

By: Senator(s) Little (By Request)

To: Insurance

SENATE BILL NO. 2676

1 AN ACT TO AMEND SECTIONS 75-63-1, 75-63-15, 75-63-18, AND
2 75-63-19, MISSISSIPPI CODE OF 1972, TO REMOVE CEMETERIES FROM THE
3 PROVISIONS OF LAW WHICH REGULATE SALES OF CEMETERY MERCHANDISE AND
4 FUNERAL SERVICES FOR FUTURE DELIVERY; TO CREATE NEW CODE SECTIONS
5 TO BE CODIFIED IN THE MISSISSIPPI CEMETERY LAW TO PROVIDE
6 REGULATION OF SALES OF CEMETERY MERCHANDISE FOR FUTURE DELIVERY;
7 TO REPEAL SECTION 75-63-5, MISSISSIPPI CODE OF 1972, WHICH
8 CLARIFIES THAT CEMETERIES ARE NOT REQUIRED TO ACCEPT PROPERTY OR
9 PERFORM SERVICES CONTRARY TO LAW; TO CREATE NEW CODE SECTIONS TO
10 CODIFY AS A SEPARATE ARTICLE WITHIN THE CEMETERY LAW THE
11 PROVISIONS REGULATING THE SALES OF CEMETERY MERCHANDISE FOR FUTURE
12 DELIVERY; AND FOR RELATED PURPOSES.

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

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

16 75-63-1. Except as hereinafter provided, no person, firm,
17 corporation, association or partnership shall, directly or
18 indirectly or through an agent, enter into a contract with any
19 retail consumer whereunder personal property as may be used by or
20 in a funeral establishment in connection with disposing of or
21 commemorating the memory of a deceased person and/or services
22 related to a funeral service or the burial of the dead are
23 deliverable at a future and unspecified date. This shall include
24 but not be limited to the pre-need sale of burial vaults, urns,
25 memorials, scrolls, vases, foundations, bases and similar
26 merchandise, and to the advance sale of funeral service.

27 SECTION 2. Section 75-63-15, Mississippi Code of 1972, is
28 amended as follows:

29 75-63-15. (1) Every trustee of a funeral services trust
30 fund shall annually prepare and file with the funeral services
31 business a detailed accounting and report of such fund on or

32 before March 31 of each year for the calendar year ending the
33 preceding December 31 or within ninety (90) days after the end of
34 the fiscal year of the trust agreement, which report shall
35 include, among other things, properly itemized, the securities in
36 which monies in the fund are invested.

37 (2) Every seller shall keep accurate books of account and
38 records of all transactions concerning funeral services funds, and
39 a copy of all agreements made in connection with funeral services
40 funds. Such records shall be kept and be available for inspection
41 and copy by any purchaser, or the purchaser's family, legal
42 representative or next of kin, at the usual place of the seller's
43 business, for at least one (1) year after the termination of the
44 agreement which they evidence.

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

47 75-63-18. (1) Within thirty (30) days after the end of the
48 calendar or the business' fiscal year, each funeral services
49 business shall file with the clerk of the chancery court having
50 jurisdiction over the administration of its funeral services trust
51 fund an annual account, which account shall contain the following
52 information:

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

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

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

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

66 (2) Within forty-five (45) days after the time by which the
67 trustee's accounting and report is required to be filed with the
68 funeral services business, as provided by Section 75-63-15, the

69 business shall file a copy of such accounting and report with the
70 clerk of the chancery court having jurisdiction thereof.

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

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

87 (5) Each chancery clerk shall maintain a properly indexed
88 book in 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 chancery clerk under the provisions of this
91 chapter. For filing and indexing the records, reports and notices
92 under this chapter, the chancery clerk shall be authorized to
93 charge such fees as are provided in Section 25-7-9 for the
94 recording and indexing of deeds.

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

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

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

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

128 (8) All the necessary expenses of any examination or audit
129 performed or court proceedings conducted under the provisions of
130 subsection (7) of this section shall be paid by the owner or
131 owners of such business or, if incorporated, its officers and
132 directors, and in the event that a sale of any such business is
133 ordered by the court, the proceeds of such sale shall first be
134 applied to the costs expended under the provisions of subsection

135 (7) of this section.

136 SECTION 4. Section 75-63-19, Mississippi Code of 1972, is
137 amended as follows:

138 75-63-19. This chapter shall not apply to: (a) the sale of
139 burial vaults, urns, memorials, scrolls, vases, foundations, bases
140 or any other similar merchandise where the seller delivers at the
141 time of the execution of the contract or upon final payment,
142 should the payment be made in installments, a valid warehouse
143 receipt as contemplated in Uniform Commercial Code-Documents of
144 Title, Section 75-7-101 et seq.; or (b) property or services
145 included within the coverage provisions of insurance policies or
146 contracts of insurance; or (c) the sale of property or services
147 provided by a cemetery which are governed by Sections 5 through 17
148 of Senate Bill No. 2676, 1999 Regular Session.

149 SECTION 5. Except as hereinafter provided, no person, firm,
150 corporation, association or partnership shall, directly or
151 indirectly or through an agent, enter into a contract with any
152 retail consumer whereunder personal property as may be used by or
153 in a cemetery in connection with disposing of or commemorating the
154 memory of a deceased person and/or services related to a funeral
155 service or the burial of the dead are deliverable at a future and
156 unspecified date. This shall include, but not be limited to, the
157 pre-need sale of burial vaults, urns, memorials, scrolls, vases,
158 foundations, bases and similar merchandise, and to the advance
159 sale of funeral service.

160 SECTION 6. (1) Any person, firm, corporation, association
161 or partnership entering into any such contract as the seller or
162 the party responsible for providing such services shall deposit an
163 amount of money equal to not less than fifty percent (50%) of the
164 value of such property or services as stated in the contract, into
165 a trust fund established for that purpose. Such deposit shall be
166 made not later than forty-five (45) days after the end of the
167 month in which such contract is executed; except in the event that

168 payment for the property and/or service shall be made by the
169 consumer in installments, fifty percent (50%) of each installment
170 payment shall be deposited to the trust within forty-five (45)
171 days of the last day of the month within which such payment was
172 made.

173 (2) Each initial deposit as to each contract into the trust
174 fund shall be identified by the seller by furnishing the trustee
175 with the name of the purchaser, a copy of the contract containing
176 a statement of the value of such property or services and a
177 description of the personal property and/or services to be
178 furnished or provided by the seller thereunder. Nothing therein
179 contained shall prohibit the trustee from commingling the deposits
180 in any such trust fund for purposes of the management thereof and
181 the investment of funds therein.

182 SECTION 7. Nothing contained in Sections 5 through 17 of
183 this act shall be construed to require any cemetery to accept any
184 personal property, or perform any personal services contrary to
185 law or ordinances pertaining to the burial of deceased human
186 beings, or contrary to rules and regulations of a cemetery
187 pertaining to the quality and kind of personal property that may
188 be used in connection with the burial of deceased human beings in
189 any such cemetery.

190 SECTION 8. To insure the adequacy of the trust funds for
191 their intended purpose, the net income therefrom shall remain
192 therein and be reinvested and compounded except the income of the
193 trust fund may be used to defer reasonable expenses of the trustee
194 in connection with the administration of the trust funds. Except
195 as provided in Section 9 of this act, none of the original
196 principal shall be returned to the seller even though such
197 principal, at the end of any annual period, on December 31, is in
198 excess of the then requirements to fulfill any particular contract
199 or portion thereof.

200 SECTION 9. Except as provided in Section 7 of this act, the

201 funds held in trust shall remain intact until detailed
202 certification of seller has been delivered to the trustee of the
203 delivery of the property and/or services provided for in such
204 contract, at which time funds on deposit covering such items plus
205 the net income shall be delivered to the seller. Any trustee
206 accepting the trust fund under Sections 5 through 17 of this act
207 may rely upon the detailed certification of seller as herein
208 required to be made, and shall not be liable to anyone for such
209 reliance. If, after payment to the seller for items delivered
210 pursuant to contract, the contract is completed but there remain
211 funds with the trustee or there are still funds allocated to the
212 particular item which has been delivered, in either event, such
213 excess funds shall be delivered to seller. All funds still in the
214 trustee's hands seventy-five (75) years after their receipt shall
215 be then returned to the seller.

216 SECTION 10. If for any reason the seller, who has entered
217 into a contract for the sale of such personal property and/or the
218 performing of such services and has made the deposit herein
219 required to be made, cannot or does not perform all provisions of
220 said contract promptly as to delivery of the property covered by
221 said contract after request to do so, the family, legal
222 representative or next of kin of the purchaser shall be entitled
223 to receive from the trustee the amount of money on deposit to the
224 credit of that particular contract, including interest. An
225 affidavit of the family, legal representative or next of kin to
226 that effect, delivered to the trustee, shall be sufficient
227 authority to the trustee to make such a payment without any
228 liability to the person making the deposit of such money into the
229 trust fund or to any other person. Nothing herein contained shall
230 relieve the seller under any such contract of his liability for
231 nonperformance. Each contract covered by Sections 5 through 17 of
232 this act shall provide that in the event that the retail consumer,
233 his family, legal representative or next of kin requests the

234 seller to deliver the property or provide the service described in
235 the contract to or at a location which is more than fifty (50)
236 miles from the location where the contract was executed by the
237 purchaser and which is deemed by the seller to be impractical for
238 the seller to deliver the property or provide the services, then
239 the seller shall return to the retail consumer, his family, legal
240 representative or next of kin all sums, including interest, paid
241 by the consumer for such property and/or services.

242 SECTION 11. A trustee of a trust fund created under Sections
243 5 through 17 of this act, upon the exercise of due care, shall not
244 be liable to the person creating such fund, to the purchaser, or
245 to any person for any disbursements made from the trust fund
246 pursuant to Sections 5 through 17 of this act.

247 SECTION 12. (1) Every trustee of a cemetery merchandise
248 trust fund shall annually prepare and file with the cemetery
249 merchandise business a detailed accounting and report of such fund
250 on or before March 31 of each year for the calendar year ending
251 the preceding December 31 or within ninety (90) days after the end
252 of the fiscal year of the trust agreement, which report shall
253 include, among other things, properly itemized, the securities in
254 which monies in the fund are invested.

255 (2) Every seller shall keep accurate books of account and
256 records of all transactions concerning merchandise funds, and a
257 copy of all agreements made in connection with merchandise funds.

258 Such records shall be kept and be available for inspection and
259 copy by any purchaser, or the purchaser's family, legal
260 representative or next of kin, at the usual place of the seller's
261 business, for at least one (1) year after the termination of the
262 agreement which they evidence.

263 SECTION 13. All trusts created pursuant to Sections 5
264 through 17 of this act shall have corporate entities as trustees.

265 The trust fund established under Sections 5 through 17 of this
266 act shall be administered under the jurisdiction of the chancery

267 court of the chancery court district wherein the seller is located
268 or if the seller be located outside of the State of Mississippi
269 then in the chancery court of the chancery court district wherein
270 the purchaser resides. The chancery courts so having jurisdiction
271 shall have full jurisdiction over the reports and accounting of
272 trustees, amount of surety bond required, and investment of funds.
273 The courts may waive the surety bond and control over investments
274 in the case of trusts placed with an established bank or corporate
275 trustee.

276 SECTION 14. (1) Within thirty (30) days after the end of the
277 calendar or the business' fiscal year, each cemetery merchandise
278 business shall file with the clerk of the chancery court having
279 jurisdiction over the administration of its merchandise trust fund
280 an annual account, which account shall contain the following
281 information:

282 (a) The name of the business, the date of
283 incorporation, if incorporated, and the location of such business
284 or businesses;

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

288 (c) The amounts paid into the merchandise trust fund,
289 and the income earned therefrom during the preceding fiscal year;
290 and

291 (d) The names and addresses of the owners of the
292 business and, if incorporated, its officers and directors, and any
293 change of control which has occurred during the past fiscal or
294 calendar year.

295 (2) Within forty-five (45) days after the time by which the
296 trustee's accounting and report is required to be filed with the
297 cemetery merchandise business, as provided by Section 75-63-15,
298 the business shall file a copy of such accounting and report with
299 the clerk of the chancery court having jurisdiction thereof.

300 (3) As a condition to the transfer of any merchandise trust
301 fund monies from one trust institution to another, the business
302 for which such fund is maintained shall, not less than thirty (30)
303 days prior to the time when such transfer is to occur, file with
304 the chancery clerk a written notice of intent to transfer
305 accompanied with a letter of intent to receive such trust fund
306 monies from the trust institution to which such trust fund monies
307 are to be transferred. Such fund monies shall be transferred
308 directly from the existing trust institution to the receiving
309 trust institution.

310 (4) Prior to any sale or transfer of any cemetery
311 merchandise business or a controlling interest therein, an
312 independent audit of the merchandise trust fund shall be performed
313 at the expense of the seller and/or buyer or transferor and
314 transferee and filed with the chancery clerk. Such audit shall be
315 current within thirty (30) days of the proposed sale or transfer.

316 (5) Each chancery clerk shall maintain a properly indexed
317 book in which there shall be kept, preserved and open for public
318 inspection a copy of each record, report and notice required to be
319 filed with the chancery clerk under Sections 5 through 17 of this
320 act. For filing and indexing the records, reports and notices
321 under Sections 5 through 17 of this act, the chancery clerk shall
322 be authorized to charge such fees as are provided in Section
323 25-7-9 for the recording and indexing of deeds.

324 (6) The clerk of the chancery court having jurisdiction
325 shall, upon the failure to timely receive any of the records,
326 reports or notices provided for under Sections 5 through 17 of
327 this act, immediately give notice by registered letter to the
328 owner or owners of such business, or, if incorporated, its
329 officers and directors at its or their last-known address, that
330 such records, reports or notices have not been received. Failure
331 of such persons to file such records, reports or notices within
332 fifteen (15) days after such registered letter is mailed shall, in

333 the absence of clear justification or excuse, constitute a
334 misdemeanor and each owner and, if incorporated, its officers and
335 directors, shall be subject to the penalties provided for in
336 Section 75-63-23.

337 (7) Whenever it reasonably appears to the court upon
338 complaint filed with the chancery court having jurisdiction
339 thereof by any purchaser, or the family, legal representative or
340 next of kin of any such purchaser, of any property or services
341 contracted for under Sections 5 through 17 of this act that (a)
342 such business is insolvent or about to become insolvent; or (b)
343 that no merchandise trust fund has been established for such
344 business or, if established, the trust fund does not contain such
345 funds as are required to be contained therein, the court shall
346 order a private audit and examination of any merchandise trust
347 fund of such business and of all the books, records and papers
348 employed in the transaction of such business.

349 In the event that such audit and examination shows that the
350 business is insolvent or is about to become insolvent or that a
351 sufficient trust fund is not established or being maintained for
352 such business, the court shall exercise such jurisdiction and make
353 and issue such orders and decrees as may be necessary to correct
354 and enforce compliance with Sections 5 through 17 of this act and
355 all such other orders and decrees as shall be just, equitable and
356 in the public interest, including the appointment of receivers to
357 continue or terminate the operation of such business.

358 (8) All the necessary expenses of any examination or audit
359 performed or court proceedings conducted under the provisions of
360 subsection (7) of this section shall be paid by the owner or
361 owners of such business or, if incorporated, its officers and
362 directors, and in the event that a sale of any such business is
363 ordered by the court, the proceeds of such sale shall first be
364 applied to the costs expended under the provisions of subsection
365 (7) of this section.

366 SECTION 15. Sections 5 through 17 of this act shall not
367 apply to: (a) the sale of burial vaults, urns, memorials,
368 scrolls, vases, foundations, bases or any other similar
369 merchandise where the seller delivers at the time of the execution
370 of the contract or upon final payment, should the payment be made
371 in installments, a valid warehouse receipt as contemplated in
372 Uniform Commercial Code-Documents of Title, Section 75-7-101 et
373 seq.; (b) property or services included within the coverage
374 provisions of insurance policies or contracts of insurance; or (c)
375 property or services provided by funeral establishments which are
376 governed by Sections 75-63-1 through 75-63-23, Mississippi Code of
377 1972.

378 SECTION 16. Any provision of any such contract which
379 purports to waive the provisions of Sections 5 through 17 of this
380 act shall be void.

381 SECTION 17. Any person, partnership, corporation or
382 organization violating the provisions of Sections 5 through 17 of
383 this act shall be punished by a fine of not less than One Hundred
384 Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00)
385 or confined in the county jail for a period not exceeding one (1)
386 year, or both. If the person violating the provisions of Sections
387 5 through 17 of this act is a corporation or association, any
388 prison term imposed shall be upon the officer responsible for the
389 violation.

390 SECTION 18. Section 75-63-5, Mississippi Code of 1972, which
391 provides that cemeteries are not required to accept property or
392 perform services contrary to law, is hereby repealed.

393 SECTION 19. Sections 5 through 17 of this act shall be
394 codified as a separate article within Chapter 43 of Title 41,
395 Mississippi Code of 1972.

396 SECTION 20. This act shall take effect and be in force from
397 and after its passage.