To:  Insurance

MISSISSIPPI LEGISLATURE                        REGULAR SESSION 2001
By:  Senator(s) Browning, Farris

SENATE BILL NO. 2457
(As Sent to Governor)

AN ACT TO CREATE THE "PRE-NEED CEMETARY AND FUNERAL
REGISTRATION ACT"; TO DEFINE CERTAIN TERMS; TO REQUIRE ALL
PRE-NEED CONTRACTS SOLD TO BE EVIDENCED IN WRITING ON FORMS
REGISTERED WITH THE SECRETARY OF STATE; TO PRESCRIBE THE CONTENTS
OF SUCH WRITTEN PRE-NEED CONTRACT; TO PROVIDE FOR RECORD-KEEPING
REQUIREMENTS; TO PROVIDE TRUSTING REQUIREMENTS IF THE PRE-NEED
CONTRACT IS FUNDED BY A TRUST; TO PROVIDE CERTAIN REQUIREMENTS IF
THE PRE-NEED CONTRACT IS FUNDED BY INSURANCE; TO REQUIRE
REGISTRATION OF ALL PERSONS AND ESTABLISHMENTS SELLING PRE-NEED
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 CLARIFY THAT NOTHING IN THIS ACT
SHALL BE CONSTRUED TO AUTHORIZE THE SALE OF LIFE INSURANCE
POLICIES BY UNLICENSED AGENTS; TO REPEAL SECTIONS 75-63-1,
75-63-3, 75-63-7, 75-63-9, 75-63-11, 75-63-13, 75-63-15, 75-63-17,
75-63-19, 75-63-21 AND 75-63-23, MISSISSIPPI CODE OF
1972, WHICH REGULATE THE PRE-NEED SALES OF CEMETARY MERCHASIDE
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
"Pre-need 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 pre-need
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

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

(d) "Contract insured" means the person upon whose
death will initiate the performance of a pre-need contract.

(e) "Contract provider" means the funeral home,
cemetery or other providers of merchandise and/or service in a
pre-need contract that will be responsible for performing a
pre-need 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

(h) "Inflation proof contract" means a pre-need
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 a
Class A or Class B burial insurance policy.

(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) "Pre-need 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.
(1) "Seller" means the person who sells a pre-need contract.

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

(n) "Standard contract" means a pre-need 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 insured 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 pre-need contract insured.

(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 pre-need contracts except as authorized under this act. All pre-need contracts sold shall be evidenced in writing on forms registered with the Secretary of State. These forms shall clearly indicate the names and addresses of the buyer, contract insured, 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 cash advance items covered by the contract.

(3) All pre-need 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 the pre-need contract is funded by a policy of insurance, as defined by Section 83-5-5, a copy of the insurance policy shall be furnished to the insured within fifteen (15) days of issue. Such insurance shall be subject to the insurance laws of the state.

The insured shall be furnished the following:

(a) A list of the merchandise and services which are applied or contracted for in the pre-need 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;

(b) 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 pre-need contract; and

(c) 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 pre-need guarantees.

If the pre-need contract is not funded by a policy of insurance, as defined by Section 83-5-5, a copy of the pre-need contract shall be furnished to the contract insured within fifteen (15) days of purchase.

(5) If the pre-need 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 pre-need contract including, but not limited to, any additional payments that may be owed if the contract insured dies before the agreed upon payment period is completed.
(6) The pre-need 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.

(7) The pre-need 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 pre-need contract is paid in multiple payments, the contract shall 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 of any oral pre-need contract, or any written contract in a form not registered by the Secretary of State, shall be a violation of this act.

SECTION 4. The contract provider or its successor shall maintain a copy of all pre-need contracts entered into by the contract provider for a period of the lifetime of each contract and for two (2) years after the death of a contract insured.

SECTION 5. (1) If the contract is funded by trust, the Secretary of State 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 investments of the assets of the trust, or change in the trustee or trust institution, the Secretary of State shall be informed not less than thirty (30) days after the time such change occurs.

(2) Any trustee, other than a financial institution, 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 twenty (20) 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 pre-need contract shall fully disclose to the contract purchaser the amount deposited in trust and the amount withheld by the contract seller.

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

(5) 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 or proof of death and a letter of performance indicating that the contracted merchandise and services were provided by the contract provider to the contract insured. Upon receipt of the letter of performance and death certificate, or proof of death, the trustee shall pay to the contract provider all funds.

(6) If the contract provider does not furnish merchandise and services as provided in the pre-need contract, the trustee shall pay to the estate of the contract insured or the substitute provider not less than the amount deposited in trust, within ten (10) days from notification of the death of the contract insured.

SECTION 6. (1) If the pre-need 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 pre-need contract. If the contract provider does not furnish merchandise and/or services as
provided in the pre-need contract, the contract provider shall pay
to the estate of the contract insured or the substitute provider
of the merchandise and/or services the proceeds of the policy
within ten (10) days of receipt of these proceeds.

SECTION 7. If the pre-need contract contains a revocation
clause, the contract insured or his representatives may name a
substitute provider for the pre-need contract at any time prior to
the performance of the contract. The naming of the substitute
provider shall be in writing. If the pre-need contract is funded
by trust, the notice of substitution shall be made in writing to
the trustee and the Secretary of State. If the pre-need contract
is funded by insurance, the change of beneficiary 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 or organization which
engages in the business of selling pre-need merchandise and/or
services shall register with the Secretary of State and shall pay
a registration fee. A separate registration is required for each
separate corporation or business entity. The establishment or
organization shall pay to the Secretary of State for the
registration of the main establishment or organization a fee of
Two Hundred Fifty Dollars ($250.00).

(2) Any person who engages in the business of selling
pre-need contracts shall register with the Secretary of State.

(3) The Secretary of State shall establish regulations to
register each establishment or organization selling pre-need
merchandise or services. No establishment or organization shall
be registered to sell pre-need merchandise or services that the
establishment or organization 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 pre-need merchandise or services through the registered establishment.

(4) The Secretary of State shall establish regulations to register each person selling pre-need contracts, including the establishment through which the seller will be selling. No person shall be registered to sell pre-need 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 pre-need contracts.

SECTION 9. Every registered pre-need establishment shall annually submit a written report to the Secretary of State of its pre-need 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 or within ninety (90) days of the end of the establishment's fiscal year. 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 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 pre-need 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, with total
penalties not to exceed Five thousand Dollars ($5,000.00) in any
such 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 or restitution 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,
with total penalties not to exceed Five Thousand Dollars
($5,000.00) in any such proceedings. The court may not require
the Secretary of State to post a bond.

(2) The Secretary of State may, with a prior hearing,
suspend or revoke any pre-need 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 pre-need
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 pre-need 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
(1) 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 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, 75-63-7, 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 January 1, 2002.