

**\*\*\*Adopted\*\*\***

**AMENDMENT No. 1 PROPOSED TO**

**Senate Bill NO. 2457**

**By Representative(s) Committee**

**Amend by striking all after the enacting clause and inserting  
in lieu thereof the following:**

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 in a pre-need contract  
42 that will be responsible for performing a pre-need contract.

43           (f) "Financial institution" means a bank, trust  
44 company, savings bank, or savings and loan association chartered  
45 and authorized to do business in this state.

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

48           (h) "Inflation proof contract" means a pre-need  
49 contract that establishes a fixed price for funeral services and  
50 merchandise without regard to future price increases.

51           (i) "Insurance" means a life insurance policy, a Class  
52 A or Class B burial insurance policy or an annuity contract, or  
53 other insurance contract or agreement in any form, issued by an  
54 insurance company authorized by law to do business in this state  
55 which, by assignment to a contract provider, has for a purpose the  
56 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 insured without a guarantee against  
78 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 pre-need contract insured.

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 clearly indicate the names and addresses of the buyer,  
90 contract insured, contract provider and seller.

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

98 not exceed the sum of the total cost for all merchandise, the  
99 total cost for all services and any interest.

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

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

109 The insured shall be furnished the following:

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

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

120 (c) Any penalties or restrictions, including, but not  
121 limited to, geographic restrictions or the inability of the  
122 provider to perform, on the delivery of merchandise, services or  
123 the pre-need guarantees.

124 (5) If the pre-need contract is funded by trust, the  
125 contract shall indicate the name, address and telephone number of  
126 the trustee; the amount to be paid; the frequency of payment; and  
127 the length of time payments will be paid into the trust. In

128 addition, the contract should clearly indicate any exclusions or  
129 limitations of the pre-need contract including, but not limited  
130 to, any additional payments that may be owed if the contract  
131 insured dies before the agreed upon payment period is completed.

132 (6) The pre-need contract shall indicate whether it is a  
133 standard contract or an inflation proof contract, and whether it  
134 is revocable or irrevocable. The contract shall clearly indicate  
135 which merchandise and services are guaranteed as to price, and  
136 which cash advance items are not guaranteed as to price.

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

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

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

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

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

158 such change occurs.

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

163 (3) Within twenty (20) days from the end of the month in  
164 which the funds were received, the contract seller shall place in  
165 a trust account in a financial institution as defined by this act  
166 at least fifty percent (50%) of the funds received. If the  
167 contract seller places less than one hundred percent (100%) in the  
168 trust account, the pre-need contract shall fully disclose to the  
169 contract purchaser the amount deposited in trust and the amount  
170 withheld by the contract seller.

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

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

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

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

193        (2) At the time of death, the proceeds of the policy shall  
194 be settled in accordance with the policy. If the contract  
195 provider furnishes merchandise and services as indicated in the  
196 contract, the contract provider is entitled to retain the proceeds  
197 of the policy in accordance with the pre-need contract. If the  
198 contract provider does not furnish merchandise and services as  
199 provided in the pre-need contract, the contract provider shall pay  
200 to the estate of the contract insured or the substitute provider  
201 of the merchandise and services the entire proceeds of the policy  
202 within ten (10) days of receipt of these proceeds.

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

217        SECTION 8. (1) Any establishment which engages in the

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

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

226 (3) The Secretary of State shall establish regulations to  
227 register each establishment selling pre-need merchandise or  
228 services. No establishment shall be registered to sell pre-need  
229 merchandise or services that the establishment cannot lawfully  
230 provide at the time of a person's death. The Secretary of State  
231 shall also maintain a record of all individuals who are registered  
232 to sell pre-need merchandise or services through the registered  
233 establishment.

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

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

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



248 Secretary of State shall adopt regulations concerning the content  
249 and filing procedure of this report.

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

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

258 (b) (i) Issue an order in the case of any person,  
259 partnership or, if a corporation, the officers and directors who  
260 sell or offer to sell pre-need contracts, or other person who  
261 violated this act, imposing an administrative penalty up to a  
262 maximum of One Thousand Dollars (\$1,000.00) for each offense and  
263 each violation shall be considered as a separate offense in a  
264 single proceeding or a series of related proceedings, with total  
265 penalties not to exceed Five thousand Dollars (\$5,000.00) in any  
266 such proceedings, to be paid to the Secretary of State and  
267 requiring reimbursement to the Secretary of State for all costs  
268 and expenses incurred in the investigation of the violation(s) and  
269 in the institution of administrative proceedings, if any, as a  
270 result thereof;

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

278 person committing the violation;

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

295 (2) The Secretary of State may, with a prior hearing,  
296 suspend or revoke any pre-need establishment or salesperson  
297 registration for violation of statutes or regulations established  
298 under this act.

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

306 (4) Any person, partnership or, if a corporation, the  
307 officers and directors who embezzle or fraudulently or knowingly

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

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

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

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

325 (b) An opportunity for a hearing; and

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

327 SECTION 11. The information contained in or filed with any  
328 registration, statement, application or report may be made  
329 available to the public under such rules as the Secretary of State  
330 prescribes. Information in the possession of, filed with or  
331 obtained by the Secretary of State in connection with any  
332 investigation or examination under this act shall be confidential  
333 and exempt from the requirements of the Mississippi Public Records  
334 Act of 1983. No such information may be disclosed by the  
335 Secretary of State, or any of his officers or employees, unless  
336 necessary or appropriate in connection with a particular  
337 investigation or proceeding under this act or for any law

338 enforcement purpose.

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

346        SECTION 13. Nothing in this act shall be construed to  
347 authorize the sale of life insurance policies by unlicensed agents  
348 which is prohibited by Section 83-17-105, Mississippi Code of  
349 1972.

350        SECTION 14. Sections 75-63-1, 75-63-3, 75-63-5, 75-63-7,  
351 75-63-9, 75-63-11, 75-63-13, 75-63-15, 75-63-17, 75-63-18,  
352 75-63-19, 75-63-21 and 75-63-23, Mississippi Code of 1972, which  
353 regulate the sales of cemetery merchandise and funeral services,  
354 are hereby repealed.

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