MISSISSIPPI LEGISLATURE
REGULAR SESSION 2001
By: Representatives Stevens, Montgomery (74th)
To: Insurance

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 721

AN ACT TO CREATE THE "PRENEED CEMETARY AND FUNERAL REGISTRATION ACT"; TO DEFINE CERTAIN TERMS; TO REQUIRE ALL PRENEED CONTRACTS SOLD TO BE EVIDENCED IN WRITING ON FORMS REGISTERED WITH THE SECRETARY OF STATE; TO PRESCRIBE THE CONTENTS OF SUCH WRITTEN PRENEED CONTRACT; TO PROVIDE FOR RECORD-KEEPING REQUIREMENTS; TO PROVIDE TRUSTING REQUIREMENTS IF THE PRENEED CONTRACT IS FUNDED BY A TRUST; TO PROVIDE CERTAIN REQUIREMENTS IF THE PRENEED CONTRACT IS FUNDED BY INSURANCE; TO REQUIRE REGISTRATION OF ALL PERSONS AND ESTABLISHMENTS SELLING PRENEED CONTRACTS; TO PROVIDE REPORTING REQUIREMENTS TO THE SECRETARY OF STATE; TO AUTHORIZE EXAMINATIONS OF THE BOOKS AND RECORDS OF REGISTERED ESTABLISHMENTS; TO PROVIDE CIVIL AND CRIMINAL PENALTIES FOR VIOLATIONS OF THIS ACT; TO REPEAL SECTIONS 75-63-1, 75-63-3, 75-63-5, 75-63-7, 75-63-9, 75-63-11, 75-63-13, 75-63-15, 75-63-17, 75-63-18, 75-63-19, 75-63-21 AND 75-63-23, MISSISSIPPI CODE OF 1972, WHICH REGULATE THE PRENEED SALES OF CEMETARY MERCHANDISE AND FUNERAL SERVICES; AND FOR RELATED PURPOSES.

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

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

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

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

(b) "Cash advance item" means any item of service or merchandise described to a purchaser as a "cash advance," "accommodation," "cash disbursement" or similar term. A cash advance item is also any item obtained from a third party and paid for by the funeral provider on the purchaser's behalf. Cash advance items may include, but are not limited to: cemetery or crematory services; pallbearers; public transportation; clergy honoraria; flowers; musicians or singers; nurses; obituary notices; gratuities and death certificates.
(c) "Cemetery" means an organization as defined in Section 41-43-33, Mississippi Code of 1972.

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

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

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

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

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

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

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

(k) "Preneed contract" means any contract, agreement or any series or combination of contracts or agreements, whether funded by trust deposits or insurance, or any combination thereof, which has for a purpose the furnishing or performance of funeral services, or the furnishing or delivery of merchandise, of any nature in connection with the final disposition of a dead human body, to be furnished or delivered at a time determinable by the
death of the person whose body is to be disposed of but shall not
mean the furnishing of a cemetery lot, crypt, niche or mausoleum.

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

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

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

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

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

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

(2) The contract shall clearly indicate all merchandise
covered by the contract and the total cost of all merchandise
covered by the contract. The contract shall list all services
covered by the contract and the total cost for all services
covered by the contract. The contract shall list all cash advance
items covered by the contract and the total cost for all services
covered by the contract. The contract price shall not exceed the
sum of the total cost for all merchandise, the total cost for all
services and any interest.
(3) All preneed contracts sold shall be funded by trust or insurance as defined in this act or evidenced by a warehouse receipt, as contemplated in Uniform Commercial Code-Documents of Title, Section 75-7-101 et seq. If evidenced by a warehouse receipt, the contract provider must have actual possession of the merchandise which corresponds to that receipt.

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

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

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

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

(d) The impact on the preneed contract:

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

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

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

(e) A list of the merchandise and services which are applied or contracted for in the preneed contract and all relevant information concerning the price of the funeral services, including an indication that the purchase price is either guaranteed at the time of purchase or to be determined at the time of need;
(f) All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the proceeds of the life insurance policy and the amount actually needed to fund the preneed contract; and

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

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

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

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

(8) If the preneed contract is paid in multiple payments, the contract should indicate the amount, frequency and duration of the payments and the amount of any interest charged. The contract
shall also include the impact on the contract if payments are not made.

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

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

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

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

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

(2) The trustee shall not be the contract provider, the seller, or an officer or director of the contract provider if the contract provider is a corporation.
(3) Within ten (10) days from the end of the month in which the funds were received, the contract seller shall place in a trust account in a financial institution as defined by this act at least fifty percent (50%) of the funds received. If the contract seller places less than one hundred percent (100%) in the trust account, the preneed contract shall fully disclose to the contract purchaser the amount deposited in trust and the amount withheld by the contract seller.

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

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

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

(7) If the contract provider does not furnish merchandise and services as provided in the preneed contract, the trustee shall pay to the estate of the contract beneficiary or the substitute provider not less than the amount deposited in trust plus any accumulated interest in the trust within ten (10) days from notification of the death of the contract beneficiary.
SECTION 6. (1) If the preneed contract is funded with insurance, and payment is made to the contract seller rather than directly to the life insurance company, the contract seller shall send to the insurance company all premiums collected from the contract purchaser.

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

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

SECTION 8. (1) Any establishment which engages in the business of selling preneed merchandise and services shall register with the Secretary of State and shall pay a registration fee. A separate registration is required for each additional
location. The establishment shall pay to the Secretary of State for the registration of the main establishment a fee of One Hundred Dollars ($100.00). The establishment shall pay to the Secretary of State for the registration of each additional location a fee of Fifty Dollars ($50.00).

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

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

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

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

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

SECTION 10. (1) Whenever it appears to the Secretary of State that any person has engaged, or is about to engage, in any
act or practice constituting a violation of any provision of this act or any rule or order hereunder, he may, in his discretion, seek any or all of the following remedies:

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

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

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

(c) Bring an action in chancery court to enjoin the acts or practices to enforce compliance with this act or any rule or order hereunder. Upon a proper showing, a permanent or temporary injunction, restraining order or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. In addition, upon a proper showing by the Secretary of State, the court may enter an order of
rescission, restitution or disgorgement directed to any person who
has engaged in any act constituting a violation of any provision
of this act or any rule or order hereunder, or the court may
impose a civil penalty up to a maximum of One Thousand Dollars
($1,000.00) for each offense and each violation shall be
considered as a separate offense in a single proceeding or a
series of related proceedings. The court may not require the
Secretary of State to post a bond.

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

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

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

(5) Upon reasonable belief that a person or corporation is
acting in violation of the portions of this act requiring fines or
imprisonment, the Secretary of State shall immediately report this
violation accompanied by all relevant records to the Insurance
Integrity Enforcement Bureau within the Office of the Attorney General created in Section 7-5-301.

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

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

(b) An opportunity for a hearing; and

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

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

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

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

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

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