

By: Senator(s) Nunnelee, Browning

To: Insurance

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 REPEAL SECTIONS
15 75-63-1, 75-63-3, 75-63-5, 75-63-7, 75-63-9, 75-63-11, 75-63-13,
16 75-63-15, 75-63-17, 75-63-18, 75-63-19, 75-63-21 AND 75-63-23,
17 MISSISSIPPI CODE OF 1972, WHICH REGULATE THE SALES OF CEMETERY
18 MERCHANDISE AND FUNERAL SERVICES; AND FOR RELATED PURPOSES.

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

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

22 SECTION 2. As used in this act, unless the context requires
23 otherwise:

24 (a) "Buyer" means the person who purchases the pre-need
25 contract.

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

35 (c) "Commissioner" means the Commissioner of Banking
36 and Consumer Finance of the State of Mississippi.

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

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

42 (f) "Contract provider" means the funeral home or
43 cemetery licensed by the Commissioner of Banking and Consumer
44 Finance, and indicated in the pre-need contract that will be
45 responsible for performing the pre-need funeral contract.

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

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

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

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

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

63 (l) "Pre-need contract" means any contract, agreement
64 or mutual understanding, or any series or combination of
65 contracts, agreements or mutual understandings, whether funded by
66 trust deposits or insurance, or any combination thereof, which has
67 for a purpose the furnishing or performance of funeral services,

68 or the furnishing of delivery of merchandise, of any nature in
69 connection with the final disposition of a dead human body, to be
70 furnished or delivered at a time determinable by the death of the
71 person whose body is to be disposed of, but shall not mean the
72 furnishing of a cemetery lot, crypt, niche or mausoleum.

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

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

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

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

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

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

95 (2) The contract shall clearly indicate all merchandise
96 covered by the contract and the total cost of all merchandise
97 covered by the contract. The contract shall list all services
98 covered by the contract and the total cost for all services
99 covered by the contract. The contract price shall not exceed the
100 sum of the total cost for all merchandise and the total cost for

101 all services.

102 (3) If the pre-need contract is funded by insurance, the
103 following information shall be adequately disclosed at the time
104 the contract is executed:

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

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

111 (c) The relationship of the life insurance policy to
112 the funding of the pre-need contract and the nature and existence
113 of any guarantees relating to the pre-need contract;

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

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

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

120 (iii) Of any penalties to be incurred or monies to
121 be received as a result of cancellation or surrender of the life
122 insurance policy.

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

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

133 (g) Any penalties or restrictions, including, but not

134 limited to, geographic restrictions or the inability of the
135 provider to perform, on the delivery of merchandise, services or
136 the pre-need guarantees; and

137 (h) The fact that a sales commission or other form of
138 compensation is being paid and if so, the identity of such
139 individuals or entities to whom it is paid.

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

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

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

164 (7) Any use or attempted use of any oral pre-need contract,
165 or any written contract in a form not registered with the
166 commissioner, shall be a violation of this act.

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

176 (2) The log shall indicate whether the pre-need contract is
177 standard or inflation proof, whether the contract is funded with
178 trust or insurance, and whether the contract is revocable or
179 irrevocable. If the contract is funded by trust, the log shall
180 indicate the trustee. If the contract is funded with insurance,
181 the log shall indicate the name of the insurance company and the
182 policy number of the insurance policy.

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

186 SECTION 5. (1) If the funds are placed in trust, the
187 contract beneficiary shall be given a copy of the trust document
188 and shall be informed in writing as to how the assets of the trust
189 are held. In the event of any change in the assets of the trust,
190 or change in the trustee, the contract beneficiary shall be
191 informed of these changes within ten (10) days.

192 (2) The trustee shall not be the contract provider, the
193 seller, or an officer or director of the contract provider if the
194 contract provider is a corporation.

195 (3) Within ten (10) days from receipt of the funds, the
196 contract seller shall place in a trust account at least eighty
197 percent (80%) of the contract price. If the contract seller
198 places less than one hundred percent (100%) in the trust account,
199 the pre-need contract shall fully disclose to the contract

200 purchaser the amount deposited in trust and the amount withheld by
201 the contract seller.

202 (4) The trustee shall obtain a surety bond for the full
203 amount of deposits in the trust account. If the trust funds are
204 held in a financial institution whose deposits are insured by an
205 agency of the United States government, the trustee shall be
206 exempt from the bonding requirement to the extent these deposits
207 are insured.

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

212 (6) At the time of death, if the contract provider actually
213 provides the merchandise and services indicated in the contract,
214 the contract provider shall furnish to the trustee a letter of
215 performance indicating the contracted merchandise and services
216 were provided by the contract provider to the contract
217 beneficiary. Upon receipt of the letter of performance, the
218 trustee shall pay to the contract provider all funds plus
219 accumulated interest in the trust.

220 (7) If the contract provider does not furnish merchandise
221 and services as provided in the pre-need contract, the trustee
222 shall pay to the estate of the contract beneficiary or the
223 substitute provider the amount deposited in trust plus any
224 accumulated interest in the trust within ten (10) days from
225 notification of the death of the contract beneficiary.

226 SECTION 6. (1) If the pre-need funeral contract is funded
227 with insurance, within ten (10) days from the receipt of funds,
228 the contract seller shall send to the insurance company a
229 completed application for insurance and all premiums collected
230 from the contract purchaser.

231 (2) At the time of death, the proceeds of the policy shall
232 be settled in accordance with the policy. If the contract

233 provider furnishes merchandise and services as indicated in the
234 contract, the contract provider is entitled to retain the proceeds
235 of the policy in accordance with the pre-need contract. If the
236 contract provider does not furnish merchandise and services as
237 provided in the pre-need contract, the contract provider shall pay
238 to the estate of the contract beneficiary or the substitute
239 provider of the merchandise and services the entire proceeds of
240 the policy within ten (10) days of receipt of these proceeds.

241 SECTION 7. At any time prior to the performance of the
242 contract, the contract beneficiary or his representatives may name
243 a substitute provider for the pre-need contract. The naming of
244 the substitute provider shall be in writing. If the pre-need
245 contract is funded by trust, the notice of substitution shall be
246 made in writing to the trustee. If the pre-need contract is
247 funded by insurance, the notice of substitution shall be made in
248 writing to the insurance company. Upon receipt of the notice of
249 substitute provider, the original provider shall be relieved of
250 all obligations to perform the contract including all obligations
251 of reporting and accounting, and the substitute provider shall
252 assume all obligations to perform the contract including all
253 obligations of reporting and accounting.

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

257 (2) There shall be two (2) types of license: a pre-need
258 establishment license and a pre-need sales license. The
259 commissioner shall establish regulations to license each funeral
260 home or cemetery selling pre-need. No establishment shall be
261 licensed to sell pre-need merchandise or services that the
262 establishment cannot lawfully provide at the time of a person's
263 death. The commissioner shall also maintain a record of all
264 individuals who are licensed to sell pre-need through the
265 registered establishment. The annual license fee for a pre-need

266 establishment license shall be One Hundred Fifty Dollars (\$150.00)
267 and due on July 1 of each year.

268 (3) The commissioner shall establish regulations to license
269 each person selling pre-need contracts, including the
270 establishment through which the seller will be selling. No person
271 shall be registered to sell pre-need contracts without indicating
272 which establishment he or she is selling. The commissioner shall
273 establish activities that are permitted and activities that are
274 prohibited under the pre-need sales license. The annual license
275 fee for a pre-need sales license shall be Fifty Dollars (\$50.00)
276 and due on July 1 of each year.

277 (4) If any person or establishment engages in the activities
278 provided for in this act without paying the required license fee
279 prior to commencing business or prior to the expiration for such
280 person's or establishment's current license, as the case may be,
281 then such person or establishment shall be liable for the full
282 amount of such license fee plus a penalty in an amount not to
283 exceed Fifty Dollars (\$50.00) for each day that the person or
284 establishment has engaged in such activities without a license or
285 after the expiration of a license.

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

289 SECTION 9. Every pre-need establishment licensee shall
290 annually submit a written report to the commissioner of its
291 pre-need funeral contract sales and performance of such contracts.
292 This report shall be filed on or before March 31 of each year for
293 the calendar year ending the preceding December 31. The
294 commissioner shall adopt regulations concerning the content and
295 filing procedure of this report.

296 SECTION 10. The commissioner or his representative may
297 examine the books and records of each establishment licensed under
298 this act as frequent as necessary to ensure compliance with this

299 act and any rules and regulations promulgated hereunder. The
300 commissioner may charge the licensee an examination fee not to
301 exceed Two Hundred Fifty Dollars (\$250.00), which shall be
302 deposited into the Department of Banking and Consumer Finance,
303 "Consumer Finance Fund."

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

308 (2) Any person, partnership or, if a corporation, the
309 officers and directors who sell or offer to sell a pre-need
310 contract with a suspended or revoked license or without a license
311 shall be guilty of a felony and upon conviction thereof, shall be
312 punishable by a fine not to exceed Five Thousand Dollars
313 (\$5,000.00) or by imprisonment in the custody of the Mississippi
314 Department of Corrections for a term of not less than one (1) year
315 nor more than two (2) years, or both fine and imprisonment.

316 (3) Any person, partnership or, if a corporation, the
317 officers and directors who embezzles or fraudulently or knowingly
318 and willfully misapplies or converts pre-need funeral funds shall
319 be guilty of a felony and upon conviction thereof, shall be
320 punishable by a fine not to exceed Five Thousand Dollars
321 (\$5,000.00) or by imprisonment in the custody of the Mississippi
322 Department of Corrections for a term of not less than one (1) year
323 nor more than two (2) years, or both fine and imprisonment. Each
324 such violation shall constitute a separate offense.

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

330 If the violations may have taken place in multiple counties, the
331 case shall be reported to the county of residence of the violator,

332 or if not a resident of the State of Mississippi, the District
333 Attorney of Hinds County.

334 (5) The commissioner may, after notice and a hearing, impose
335 an administrative fine against any licensee adjudged by the
336 commissioner to be in violation of the provisions of this act.
337 Such administrative fine shall not exceed Five Hundred Dollars
338 (\$500.00) per violation and shall be deposited into the Department
339 of Banking and Consumer Finance, "Consumer Finance Fund."

340 SECTION 12. The commissioner, for the purpose of discovering
341 violations of this act and for the purpose of determining whether
342 persons are subject to the provisions of this act, is hereby
343 authorized to examine persons or establishments licensed under
344 this act and persons or establishments reasonably suspected by the
345 commissioner of engaging in activities which require a license
346 under this act, including all relevant books, records and papers
347 employed by such persons or establishments in the transaction of
348 their business, and to summon witnesses and examine them under
349 oath concerning matters relating to the business of such persons
350 or establishments, or such other matters as may be relevant to the
351 discovery of violations of this act.

352 SECTION 13. The commissioner may employ the necessary
353 permanent full-time employees in addition to the number of
354 permanent full-time employees authorized for the Department of
355 Banking and Consumer Finance for Fiscal Year 1999 to carry out and
356 enforce the provisions of this act.

357 SECTION 14. Sections 75-63-1, 75-63-3, 75-63-5, 75-63-7,
358 75-63-9, 75-63-11, 75-63-13, 75-63-15, 75-63-17, 75-63-18,
359 75-63-19, 75-63-21 and 75-63-23, Mississippi Code of 1972, which
360 regulate the sales of cemetery merchandise and funeral services,
361 are hereby repealed.

362 SECTION 15. This act shall take effect and be in force from
363 and after July 1, 1999.