

By: Stevens, Chism, Masterson, Montgomery
(74th)

To: Insurance

HOUSE BILL NO. 783

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 AS A SEPARATE ARTICLE IN THE MISSISSIPPI CEMETERY
6 LAW TO PROVIDE REGULATION OF SALES OF CEMETERY MERCHANDISE FOR
7 FUTURE DELIVERY; TO REPEAL SECTION 75-63-5, MISSISSIPPI CODE OF
8 1972, WHICH CLARIFIES THAT CEMETERIES ARE NOT REQUIRED TO ACCEPT
9 PROPERTY OR PERFORM SERVICES CONTRARY TO LAW; AND FOR RELATED
10 PURPOSES.

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

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

14 75-63-1. Except as hereinafter provided, no person, firm,
15 corporation, association or partnership shall, directly or
16 indirectly or through an agent, enter into a contract with any
17 retail consumer whereunder personal property as may be used by or
18 in a funeral establishment in connection with disposing of or
19 commemorating the memory of a deceased person and/or services
20 related to a funeral service or the burial of the dead are
21 deliverable at a future and unspecified date. This shall include
22 but not be limited to the preneed sale of burial vaults, urns,
23 memorials, scrolls, vases, foundations, bases and similar
24 merchandise * * *.

25 SECTION 2. Section 75-63-15, Mississippi Code of 1972, is

26 amended as follows:

27 75-63-15. (1) Every trustee of a funeral services trust
28 fund shall annually prepare and file with the funeral services
29 business a detailed accounting and report of such fund on or
30 before March 31 of each year for the calendar year ending the
31 preceding December 31 or within ninety (90) days after the end of
32 the fiscal year of the trust agreement, which report shall
33 include, among other things, properly itemized, the securities in
34 which monies in the fund are invested.

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

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

45 75-63-18. (1) Within thirty (30) days after the end of the
46 calendar or the business' fiscal year, each funeral establishment
47 shall file with the clerk of the chancery court having
48 jurisdiction over the administration of its funeral services trust
49 fund an annual account, which account shall contain the following
50 information:

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

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

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

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

64 (2) Within forty-five (45) days after the time by which the
65 trustee's accounting and report is required to be filed with the
66 funeral establishment, as provided by Section 75-63-15, the
67 business shall file a copy of such accounting and report with the
68 clerk of the chancery court having jurisdiction thereof.

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

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

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

93 (6) The clerk of the chancery court having jurisdiction
94 shall, upon the failure to timely receive any of the records,
95 reports or notices provided for under this chapter, immediately
96 give notice by registered letter to the owner or owners of such
97 business, or, if incorporated, its officers and directors at its
98 or their last-known address, that such records, reports or notices
99 have not been received. Failure of such persons to file such
100 records, reports or notices within fifteen (15) days after such
101 registered letter is mailed shall, in the absence of clear
102 justification or excuse, constitute a misdemeanor and each owner
103 and, if incorporated, its officers and directors, shall be subject
104 to the penalties provided for in Section 75-63-23.

105 (7) Whenever it reasonably appears to the court upon
106 complaint filed with the chancery court having jurisdiction
107 thereof by any purchaser, or the family, legal representative or
108 next of kin of any such purchaser, of any merchandise or services
109 contracted for under the provisions of this chapter that (a) such
110 business is insolvent or about to become insolvent; or (b) that no
111 funeral services trust fund has been established for such business
112 or, if established, the trust fund does not contain such funds as

113 are required to be contained therein, the court shall order a
114 private audit and examination of any funeral services trust fund
115 of such business and of all the books, records and papers employed
116 in the transaction of such business.

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

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

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

136 75-63-19. This chapter shall not apply to: (a) the sale of
137 burial vaults, urns, memorials, scrolls, vases, foundations, bases
138 or any other similar merchandise where the seller delivers at the
139 time of the execution of the contract or upon final payment,
140 should the payment be made in installments, a valid warehouse

141 receipt as contemplated in Uniform Commercial Code-Documents of
142 Title, Section 75-7-101 et seq.; * * * (b) merchandise or services
143 included within the coverage provisions of insurance policies or
144 contracts of insurance; or (c) the sale of merchandise or services
145 provided by a cemetery which are governed by Sections 5 through 17
146 of House Bill No. _____, 2000 Regular Session.

147 SECTION 5. Except as provided in Sections 5 through 17 of
148 this act, no person, firm, corporation, association or partnership
149 shall, directly or indirectly or through an agent, enter into a
150 contract with any retail consumer whereunder merchandise as may be
151 used by or in a cemetery in connection with disposing of or
152 commemorating the memory of a deceased person and/or services
153 related to the burial of the dead are deliverable at a future and
154 unspecified date. This shall include, but not be limited to, the
155 pre-need sale of burial vaults, urns, grave markers, memorials,
156 scrolls, vases, foundations, bases and similar merchandise, and to
157 the advance sale of funeral service.

158 SECTION 6. (1) Any person, firm, corporation, association
159 or partnership entering into any such contract as the seller or
160 the party responsible for providing such services shall deposit
161 into a trust fund an amount of money not less than fifty percent
162 (50%) of the retail price collected for services, including:

163 (a) The opening and closing of the grave; and

164 (b) The erecting/setting of the memorial/monument/grave
165 marker;

166 and one hundred ten percent (110%) of the wholesale price of all
167 tangible merchandise, including:

168 (a) Burial vaults/outer containers; and

169 (b) Memorial markers/monuments/grave markers, bases and
170 foundations of memorial markers, grave markers, monuments.

171 (2) The deposit shall be made not later than forty-five (45)
172 days after the end of the month in which the contract is executed;
173 except in the event that payment for the merchandise and/or
174 service shall be made by the consumer in installments, fifty
175 percent (50%) of each installment payment shall be deposited to
176 the trust within forty-five (45) days of the last day of the month
177 within which such payment was made.

178 (3) Each initial deposit as to each contract into the trust
179 fund shall be identified by the seller by furnishing the trustee
180 with the name of the purchaser, a copy of the contract containing
181 a statement of the value of such merchandise or services and a
182 description of the merchandise and/or services to be furnished or
183 provided by the seller thereunder. Nothing therein contained
184 shall prohibit the trustee from commingling the deposits in any
185 such trust fund for purposes of the management thereof and the
186 investment of funds therein.

187 (4) Each such contract shall contain the name and address of
188 the purchaser, the merchandise/services obtained by the purchaser
189 and the price per merchandise/service.

190 (5) Each such contract shall be numbered and all voided
191 contracts shall be submitted with the annual report to the clerk
192 of the chancery court.

193 SECTION 7. Nothing contained in Sections 5 through 17 of
194 this act shall be construed to require any cemetery to accept any
195 merchandise, or perform any personal services contrary to law or
196 ordinances pertaining to the burial of deceased human beings, or

197 contrary to rules and regulations of a cemetery pertaining to the
198 quality and kind of merchandise that may be used in connection
199 with the burial of deceased human beings in any such cemetery.

200 SECTION 8. To insure the adequacy of the trust funds for
201 their intended purpose, the net income therefrom shall remain
202 therein and be reinvested and compounded except the income of the
203 trust fund may be used to defer reasonable expenses of the trustee
204 in connection with the administration of the trust funds. Except
205 as provided in Section 9 of this act, none of the original
206 principal shall be returned to the seller even though such
207 principal, at the end of any annual period, on December 31, is in
208 excess of the then requirements to fulfill any particular contract
209 or portion thereof.

210 SECTION 9. Except as provided in Section 8 of this act, the
211 funds held in trust shall remain intact until detailed
212 certification of seller has been delivered to the trustee of the
213 delivery of the merchandise and/or services provided for in such
214 contract, at which time funds on deposit covering such items plus
215 the net income shall be delivered to the seller. Any trustee
216 accepting the trust fund under Sections 5 through 17 of this act
217 may rely upon the detailed certification of seller as herein
218 required to be made and shall not be liable to anyone for such
219 reliance. If, after payment to the seller for items delivered
220 pursuant to contract, the contract is completed but there remain
221 funds with the trustee or there are still funds allocated to the
222 particular item which has been delivered, in either event, such
223 excess funds shall be delivered to the seller. All funds still in
224 the trustee's hands seventy-five (75) years after their receipt

225 shall be then returned to the seller.

226 SECTION 10. If for any reason the seller, who has entered
227 into a contract for the sale of such merchandise or the performing
228 of such services, or both, and has made the deposit herein
229 required to be made, cannot or does not perform all provisions of
230 the contract promptly as to delivery of the merchandise covered by
231 the contract after request to do so, the family, legal
232 representative or next of kin of the purchaser shall be entitled
233 to receive from the trustee the amount of money on deposit to the
234 credit of that particular contract, including interest. An
235 affidavit of the family, legal representative or next of kin to
236 that effect, delivered to the trustee, shall be sufficient
237 authority to the trustee to make such a payment without any
238 liability to the person making the deposit of such money into the
239 trust fund or to any other person. Nothing herein contained shall
240 relieve the seller under any such contract of his liability for
241 nonperformance. Each contract covered by Sections 5 through 17 of
242 this act shall provide that in the event that the retail consumer,
243 his family, legal representative or next of kin requests the
244 seller to deliver the merchandise or provide the service described
245 in the contract to or at a location which is more than fifty (50)
246 miles from the location where the contract was executed by the
247 purchaser and which is deemed by the seller to be impractical for
248 the seller to deliver the merchandise or provide the services,
249 then the seller shall return to the retail consumer, his family,
250 legal representative or next of kin all sums, including interest,
251 paid by the consumer for such merchandise and/or services.

252 SECTION 11. A trustee of a trust fund created under Sections

253 5 through 17 of this act, upon the exercise of due care, shall not
254 be liable to the person creating such fund, to the purchaser, or
255 to any person for any disbursements made from the trust fund
256 pursuant to Sections 5 through 17 of this act.

257 SECTION 12. (1) Every trustee of a cemetery merchandise
258 trust fund shall annually prepare and file with the cemetery
259 business a detailed accounting and report of such fund on or
260 before March 31 of each year for the calendar year ending the
261 preceding December 31 or within ninety (90) days after the end of
262 the fiscal year of the trust agreement, which report shall
263 include, among other things, properly itemized, the securities in
264 which monies in the fund are invested.

265 (2) Every seller shall keep accurate books of account and
266 records of all transactions concerning merchandise funds, and a
267 copy of all agreements made in connection with merchandise funds.
268 Such records shall be kept and be available for inspection and
269 copy by any purchaser, or the purchaser's family, legal
270 representative or next of kin, at the usual place of the seller's
271 business, for at least one (1) year after the termination of the
272 agreement which they evidence.

273 SECTION 13. All trusts created pursuant to Sections 5
274 through 17 of this act shall have corporate entities as trustees.
275 The trust fund established under Sections 5 through 17 of this
276 act shall be administered under the jurisdiction of the chancery
277 court of the chancery court district wherein the seller is located
278 or if the seller be located outside of the State of Mississippi
279 then in the chancery court of the chancery court district wherein
280 the purchaser resides. The chancery courts so having jurisdiction

281 shall have full jurisdiction over the reports and accounting of
282 trustees, amount of surety bond required, and investment of funds.

283 The courts may waive the surety bond and control over investments
284 in the case of trusts placed with an established bank or corporate
285 trustee.

286 SECTION 14. (1) Within thirty (30) days after the end of
287 the calendar or the business' fiscal year, each cemetery
288 merchandise business shall file with the clerk of the chancery
289 court having jurisdiction over the administration of its
290 merchandise trust fund an annual account, which account shall
291 contain the following information:

292 (a) The name of the business, the date of
293 incorporation, if incorporated, and the location of such business
294 or businesses;

295 (b) The amounts of sales of all merchandise and
296 services for which payment has been made in full during the
297 preceding calendar or fiscal year;

298 (c) The amounts deposited into the trust funds, the
299 names and addresses of the institutions holding the trust funds,
300 and the income earned therefrom during the preceding fiscal year;

301 (d) The names and addresses of the owners of the
302 business and, if incorporated, its officers and directors, and any
303 change of control which has occurred during the past fiscal or
304 calendar year; and

305 (e) For all preneed sales, the names of purchasers, the
306 merchandise purchased, the cemetery wholesale cost of
307 merchandise/services purchased and the retail price of
308 merchandise/services.

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

314 (3) As a condition to the transfer of any merchandise trust
315 fund monies from one trust institution to another, the business
316 for which such fund is maintained shall, not less than thirty (30)
317 days before the time when such transfer is to occur, file with the
318 chancery clerk a written notice of intent to transfer accompanied
319 with a letter of intent to receive such trust fund monies from the
320 trust institution to which such trust fund monies are to be
321 transferred. Such fund monies shall be transferred directly from
322 the existing trust institution to the receiving trust institution.

323 (4) Before to any sale or transfer of any cemetery
324 merchandise business or a controlling interest therein, an
325 independent audit of the merchandise trust fund shall be performed
326 at the expense of the seller or buyer, or both, or transferor and
327 transferee and filed with the chancery clerk. Such audit shall be
328 current within thirty (30) days of the proposed sale or transfer.

329 (5) Each chancery clerk shall maintain a properly indexed
330 book in which there shall be kept, preserved and open for public
331 inspection a copy of each record, report and notice required to be
332 filed with the chancery clerk under Sections 5 through 17 of this
333 act. For filing and indexing the records, reports and notices
334 under Sections 5 through 17 of this act, the chancery clerk shall
335 be authorized to charge such fees as are provided in Section
336 25-7-9 for the recording and indexing of deeds.

337 (6) The clerk of the chancery court having jurisdiction
338 shall, upon the failure to timely receive any of the records,
339 reports or notices provided for under Sections 5 through 17 of
340 this act, immediately give notice by registered letter to the
341 owner or owners of such business, or, if incorporated, its
342 officers and directors at its or their last-known address, that
343 such records, reports or notices have not been received. Failure
344 of such persons to file such records, reports or notices within
345 fifteen (15) days after such registered letter is mailed shall, in
346 the absence of clear justification or excuse, constitute a
347 misdemeanor and each owner and, if incorporated, its officers and
348 directors, shall be subject to the penalties provided for in
349 Section 75-63-23.

350 (7) Whenever it reasonably appears to the court upon
351 complaint filed with the chancery court having jurisdiction
352 thereof by any purchaser, or the family, legal representative or
353 next of kin of any such purchaser, of any merchandise or services
354 contracted for under Sections 5 through 17 of this act that (a)
355 such business is insolvent or about to become insolvent; or (b)
356 that no merchandise trust fund has been established for such
357 business or, if established, the trust fund does not contain such
358 funds as are required to be contained therein, the court shall
359 order a private audit and examination of any merchandise trust
360 fund of such business and of all the books, records and papers
361 employed in the transaction of such business.

362 In the event that such audit and examination shows that the
363 business is insolvent or is about to become insolvent or that a
364 sufficient trust fund is not established or being maintained for

365 such business, the court shall exercise such jurisdiction and make
366 and issue such orders and decrees as may be necessary to correct
367 and enforce compliance with Sections 5 through 17 of this act and
368 all such other orders and decrees as shall be just, equitable and
369 in the public interest, including the appointment of receivers to
370 continue or terminate the operation of such business.

371 (8) All the necessary expenses of any examination or audit
372 performed or court proceedings conducted under the provisions of
373 subsection (7) of this section shall be paid by the owner or
374 owners of such business or, if incorporated, its officers and
375 directors, and in the event that a sale of any such business is
376 ordered by the court, the proceeds of such sale shall first be
377 applied to the costs expended under the provisions of subsection
378 (7) of this section.

379 SECTION 15. Sections 5 through 17 of this act shall not
380 apply to: (a) the sale of burial vaults, urns, memorials,
381 scrolls, vases, foundations, bases or any other similar
382 merchandise where the seller delivers at the time of the execution
383 of the contract or upon final payment, should the payment be made
384 in installments, a valid warehouse receipt as contemplated in
385 Uniform Commercial Code-Documents of Title, Section 75-7-101 et
386 seq.; (b) the sale of merchandise as may be used by or in a
387 cemetery in connection with disposing or commemorating the memory
388 of a deceased person or services related to the burial of the dead
389 when such merchandise/services are delivered by the seller within
390 forty-five (45) days from the date of the execution of the
391 contract; (c) merchandise or services included within the coverage
392 provisions of insurance policies or contracts of insurance; or (d)

393 merchandise or services provided by funeral establishments which
394 are governed by Sections 75-63-1 through 75-63-23.

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

398 SECTION 17. Any person, partnership, corporation or
399 organization violating the provisions of Sections 5 through 17 of
400 this act shall be punished by a fine of not less than One Hundred
401 Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00)
402 or confined in the county jail for a period not exceeding one (1)
403 year, or both. If the person violating the provisions of Sections
404 5 through 17 of this act is a corporation or association, any
405 prison term imposed shall be upon the officer responsible for the
406 violation.

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

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

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