assigned Insurance") to be applied toward the payment of the funeral services and merchandise listed on the Purchase Statement:

Name and Address  
of Insurance Company

Face Amount

Policy No.

\_\_\_\_\_

\$ \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\$ \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\$ \_\_\_\_\_

\_\_\_\_\_

4. **FUNERAL SERVICES AND MERCHANDISE.** The funeral services and merchandise you are purchasing from the Funeral Home are listed on the attached Statement of Funeral Goods and Services Selected (the "Purchase Statement"). The Funeral Home will use all reasonable efforts to provide the funeral services and merchandise listed in the Purchase Statement when they are needed. However, since this Agreement is to be carried out in the future, some of the items you have purchased may no longer be reasonably available to the Funeral Home. In that case, the Funeral Home agrees to provide similar items of equal quality, value and workmanship in substitution for the unavailable items.

5. **RESTRICTIONS.** The Funeral Home agrees not to transfer, assign, cash in, borrow against, or otherwise encumber in any way the Assigned Insurance unless authorized to do so under this Agreement.

6. **TERMINATION BY FUNERAL HOME.** If the Assigned Insurance is not in force and payable to the Funeral Home at its full face value at the time of the insured's death, the Funeral Home is not required to provide the funeral services and merchandise and may elect to terminate the Agreement without liability.

7. **NON-GUARANTEED-PRICE AGREEMENT.** The Funeral Home is not guaranteeing the prices of the funeral services and merchandise listed on the Purchase Statement. The actual prices of those items will be established from the Funeral Home's price lists when the insured dies and the funeral services and

merchandise are supplied. The Funeral Home will apply all proceeds from the Assigned Insurance it receives toward the total price of the funeral services and merchandise provided by the Funeral Home. If the total price is less than the proceeds of the Assigned Insurance, any surplus that is not required by law to be paid to Ohio Medicaid Recovery (if Purchaser is a Medicaid beneficiary), will be paid to the alternate beneficiary of the insurance policy or the estate. If the price is more than the proceeds of the Assigned Insurance, then the estate or the survivors must either make acceptable arrangements to pay the shortfall or select less expensive funeral services and merchandise.

8. **INITIAL RIGHT OF CANCELLATION.** NOTICE: Under Ohio law, you, as the purchaser of this contract, may rescind it and receive a refund of all payments you have made under this contract. To rescind the contract, you must notify the funeral home within seven days of signing the contract.
9. **IRREVOCABLE CONTRACT.** As the purchaser, you have the right to make this contract irrevocable. You have directed that this contract shall be irrevocable and cannot be subsequently revoked by you or the funeral home. Although you retain the right to transfer the Assigned Insurance to another funeral home in accordance with Section 10 below, you will not be able to cancel the Assigned Insurance to obtain its cash surrender value.
10. **TRANSFER TO ANOTHER FUNERAL HOME.** If you wish to use another funeral home to provide the funeral, you may transfer the Assigned Insurance to the new funeral home. To make the transfer, you must send written notice to the Funeral Home requesting the transfer and designating the new funeral home. Within fifteen (15) days of receiving the written notice from you, the Funeral Home shall assign the ownership of the Assigned Insurance to the new funeral home.
11. **OTHER TERMS.** This Agreement may not be modified except in a writing that is signed by both parties. This Agreement shall be subject to the laws of the State of Ohio. This Agreement is binding upon the heirs of the Purchaser and any successors or assigns of the Funeral Home.
12. **NOTICES.** The following notices are made to you as the purchaser of the contract:

**NOTICE:** Under Ohio law, the person holding the right of disposition of the remains of the individual contract beneficiary pursuant to Section 2108.70 or 2108.81 of the Revised Code will have the right to make funeral arrangements inconsistent with the arrangements set forth in this contract. However, the individual contract beneficiary is encouraged to state his or her preferences as to funeral arrangements in a declaration of the right of disposition pursuant to Section 2108.72 of the Revised Code, including that the arrangements set forth in this contract shall be followed.

**NOTICE:** You, as the purchaser of this contract, will be notified in writing by the insurance company or companies identified in this contract when the insurance policy or policies that will fund the contract have been assigned. If you do not receive the notice within sixty (60) days after the date you sign this contract, you should contact the insurance company or companies identified in the contract.

13. **PRICE LISTS:** By initialing the lines below, you acknowledge that you were presented with the following prior to making the purchase of funeral goods and services in accordance with the Federal Trade commission's Funeral Rule:

\_\_\_\_\_ General Price List                      \_\_\_\_\_ Casket Price List                      \_\_\_\_\_ Outer Burial Container Price List

**PURCHASER'S SIGNATURE**  
I have read this Agreement and agree to be bound by it.

**FUNERAL HOME SIGNATURE**  
The Funeral Home agrees to be bound by this Agreement.

\_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_