

By: Representatives Montgomery, Stevens

To: Insurance

HOUSE BILL NO. 1438

1 AN ACT TO AMEND SECTION 75-63-3, MISSISSIPPI CODE OF 1972, TO
2 INCREASE THE TRUST FUND DEPOSIT REQUIRED OF ENTITIES SELLING
3 CERTAIN PRENEED FUNERAL SERVICE CONTRACTS; TO CREATE NEW CODE
4 SECTION 75-63-6, MISSISSIPPI CODE OF 1972, TO REQUIRE THE
5 LICENSING OF ENTITIES SELLING PRENEED AND PREARRANGEMENT FUNERAL
6 SERVICE CONTRACTS; TO AMEND SECTION 75-63-18, MISSISSIPPI CODE OF
7 1972, TO REQUIRE ESTABLISHMENTS SELLING PRENEED, PREARRANGEMENT
8 FUNERAL SERVICE CONTRACTS AND AGREEMENTS TO FILE CERTAIN ANNUAL
9 REPORTS WITH THE DEPARTMENT OF BANKING AND CONSUMER FINANCE; TO
10 BRING FORWARD SECTION 75-63-1, MISSISSIPPI CODE OF 1972, FOR
11 PURPOSES OF AMENDMENT; AND FOR RELATED PURPOSES.

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

13 SECTION 1. Section 75-63-3, Mississippi Code of 1972, is
14 amended as follows:

15 75-63-3. (1) Any person, firm, corporation, association or
16 partnership entering into any such contract as the seller or the
17 party responsible for providing such services shall deposit an
18 amount of money equal to not less than eighty-five percent (85%)
19 of the value of such property or services as stated in the
20 contract, into a trust fund established for that purpose. Such
21 deposit shall be made not later than forty-five (45) days after
22 the end of the month in which such contract is executed; except in
23 the event that payment for the property and/or service shall be
24 made by the consumer in installments, eighty-five percent (85%) of
25 each installment payment shall be deposited to the trust within
26 forty-five (45) days of the last day of the month within which
27 such payment was made.

28 (2) Each initial deposit as to each contract into the trust
29 fund shall be identified by the seller by furnishing the trustee
30 with the name of the purchaser, a copy of the contract containing

31 a statement of the value of such property or services and a
32 description of the personal property and/or services to be
33 furnished or provided by the seller thereunder. Nothing therein
34 contained shall prohibit the trustee from commingling the deposits
35 in any such trust fund for purposes of the management thereof and
36 the investment of funds therein.

37 SECTION 2. The following section shall be codified as
38 Section 75-63-6, Mississippi Code of 1972:

39 75-63-6. Every business, corporation, establishment and
40 funeral home selling preneed, prearrangement funeral service
41 contracts or agreements shall be registered by application to the
42 Department of Banking and Consumer Finance. The department may
43 charge an initial and subsequent renewal registration fee; such
44 fee shall not exceed Twenty-five Dollars (\$25.00) annually. Every
45 such business shall renew its registration on January 1 of each
46 year.

47 SECTION 3. Section 75-63-18, Mississippi Code of 1972, is
48 amended as follows:

49 75-63-18. (1) Within thirty (30) days after the end of the
50 calendar or the business fiscal year, each cemetery merchandise
51 business shall file with the Department of Banking and Consumer
52 Finance an annual account, which account shall contain the
53 following information:

54 (a) The name of the business, the date of
55 incorporation, if incorporated, and the location of such business
56 or businesses;

57 (b) The amounts of sales of all property and services
58 for which payment has been made in full during the preceding
59 calendar or fiscal year;

60 (c) The amounts paid into the merchandise trust fund,
61 and the income earned therefrom during the preceding fiscal year;
62 and

63 (d) The names and addresses of the owners of the
64 business and, if incorporated, its officers and directors, and any
65 change of control which has occurred during the past fiscal or
66 calendar year.

67 (2) Within forty-five (45) days after the time by which the

68 trustee's accounting and report is required to be filed with the
69 cemetery merchandise business, as provided by Section 75-63-15,
70 the business shall file a copy of such accounting and report with
71 the department.

72 (3) As a condition to the transfer of any merchandise trust
73 fund monies from one trust institution to another, the business
74 for which such fund is maintained shall, not less than thirty (30)
75 days before the time when such transfer is to occur, file with the
76 department a written notice of intent to transfer accompanied with
77 a letter of intent to receive such trust fund monies from the
78 trust institution to which such trust fund monies are to be
79 transferred. Such fund monies shall be transferred directly from
80 the existing trust institution to the receiving trust institution.

81 (4) Before any sale or transfer of any cemetery merchandise
82 business or a controlling interest therein, an independent audit
83 of the merchandise trust fund shall be performed at the expense of
84 the seller and/or buyer or transferor and transferee and filed
85 with the department. Such audit shall be current within thirty
86 (30) days of the proposed sale or transfer.

87 (5) The department shall maintain a properly indexed book in
88 which there shall be kept, preserved and open for public
89 inspection a copy of each record, report and notice required to be
90 filed with the department under the provisions of this chapter.
91 For filing and indexing the records, reports and notices under
92 this chapter, the department shall be authorized to charge such
93 fees as are provided in Section 25-7-9 for the recording and
94 indexing of deeds.

95 (6) The department shall, upon the failure to timely receive
96 any of the records, reports or notices provided for under this
97 chapter, immediately give notice by registered letter to the owner
98 or owners of such business, or, if incorporated, its officers and
99 directors at its or their last-known address, that such records,
100 reports or notices have not been received. Failure of such

101 persons to file such records, reports or notices within fifteen
102 (15) days after such registered letter is mailed shall, in the
103 absence of clear justification or excuse, constitute a misdemeanor
104 and each owner and, if incorporated, its officers and directors,
105 shall be subject to the penalties provided for in Section
106 75-63-23.

107 (7) Whenever it reasonably appears to the department upon
108 complaint filed with the department by any purchaser, or the
109 family, legal representative or next of kin of any such purchaser,
110 of any property or services contracted for under the provisions of
111 this chapter that (a) such business is insolvent or about to
112 become insolvent; or (b) that no merchandise trust fund has been
113 established for such business or, if established, the trust fund
114 does not contain such funds as are required to be contained
115 therein, the department shall order a private audit and
116 examination of any merchandise trust fund of such business and of
117 all the books, records and papers employed in the transaction of
118 such business.

119 If such audit and examination shows that the business is
120 insolvent or is about to become insolvent or that a sufficient
121 trust fund is not established or being maintained for such
122 business, the department shall issue such orders * * * as may be
123 necessary to correct and enforce compliance with the provisions of
124 this chapter and all such other orders * * * as shall be just,
125 equitable and in the public interest, including the appointment of
126 receivers, with approval of the chancery court having
127 jurisdiction, to continue or terminate the operation of such
128 business.

129 (8) All the necessary expenses of any examination or audit
130 performed * * * under the provisions of subsection (7) of this
131 section shall be paid by the owner or owners of such business or,
132 if incorporated, its officers and directors, and in the event that
133 a sale of any such business is ordered by the department, the

134 proceeds of such sale shall first be applied to the costs expended
135 under the provisions of subsection (7) of this section.

136 SECTION 4. Section 75-63-1, Mississippi Code of 1972, is
137 brought forward as follows:

138 75-63-1. Except as hereinafter provided, no person, firm,
139 corporation, association or partnership shall, directly or
140 indirectly or through an agent, enter into a contract with any
141 retail consumer whereunder personal property as may be used by or
142 in a cemetery in connection with disposing of or commemorating the
143 memory of a deceased person and/or services related to a funeral
144 service or the burial of the dead are deliverable at a future and
145 unspecified date. This shall include but not be limited to the
146 pre-need sale of burial vaults, urns, memorials, scrolls, vases,
147 foundations, bases and similar merchandise, and to the advance
148 sale of funeral service.

149 SECTION 5. This act shall take effect and be in force from
150 and after January 1, 2000.