

By: Senator(s) Browning, Farris

To: Insurance

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2457

1 AN ACT TO CREATE THE "PRE-NEED CEMETERY AND FUNERAL
2 REGISTRATION ACT"; TO DEFINE CERTAIN TERMS; TO REQUIRE ALL
3 PRE-NEED CONTRACTS SOLD TO BE EVIDENCED IN WRITING ON FORMS
4 REGISTERED WITH THE SECRETARY OF STATE; TO PRESCRIBE THE CONTENTS
5 OF SUCH WRITTEN PRE-NEED CONTRACT; TO PROVIDE FOR RECORD-KEEPING
6 REQUIREMENTS; TO PROVIDE TRUSTING REQUIREMENTS IF THE PRE-NEED
7 CONTRACT IS FUNDED BY A TRUST; TO PROVIDE CERTAIN REQUIREMENTS IF
8 THE PRE-NEED CONTRACT IS FUNDED BY INSURANCE; TO REQUIRE
9 REGISTRATION OF ALL PERSONS AND ESTABLISHMENTS SELLING PRE-NEED
10 CONTRACTS; TO PROVIDE REPORTING REQUIREMENTS TO THE SECRETARY OF
11 STATE; TO AUTHORIZE EXAMINATIONS OF THE BOOKS AND RECORDS OF
12 REGISTERED ESTABLISHMENTS; TO PROVIDE CIVIL AND CRIMINAL PENALTIES
13 FOR VIOLATIONS OF THIS ACT; TO CLARIFY THAT NOTHING IN THIS ACT
14 SHALL BE CONSTRUED TO AUTHORIZE THE SALE OF LIFE INSURANCE
15 POLICIES BY UNLICENSED AGENTS; TO REPEAL SECTIONS 75-63-1,
16 75-63-3, 75-63-5, 75-63-7, 75-63-9, 75-63-11, 75-63-13, 75-63-15,
17 75-63-17, 75-63-18, 75-63-19, 75-63-21 AND 75-63-23, MISSISSIPPI
18 CODE OF 1972, WHICH REGULATE THE PRE-NEED SALES OF CEMETERY
19 MERCHANDISE AND FUNERAL SERVICES; 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 "Pre-need 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 pre-need
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 pre-need 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 pre-need contract
43 that will be responsible for performing a pre-need 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 pre-need
50 contract 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 pre-need 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) "Pre-need contract" means any contract, agreement
62 or 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 pre-need
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 pre-need 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 pre-need contracts except as authorized
87 under this act. All pre-need 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 pre-need 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 pre-need 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 pre-need contract and the nature and existence of any
118 guarantees relating to the pre-need contract;

119 (d) The impact on the pre-need 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 pre-need contract and all
130 relevant 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 pre-need 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 pre-need guarantees.

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

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

162 (7) The pre-need contract shall contain the address and
163 phone number of the Secretary of State with instructions that
164 consumer complaints may be filed with the Secretary of State.

165 (8) If the pre-need contract is paid in multiple payments,
166 the contract should indicate the amount, frequency and duration of



167 the payments and the amount of any interest charged. The contract
168 shall also include the impact on the contract if payments are not
169 made.

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

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

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

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

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

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



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

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

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

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

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



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

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

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

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



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

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

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

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

286 (5) The Secretary of State shall develop and furnish the
287 forms necessary for the registration of establishments and
288 individuals selling pre-need contracts.

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

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



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

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

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

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

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



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

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

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

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

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



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

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

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

369 (b) An opportunity for a hearing; and

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

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

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

390 SECTION 13. Nothing in this act shall be construed to
391 authorize the sale of life insurance policies by unlicensed agents
392 which is prohibited by Section 83-17-105, Mississippi Code of
393 1972.

394 SECTION 14. Sections 75-63-1, 75-63-3, 75-63-5, 75-63-7,
395 75-63-9, 75-63-11, 75-63-13, 75-63-15, 75-63-17, 75-63-18,



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

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

