

By: Representatives Stevens, Montgomery
(74th)

To: Insurance

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 THE ACT SHALL BE CONSTRUED TO AUTHORIZE
14 THE SALE OF LIFE INSURANCE POLICIES BY UNLICENSED AGENTS; TO
15 PROVIDE THAT THE SECRETARY OF STATE SHALL REPORT CERTAIN
16 VIOLATIONS TO THE INSURANCE INTEGRITY ENFORCEMENT BUREAU; TO
17 REPEAL SECTIONS 75-63-1, 75-63-3, 75-63-5, 75-63-7, 75-63-9,
18 75-63-11, 75-63-13, 75-63-15, 75-63-17, 75-63-18, 75-63-19,
19 75-63-21 AND 75-63-23, MISSISSIPPI CODE OF 1972, WHICH REGULATE
20 THE PRENEED SALES OF CEMETERY MERCHANDISE AND FUNERAL SERVICES;
21 AND FOR RELATED PURPOSES.

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

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

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

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

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

36 honoraria; flowers; musicians or singers; nurses; obituary
37 notices; gratuities and death certificates.

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

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

43 (e) "Contract provider" means the funeral home or
44 cemetery indicated in the preneed contract that will be
45 responsible for performing the preneed contract.

46 (f) "Financial institution" means a bank, trust
47 company, savings bank, or savings and loan association located in
48 this state.

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

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

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

59 (j) "Merchandise" means personal property associated
60 with the disposal of or memorializing a deceased human being such
61 as a casket, burial vault, burial clothes, urn or monument.

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

69 or delivered at a time determinable by the death of the person
70 whose body is to be disposed of, but shall not mean the furnishing
71 of a cemetery lot, crypt, niche or mausoleum or the furnishing of
72 merchandise that is delivered to the purchaser within sixty (60)
73 days from the date of purchase.

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

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

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

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

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

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

96 (2) The contract shall clearly indicate all merchandise
97 covered by the contract and the total cost of all merchandise
98 covered by the contract. The contract shall list all services
99 covered by the contract and the total cost for all services
100 covered by the contract. The contract price shall not exceed the

101 sum of the total cost for all merchandise, the total cost for all
102 services and any interest.

103 (3) All preneed contracts sold shall be funded by trust or
104 insurance as defined in this act or evidenced by a warehouse
105 receipt.

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

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

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

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

118 (d) The impact on the preneed contract:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

187 SECTION 5. (1) If the contract is funded by trust, the
188 contract beneficiary shall be given a copy of the trust document
189 and shall be informed in writing as to how the assets of the trust
190 are held. In the event of any change in the assets of the trust,
191 or change in the trustee, the contract beneficiary and Secretary
192 of State shall be informed of these changes within ten (10) days.

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

196 (3) Within ten (10) days from receipt of the funds, the
197 contract seller shall place in a trust account at least fifty

198 percent (50%) of the funds received. If the contract seller
199 places less than one hundred percent (100%) in the trust account,
200 the preneed contract shall fully disclose to the contract
201 purchaser the amount deposited in trust and the amount withheld by
202 the contract seller.

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

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

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

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

227 SECTION 6. (1) If the preneed contract is funded with
228 insurance, and payment is made to the contract seller rather than
229 directly to the life insurance company, the contract seller shall

230 send to the insurance company all premiums collected from the
231 contract purchaser.

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

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

255 SECTION 8. (1) No person may offer or sell preneed
256 contracts or offer to make or make any funded prearrangements
257 without first being registered with the Secretary of State.

258 (2) There shall be two (2) types of registration: a preneed
259 establishment registration and a preneed sales registration. The
260 Secretary of State shall establish regulations to register each
261 funeral home or cemetery selling preneed merchandise or services
262 including the fees to be paid for each registration. No

263 establishment shall be registered to sell preneed merchandise or
264 services that the establishment cannot lawfully provide at the
265 time of a person's death. The Secretary of State shall also
266 maintain a record of all individuals who are registered to sell
267 preneed merchandise or services through the registered
268 establishment.

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

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

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

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

290 (2) (a) Issue an order in the case of any person,
291 partnership or, if a corporation, the officers and directors who
292 sell or offer to sell preneed contracts, or other person who
293 violated this act, imposing an administrative penalty up to a
294 maximum of One Thousand Dollars (\$1,000.00) for each offense and
295 each violation shall be considered as a separate offense in a

296 single proceeding or a series of related proceedings; to be paid
297 to the Secretary of State and requiring reimbursement to the
298 Secretary of State for all costs and expenses incurred in the
299 investigation of the violation(s) and in the institution of
300 administrative proceedings, if any, as a result thereof; or

301 (b) For the purpose of determining the amount or extent
302 of a sanction, if any, to be imposed under subsection (2)(a) of
303 this section, the Secretary of State shall consider, among other
304 factors, the frequency, persistence and willfulness of the conduct
305 constituting a violation of this act or a rule promulgated
306 thereunder, or an order of the Secretary of State, the number of
307 persons adversely affected by the conduct and the resources of the
308 person committing the violation.

309 (3) Bring an action in chancery court to enjoin the acts or
310 practices to enforce compliance with this act or any rule or order
311 hereunder. Upon a proper showing, a permanent or temporary
312 injunction, restraining order or writ of mandamus shall be granted
313 and a receiver or conservator may be appointed for the defendant
314 or the defendant's assets. In addition, upon a proper showing by
315 the Secretary of State, the court may enter an order of
316 rescission, restitution or disgorgement directed to any person who
317 has engaged in any act constituting a violation of any provision
318 of this act or any rule or order hereunder, or the court may
319 impose a civil penalty up to a maximum of One Thousand Dollars
320 (\$1,000.00) for each offense and each violation shall be
321 considered as a separate offense in a single proceeding or a
322 series of related proceedings. The court may not require the
323 Secretary of State to post a bond.

324 (4) The Secretary of State may, with or without a prior
325 hearing, suspend or revoke any preneed establishment or sales
326 registration for violation of statutes or regulations established
327 under this act.

328 (5) Any person, partnership or, if a corporation, the
329 officers and directors who sell or offer to sell a preneed
330 contract with a suspended or revoked registration or without a
331 license shall be guilty of a misdemeanor and, upon conviction
332 thereof, shall be punishable by a fine not less than Two Hundred
333 Dollars (\$200.00) nor more than Five Hundred Dollars (\$500.00) or
334 by imprisonment for a term of not more than one (1) year, or both
335 fine and imprisonment.

336 (6) Any person, partnership or, if a corporation, the
337 officers and directors who embezzles or fraudulently or knowingly
338 and willfully misapplies or converts preneed funds shall, upon
339 conviction, be punished by imprisonment in the custody of the
340 Mississippi Department of Corrections for a term of not less than
341 ten (10) years, or be fined not more than One Thousand Dollars
342 (\$1,000.00) and imprisoned in the county jail not more than one
343 (1) year, or both fine and imprisonment. Each such violation
344 shall constitute a separate offense.

345 (7) Upon reasonable belief that a person or corporation is
346 acting in violation of the portions of this act requiring fines or
347 imprisonment, the Secretary of State shall immediately report this
348 violation accompanied by all relevant records to the Insurance
349 Integrity Enforcement Bureau within the Office of the Attorney
350 General as set forth in Sections 7-5-301 through 7-5-311.

351 (8) No order shall be entered under this section without the
352 following:

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

355 (b) An opportunity for a hearing; and

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

357 SECTION 11. The information contained in or filed with any
358 registration, statement, application or report may be made
359 available to the public under such rules as the Secretary of State
360 prescribes. Information in the possession of, filed with or

361 obtained by the Secretary of State in connection with any
362 investigation or examination under this act shall be confidential
363 and exempt from the requirements of the Mississippi Public Records
364 Act of 1983. No such information may be disclosed by the
365 Secretary of State, or any of his officers or employees, unless
366 necessary or appropriate in connection with a particular
367 investigation or proceeding under this act or for any law
368 enforcement purpose.

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

376 SECTION 13. Nothing in this act shall be construed to
377 authorize the sale of life insurance policies by unlicensed agents
378 which is prohibited by Section 83-17-105, Mississippi Code of
379 1972.

380 SECTION 14. Sections 75-63-1, 75-63-3, 75-63-5, 75-63-7,
381 75-63-9, 75-63-11, 75-63-13, 75-63-15, 75-63-17, 75-63-18,
382 75-63-19, 75-63-21 and 75-63-23, Mississippi Code of 1972, which
383 regulate the sales of cemetery merchandise and funeral services,
384 are repealed.

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