

By: Senator(s) Browning, Farris

To: Insurance

SENATE BILL NO. 2457  
(As Sent to Governor)

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, 75-63-7, 75-63-9, 75-63-11, 75-63-13, 75-63-15, 75-63-17,  
17 75-63-18, 75-63-19, 75-63-21 AND 75-63-23, MISSISSIPPI CODE OF  
18 1972, WHICH REGULATE THE PRE-NEED SALES OF CEMETERY MERCHANDISE  
19 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 insured" means the person upon whose  
39 death will initiate the performance of a pre-need contract.

40 (e) "Contract provider" means the funeral home,  
41 cemetery or other providers of merchandise and/or service in a  
42 pre-need contract that will be responsible for performing a  
43 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 a  
53 Class A or Class B burial insurance policy.

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

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

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

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

71           (n) "Standard contract" means a pre-need contract that  
72 applies the trust funds or insurance proceeds to the purchase  
73 price of specific funeral services and specific merchandise at the  
74 time of death of the contract insured without a guarantee against  
75 future price increases.

76           (o) "Trust" means an express trust created by a trust  
77 instrument whereby a trustee has the duty to administer a trust  
78 asset for the benefit of a named pre-need contract insured.

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

81       SECTION 3. (1) No person, firm, partnership, association or  
82 corporation may directly or indirectly, or through an agent,  
83 engage in the sale of pre-need contracts except as authorized  
84 under this act. All pre-need contracts sold shall be evidenced in  
85 writing on forms registered with the Secretary of State. These  
86 forms shall clearly indicate the names and addresses of the buyer,  
87 contract insured, contract provider and seller.

88       (2) The contract shall clearly indicate all merchandise  
89 covered by the contract and the total cost of all merchandise  
90 covered by the contract. The contract shall list all services  
91 covered by the contract and the total cost for all services  
92 covered by the contract. The contract shall list all cash advance  
93 items covered by the contract and the total cost for all cash  
94 advance items covered by the contract.

95       (3) All pre-need contracts sold shall be funded by trust or  
96 insurance as defined in this act or evidenced by a warehouse  
97 receipt, as contemplated in Uniform Commercial Code-Documents of  
98 Title, Section 75-7-101 et seq.

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

104           The insured shall be furnished the following:

105                 (a) A list of the merchandise and services which are  
106 applied or contracted for in the pre-need contract and all  
107 relevant information concerning the price of the funeral services,  
108 including an indication that the purchase price is either  
109 guaranteed at the time of purchase or to be determined at the time  
110 of need;

111                 (b) All relevant information concerning what occurs and  
112 whether any entitlements or obligations arise if there is a  
113 difference between the proceeds of the life insurance policy and  
114 the amount actually needed to fund the pre-need contract; and

115                 (c) Any penalties or restrictions, including, but not  
116 limited to, geographic restrictions or the inability of the  
117 provider to perform, on the delivery of merchandise, services or  
118 the pre-need guarantees.

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

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

131           (6) The pre-need contract shall indicate whether it is a  
132 standard contract or an inflation proof contract, and whether it  
133 is revocable or irrevocable. The contract shall clearly indicate  
134 which merchandise and services are guaranteed as to price.

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

138           (8) If the pre-need contract is paid in multiple payments,  
139 the contract should indicate the amount, frequency and duration of  
140 the payments and the amount of any interest charged. The contract  
141 shall also include the impact on the contract if payments are not  
142 made.

143           (9) Any use of any oral pre-need contract, or any written  
144 contract in a form not registered by the Secretary of State, shall  
145 be a violation of this act.

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

150           SECTION 5. (1) If the contract is funded by trust, the  
151 Secretary of State shall be given a copy of the trust document and  
152 shall be informed in writing as to how the assets of the trust are  
153 held. In the event of any change in the investments of the assets  
154 of the trust, or change in the trustee or trust institution, the  
155 Secretary of State shall be informed not less than thirty (30)  
156 days after the time such change occurs.

157           (2) Any trustee, other than a financial institution, shall  
158 not be the contract provider, the seller, or an officer or  
159 director of the contract provider if the contract provider is a  
160 corporation.

161           (3) Within twenty (20) days from the end of the month in  
162 which the funds were received, the contract seller shall place in  
163 a trust account in a financial institution as defined by this act

164 at least fifty percent (50%) of the funds received. If the  
165 contract seller places less than one hundred percent (100%) in the  
166 trust account, the pre-need contract shall fully disclose to the  
167 contract purchaser the amount deposited in trust and the amount  
168 withheld by the contract seller.

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

172 (5) At the time of death, if the contract provider provides  
173 the merchandise and services indicated in the contract, the  
174 contract provider shall furnish to the trustee a copy of the  
175 buyer's death certificate or proof of death and a letter of  
176 performance indicating that the contracted merchandise and  
177 services were provided by the contract provider to the contract  
178 insured. Upon receipt of the letter of performance and death  
179 certificate, or proof of death, the trustee shall pay to the  
180 contract provider all funds.

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

186 SECTION 6. (1) If the pre-need contract is funded with  
187 insurance, and payment is made to the contract seller rather than  
188 directly to the life insurance company, the contract seller shall  
189 send to the insurance company all premiums collected from the  
190 contract purchaser.

191 (2) At the time of death, the proceeds of the policy shall  
192 be settled in accordance with the policy. If the contract  
193 provider furnishes merchandise and services as indicated in the  
194 contract, the contract provider is entitled to retain the proceeds  
195 of the policy in accordance with the pre-need contract. If the  
196 contract provider does not furnish merchandise and/or services as

197 provided in the pre-need contract, the contract provider shall pay  
198 to the estate of the contract insured or the substitute provider  
199 of the merchandise and/or services the proceeds of the policy  
200 within ten (10) days of receipt of these proceeds.

201       SECTION 7. If the pre-need contract contains a revocation  
202 clause, the contract insured or his representatives may name a  
203 substitute provider for the pre-need contract at any time prior to  
204 the performance of the contract. The naming of the substitute  
205 provider shall be in writing. If the pre-need contract is funded  
206 by trust, the notice of substitution shall be made in writing to  
207 the trustee and the Secretary of State. If the pre-need contract  
208 is funded by insurance, the change of beneficiary shall be made in  
209 writing to the insurance company. Upon receipt of the notice of  
210 substitute provider, the original provider shall be relieved of  
211 all obligations to perform the contract including all obligations  
212 of reporting and accounting, and the substitute provider shall  
213 assume all obligations to perform the contract including all  
214 obligations of reporting and accounting.

215       SECTION 8. (1) Any establishment or organization which  
216 engages in the business of selling pre-need merchandise and/or  
217 services shall register with the Secretary of State and shall pay  
218 a registration fee. A separate registration is required for each  
219 separate corporation or business entity. The establishment or  
220 organization shall pay to the Secretary of State for the  
221 registration of the main establishment or organization a fee of  
222 Two Hundred Fifty Dollars (\$250.00).

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

225       (3) The Secretary of State shall establish regulations to  
226 register each establishment or organization selling pre-need  
227 merchandise or services. No establishment or organization shall  
228 be registered to sell pre-need merchandise or services that the  
229 establishment or organization cannot lawfully provide at the time

230 of a person's death. The Secretary of State shall also maintain a  
231 record of all individuals who are registered to sell pre-need  
232 merchandise or services through the registered establishment.

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

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

241 SECTION 9. Every registered pre-need establishment shall  
242 annually submit a written report to the Secretary of State of its  
243 pre-need contract sales and performance of such contracts. This  
244 report shall be filed on or before March 31 of each year for the  
245 calendar year ending the preceding December 31 or within ninety  
246 (90) days of the end of the establishment's fiscal year. The  
247 Secretary of State shall adopt regulations concerning the content  
248 and filing procedure of this report.

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

254 (a) Issue a cease and desist order with a prior hearing  
255 against the person or persons engaged in the prohibited activities  
256 directing them to cease and desist from further illegal activity;

257 (b) (i) Issue an order in the case of any person,  
258 partnership or, if a corporation, the officers and directors who  
259 sell or offer to sell pre-need contracts, or other person who  
260 violated this act, imposing an administrative penalty up to a  
261 maximum of One Thousand Dollars (\$1,000.00) for each offense and  
262 each violation shall be considered as a separate offense in a



263 single proceeding or a series of related proceedings, with total  
264 penalties not to exceed Five thousand Dollars (\$5,000.00) in any  
265 such proceedings, to be paid to the Secretary of State and  
266 requiring reimbursement to the Secretary of State for all costs  
267 and expenses incurred in the investigation of the violation(s) and  
268 in the institution of administrative proceedings, if any, as a  
269 result thereof;

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

278 (c) Bring an action in chancery court to enjoin the  
279 acts or practices to enforce compliance with this act or any rule  
280 or order hereunder. Upon a proper showing, a permanent or  
281 temporary injunction, restraining order or writ of mandamus shall  
282 be granted and a receiver or conservator may be appointed for the  
283 defendant or the defendant's assets. In addition, upon a proper  
284 showing by the Secretary of State, the court may enter an order of  
285 rescission or restitution directed to any person who has engaged  
286 in any act constituting a violation of any provision of this act  
287 or any rule or order hereunder, or the court may impose a civil  
288 penalty up to a maximum of One Thousand Dollars (\$1,000.00) for  
289 each offense and each violation shall be considered as a separate  
290 offense in a single proceeding or a series of related proceedings,  
291 with total penalties not to exceed Five Thousand Dollars  
292 (\$5,000.00) in any such proceedings. The court may not require  
293 the Secretary of State to post a bond.

294 (2) The Secretary of State may, with a prior hearing,  
295 suspend or revoke any pre-need establishment or salesperson

296 registration for violation of statutes or regulations established  
297 under this act.

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

305 (4) Any person, partnership or, if a corporation, the  
306 officers and directors who embezzle or fraudulently or knowingly  
307 and willfully misapply or convert pre-need funds shall, upon  
308 conviction, be punished by imprisonment in the custody of the  
309 Mississippi Department of Corrections for a term of not less than  
310 ten (10) years, or be fined not more than One Thousand Dollars  
311 (\$1,000.00) and imprisoned in the county jail not more than one  
312 (1) year, or both fine and imprisonment. Each such violation  
313 shall constitute a separate offense.

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

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

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

324 (b) An opportunity for a hearing; and

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

326 SECTION 11. The information contained in or filed with any  
327 registration, statement, application or report may be made  
328 available to the public under such rules as the Secretary of State

329 prescribes. Information in the possession of, filed with or  
330 obtained by the Secretary of State in connection with any  
331 investigation or examination under this act shall be confidential  
332 and exempt from the requirements of the Mississippi Public Records  
333 Act of 1983. No such information may be disclosed by the  
334 Secretary of State, or any of his officers or employees, unless  
335 necessary or appropriate in connection with a particular  
336 investigation or proceeding under this act or for any law  
337 enforcement purpose.

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

345       SECTION 13. Nothing in this act shall be construed to  
346 authorize the sale of life insurance policies by unlicensed agents  
347 which is prohibited by Section 83-17-105, Mississippi Code of  
348 1972.

349       SECTION 14. Sections 75-63-1, 75-63-3, 75-63-7, 75-63-9,  
350 75-63-11, 75-63-13, 75-63-15, 75-63-17, 75-63-18, 75-63-19,  
351 75-63-21 and 75-63-23, Mississippi Code of 1972, which regulate  
352 the sales of cemetery merchandise and funeral services, are hereby  
353 repealed.

354       SECTION 15. This act shall take effect and be in force from  
355 and after January 1, 2002.