

By: Little

To: Judiciary

SENATE BILL NO. 2002

1 AN ACT TO AMEND SECTIONS 75-63-1, 75-63-3, 75-63-15,
2 75-63-18, AND 75-63-19, MISSISSIPPI CODE OF 1972, TO REMOVE
3 CEMETERIES FROM THE PROVISIONS OF LAW WHICH REGULATE SALES OF
4 CEMETERY MERCHANDISE AND FUNERAL SERVICES FOR FUTURE DELIVERY; TO
5 CREATE NEW CODE SECTIONS TO BE CODIFIED AS A SEPARATE ARTICLE IN
6 THE MISSISSIPPI CEMETERY LAW TO PROVIDE REGULATION OF SALES OF
7 CEMETERY MERCHANDISE FOR FUTURE DELIVERY; TO REPEAL SECTION
8 75-63-5, MISSISSIPPI CODE OF 1972, WHICH CLARIFIES THAT CEMETERIES
9 ARE NOT REQUIRED TO ACCEPT PROPERTY OR PERFORM SERVICES CONTRARY
10 TO LAW; AND FOR RELATED PURPOSES. BE IT ENACTED BY THE
11 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 pre-need sale of burial vaults, urns,
23 memorials, scrolls, vases, foundations, bases and similar
24 merchandise, and to the advance sale of funeral service.

25 SECTION 2. Section 75-63-3, Mississippi Code of 1972, is

26 amended as follows:

27 75-63-3. (1) Any person, firm, corporation, association or
28 partnership entering into any such contract as the seller or the
29 party responsible for providing such services shall deposit into a
30 trust fund an amount of money * * * not less than eighty percent
31 (80%) of the retail price collected for services, including:

32 (a) The cost of professional services of the licensed
33 funeral director and staff;

34 (b) The retail price of opening and closing the grave;
35 and

36 (c) The cost of cremation;
37 and one hundred ten percent (110%) of the wholesale price of any
38 and all tangible items including casket, clothes, etc.

39 Such deposit shall be made not later than forty-five (45) days
40 after the end of the month in which such contract is executed;
41 except in the event that payment for the property and/or service
42 shall be made by the consumer in installments, fifty percent (50%)
43 of each installment payment shall be deposited to the trust within
44 forty-five (45) days of the last day of the month within which
45 such payment was made.

46 (2) Each initial deposit as to each contract into the trust
47 fund shall be identified by the seller by furnishing the trustee
48 with the name of the purchaser, a copy of the contract containing
49 a statement of the value of such property or services and a
50 description of the personal property and/or services to be
51 furnished or provided by the seller thereunder. Nothing therein
52 contained shall prohibit the trustee from commingling the deposits
53 in any such trust fund for purposes of the management thereof and
54 the investment of funds therein.

55 (3) Each such contract shall contain the name and address of
56 the purchaser, the item/services obtained by the purchaser and the

57 price per item/service.

58 SECTION 3. Section 75-63-15, Mississippi Code of 1972, is
59 amended as follows:

60 75-63-15. (1) Every trustee of a funeral services trust
61 fund shall annually prepare and file with the funeral services
62 business a detailed accounting and report of such fund on or
63 before March 31 of each year for the calendar year ending the
64 preceding December 31 or within ninety (90) days after the end of
65 the fiscal year of the trust agreement, which report shall
66 include, among other things, properly itemized, the securities in
67 which monies in the fund are invested.

68 (2) Every seller shall keep accurate books of account and
69 records of all transactions concerning funeral services funds, and
70 a copy of all agreements made in connection with funeral services
71 funds. Such records shall be kept and be available for inspection
72 and copy by any purchaser, or the purchaser's family, legal
73 representative or next of kin, at the usual place of the seller's
74 business, for at least one (1) year after the termination of the
75 agreement which they evidence.

76 SECTION 4. Section 75-63-18, Mississippi Code of 1972, is
77 amended as follows:

78 75-63-18. (1) Within thirty (30) days after the end of the
79 calendar or the business' fiscal year, each funeral services
80 business shall file with the clerk of the chancery court having
81 jurisdiction over the administration of its funeral services trust
82 fund an annual account, which account shall contain the following
83 information:

84 (a) The name of the business, the date of

85 incorporation, if incorporated, and the location of such business
86 or businesses;

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

90 (c) The amounts paid into the funeral services trust
91 fund, and the income earned therefrom during the preceding fiscal
92 year; and

93 (d) The names and addresses of the owners of the
94 business and, if incorporated, its officers and directors, and any
95 change of control which has occurred during the past fiscal or
96 calendar year.

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

102 (3) As a condition to the transfer of any funeral services
103 trust fund monies from one trust institution to another, the
104 business for which such fund is maintained shall, not less than
105 thirty (30) days prior to the time when such transfer is to occur,
106 file with the chancery clerk a written notice of intent to
107 transfer accompanied with a letter of intent to receive such trust
108 fund monies from the trust institution to which such trust fund
109 monies are to be transferred. Such fund monies shall be
110 transferred directly from the existing trust institution to the
111 receiving trust institution.

112 (4) Prior to any sale or transfer of any funeral services

113 business or a controlling interest therein, an independent audit
114 of the funeral services trust fund shall be performed at the
115 expense of the seller and/or buyer or transferor and transferee
116 and filed with the chancery clerk. Such audit shall be current
117 within thirty (30) days of the proposed sale or transfer.

118 (5) Each chancery clerk shall maintain a properly indexed
119 book in which there shall be kept, preserved and open for public
120 inspection a copy of each record, report and notice required to be
121 filed with the chancery clerk under the provisions of this
122 chapter. For filing and indexing the records, reports and notices
123 under this chapter, the chancery clerk shall be authorized to
124 charge such fees as are provided in Section 25-7-9 for the
125 recording and indexing of deeds.

126 (6) The clerk of the chancery court having jurisdiction
127 shall, upon the failure to timely receive any of the records,
128 reports or notices provided for under this chapter, immediately
129 give notice by registered letter to the owner or owners of such
130 business, or, if incorporated, its officers and directors at its
131 or their last-known address, that such records, reports or notices
132 have not been received. Failure of such persons to file such
133 records, reports or notices within fifteen (15) days after such
134 registered letter is mailed shall, in the absence of clear
135 justification or excuse, constitute a misdemeanor and each owner
136 and, if incorporated, its officers and directors, shall be subject
137 to the penalties provided for in Section 75-63-23.

138 (7) Whenever it reasonably appears to the court upon
139 complaint filed with the chancery court having jurisdiction
140 thereof by any purchaser, or the family, legal representative or

141 next of kin of any such purchaser, of any property or services
142 contracted for under the provisions of this chapter that (a) such
143 business is insolvent or about to become insolvent; or (b) that no
144 funeral services trust fund has been established for such business
145 or, if established, the trust fund does not contain such funds as
146 are required to be contained therein, the court shall order a
147 private audit and examination of any funeral services trust fund
148 of such business and of all the books, records and papers employed
149 in the transaction of such business.

150 In the event that such audit and examination shows that the
151 business is insolvent or is about to become insolvent or that a
152 sufficient trust fund is not established or being maintained for
153 such business, the court shall exercise such jurisdiction and make
154 and issue such orders and decrees as may be necessary to correct
155 and enforce compliance with the provisions of this chapter and all
156 such other orders and decrees as shall be just, equitable and in
157 the public interest, including the appointment of receivers to
158 continue or terminate the operation of such business.

159 (8) All the necessary expenses of any examination or audit
160 performed or court proceedings conducted under the provisions of
161 subsection (7) of this section shall be paid by the owner or
162 owners of such business or, if incorporated, its officers and
163 directors, and in the event that a sale of any such business is
164 ordered by the court, the proceeds of such sale shall first be
165 applied to the costs expended under the provisions of subsection
166 (7) of this section.

167 SECTION 5. Section 75-63-19, Mississippi Code of 1972, is
168 amended as follows:

169 75-63-19. This chapter shall not apply to: (a) the sale of
170 burial vaults, urns, memorials, scrolls, vases, foundations, bases
171 or any other similar merchandise where the seller delivers at the
172 time of the execution of the contract or upon final payment,
173 should the payment be made in installments, a valid warehouse
174 receipt as contemplated in Uniform Commercial Code-Documents of
175 Title, Section 75-7-101 et seq.; * * * (b) property or services
176 included within the coverage provisions of insurance policies or
177 contracts of insurance; or (c) the sale of property or services
178 provided by a cemetery which are governed by Sections 5 through 17
179 of Senate Bill No. _____, 2000 Regular Session.

180 SECTION 6. Except as provided in Sections 6 through 18 of
181 this act, no person, firm, corporation, association or partnership
182 shall, directly or indirectly or through an agent, enter into a
183 contract with any retail consumer whereunder personal property as
184 may be used by or in a cemetery in connection with disposing of or
185 commemorating the memory of a deceased person and/or services
186 related to the burial of the dead are deliverable at a future and
187 unspecified date. This shall include, but not be limited to, the
188 pre-need sale of burial vaults, urns, memorials, scrolls, vases,
189 foundations, bases and similar merchandise, and to the advance
190 sale of funeral service.

191 SECTION 7. (1) Any person, firm, corporation, association
192 or partnership entering into any such contract as the seller or
193 the party responsible for providing such services shall deposit
194 into a trust fund an amount of money not less than eighty percent
195 (80%) of the retail price collected for services, including:

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

197 (b) The erecting/setting of the memorial/monument/grave
198 marker;
199 and one hundred ten percent (110%) of the wholesale price of all
200 tangible items, including:
201 (a) Burial vaults/outer containers;
202 (b) Memorial markers/monuments/grave markers, bases and
203 foundations of memorial markers, grave markers, monuments;
204 (c) Five percent (5%) of the retail price of family
205 mausoleum unit;
206 (d) Five percent (5%) of the retail price of
207 community/multiple family mausoleum unit;
208 (e) Five percent (5%) of the retail price of urns; and
209 (f) Five percent (5%) of the retail price of cremation
210 niches.

211 Such deposit shall be made not later than forty-five (45) days
212 after the end of the month in which such contract is executed;
213 except in the event that payment for the property and/or service
214 shall be made by the consumer in installments, eighty percent
215 (80%) of each installment payment shall be deposited to the trust
216 within forty-five (45) days of the last day of the month within
217 which such payment was made.

218 (2) Each initial deposit as to each contract into the trust
219 fund shall be identified by the seller by furnishing the trustee
220 with the name of the purchaser, a copy of the contract containing
221 a statement of the value of such property or services and a
222 description of the personal property and/or services to be
223 furnished or provided by the seller thereunder. Nothing therein
224 contained shall prohibit the trustee from commingling the deposits

225 in any such trust fund for purposes of the management thereof and
226 the investment of funds therein.

227 (3) Each such contract shall contain the name and address of
228 the purchaser, the items/services obtained by the purchaser and
229 the price per item/service.

230 SECTION 8. Nothing contained in Sections 6 through 18 of
231 this act shall be construed to require any cemetery to accept any
232 personal property, or perform any personal services contrary to
233 law or ordinances pertaining to the burial of deceased human
234 beings, or contrary to rules and regulations of a cemetery
235 pertaining to the quality and kind of personal property that may
236 be used in connection with the burial of deceased human beings in
237 any such cemetery.

238 SECTION 9. To insure the adequacy of the trust funds for
239 their intended purpose, the net income therefrom shall remain
240 therein and be reinvested and compounded except the income of the
241 trust fund may be used to defer reasonable expenses of the trustee
242 in connection with the administration of the trust funds. Except
243 as provided in Section 10 of this act, none of the original
244 principal shall be returned to the seller even though such
245 principal, at the end of any annual period, on December 31, is in
246 excess of the then requirements to fulfill any particular contract
247 or portion thereof.

248 SECTION 10. Except as provided in Section 8 of this act, the
249 funds held in trust shall remain intact until detailed
250 certification of seller has been delivered to the trustee of the
251 delivery of the property and/or services provided for in such
252 contract, at which time funds on deposit covering such items plus

253 the net income shall be delivered to the seller. Any trustee
254 accepting the trust fund under Sections 6 through 18 of this act
255 may rely upon the detailed certification of seller as herein
256 required to be made, and shall not be liable to anyone for such
257 reliance. If, after payment to the seller for items delivered
258 pursuant to contract, the contract is completed but there remain
259 funds with the trustee or there are still funds allocated to the
260 particular item which has been delivered, in either event, such
261 excess funds shall be delivered to seller. All funds still in the
262 trustee's hands seventy-five (75) years after their receipt shall
263 be then returned to the seller.

264 SECTION 11. If for any reason the seller, who has entered
265 into a contract for the sale of such personal property and/or the
266 performing of such services and has made the deposit herein
267 required to be made, cannot or does not perform all provisions of
268 said contract promptly as to delivery of the property covered by
269 said contract after request to do so, the family, legal
270 representative or next of kin of the purchaser shall be entitled
271 to receive from the trustee the amount of money on deposit to the
272 credit of that particular contract, including interest. An
273 affidavit of the family, legal representative or next of kin to
274 that effect, delivered to the trustee, shall be sufficient
275 authority to the trustee to make such a payment without any
276 liability to the person making the deposit of such money into the
277 trust fund or to any other person. Nothing herein contained shall
278 relieve the seller under any such contract of his liability for
279 nonperformance. Each contract covered by Sections 6 through 18 of
280 this act shall provide that in the event that the retail consumer,

281 his family, legal representative or next of kin requests the
282 seller to deliver the property or provide the service described in
283 the contract to or at a location which is more than fifty (50)
284 miles from the location where the contract was executed by the
285 purchaser and which is deemed by the seller to be impractical for
286 the seller to deliver the property or provide the services, then
287 the seller shall return to the retail consumer, his family, legal
288 representative or next of kin all sums, including interest, paid
289 by the consumer for such property and/or services.

290 SECTION 12. A trustee of a trust fund created under Sections
291 6 through 18 of this act, upon the exercise of due care, shall not
292 be liable to the person creating such fund, to the purchaser, or
293 to any person for any disbursements made from the trust fund
294 pursuant to Sections 6 through 18 of this act.

295 SECTION 13. (1) Every trustee of a cemetery merchandise
296 trust fund shall annually prepare and file with the cemetery
297 merchandise business a detailed accounting and report of such fund
298 on or before March 31 of each year for the calendar year ending
299 the preceding December 31 or within ninety (90) days after the end
300 of the fiscal year of the trust agreement, which report shall
301 include, among other things, properly itemized, the securities in
302 which monies in the fund are invested.

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

306 Such records shall be kept and be available for inspection and
307 copy by any purchaser, or the purchaser's family, legal
308 representative or next of kin, at the usual place of the seller's

309 business, for at least one (1) year after the termination of the
310 agreement which they evidence.

311 SECTION 14. All trusts created pursuant to Sections 6
312 through 18 of this act shall have corporate entities as trustees.
313 The trust fund established under Sections 6 through 18 of this
314 act shall be administered under the jurisdiction of the chancery
315 court of the chancery court district wherein the seller is located
316 or if the seller be located outside of the State of Mississippi
317 then in the chancery court of the chancery court district wherein
318 the purchaser resides. The chancery courts so having jurisdiction
319 shall have full jurisdiction over the reports and accounting of
320 trustees, amount of surety bond required, and investment of funds.

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

324 SECTION 15. (1) Within thirty (30) days after the end of
325 the calendar or the business' fiscal year, each cemetery
326 merchandise business shall file with the clerk of the chancery
327 court having jurisdiction over the administration of its
328 merchandise trust fund an annual account, which account shall
329 contain the following information:

330 (a) The name of the business, the date of
331 incorporation, if incorporated, and the location of such business
332 or businesses;

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

336 (c) The amounts paid into the merchandise trust fund,

337 and the income earned therefrom during the preceding fiscal year;
338 and

339 (d) The names and addresses of the owners of the
340 business and, if incorporated, its officers and directors, and any
341 change of control which has occurred during the past fiscal or
342 calendar year.

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

348 (3) As a condition to the transfer of any merchandise trust
349 fund monies from one trust institution to another, the business
350 for which such fund is maintained shall, not less than thirty (30)
351 days prior to the time when such transfer is to occur, file with
352 the chancery clerk a written notice of intent to transfer
353 accompanied with a letter of intent to receive such trust fund
354 monies from the trust institution to which such trust fund monies
355 are to be transferred. Such fund monies shall be transferred
356 directly from the existing trust institution to the receiving
357 trust institution.

358 (4) Prior to any sale or transfer of any cemetery
359 merchandise business or a controlling interest therein, an
360 independent audit of the merchandise trust fund shall be performed
361 at the expense of the seller and/or buyer or transferor and
362 transferee and filed with the chancery clerk. Such audit shall be
363 current within thirty (30) days of the proposed sale or transfer.

364 (5) Each chancery clerk shall maintain a properly indexed

365 book in which there shall be kept, preserved and open for public
366 inspection a copy of each record, report and notice required to be
367 filed with the chancery clerk under Sections 6 through 18 of this
368 act. For filing and indexing the records, reports and notices
369 under Sections 6 through 18 of this act, the chancery clerk shall
370 be authorized to charge such fees as are provided in Section
371 25-7-9 for the recording and indexing of deeds.

372 (6) The clerk of the chancery court having jurisdiction
373 shall, upon the failure to timely receive any of the records,
374 reports or notices provided for under Sections 6 through 18 of
375 this act, immediately give notice by registered letter to the
376 owner or owners of such business, or, if incorporated, its
377 officers and directors at its or their last-known address, that
378 such records, reports or notices have not been received. Failure
379 of such persons to file such records, reports or notices within
380 fifteen (15) days after such registered letter is mailed shall, in
381 the absence of clear justification or excuse, constitute a
382 misdemeanor and each owner and, if incorporated, its officers and
383 directors, shall be subject to the penalties provided for in
384 Section 75-63-23.

385 (7) Whenever it reasonably appears to the court upon
386 complaint filed with the chancery court having jurisdiction
387 thereof by any purchaser, or the family, legal representative or
388 next of kin of any such purchaser, of any property or services
389 contracted for under Sections 6 through 18 of this act that (a)
390 such business is insolvent or about to become insolvent; or (b)
391 that no merchandise trust fund has been established for such
392 business or, if established, the trust fund does not contain such

393 funds as are required to be contained therein, the court shall
394 order a private audit and examination of any merchandise trust
395 fund of such business and of all the books, records and papers
396 employed in the transaction of such business.

397 In the event that such audit and examination shows that the
398 business is insolvent or is about to become insolvent or that a
399 sufficient trust fund is not established or being maintained for
400 such business, the court shall exercise such jurisdiction and make
401 and issue such orders and decrees as may be necessary to correct
402 and enforce compliance with Sections 6 through 18 of this act and
403 all such other orders and decrees as shall be just, equitable and
404 in the public interest, including the appointment of receivers to
405 continue or terminate the operation of such business.

406 (8) All the necessary expenses of any examination or audit
407 performed or court proceedings conducted under the provisions of
408 subsection (7) of this section shall be paid by the owner or
409 owners of such business or, if incorporated, its officers and
410 directors, and in the event that a sale of any such business is
411 ordered by the court, the proceeds of such sale shall first be
412 applied to the costs expended under the provisions of subsection
413 (7) of this section.

414 SECTION 16. Sections 6 through 18 of this act shall not
415 apply to: (a) the sale of burial vaults, urns, memorials,
416 scrolls, vases, foundations, bases or any other similar
417 merchandise where the seller delivers at the time of the execution
418 of the contract or upon final payment, should the payment be made
419 in installments, a valid warehouse receipt as contemplated in
420 Uniform Commercial Code-Documents of Title, Section 75-7-101 et

421 seq.; (b) property or services included within the coverage
422 provisions of insurance policies or contracts of insurance; or (c)
423 property or services provided by funeral establishments which are
424 governed by Sections 75-63-1 through 75-63-23, Mississippi Code of
425 1972.

426 SECTION 17. Any provision of any such contract which
427 purports to waive the provisions of Sections 6 through 18 of this
428 act shall be void.

429 SECTION 18. Any person, partnership, corporation or
430 organization violating the provisions of Sections 6 through 18 of
431 this act shall be punished by a fine of not less than One Hundred
432 Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00)
433 or confined in the county jail for a period not exceeding one (1)
434 year, or both. If the person violating the provisions of Sections
435 6 through 18 of this act is a corporation or association, any
436 prison term imposed shall be upon the officer responsible for the
437 violation.

438 SECTION 19. Section 75-63-5, Mississippi Code of 1972, which
439 provides that cemeteries are not required to accept property or
440 perform services contrary to law, is hereby repealed.

441 SECTION 20. Sections 6 through 18 of this act shall be
442 codified as a separate article within Chapter 43 of Title 41,
443 Mississippi Code of 1972.

444 SECTION 21. This act shall take effect and be in force from
445 and after its passage.