

By: Senator(s) Nunnelee, Browning

To: Insurance

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2599

1 AN ACT TO CREATE THE "PRE-NEED CEMETERY AND FUNERAL CONSUMER
2 PROTECTION ACT"; TO DEFINE CERTAIN TERMS; TO REQUIRE ALL PRE-NEED
3 FUNERAL CONTRACTS SOLD TO BE EVIDENCED IN WRITING ON FORMS
4 REGISTERED WITH THE COMMISSIONER OF BANKING AND CONSUMER FINANCE;
5 TO PRESCRIBE THE CONTENTS OF SUCH WRITTEN PRE-NEED CONTRACT; TO
6 PROVIDE FOR RECORD-KEEPING REQUIREMENTS; TO PROVIDE TRUSTING
7 REQUIREMENTS IF THE PRE-NEED CONTRACT IS FUNDED BY A TRUST; TO
8 PROVIDE CERTAIN REQUIREMENTS IF THE PRE-NEED CONTRACT IS FUNDED BY
9 INSURANCE; TO REQUIRE LICENSURE OF ALL PERSONS AND ESTABLISHMENTS
10 SELLING PRE-NEED FUNERAL CONTRACTS AND TO PROVIDE LICENSING FEES
11 THEREFOR; TO PROVIDE REPORTING REQUIREMENTS TO THE COMMISSIONER OF
12 BANKING AND CONSUMER FINANCE; TO AUTHORIZE EXAMINATIONS OF THE
13 BOOKS AND RECORDS OF LICENSED ESTABLISHMENTS; TO PROVIDE CIVIL AND
14 CRIMINAL PENALTIES FOR VIOLATIONS OF THIS ACT; TO CLARIFY THAT
15 NOTHING IN THE ACT SHALL BE CONSTRUED TO AUTHORIZE THE SALE OF
16 LIFE INSURANCE POLICIES BY UNLICENSED AGENTS; TO REPEAL SECTIONS
17 75-63-1, 75-63-3, 75-63-5, 75-63-7, 75-63-9, 75-63-11, 75-63-13,
18 75-63-15, 75-63-17, 75-63-18, 75-63-19, 75-63-21 AND 75-63-23,
19 MISSISSIPPI CODE OF 1972, WHICH REGULATE THE PRE-NEED SALES OF
20 CEMETERY MERCHANDISE AND FUNERAL SERVICES; AND FOR RELATED
21 PURPOSES.

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

23 SECTION 1. This act shall be known and may be cited as the
24 "Pre-need Cemetery and Funeral Consumer Protection Act."

25 SECTION 2. As used in this act, unless the context requires
26 otherwise:

27 (a) "Buyer" means the person who purchases the pre-need
28 contract.

29 (b) "Cash advance item" means any item of service or
30 merchandise described to a purchaser as a "cash advance,"
31 "accommodation," "cash disbursement," or similar term. A cash
32 advance item is also any item obtained from a third party and paid
33 for by the funeral provider on the purchaser's behalf. Cash
34 advance items may include, but are not limited to: cemetery or
35 crematory services; pallbearers; public transportation; clergy

36 honoraria; flowers; musicians or singers; nurses; obituary
37 notices; gratuities and death certificates.

38 (c) "Commissioner" means the Commissioner of Banking
39 and Consumer Finance of the State of Mississippi.

40 (d) "Cemetery" means an organization as defined in
41 Section 41-43-33, Mississippi Code of 1972.

42 (e) "Contract beneficiary" means the person upon whose
43 death will initiate the performance of the pre-need contract.
44 This person may also be the contract purchaser.

45 (f) "Contract provider" means the funeral home or
46 cemetery indicated in the pre-need contract that will be
47 responsible for performing the pre-need funeral contract.

48 (g) "Financial institution" means a bank, trust
49 company, savings bank, or savings and loan association authorized
50 by law to do business in this state.

51 (h) "Funeral home" means a business licensed under
52 Section 73-11-55, Mississippi Code of 1972.

53 (i) "Inflation proof contract" means a pre-need
54 contract that establishes a fixed price for funeral services and
55 merchandise without regard to future price increases.

56 (j) "Insurance" means a life insurance policy or
57 annuity contract, or other insurance contract or agreement in any
58 form, issued by an insurance company authorized by law to do
59 business in this state which, by assignment to a contract
60 provider, has for a purpose the funding of a pre-need funeral
61 contract.

62 (k) "Merchandise" means personal property associated
63 with the disposal of or memorializing a deceased human being such
64 as a casket, burial vault, burial clothes, urn or monument.

65 (l) "Pre-need contract" means any contract, agreement
66 or mutual understanding, or any series or combination of
67 contracts, agreements or mutual understandings, whether funded by
68 trust deposits or insurance, or any combination thereof, which has
69 for a purpose the furnishing or performance of funeral services,
70 or the furnishing of delivery of merchandise, of any nature in
71 connection with the final disposition of a dead human body, to be
72 furnished or delivered at a time determinable by the death of the

73 person whose body is to be disposed of, but shall not mean the
74 furnishing of a cemetery lot, crypt, niche or mausoleum.

75 (m) "Seller" means the person who sells the pre-need
76 funeral contract.

77 (n) "Services" means services of any nature in
78 connection with the final disposition of a dead human body.

79 (o) "Standard contract" means a pre-need contract that
80 applies the trust funds or insurance proceeds to the purchase
81 price of funeral services and merchandise at the time of death of
82 the contract beneficiary without a guarantee against future price
83 increases.

84 (p) "Trust" means an express trust created by a trust
85 instrument whereby a trustee has the duty to administer a trust
86 asset for the benefit of a named beneficiary.

87 (q) "Trustee" means an original, added, or successor
88 trustee including its successor by merger or consolidation.

89 SECTION 3. (1) No person, firm, partnership, association
90 or corporation may directly or indirectly, or through an agent,
91 engage in the sale of pre-need funeral contracts except as
92 authorized under this act. All pre-need funeral contracts sold
93 shall be evidenced in writing on forms registered with the
94 commissioner. These forms shall be in twelve-point type and
95 clearly indicate the names and addresses of the buyer, contract
96 beneficiary, contract provider and seller.

97 (2) The contract shall clearly indicate all merchandise
98 covered by the contract and the total cost of all merchandise
99 covered by the contract. The contract shall list all services
100 covered by the contract and the total cost for all services
101 covered by the contract. The contract price shall not exceed the
102 sum of the total cost for all merchandise, the total cost for all
103 services and any interest.

104 (3) All pre-need funeral contracts sold shall be funded by
105 trust or by insurance as defined in this act.

106 (4) If the pre-need contract is funded by insurance, the
107 following information shall be adequately disclosed at the time
108 the contract is executed:

109 (a) The fact that a life insurance policy is involved
110 or being used to fund the contract, and the name, address and
111 telephone number of the insurance company issuing the insurance;

112 (b) The nature of the relationship among the soliciting
113 agent or agents, the provider of the funeral or cemetery
114 merchandise or service, the administrator and any other person;

115 (c) The relationship of the life insurance policy to
116 the funding of the pre-need contract and the nature and existence
117 of any guarantees relating to the pre-need contract;

118 (d) The impact on the pre-need contract:

119 (i) Of any changes in the life insurance policy
120 including, but not limited to, changes in the assignment,
121 beneficiary designation or use of the proceeds;

122 (ii) Of any penalties to be incurred by the policy
123 holder as a result of failure to make premium payments; and

124 (iii) Of any penalties to be incurred or monies to
125 be received as a result of cancellation or surrender of the life
126 insurance policy.

127 (e) A list of the merchandise and services which are
128 applied or contracted for in the pre-need contract and all
129 relevant information concerning the price of the funeral services,
130 including an indication that the purchase price is either
131 guaranteed at the time of purchase or to be determined at the time
132 of need;

133 (f) All relevant information concerning what occurs and
134 whether any entitlements or obligations arise if there is a
135 difference between the proceeds of the life insurance policy and
136 the amount actually needed to fund the pre-need contract; and

137 (g) Any penalties or restrictions, including, but not
138 limited to, geographic restrictions or the inability of the

139 provider to perform, on the delivery of merchandise, services or
140 the pre-need guarantees.

141 (5) If the pre-need contract is funded by trust, the
142 contract shall indicate the name, address and telephone number of
143 the trustee; the amount to be paid; the frequency of payment; and
144 the length of time payments will be paid into the trust. In
145 addition, the contract should clearly indicate any exclusions or
146 limitations of the pre-need contract including, but not limited
147 to, any additional payments that may be owed if the contract
148 beneficiary dies before the agreed upon payment period is
149 completed.

150 (6) The pre-need contract shall indicate whether it is a
151 standard contract or an inflation proof contract, and whether it
152 is revocable or irrevocable. The contract shall clearly indicate
153 which merchandise and services are guaranteed as to price, and
154 which cash advance items are not guaranteed as to price. Upon
155 written disclosure to the buyer, inflation-proof contracts may
156 permit the contract provider to retain all of the pre-need funeral
157 contract trust funds or all insurance proceeds, even those in
158 excess of the retail cost of the merchandise and services provided
159 when the contract provider has fully performed the pre-need
160 funeral contract.

161 (7) The pre-need contract shall contain the address and
162 phone number of the Commissioner of Banking and Consumer Finance
163 with instructions that consumer complaints may be filed with the
164 commissioner.

165 (8) If the pre-need contract is paid in multiple payments,
166 the contract should indicate the amount, frequency and duration of
167 the payments and the amount of any interest charged. The contract
168 shall also include the impact on the contract if payments are not
169 made.

170 (9) Any use or attempted use of any oral pre-need contract,
171 or any written contract in a form not registered with the

172 commissioner, shall be a violation of this act.

173 SECTION 4. (1) The contract provider or its successor shall
174 maintain a copy of all pre-need funeral contracts entered into by
175 the contract provider for a period of the lifetime of each
176 contract beneficiary and for two (2) years after the death of a
177 contract beneficiary. In addition, the contract provider shall
178 maintain a log of pre-need contracts in force. The contracts in
179 this log shall be sequentially numbered and the number of the
180 pre-need contract in the log shall correspond to the number on the
181 pre-need contract.

182 (2) The log shall indicate whether the pre-need contract is
183 standard or inflation proof, whether the contract is funded with
184 trust or insurance, and whether the contract is revocable or
185 irrevocable. If the contract is funded by trust, the log shall
186 indicate the trustee. If the contract is funded with insurance,
187 the log shall indicate the name of the insurance company and the
188 policy number of the insurance policy.

189 (3) The commissioner shall promulgate rules and regulations
190 to ensure that the copies of the pre-need contract and the log
191 kept by the contract provider are stored in a secure place.

192 SECTION 5. (1) If the funds are placed in trust, the
193 contract beneficiary shall be given a copy of the trust document
194 and shall be informed in writing as to how the assets of the trust
195 are held. In the event of any change in the assets of the trust,
196 or change in the trustee, the contract beneficiary shall be
197 informed of these changes within ten (10) days.

198 (2) The trustee shall not be the contract provider, the
199 seller, or an officer or director of the contract provider if the
200 contract provider is a corporation.

201 (3) Within ten (10) days from receipt of the funds, the
202 contract seller shall place in a trust account at least eighty
203 percent (80%) of the funds received, except for funds received
204 from the pre-need sale of monuments and burial vaults of which the

205 contract seller shall place at least fifty percent (50%) in a
206 trust account. If the contract seller places less than one
207 hundred percent (100%) in the trust account, the pre-need contract
208 shall fully disclose to the contract purchaser the amount
209 deposited in trust and the amount withheld by the contract seller.

210 (4) The trustee shall obtain a surety bond for the full
211 amount of deposits in the trust account. If the trust funds are
212 held in a financial institution whose deposits are insured by an
213 agency of the United States government, the trustee shall be
214 exempt from the bonding requirement to the extent these deposits
215 are insured.

216 (5) Reasonable annual trust fees including any income taxes
217 owed to the State of Mississippi or the United States Treasury, as
218 approved by the commissioner, may be withheld from the earnings of
219 the trust.

220 (6) At the time of death, if the contract provider actually
221 provides the merchandise and services indicated in the contract,
222 the contract provider shall furnish to the trustee a letter of
223 performance indicating the contracted merchandise and services
224 were provided by the contract provider to the contract
225 beneficiary. Upon receipt of the letter of performance, the
226 trustee shall pay to the contract provider all funds plus
227 accumulated interest in the trust.

228 (7) If the contract provider does not furnish merchandise
229 and services as provided in the pre-need contract, the trustee
230 shall pay to the estate of the contract beneficiary or the
231 substitute provider the amount deposited in trust plus any
232 accumulated interest in the trust within ten (10) days from
233 notification of the death of the contract beneficiary.

234 SECTION 6. (1) If the pre-need funeral contract is funded
235 with insurance, within ten (10) days from the receipt of funds,
236 the contract seller shall send to the insurance company a
237 completed application for insurance and all premiums collected

238 from the contract purchaser.

239 (2) At the time of death, the proceeds of the policy shall
240 be settled in accordance with the policy. If the contract
241 provider furnishes merchandise and services as indicated in the
242 contract, the contract provider is entitled to retain the proceeds
243 of the policy in accordance with the pre-need contract. If the
244 contract provider does not furnish merchandise and services as
245 provided in the pre-need contract, the contract provider shall pay
246 to the estate of the contract beneficiary or the substitute
247 provider of the merchandise and services the entire proceeds of
248 the policy within ten (10) days of receipt of these proceeds.

249 SECTION 7. At any time prior to the performance of the
250 contract, the contract beneficiary or his representatives may name
251 a substitute provider for the pre-need contract. The naming of
252 the substitute provider shall be in writing. If the pre-need
253 contract is funded by trust, the notice of substitution shall be
254 made in writing to the trustee. If the pre-need contract is
255 funded by insurance, the notice of substitution shall be made in
256 writing to the insurance company. Upon receipt of the notice of
257 substitute provider, the original provider shall be relieved of
258 all obligations to perform the contract including all obligations
259 of reporting and accounting, and the substitute provider shall
260 assume all obligations to perform the contract including all
261 obligations of reporting and accounting.

262 SECTION 8. (1) No person may offer or sell pre-need funeral
263 contracts or offer to make or make any funded funeral
264 pre-arrangements without first being licensed by the commissioner.

265 (2) There shall be two (2) types of license: a pre-need
266 establishment license and a pre-need sales license. The
267 commissioner shall establish regulations to license each funeral
268 home or cemetery selling pre-need. No establishment shall be
269 licensed to sell pre-need merchandise or services that the
270 establishment cannot lawfully provide at the time of a person's

271 death. The commissioner shall also maintain a record of all
272 individuals who are licensed to sell pre-need through the
273 registered establishment. With each initial application for an
274 establishment license, the applicant shall pay the commissioner at
275 the time of making the application a reasonable license fee in an
276 amount not to exceed Two Hundred Fifty Dollars (\$250.00), and on
277 or before February 1 of each year thereafter, an annual renewal
278 fee in an amount not to exceed One Hundred Fifty Dollars
279 (\$150.00). If the annual fee remains unpaid twenty-eight (28)
280 days after February 1, the license shall thereupon expire, but not
281 before February 28 of any year for which the annual fee has been
282 paid.

283 (3) The commissioner shall establish regulations to license
284 each person selling pre-need contracts, including the
285 establishment through which the seller will be selling. No person
286 shall be registered to sell pre-need contracts without indicating
287 which establishment he or she is selling. The commissioner shall
288 establish activities that are permitted and activities that are
289 prohibited under the pre-need sales license. With each initial
290 application for a sales license, the applicant shall pay the
291 commissioner at the time of making the application a reasonable
292 license fee in an amount not to exceed One Hundred Dollars
293 (\$100.00), and on or before February 1 of each year thereafter, an
294 annual renewal fee in an amount not to exceed Fifty Dollars
295 (\$50.00). If the annual fee remains unpaid twenty-eight (28) days
296 after February 1, the license shall thereupon expire, but not
297 before February 28 of any year for which the annual fee has been
298 paid.

299 (4) If any person or establishment engages in the activities
300 provided for in this act without paying the required license fee
301 prior to commencing business or prior to the expiration for such
302 person's or establishment's current license, as the case may be,
303 then such person or establishment shall be liable for the full

304 amount of such license fee plus a penalty in an amount not to
305 exceed Fifty Dollars (\$50.00) for each day that the person or
306 establishment has engaged in such activities without a license or
307 after the expiration of a license.

308 (5) All licensing fees and penalties collected pursuant to
309 this section shall be deposited into the Department of Banking and
310 Consumer Finance, "Consumer Finance Fund."

311 SECTION 9. Every pre-need establishment licensee shall
312 annually submit a written report to the commissioner of its
313 pre-need funeral contract sales and performance of such contracts.

314 This report shall be filed on or before March 31 of each year for
315 the calendar year ending the preceding December 31. The
316 commissioner shall adopt regulations concerning the content and
317 filing procedure of this report.

318 SECTION 10. The commissioner or his representative may
319 examine the books and records of each establishment licensed under
320 this act as frequent as necessary to ensure compliance with this
321 act and any rules and regulations promulgated hereunder. The
322 commissioner may charge the licensee an examination fee in an
323 amount not less than Fifty Dollars (\$50.00) nor more than Three
324 Hundred Dollars (\$300.00) per examination of each office or
325 location within the State of Mississippi plus any actual expenses
326 incurred while examining the licensee's records or books that are
327 located outside the State of Mississippi. The examination fee
328 shall be deposited into the Department of Banking and Consumer
329 Finance, "Consumer Finance Fund."

330 SECTION 11. (1) The commissioner may, after notice and
331 hearing, suspend or revoke any pre-need establishment or sales
332 license for violation of statutes or regulations established under
333 this act.

334 (2) Any person, partnership or, if a corporation, the
335 officers and directors who sell or offer to sell a pre-need
336 contract with a suspended or revoked license or without a license

337 shall be guilty of a misdemeanor and upon conviction thereof,
338 shall be punishable by a fine not less than Two Hundred Dollars
339 (\$200.00) nor more than Five Hundred Dollars (\$500.00) or by
340 imprisonment for a term of not less than one (1) year nor more
341 than two (2) years, or both fine and imprisonment.

342 (3) Any person, partnership or, if a corporation, the
343 officers and directors who embezzles or fraudulently or knowingly
344 and willfully misapplies or converts pre-need funeral funds shall,
345 upon conviction, be punished by imprisonment in the custody of the
346 Mississippi Department of Corrections for a term of not less than
347 ten (10) years, or be fined not more than One Thousand Dollars
348 (\$1,000.00) and imprisoned in the county jail not more than one
349 (1) year, or both fine and imprisonment. Each such violation
350 shall constitute a separate offense.

351 (4) Upon reasonable belief that a person or corporation is
352 acting in violation of the portions of this act requiring fines or
353 imprisonment, the commissioner shall immediately report this
354 violation accompanied by all relevant records to the district
355 attorney in the county where the violations may have taken place.

356 If the violations may have taken place in multiple counties, the
357 case shall be reported to the county of residence of the violator,
358 or if not a resident of the State of Mississippi, the District
359 Attorney of Hinds County.

360 (5) The commissioner may, after notice and a hearing, impose
361 an administrative fine against any licensee adjudged by the
362 commissioner to be in violation of the provisions of this act.
363 Such administrative fine shall not exceed Five Hundred Dollars
364 (\$500.00) per violation and shall be deposited into the Department
365 of Banking and Consumer Finance, "Consumer Finance Fund."

366 SECTION 12. The commissioner, for the purpose of discovering
367 violations of this act and for the purpose of determining whether
368 persons are subject to the provisions of this act, is hereby
369 authorized to examine persons or establishments licensed under

370 this act and persons or establishments reasonably suspected by the
371 commissioner of engaging in activities which require a license
372 under this act, including all relevant books, records and papers
373 employed by such persons or establishments in the transaction of
374 their business, and to summon witnesses and examine them under
375 oath concerning matters relating to the business of such persons
376 or establishments, or such other matters as may be relevant to the
377 discovery of violations of this act.

378 SECTION 13. Nothing in this act shall be construed to
379 authorize the sale of life insurance policies by unlicensed agents
380 which is prohibited by Section 83-17-105, Mississippi Code of
381 1972.

382 SECTION 14. The commissioner may employ the necessary
383 permanent full-time employees in addition to the number of
384 permanent full-time employees authorized for the Department of
385 Banking and Consumer Finance for Fiscal Year 2000 to carry out and
386 enforce the provisions of this act.

387 SECTION 15. Sections 75-63-1, 75-63-3, 75-63-5, 75-63-7,
388 75-63-9, 75-63-11, 75-63-13, 75-63-15, 75-63-17, 75-63-18,
389 75-63-19, 75-63-21 and 75-63-23, Mississippi Code of 1972, which
390 regulate the sales of cemetery merchandise and funeral services,
391 are hereby repealed.

392 SECTION 16. This act shall take effect and be in force from
393 and after July 1, 1999.