

By: Senator(s) Browning, Farris

To: Insurance

SENATE BILL NO. 2457  
(As Passed the Senate)

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 Fifty  
267 Dollars (\$50.00). The establishment shall pay to the Secretary of  
268 State for the registration of each additional location a fee of  
269 Twenty-five Dollars (\$25.00).

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 Ten Dollars (\$10.00).

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.