

By: Representatives Stevens, Montgomery
(74th)

To: Insurance

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 721

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

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

21 SECTION 1. This act shall be known and may be cited as the
22 "Preneed Cemetery and Funeral Registration Act."

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

25 (a) "Buyer" means the person who purchases the preneed
26 contract.

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



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

38 (d) "Contract beneficiary" means the person upon whose
39 death will initiate the performance of a preneed contract. This
40 person may also be the contract purchaser.

41 (e) "Contract provider" means the funeral home,
42 cemetery or other providers of merchandise in a preneed contract
43 that will be responsible for performing a preneed contract.

44 (f) "Financial institution" means a bank, trust
45 company, savings bank, or savings and loan association chartered
46 and authorized to do business in this state.

47 (g) "Funeral home" means a business licensed under
48 Section 73-11-55, Mississippi Code of 1972.

49 (h) "Inflation proof contract" means a preneed contract
50 that establishes a fixed price for funeral services and
51 merchandise without regard to future price increases.

52 (i) "Insurance" means a life insurance policy or
53 annuity contract, or other insurance contract or agreement in any
54 form, issued by an insurance company authorized by law to do
55 business in this state which, by assignment to a contract
56 provider, has for a purpose the funding of a preneed contract.

57 (j) "Merchandise" means personal property associated
58 with the disposal of or memorializing a deceased human being,
59 including, but not limited to, a casket, burial vault, burial
60 clothes, urn or monument.

61 (k) "Preneed contract" means any contract, agreement or
62 any series or combination of contracts or agreements, whether
63 funded by trust deposits or insurance, or any combination thereof,
64 which has for a purpose the furnishing or performance of funeral
65 services, or the furnishing or delivery of merchandise, of any
66 nature in connection with the final disposition of a dead human
67 body, to be furnished or delivered at a time determinable by the



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

70 (l) "Seller" means the person who sells a preneed
71 contract.

72 (m) "Services" means services of any nature in
73 connection with the final disposition of a dead human body.

74 (n) "Standard contract" means a preneed contract that
75 applies the trust funds or insurance proceeds to the purchase
76 price of specific funeral services and specific merchandise at the
77 time of death of the contract beneficiary without a guarantee
78 against future price increases.

79 (o) "Trust" means an express trust created by a trust
80 instrument whereby a trustee has the duty to administer a trust
81 asset for the benefit of a named contract beneficiary.

82 (p) "Trustee" means an original, added, or successor
83 trustee including its successor by merger or consolidation.

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

92 (2) The contract shall clearly indicate all merchandise
93 covered by the contract and the total cost of all merchandise
94 covered by the contract. The contract shall list all services
95 covered by the contract and the total cost for all services
96 covered by the contract. The contract shall list all cash advance
97 items covered by the contract and the total cost for all services
98 covered by the contract. The contract price shall not exceed the
99 sum of the total cost for all merchandise, the total cost for all
100 services and any interest.



101 (3) All preneed contracts sold shall be funded by trust or
102 insurance as defined in this act or evidenced by a warehouse
103 receipt, as contemplated in Uniform Commercial Code-Documents of
104 Title, Section 75-7-101 et seq. If evidenced by a warehouse
105 receipt, the contract provider must have actual possession of the
106 merchandise which corresponds to that receipt.

107 (4) If the preneed contract is funded by insurance, the
108 following information shall be adequately disclosed at the time
109 the contract is executed:

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

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

116 (c) The relationship of the insurance to the funding of
117 the preneed contract and the nature and existence of any
118 guarantees relating to the preneed contract;

119 (d) The impact on the preneed contract:

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

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

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

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



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

138 (g) Any penalties or restrictions, including, but not
139 limited to, geographic restrictions or the inability of the
140 provider to perform, on the delivery of merchandise, services or
141 the preneed guarantees.

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

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

160 (7) The preneed contract shall contain the address and phone
161 number of the Secretary of State with instructions that consumer
162 complaints may be filed with the Secretary of State.

163 (8) If the preneed contract is paid in multiple payments,
164 the contract should indicate the amount, frequency and duration of
165 the payments and the amount of any interest charged. The contract



166 shall also include the impact on the contract if payments are not
167 made.

168 (9) Any use or attempted use of any oral preneed contract,
169 or any written contract in a form not approved by the Secretary of
170 State, shall be a violation of this act.

171 SECTION 4. (1) The contract provider or its successor shall
172 maintain a copy of all preneed contracts entered into by the
173 contract provider for a period of the lifetime of each contract
174 beneficiary and for two (2) years after the death of a contract
175 beneficiary. In addition, the contract provider shall maintain a
176 log of preneed contracts in force. The log shall be maintained in
177 chronological order of when contracts are sold.

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

185 (3) The Secretary of State shall promulgate rules and
186 regulations governing the form, maintenance and location of such
187 logs.

188 SECTION 5. (1) If the contract is funded by trust, the
189 contract beneficiary shall be given a copy of the trust document
190 and shall be informed in writing as to how the assets of the trust
191 are held. In the event of any change in the assets of the trust,
192 or change in the trustee or trust institution, the contract
193 beneficiary and Secretary of State shall be informed not less than
194 thirty (30) days prior to the time such change is to occur.

195 (2) The trustee shall not be the contract provider, the
196 seller, or an officer or director of the contract provider if the
197 contract provider is a corporation.



198 (3) Within ten (10) days from the end of the month in which
199 the funds were received, the contract seller shall place in a
200 trust account in a financial institution as defined by this act at
201 least fifty percent (50%) of the funds received. If the contract
202 seller places less than one hundred percent (100%) in the trust
203 account, the preneed contract shall fully disclose to the contract
204 purchaser the amount deposited in trust and the amount withheld by
205 the contract seller.

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

212 (5) Reasonable annual trust fees including any income taxes
213 owed to the State of Mississippi or the United States Treasury may
214 be withheld from the earnings of the trust.

215 (6) At the time of death, if the contract provider provides
216 the merchandise and services indicated in the contract, the
217 contract provider shall furnish to the trustee a copy of the
218 buyer's death certificate and a letter of performance indicating
219 that the contracted merchandise and services were provided by the
220 contract provider to the contract beneficiary. Upon receipt of
221 the letter of performance and death certificate, the trustee shall
222 pay to the contract provider all funds plus accumulated interest
223 in the trust.

224 (7) If the contract provider does not furnish merchandise
225 and services as provided in the preneed contract, the trustee
226 shall pay to the estate of the contract beneficiary or the
227 substitute provider not less than the amount deposited in trust
228 plus any accumulated interest in the trust within ten (10) days
229 from notification of the death of the contract beneficiary.



230 SECTION 6. (1) If the preneed contract is funded with
231 insurance, and payment is made to the contract seller rather than
232 directly to the life insurance company, the contract seller shall
233 send to the insurance company all premiums collected from the
234 contract purchaser.

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

245 SECTION 7. If the preneed contract contains a revocation
246 clause, the contract beneficiary or his representatives may name a
247 substitute provider for the preneed contract at any time prior to
248 the performance of the contract. The naming of the substitute
249 provider shall be in writing. If the preneed contract is funded
250 by trust, the notice of substitution shall be made in writing to
251 the trustee and the Secretary of State. If the preneed contract
252 is funded by insurance, the notice of substitution shall be made
253 in writing to the insurance company. Upon receipt of the notice
254 of substitute provider, the original provider shall be relieved of
255 all obligations to perform the contract including all obligations
256 of reporting and accounting, and the substitute provider shall
257 assume all obligations to perform the contract including all
258 obligations of reporting and accounting.

259 SECTION 8. (1) Any establishment which engages in the
260 business of selling preneed merchandise and services shall
261 register with the Secretary of State and shall pay a registration
262 fee. A separate registration is required for each additional



263 location. The establishment shall pay to the Secretary of State
264 for the registration of the main establishment a fee of One
265 Hundred Dollars (\$100.00). The establishment shall pay to the
266 Secretary of State for the registration of each additional
267 location a fee of Fifty Dollars (\$50.00).

268 (2) Any person who engages in the business of selling
269 preneed contracts shall register with the Secretary of State and
270 shall pay a fee in the amount of Twenty-five Dollars (\$25.00).

271 (3) The Secretary of State shall establish regulations to
272 register each establishment selling preneed merchandise or
273 services. No establishment shall be registered to sell preneed
274 merchandise or services that the establishment cannot lawfully
275 provide at the time of a person's death. The Secretary of State
276 shall also maintain a record of all individuals who are registered
277 to sell preneed merchandise or services through the registered
278 establishment.

279 (4) The Secretary of State shall establish regulations to
280 register each person selling preneed contracts, including the
281 establishment through which the seller will be selling. No person
282 shall be registered to sell preneed contracts without indicating
283 the establishment for which he or she is selling.

284 (5) The Secretary of State shall develop and furnish the
285 forms necessary for the registration of establishments and
286 individuals selling preneed contracts.

287 SECTION 9. Every registered preneed establishment shall
288 annually submit a written report to the Secretary of State of its
289 preneed contract sales and performance of such contracts. This
290 report shall be filed on or before March 31 of each year for the
291 calendar year ending the preceding December 31. The Secretary of
292 State shall adopt regulations concerning the content and filing
293 procedure of this report.

294 SECTION 10. (1) Whenever it appears to the Secretary of
295 State that any person has engaged, or is about to engage, in any



296 act or practice constituting a violation of any provision of this
297 act or any rule or order hereunder, he may, in his discretion,
298 seek any or all of the following remedies:

299 (a) Issue a cease and desist order with or without a
300 prior hearing against the person or persons engaged in the
301 prohibited activities directing them to cease and desist from
302 further illegal activity;

303 (b) (i) Issue an order in the case of any person,
304 partnership or, if a corporation, the officers and directors who
305 sell or offer to sell preneed contracts, or other person who
306 violated this act, imposing an administrative penalty up to a
307 maximum of One Thousand Dollars (\$1,000.00) for each offense and
308 each violation shall be considered as a separate offense in a
309 single proceeding or a series of related proceedings; to be paid
310 to the Secretary of State and requiring reimbursement to the
311 Secretary of State for all costs and expenses incurred in the
312 investigation of the violation(s) and in the institution of
313 administrative proceedings, if any, as a result thereof;

314 (ii) For the purpose of determining the amount or
315 extent of a sanction, if any, to be imposed under paragraph (b) (i)
316 of this subsection, the Secretary of State shall consider, among
317 other factors, the frequency, persistence and willfulness of the
318 conduct constituting a violation of this act or a rule promulgated
319 thereunder, or an order of the Secretary of State, the number of
320 persons adversely affected by the conduct and the resources of the
321 person committing the violation;

322 (c) Bring an action in chancery court to enjoin the
323 acts or practices to enforce compliance with this act or any rule
324 or order hereunder. Upon a proper showing, a permanent or
325 temporary injunction, restraining order or writ of mandamus shall
326 be granted and a receiver or conservator may be appointed for the
327 defendant or the defendant's assets. In addition, upon a proper
328 showing by the Secretary of State, the court may enter an order of



329 rescission, restitution or disgorgement directed to any person who
330 has engaged in any act constituting a violation of any provision
331 of this act or any rule or order hereunder, or the court may
332 impose a civil penalty up to a maximum of One Thousand Dollars
333 (\$1,000.00) for each offense and each violation shall be
334 considered as a separate offense in a single proceeding or a
335 series of related proceedings. The court may not require the
336 Secretary of State to post a bond.

337 (2) The Secretary of State may, with or without a prior
338 hearing, suspend or revoke any preneed establishment or
339 salesperson registration for violation of statutes or regulations
340 established under this act.

341 (3) Any person, partnership or, if a corporation, the
342 officers and directors who sell or offer to sell a preneed
343 contract with a suspended or revoked registration shall be guilty
344 of a misdemeanor and, upon conviction thereof, shall be punishable
345 by a fine not less than Two Hundred Dollars (\$200.00) nor more
346 than Five Hundred Dollars (\$500.00) or by imprisonment for a term
347 of not more than one (1) year, or both fine and imprisonment.

348 (4) Any person, partnership or, if a corporation, the
349 officers and directors who embezzle or fraudulently or knowingly
350 and willfully misapply or convert preneed funds shall, upon
351 conviction, be punished by imprisonment in the custody of the
352 Mississippi Department of Corrections for a term of not less than
353 ten (10) years, or be fined not more than One Thousand Dollars
354 (\$1,000.00) and imprisoned in the county jail not more than one
355 (1) year, or both fine and imprisonment. Each such violation
356 shall constitute a separate offense.

357 (5) Upon reasonable belief that a person or corporation is
358 acting in violation of the portions of this act requiring fines or
359 imprisonment, the Secretary of State shall immediately report this
360 violation accompanied by all relevant records to the Insurance



361 Integrity Enforcement Bureau within the Office of the Attorney
362 General created in Section 7-5-301.

363 (6) No order shall be entered under this section without the
364 following:

365 (a) An appropriate prior notice to the applicant or
366 registrant;

367 (b) An opportunity for a hearing; and

368 (c) Written findings of fact and conclusions of law.

369 SECTION 11. The information contained in or filed with any
370 registration, statement, application or report may be made
371 available to the public under such rules as the Secretary of State
372 prescribes. Information in the possession of, filed with or
373 obtained by the Secretary of State in connection with any
374 investigation or examination under this act shall be confidential
375 and exempt from the requirements of the Mississippi Public Records
376 Act of 1983. No such information may be disclosed by the
377 Secretary of State, or any of his officers or employees, unless
378 necessary or appropriate in connection with a particular
379 investigation or proceeding under this act or for any law
380 enforcement purpose.

381 SECTION 12. For the purpose of any investigation or
382 proceeding under this act, the Secretary of State, or any officer
383 designated by him, may administer oaths and affirmations, subpoena
384 witnesses, compel their attendance, take evidence and require the
385 production of any books, papers, correspondence, memoranda,
386 agreements or other documents or records which the Secretary of
387 State deems relevant or material to the inquiry.

388 SECTION 13. Nothing in this act shall be construed to
389 authorize the sale of life insurance policies by unlicensed agents
390 which is prohibited by Section 83-17-105, Mississippi Code of
391 1972.

392 SECTION 14. Sections 75-63-1, 75-63-3, 75-63-5, 75-63-7,
393 75-63-9, 75-63-11, 75-63-13, 75-63-15, 75-63-17, 75-63-18,



394 75-63-19, 75-63-21 and 75-63-23, Mississippi Code of 1972, which
395 regulate the sales of cemetery merchandise and funeral services,
396 are hereby repealed.

397 SECTION 15. This act shall take effect and be in force from
398 and after July 1, 2001.

