

By: Representative Chism

To: Insurance

HOUSE BILL NO. 1483

1 AN ACT TO AMEND SECTION 75-63-53, MISSISSIPPI CODE OF 1972,
 2 TO DEFINE CERTAIN TERMS UNDER THE PRE-NEED CEMETERY AND FUNERAL
 3 REGISTRATION ACT; TO AMEND SECTION 75-63-55, MISSISSIPPI CODE OF
 4 1972, TO PROVIDE FOR COMBINATION OF TRUST AND INSURANCE FUNDED
 5 PRE-NEED CONTRACTS; TO AMEND SECTION 75-63-57, MISSISSIPPI CODE OF
 6 1972, TO PROVIDE FOR BOOKS AND RECORDS REQUIREMENTS; TO AMEND
 7 SECTION 75-63-59, MISSISSIPPI CODE OF 1972, TO INCREASE THE AMOUNT
 8 IN TRUST IF THE PRE-NEED CONTRACT IS FUNDED BY A TRUST; TO AMEND
 9 SECTION 75-63-65, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR RENEWAL
 10 OF REGISTRATION OF ESTABLISHMENTS AND PERSONS ENGAGED IN THE
 11 BUSINESS OF SELLING PRE-NEED CONTRACTS; TO AMEND SECTION 75-63-67,
 12 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR AN ANNUAL REPORT FEE; TO
 13 AMEND SECTION 75-63-69, MISSISSIPPI CODE OF 1972, TO INCREASE THE
 14 MAXIMUM ADMINISTRATIVE AND CIVIL PENALTY TO TWENTY-FIVE THOUSAND
 15 DOLLARS; TO AMEND SECTION 75-63-71, MISSISSIPPI CODE OF 1972, TO
 16 AUTHORIZE DISCLOSURE OF INFORMATION IN THE INTEREST OF INFORMING
 17 THE PUBLIC; AND FOR RELATED PURPOSES.

18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

19 **SECTION 1.** Section 75-63-53, Mississippi Code of 1972, is
 20 amended as follows:

21 75-63-53. As used in this article, unless the context
 22 requires otherwise:

23 (a) "Agent" means the person who sells the pre-need
 24 contract on behalf of a contract provider.

25 (b) "Business entity" includes domestic and foreign
 26 corporations; not-for-profit corporations; profit and
 27 not-for-profit unincorporated associations; partnerships; sole
 28 proprietorships; trusts; and city, county, state and United States
 29 government.

30 (c) "Buyer" means the person who purchases the pre-need
 31 contract.

32 (d) "Cash advance item" means any item of service or
 33 merchandise described to a purchaser as a "cash advance,"
 34 "accommodation," "cash disbursement" or similar term. A cash

35 advance item is also any item obtained from a third party and paid
36 for by the funeral provider on the purchaser's behalf. Cash
37 advance items may include, but are not limited to: cemetery or
38 crematory services; pallbearers; public transportation; clergy
39 honoraria; flowers; musicians or singers; nurses; obituary
40 notices; gratuities and death certificates.

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

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

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

49 (h) "Establishment" means any business entity that
50 sells pre-need merchandise or services, or both.

51 (i) "Financial institution" means a bank, trust
52 company, savings bank, or savings and loan association chartered
53 and authorized to do business in this state.

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

56 (k) "Inflation proof contract" means a pre-need
57 contract that establishes a fixed price for funeral services and
58 merchandise without regard to future price increases.

59 (l) "Insurance" means a life insurance policy or a
60 Class A or Class B burial insurance policy.

61 (m) "Merchandise" means personal property associated
62 with the disposal of or memorializing a deceased human being,
63 including, but not limited to, a casket, burial vault, burial
64 clothes, urn or monument.

65 (n) "Pre-need contract" means any contract, agreement
66 or any series or combination of contracts or agreements, whether
67 funded by trust deposits or insurance, or any combination thereof,

68 which has for a purpose the furnishing or performance of funeral
69 services, or the furnishing or delivery of merchandise, of any
70 nature in connection with the final disposition of a dead human
71 body, to be furnished or delivered at a time determinable by the
72 death of the person whose body is to be disposed of but shall not
73 mean the furnishing of a cemetery lot, crypt, niche or mausoleum.

74 (o) "Seller" means the person who sells a pre-need
75 contract.

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

78 (o) "Standard contract" means a pre-need contract that
79 applies the trust funds or insurance proceeds to the purchase
80 price of specific funeral services and specific merchandise at the
81 time of death of the contract insured without a guarantee against
82 future price increases.

83 (r) "Trust" means an express trust created by a trust
84 instrument whereby a trustee has the duty to administer a trust
85 asset for the benefit of a named pre-need contract insured.

86 (s) "Trustee" means an individual or legal entity
87 whether an original, added or successor trustee and, in the case
88 of a corporate trustee, includes its successor by merger or
89 consolidation.

90 **SECTION 2.** Section 75-63-55, Mississippi Code of 1972, is
91 amended as follows:

92 75-63-55. (1) No person, firm, partnership, association or
93 corporation may directly or indirectly, or through an agent,
94 engage in the sale of pre-need contracts except as authorized
95 under this article. All pre-need contracts sold shall be
96 evidenced in writing on forms registered with the Secretary of
97 State. These forms shall clearly indicate the names and addresses
98 of the buyer, contract insured, contract provider and seller.

99 (2) The contract shall clearly indicate all merchandise
100 covered by the contract and the total cost of all merchandise

101 covered by the contract. The contract shall list all services
102 covered by the contract and the total cost for all services
103 covered by the contract. The contract shall list all cash advance
104 items covered by the contract and the total cost for all cash
105 advance items covered by the contract.

106 (3) All pre-need contracts sold shall be funded by trust or
107 insurance, or a combination thereof, as defined in this article or
108 evidenced by a warehouse receipt, as contemplated in Uniform
109 Commercial Code-Documents of Title, Section 75-7-101 et seq.

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

115 The insured shall be furnished the following:

116 (a) A list of the merchandise and services which are
117 applied or contracted for in the pre-need contract and all
118 relevant information concerning the price of the funeral services,
119 including an indication that the purchase price is either
120 guaranteed at the time of purchase or to be determined at the time
121 of need;

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

126 (c) Any penalties or restrictions, including, but not
127 limited to, geographic restrictions or the inability of the
128 provider to perform, on the delivery of merchandise, services or
129 the pre-need guarantees.

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

134 (5) If the pre-need contract is funded by trust, the
135 contract shall indicate the name, address and telephone number of
136 the trustee; the amount to be paid; the frequency of payment; and
137 the length of time payments will be paid into the trust. In
138 addition, the contract should clearly indicate any exclusions or
139 limitations of the pre-need contract including, but not limited
140 to, any additional payments that may be owed if the contract
141 insured dies before the agreed upon payment period is completed.

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

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

149 (8) If the pre-need contract is paid in multiple payments,
150 the contract should indicate the amount, frequency and duration of
151 the payments and the amount of any interest charged. The contract
152 shall also include the impact on the contract if payments are not
153 made.

154 (9) Any use of any oral pre-need contract, or any written
155 contract in a form not registered by the Secretary of State, shall
156 be a violation of this article.

157 **SECTION 3.** Section 75-63-57, Mississippi Code of 1972, is
158 amended as follows:

159 75-63-57. The contract provider or its successor shall
160 maintain true and correct books and records of all pre-need
161 activities as prescribed by rules adopted by the Secretary of
162 State for a period of the lifetime of each contract and for two
163 (2) years after the death of a contract insured. All such books
164 and records shall be open to inspection at all reasonable times by
165 the Secretary of State or his duly authorized representatives.

166 **SECTION 4.** Section 75-63-59, Mississippi Code of 1972, is
167 amended as follows:

168 75-63-59. (1) If the contract is funded by trust, the
169 Secretary of State shall be given a copy of the trust document and
170 shall be informed in writing as to how the assets of the trust are
171 held. In the event of any change in the investments of the assets
172 of the trust, or change in the trustee or trust institution, the
173 Secretary of State shall be informed not less than thirty (30)
174 days after the time such change occurs.

175 (2) No trustee, other than a financial institution,
176 shall * * * be the contract provider, the seller, or an officer or
177 director of the contract provider if the contract provider is a
178 corporation.

179 (3) Within twenty (20) days from the end of the month in
180 which the funds were received, the contract seller shall place in
181 a trust account in a financial institution as defined by this
182 article at least one hundred percent (100%) of the funds
183 received. * * * The pre-need contract shall fully disclose to the
184 contract purchaser the amount deposited in trust.

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

188 (5) At the time of death, if the contract provider provides
189 the merchandise and services indicated in the contract, the
190 contract provider shall furnish to the trustee a copy of the
191 buyer's death certificate or proof of death and a letter of
192 performance indicating that the contracted merchandise and
193 services were provided by the contract provider to the contract
194 insured. Upon receipt of the letter of performance and death
195 certificate, or proof of death, the trustee shall pay to the
196 contract provider all funds.

197 (6) If the contract provider does not furnish merchandise
198 and services as provided in the pre-need contract, the trustee

199 shall pay to the estate of the contract insured or the substitute
200 provider not less than the amount deposited in trust, within ten
201 (10) days from notification of the death of the contract insured.

202 **SECTION 5.** Section 75-63-65, Mississippi Code of 1972, is
203 amended as follows:

204 75-63-65. (1) Any establishment or organization which
205 engages in the business of selling pre-need merchandise and/or
206 services shall register with the Secretary of State and shall pay
207 a registration fee. A separate registration is required for each
208 separate corporation or business entity. The establishment or
209 organization shall pay to the Secretary of State for the
210 registration of the main establishment or organization a fee of
211 Two Hundred Fifty Dollars (\$250.00). Such registration shall
212 remain in effect for one (1) year, unless renewed by the filing of
213 forms as prescribed by the Secretary of State and upon payment of
214 a renewal fee of One Hundred Dollars (\$100.00).

215 (2) Any person who engages in the business of selling
216 pre-need contracts shall register with the Secretary of State and
217 shall pay a registration fee of Fifty Dollars (\$50.00). Such
218 registration shall remain in effect for one (1) year, unless
219 renewed by the filing of forms as prescribed by the Secretary of
220 State and upon payment of a renewal fee of Fifty Dollars (\$50.00).

221 (3) The Secretary of State shall establish regulations to
222 register each establishment or organization selling pre-need
223 merchandise or services. No funeral home shall be registered to
224 sell pre-need merchandise or services that the funeral home cannot
225 lawfully provide * * *. The Secretary of State shall also
226 maintain a record of all individuals who are registered to sell
227 pre-need merchandise or services through the registered
228 establishment.

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

232 shall be registered to sell pre-need contracts without indicating
233 the establishment for which he or she is selling.

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

237 **SECTION 6.** Section 75-63-67, Mississippi Code of 1972, is
238 amended as follows:

239 75-63-67. Every registered pre-need establishment shall
240 annually submit a written report to the Secretary of State of its
241 pre-need contract sales and performance of such contracts. This
242 report shall be filed on or before March 31 of each year for the
243 calendar year ending the preceding December 31 or within ninety
244 (90) days of the end of the establishment's fiscal year. The
245 Secretary of State shall adopt regulations concerning the content
246 and filing procedure of this report. The establishment shall pay
247 to the Secretary of State an annual report fee of Fifty Dollars
248 (\$50.00).

249 **SECTION 7.** Section 75-63-69, Mississippi Code of 1972, is
250 amended as follows:

251 75-63-69. (1) Whenever it appears to the Secretary of State
252 that any person has engaged, or is about to engage, in any act or
253 practice constituting a violation of any provision of this article
254 or any rule or order hereunder, he may, in his discretion, seek
255 any or all of the following remedies:

256 (a) Issue a cease and desist order with or without a
257 prior hearing against the person or persons engaged in the
258 prohibited activities directing them to cease and desist from
259 further illegal activity;

260 (b) (i) Issue an order in the case of any person,
261 partnership or, if a corporation, the officers and directors who
262 sell or offer to sell pre-need contracts, or other person who
263 violated this article, imposing an administrative penalty up to a
264 maximum of Twenty-five Thousand Dollars (\$25,000.00) for each

265 offense and each violation shall be considered as a separate
266 offense in a single proceeding or a series of related
267 proceedings, * * * to be paid to the Secretary of State and
268 requiring reimbursement to the Secretary of State for all costs
269 and expenses incurred in the investigation of the violation(s) and
270 in the institution of administrative proceedings, if any, as a
271 result thereof;

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

280 (c) Bring an action in chancery court to enjoin the
281 acts or practices to enforce compliance with this article or any
282 rule or order hereunder. Upon a proper showing, a permanent or
283 temporary injunction, restraining order or writ of mandamus shall
284 be granted and a receiver or conservator may be appointed for the
285 defendant or the defendant's assets. In addition, upon a proper
286 showing by the Secretary of State, the court may enter an order of
287 rescission or restitution directed to any person who has engaged
288 in any act constituting a violation of any provision of this
289 article or any rule or order hereunder, or the court may impose a
290 civil penalty up to a maximum of Twenty-five Thousand Dollars
291 (\$25,000.00) for each offense and each violation shall be
292 considered as a separate offense in a single proceeding or a
293 series of related 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 article.

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 more than
311 ten (10) years, or be fined not less than One Thousand Dollars
312 (\$1,000.00) and imprisoned in the county jail not less 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 article requiring
317 fines or imprisonment, the Secretary of State shall immediately
318 report this violation accompanied by all relevant records to the
319 Insurance Integrity Enforcement Bureau within the Office of
320 Attorney General created in Section 7-5-301.

321 (6) No final order shall be entered under this section
322 without the 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 8.** Section 75-63-71, Mississippi Code of 1972, is
328 amended as follows:

329 75-63-71. The information contained in or filed with any
330 registration, statement, application or report may be made
331 available to the public under such rules as the Secretary of State
332 prescribes. Information in the possession of, filed with or
333 obtained by the Secretary of State in connection with any
334 investigation or examination under this article shall be
335 confidential, privileged and exempt from the requirements of the
336 Mississippi Public Records Act of 1983. No such information may
337 be disclosed by the Secretary of State, or any of his officers or
338 employees, unless necessary or appropriate in connection with a
339 particular investigation or proceeding under this article or for
340 any law enforcement purpose or in the interest of informing the
341 public.

342 **SECTION 9.** This act shall take effect and be in force from
343 and after July 1, 2005.