

By: Representative Bain

To: Judiciary A

HOUSE BILL NO. 682

1 AN ACT TO AMEND SECTION 41-43-37, MISSISSIPPI CODE OF 1972,  
2 TO REQUIRE THE OWNER OF EVERY PERPETUAL CARE CEMETERY SUBJECT TO  
3 THE CEMETERY LAW TO FILE WITH THE SECRETARY OF STATE A SURETY BOND  
4 IN THE SUM OF FIVE HUNDRED THOUSAND DOLLARS, OR SUCH LOWER AMOUNT  
5 AS PRESCRIBED BY THE SECRETARY OF STATE, FOR THE BENEFIT OF ANY  
6 OWNER OR PURCHASER, OR THE FAMILY, LEGAL REPRESENTATIVE OR NEXT OF  
7 KIN OF ANY SUCH OWNER OR PURCHASER, OF ANY LOT, PLOT, GRAVE,  
8 CRYPT, NICHE OR BURIAL SPACE WITHIN THE CEMETERY, WHEN THE  
9 CEMETERY IS INSOLVENT OR ABOUT TO BECOME INSOLVENT, OR NO  
10 PERPETUAL CARE TRUST FUND HAS BEEN ESTABLISHED FOR THE CEMETERY  
11 OR, IF ESTABLISHED, THE TRUST FUND DOES NOT CONTAIN THE FUNDS AS  
12 ARE REQUIRED TO BE CONTAINED IN THE TRUST FUND; TO AMEND SECTION  
13 41-43-38, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ANY SUCH  
14 PERSON MAY CLAIM AGAINST THE BOND FOR ANY LOSSES OR DAMAGES  
15 SUSTAINED BY THE PERSON; TO AMEND SECTION 73-63-59, MISSISSIPPI  
16 CODE OF 1972, TO REQUIRE SELLERS OF PRENEED CONTRACTS THAT ARE  
17 FUNDED BY TRUST TO FILE WITH THE SECRETARY OF STATE A SURETY BOND  
18 IN THE SUM OF FIVE HUNDRED THOUSAND DOLLARS, OR SUCH LOWER AMOUNT  
19 AS PRESCRIBED BY THE SECRETARY OF STATE, FOR THE BENEFIT OF THE  
20 CONTRACT INSURED OR THE BENEFICIARIES OR ESTATE OF THE CONTRACT  
21 INSURED FOR FINANCIAL LOSS OR OTHER DAMAGES SUFFERED AS A RESULT  
22 OF IMPROPER ACTIONS OF A CONTRACT PROVIDER OR IMPROPER USE OF  
23 TRUST FUNDS OR THE INSOLVENCY OF THE TRUST; TO BRING FORWARD  
24 SECTION 75-63-81, MISSISSIPPI CODE OF 1972, FOR THE PURPOSES OF  
25 POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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

27 **SECTION 1.** Section 41-43-37, Mississippi Code of 1972, is  
28 amended as follows:



29           41-43-37. (1) The owner of every cemetery, subject to the  
30 provisions of Section 41-43-31 et seq., that is organized, begins  
31 or continues to do business in the State of Mississippi after July  
32 1, 2009, shall provide for the creation and establishment of an  
33 irrevocable perpetual care trust fund, the principal of which  
34 shall permanently remain intact except as hereinafter provided and  
35 only the income thereof shall be devoted to the perpetual care of  
36 the cemetery. The perpetual care trust fund shall not be subject  
37 to the claims of the cemetery's creditors and shall not be used as  
38 collateral, pledged, encumbered or placed at risk. This fund  
39 shall be created and established as follows:

40           (a) In respect to a cemetery for earth burials, by the  
41 application and payment thereto of an amount equivalent to fifteen  
42 percent (15%) of the sale price, or Forty Cents (40¢) per square  
43 foot of ground interment rights sold, whichever is greater;

44           (b) In respect to an above-ground community or public  
45 mausoleum, by the application and payment thereto of an amount  
46 equivalent to five percent (5%) of the sale price, or Fifty  
47 Dollars (\$50.00) per crypt sold, whichever is greater;

48           (c) In respect to the placement of an above-ground,  
49 free-standing or private mausoleum, by the application and payment  
50 thereof of an amount equivalent to fifteen percent (15%) of the  
51 sale price for the ground interment right upon which the private  
52 mausoleum is installed and five percent (5%) of the sales price as



53 determined by the customer's invoice for the purchase price of the  
54 private mausoleum; and

55 (d) In respect to a community columbarium, by the  
56 application and payment thereto of an amount equivalent to five  
57 percent (5%) of the sale price, or Ten Dollars (\$10.00) per niche  
58 sold, whichever is greater.

59 For any sale of a lot for an earth burial, mausoleum crypt or  
60 columbarium niche in which payment is made by the purchaser on an  
61 installment basis over time, the percentage required to be trusted  
62 shall be paid into the perpetual care trust fund calculated on  
63 each payment.

64 (2) From the sale price the owner shall pay to the perpetual  
65 care fund an amount in proportion to the requirements in  
66 subsection (1) of this section, which payment shall be in cash,  
67 check, money order or electronic transfer and shall be deposited  
68 with the custodian or trustee of the fund not later than the fifth  
69 day of the following month from when funds are received.

70 (3) If the perpetual care trust fund principal is Fifty  
71 Thousand Dollars (\$50,000.00) or less, a perpetual care cemetery  
72 may maintain certificates of deposit that mature every thirty (30)  
73 days issued by an institution whose deposits are insured by the  
74 Federal Deposit Insurance Corporation. Certificates of deposits  
75 held by a cemetery for perpetual care under this subsection shall  
76 renew automatically with all earned interest added to principal  
77 for each successive renewal. Collections owed to trust from sales



78 under subsection (1) of this section shall be added upon the next  
79 maturity date of the certificate rather than the fifth day of the  
80 following month as required by subsection (2) of this section.  
81 Certificates of deposit meeting the requirements of this  
82 subsection shall contain the words, "For Perpetual Care," in the  
83 caption of the certificate. Each perpetual care cemetery electing  
84 to maintain certificates of deposit under this subsection shall  
85 file documentation from the issuer with the Office of the  
86 Secretary of State with the submission of the annual report. Once  
87 the perpetual care principal from the cemetery's operations  
88 exceeds Fifty Thousand Dollars (\$50,000.00), such funds shall be  
89 held in an irrevocable trust managed by a trustee and governed by  
90 a trust instrument.

91 (4) In addition to the provisions of subsections (1) and (2)  
92 of this section, any cemetery organized after July 1, 2009, or any  
93 mausoleum or columbarium that is built at any location other than  
94 upon property owned by an existing cemetery after that date,  
95 whether it is by incorporation, association, individually or by  
96 any other means, or having its first burial after that date,  
97 shall, before disposing of any burial lot or right or making any  
98 sale thereof and/or making its first burial, cause to be deposited  
99 the sum of Twenty-five Thousand Dollars (\$25,000.00) in cash into  
100 an irrevocable perpetual care trust fund as provided in subsection  
101 (1) of this section for the maintenance of the cemetery.



102 (5) Whenever the cemetery has deposited in the perpetual  
103 care fund, as required by this section, a sum amounting to Fifty  
104 Thousand Dollars (\$50,000.00), it shall submit proof of that fact  
105 to its trustee, and it shall be the duty of the trustee to  
106 thereupon pay over to the cemetery the amount of Twenty-five  
107 Thousand Dollars (\$25,000.00) so originally deposited by it in the  
108 perpetual care fund.

109 (6) The perpetual care fund shall be permanently set aside  
110 in trust to be administered under the jurisdiction of the  
111 Secretary of State. The Secretary of State shall have full  
112 jurisdiction over the reports and accounting of trustees and the  
113 amount of a surety bond required, if any. The trust officer or  
114 trustee responsible for the investment of funds shall be  
115 affiliated with an established bank, trust company, other  
116 financial institution or financial services company. Only the  
117 income from the fund shall be used for the care and maintenance of  
118 the cemetery for which it was established.

119 (7) The owner of every cemetery subject to the provisions of  
120 Section 41-43-31 et seq. shall file with the Secretary of State a  
121 surety bond in which the owner is the principal obligor, in the  
122 sum of Five Hundred Thousand Dollars (\$500,000.00), or such lower  
123 amount as prescribed by the Secretary of State, with one or more  
124 surety companies licensed to do business in this state whose  
125 liability in the aggregate will be equal to that sum. The bond  
126 shall be in favor of the State of Mississippi for the benefit of



127 any owner or purchaser, or the family, legal representative or  
128 next of kin of any such owner or purchaser, of any lot, plot,  
129 grave, crypt, niche or burial space within the cemetery, when (a)  
130 the cemetery is insolvent or about to become insolvent, or (b) no  
131 perpetual care trust fund has been established for the cemetery  
132 or, if established, the trust fund does not contain the funds as  
133 are required to be contained in the trust fund. Any person  
134 claiming against the bond may maintain an action against the  
135 cemetery and the surety.

136 ( \* \* \*8) Each geographic location of a cemetery shall  
137 constitute a separate and distinct cemetery for the purpose of  
138 interpretation and application of this section.

139 ( \* \* \*9) The Secretary of State shall develop and implement  
140 a registration system for perpetual care cemeteries subject to  
141 this chapter. The Secretary of State is authorized to promulgate  
142 rules and regulations for the development and implementation of a  
143 statewide registry and to collect a registration fee not to exceed  
144 Twenty-five Dollars (\$25.00) per year to be paid at the same time  
145 as the reports and accountings required by Section 41-43-38 are  
146 due.

147 ( \* \* \*10) To assist with the development of a statewide  
148 registry of perpetual care cemeteries, the county boards of  
149 supervisors in conjunction with the chancery clerks shall provide  
150 the Secretary of State with a list of all perpetual care  
151 cemeteries and other pertinent information regarding perpetual



152 care cemeteries situated in their respective counties no later  
153 than October 31, 2009.

154 **SECTION 2.** Section 41-43-38, Mississippi Code of 1972, is  
155 amended as follows:

156 41-43-38. (1) The provisions of this section shall apply to  
157 every cemetery that is required to establish and maintain a  
158 perpetual care trust fund as provided in Section 41-43-37.

159 (2) By March 31 of each year, each perpetual care cemetery  
160 not exempt by Section 41-43-33 shall file with the Secretary of  
161 State the following information:

162 (a) The name of the cemetery, the date of  
163 incorporation, if incorporated, and the location of the cemetery  
164 or cemeteries owned;

165 (b) The amounts of sales of cemetery lots, grave  
166 spaces, mausoleum crypts or columbarium niches for which payment  
167 has been made in full or deeds of conveyance or perpetual  
168 easements issued thereon during the preceding calendar year;

169 (c) The amounts paid into the perpetual care fund, and  
170 the income earned therefrom during the preceding calendar year;

171 (d) The number of acres embraced within each cemetery  
172 and held by the cemetery for cemetery purposes; and

173 (e) The names and addresses of the owners of the  
174 cemetery or the officers and directors of the corporation and any  
175 change of control that occurred during the preceding calendar  
176 year.



177           (3) The custodian or trustee of the perpetual care fund of  
178 each cemetery shall annually prepare and file with the Secretary  
179 of State a detailed accounting and report of the fund on or before  
180 March 31 of each year for the preceding calendar year. The  
181 accounting and report shall contain a properly itemized  
182 description of the securities in which the monies of the perpetual  
183 care fund are invested, the fund value, and any changes in the  
184 investment portfolio from the prior year's report. The accounting  
185 and report shall be at all times available to inspection and copy  
186 by any owner of a burial right in the cemetery, or the family,  
187 legal representative or next of kin of the owner, at the usual  
188 place for transacting the regular business of the cemetery.

189           For each day that the report and accounting required by  
190 subsections (2) and (3) of this section are late, the Secretary of  
191 State is authorized to charge a late fee of Ten Dollars (\$10.00)  
192 per day.

193           (4) As a condition to the transfer of any perpetual care  
194 trust fund monies from one (1) trustee or trust institution to  
195 another, the cemetery for which the fund is maintained shall, not  
196 less than thirty (30) days before the time when the transfer is to  
197 occur, file with the Secretary of State a written notice of intent  
198 to transfer accompanied with a letter of intent to receive the  
199 trust fund monies from the trustee or trust institution to which  
200 the trust fund monies are to be transferred. The fund monies  
201 shall be transferred directly from the existing custodian or





202 trustee to the receiving custodian or trustee only after approval  
203 has been issued in writing by the Secretary of State or his  
204 representative.

205 (5) Before any sale or transfer of a perpetual care cemetery  
206 or a controlling interest therein, an independent audit of the  
207 perpetual care trust fund shall be performed at the expense of the  
208 seller and/or buyer or transferor and transferee and filed with  
209 the Secretary of State. The audit shall be current within thirty  
210 (30) days of the proposed sale or transfer. No sale or transfer  
211 of any perpetual care cemetery shall occur until approved in  
212 writing by the Secretary of State or his representative.

213 (6) The Secretary of State shall, upon the failure to timely  
214 receive any of the records, reports or notices provided for in  
215 this section, immediately give notice by certified letter or hand  
216 delivery to the last known cemetery owner or owners, or, if  
217 incorporated, its officers and directors, at its or their last  
218 known address, that those records, reports or notices have not  
219 been received. Failure of those persons to file the records,  
220 reports or notices within fifteen (15) days after receipt of the  
221 certified letter or hand delivery shall, in the absence of clear  
222 justification or excuse, constitute a misdemeanor and each owner  
223 of the cemetery and, if incorporated, its officers and directors,  
224 shall be subject to the penalties provided for in Section  
225 41-43-53.



226 (7) Whenever it reasonably appears to the Secretary of  
227 State, any owner or purchaser, or the family, legal representative  
228 or next of kin of any such owner or purchaser, of any lot, plot,  
229 grave, crypt, niche or burial space within a perpetual care  
230 cemetery, that (a) the cemetery is insolvent or about to become  
231 insolvent; or (b) no perpetual care trust fund has been  
232 established for the cemetery or, if established, the trust fund  
233 does not contain the funds as are required to be contained  
234 therein, that party may bring an action in the chancery court in  
235 the county in which the cemetery is located. Upon a proper  
236 showing, the court shall order a private audit and examination of  
237 any perpetual care trust fund of the cemetery and of all the  
238 books, records and papers employed in the transaction of the  
239 cemetery business.

240 If the audit and examination show that the cemetery is  
241 insolvent or is about to become insolvent, or that a sufficient  
242 trust fund is not established or being maintained for the  
243 cemetery, the court shall exercise any jurisdiction and make and  
244 issue any orders and decrees as may be necessary to correct and  
245 enforce compliance with the provisions of Section 41-43-31 et seq.  
246 and all such other orders and decrees as shall be just, equitable  
247 and in the public interest, including the appointment of receivers  
248 to continue or terminate the operation of the business.

249 In that same action, the person bringing the action may claim  
250 against the bond that the cemetery is required to file with the



251 Secretary of State under Section 41-43-37(7) for any losses or  
252 damages sustained by the person.

253 (8) All the necessary expenses of any examination or audit  
254 performed or court proceedings conducted under the provisions of  
255 subsection (7) of this section shall be paid by the cemetery owner  
256 or owners or, if incorporated, its officers and directors, and if  
257 a sale of any cemetery is ordered by the court, the proceeds of  
258 the sale shall first be applied to the costs expended under the  
259 provisions of subsection (7) of this section.

260 (9) Whenever a cemetery subject to the provisions of Section  
261 41-43-31 et seq. becomes the subject of a court order of  
262 receivership, the receiver shall determine as soon as practical if  
263 the income of the receivership estate is sufficient for the  
264 operation of the cemetery including the upkeep and maintenance of  
265 cemetery grounds. If the receiver determines that insufficient  
266 cash flow or income exists to provide maintenance and upkeep, the  
267 receiver shall notify the mayor of the municipality in which the  
268 cemetery is located or the president of the board of supervisors  
269 for cemeteries located outside of a municipality, by certified  
270 mail return receipt requested, that insufficient income exists for  
271 the receivership estate. Upon receipt of that notice, the  
272 municipality or county shall appoint a cemetery maintenance  
273 committee of no more than seven (7) persons who have an interest  
274 in the cemetery through ownership of interment or entombment  
275 rights, genealogical or historical reasons. The committee may



276 solicit donations and raise funds by any lawful means from private  
277 citizens and private sources. The committee may establish a trust  
278 fund to supply continuing needs over a long period of time.  
279 However, the receiver shall have the authority to determine the  
280 maintenance and upkeep to be performed, the frequency of upkeep  
281 and the selection of workers or contractors to accomplish  
282 maintenance and upkeep. If, at the conclusion of the receivership  
283 estate, excess funds are on deposit with the maintenance  
284 committee, the receiver is authorized to apply excess funds to any  
285 short-term or long-term capital improvement by which the cemetery  
286 would benefit.

287       **SECTION 3.** Section 75-63-59, Mississippi Code of 1972, is  
288 amended as follows:

289       75-63-59. (1) If the contract is funded by trust, the  
290 Secretary of State shall be given a copy of the trust agreement,  
291 which the Secretary of State shall review and approve in advance.  
292 The Secretary of State may at any time require the submission of  
293 the trust agreement for review and approval from any preneed  
294 provider. The Secretary of State shall approve in advance any  
295 amendments or modifications to the trust agreement. The Secretary  
296 of State shall be informed in writing as to how the assets of the  
297 trust are held. In the event of any change in the investment  
298 composition of the trust assets, or change in the trustee or trust  
299 institution, the Secretary of State shall be informed within ten  
300 (10) days after the time the change occurs.



301 (2) Any trustee, other than a financial institution, shall  
302 not be the contract provider, the seller, or an officer or  
303 director of the contract provider if the contract provider is a  
304 corporation.

305 (3) (a) In no event may trust funds be loaned, directly or  
306 indirectly, to any of the following persons: the preneed  
307 provider; any entity in which the preneed provider has any  
308 financial interest; any employee, director, member, stockholder,  
309 partner, full or partial owner, or principal of the preneed  
310 provider; or any person related by blood or marriage to any of  
311 those persons.

312 (b) In no event may trust funds, directly or  
313 indirectly, be invested in or with any business or business  
314 venture in which any of the following persons have an interest:  
315 the preneed provider; any entity in which the preneed provider has  
316 any financial interest; any employee, director, member,  
317 stockholder, partner, full or partial owner, or principal of the  
318 preneed provider; or any person related by blood or marriage to  
319 any of those persons.

320 (4) Not later than the fifth day of the following month from  
321 when funds are received, the contract seller shall place in a  
322 trust account in a financial institution as defined by this  
323 article at least eighty-five percent (85%) of the funds received  
324 for funeral services and merchandise. The contract shall disclose  
325 to the purchaser in boldface type the percentage of funds the



326 seller is required to trust along with the name of the trust  
327 officer, the trust institution, the address and phone number of  
328 the same. The purchaser shall initial the corresponding paragraph  
329 in the contract indicating notice of the trust percentage and  
330 acknowledge being provided the name of the trust officer, the  
331 trust institution, address and phone number. The contract seller  
332 must provide the trustee with documentation containing the  
333 contract owner's identity and allocable share for each remittance.  
334 Trust accounts shall be carried in the name of the preneed seller,  
335 but accounting records shall be established and maintained for  
336 each individual preneed funeral contract beneficiary showing the  
337 amounts deposited and invested. The Secretary of State may by  
338 rule address the recordkeeping required for interest, dividends,  
339 increases and accretions earned.

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

343 (6) At the time of death, if the contract provider provides  
344 the merchandise and services indicated in the contract, the  
345 contract provider shall furnish to the trustee a copy of the  
346 preneed contract, contract owner's death certificate or proof of  
347 death, and a letter of performance indicating that the contracted  
348 merchandise and services were provided by the contract provider to  
349 the contract insured. Upon receipt of the letter of performance  
350 and death certificate, or proof of death, the trustee shall pay to



351 the contract provider all funds, which shall not be less than the  
352 amount deposited in trust. In the limited instance only when a  
353 preneed provider furnishes a personalized, engraved marker,  
354 headstone or monument before death, the trustee may disburse to  
355 the preneed provider compensation for the engraved marker,  
356 headstone or monument as well as any associated engraving, setting  
357 or delivery fees. In those instances, no disbursement from the  
358 trust shall be made until the trustee receives from the preneed  
359 provider a delivery ticket or invoice, documentation for the  
360 engraving of identifying information regarding the purchaser, and  
361 a letter of performance indicating that the engraved marker,  
362 headstone or monument has been provided.

363 Any trust officer or trust institution that releases trust  
364 funds for funeral services or merchandise in a manner contrary  
365 with the provisions of this article shall be liable for the same.  
366 Furthermore, any trustee or trust institution that engages in  
367 fraud, deceit, misrepresentation, or misappropriation of trust  
368 funds to the detriment of a contract provider or a contract  
369 insured shall be liable for the same.

370 (7) If a substitute provider was named by the contract  
371 beneficiary, during his life, or by one with the legal authority  
372 to act on his behalf at any time, the substitute provider shall  
373 provide the trustee with a death certificate or published obituary  
374 along with an invoice verifying that the substitute provider  
375 serviced the final needs of the beneficiary. Within ten (10) days



376 of receipt of the documentation of death and invoice from the  
377 substitute provider, the trustee shall pay the substitute provider  
378 or the estate of the contract beneficiary not less than the amount  
379 deposited in trust on behalf of the serviced beneficiary. For all  
380 trust-funded preneed contracts sold on or after July 1, 2012, the  
381 trustee shall pay the substitute provider not less than the amount  
382 deposited into trust on behalf of the serviced beneficiary in  
383 addition to all earnings, interest and income on the beneficiary's  
384 principal.

385 (8) Preneed trust funds are exempt from all claims of  
386 creditors of the preneed provider, except as to the claims of the  
387 contract purchaser or his representatives, and cannot be used as  
388 collateral, pledged or in any way encumbered or placed at risk.

389 (9) Each seller of preneed contracts that are funded by  
390 trust shall file with the Secretary of State a surety bond in  
391 which the seller is the principal obligor, in the sum of Five  
392 Hundred Thousand Dollars (\$500,000.00), or such lower amount as  
393 prescribed by the Secretary of State, with one or more surety  
394 companies licensed to do business in this state whose liability in  
395 the aggregate will be equal to that sum. The bond shall be in  
396 favor of the State of Mississippi for the benefit of the contract  
397 insured or the beneficiaries or estate of the contract insured for  
398 financial loss or other damages suffered as a result of the  
399 misfeasance, fraud, default, failure or insolvency of a contract  
400 provider, or the fraud, deceit, misrepresentation or





401 misappropriation of trust funds or the insolvency of the trust.  
402 Any person claiming against the bond may maintain an action  
403 against the contract seller and the surety.

404         **SECTION 4.** Section 75-63-81, Mississippi Code of 1972, is  
405 brought forward as follows:

406         75-63-81. (1) There is established a Preneed Contracts Loss  
407 Recovery Fund, hereinafter referred to as the "fund," to be  
408 administered by directors of the Preneed Contracts Loss Recovery  
409 Association, hereinafter referred to as the "association."  
410 Directors are to be appointed by the Secretary of State. The  
411 purpose of the fund is to reimburse the estates, or in the absence  
412 of an estate filing, the purchaser or applicant with payment  
413 jointly to the funeral home providing services or merchandise, or  
414 both, of beneficiaries of preneed funeral contracts who have  
415 suffered financial loss as a result of the misfeasance, fraud,  
416 default, failure or insolvency of a registered Mississippi preneed  
417 provider.

418         (2) The fund shall be funded from a charge not to exceed Ten  
419 Dollars (\$10.00) to be added to the cost of every preneed contract  
420 sold from and after July 1, 2009; however, if the preneed contract  
421 is funded solely with insurance that is protected by the  
422 Mississippi Life and Health Insurance Guaranty Association, then  
423 that fee shall not be charged. The association may reduce,  
424 suspend or resume collection of the fee at any time and for any  
425 period to ensure that a sufficient amount is available to meet



426 anticipated disbursements and to maintain an adequate reserve  
427 consistent with actuarial guidance.

428         The per-contract fees shall be remitted quarterly to the  
429 association for each quarter of the calendar year with a quarterly  
430 fee form as prescribed by the Secretary of State. The  
431 per-contract fee is not subject to the trusting requirements of  
432 Section 75-63-59. The fees shall be remitted to the association  
433 no later than fifteen (15) days after each quarter. Absent the  
434 Secretary of State's approval of an extension for good cause  
435 shown, preneed providers failing to timely report and remit the  
436 per-contract fee to the association may be subject to a penalty of  
437 One Hundred Dollars (\$100.00) per day for each day of delinquency,  
438 payable to the fund.

439         (3) All sums received by the association shall be held in a  
440 separate account maintained by the State Treasurer to be used  
441 solely as provided in this article. Warrants to the fund may only  
442 be issued by the Department of Finance and Administration upon  
443 request by a majority vote of the directors of the Preneed  
444 Contracts Loss Recovery Association. All interest or other income  
445 earned on the fund shall be retained by the fund.

446         (4) Reimbursements from the fund must not exceed the total  
447 payment made for preneed funeral services or merchandise, cemetery  
448 services or merchandise, or both. No current insurance benefits  
449 or future graduated insurance benefits may be reimbursed,  
450 including any current or future graduated insurance benefits in



451 any insurance company insolvency guaranty fund association. Upon  
452 the death of the beneficiary and the applicant's compliance with  
453 all applicable rules of the association, reimbursement from the  
454 fund may be made to the estate of the beneficiary, the purchaser  
455 or applicant with payment jointly to the funeral home or cemetery  
456 providing services or merchandise, or both, only to the extent to  
457 which losses are not bonded or otherwise covered. If the  
458 association makes payments from the fund under this section, the  
459 association is subrogated in the reimbursed amount and may bring  
460 an action against any person or entity, including a preneed  
461 provider. The association may enforce claims it may have for  
462 restitution or otherwise and may employ and compensate from the  
463 fund consultants, legal counsel, accountants and other persons it  
464 considers appropriate to assure compliance with this section.

465 (5) The association shall investigate all applications made  
466 and may reject or allow claims, in whole or in part. Payment may  
467 be made only to the extent that monies are available in the fund,  
468 and payments may be prorated among claimants. Reimbursements for  
469 completed claims must be processed subject to availability of  
470 monies in the fund. The association has complete discretion to  
471 determine the order and manner of payment of approved  
472 applications. The association may approve one (1) application, in  
473 whole or in part, that includes more than one (1) reparation claim  
474 for the benefit of purchasers of prepaid contracts of an insolvent  
475 registrant as part of a plan to arrange for another registrant to



476 assume the obligations of the licensee being liquidated if the  
477 association finds that the plan is reasonable and is in the best  
478 interests of the contract beneficiaries. All payments are a  
479 matter of privilege and not a right, and no person has a right in  
480 the fund as a third-party beneficiary or otherwise.

481 (6) The association shall develop a form of application for  
482 reimbursement.

483 (7) This fund and all interest earned may be used only as  
484 prescribed in this section and may not be used for any other  
485 purposes to the extent losses are not bonded, insured, or  
486 otherwise covered, protected or reimbursed. Further, all monies  
487 deposited into the fund shall not be subject to any deduction,  
488 tax, judgment lien, levy, or any other type of assessment except  
489 as may be provided in this article. The association may expend  
490 monies from the fund to:

491 (a) Make reimbursements on approved applications;

492 (b) Purchase insurance to cover losses and association  
493 liability as considered appropriate by the directors and not  
494 inconsistent with the purpose of the fund;

495 (c) Invest portions of the fund as are not currently  
496 needed to reimburse losses and maintain adequate reserves, as are  
497 permitted to be made by fiduciaries under state law;

498 (d) Pay the expenses of the association for  
499 administering the fund, including employment of legal counsel,



500 accountants, consultants and other persons the board considers  
501 necessary to assure compliance with this section;

502 (e) Effective upon June 23, 2017, no monies deposited  
503 to the fund may be used to reimburse, or otherwise defray any  
504 costs that the Office of the Secretary of State may incur in  
505 administering this fund, or in support of the association.

506 (8) No person may make, publish, disseminate, circulate or  
507 place before the public, or cause, directly or indirectly, to be  
508 made, published, disseminated, circulated, or placed before the  
509 public, in a newspaper, magazine or other publication, or in the  
510 form of a notice, circular, pamphlet, letter, poster or over any  
511 radio station or television station, or in any other way, any  
512 advertisement, announcement, or statement that uses the existence  
513 of the fund for the purpose of sales, solicitation or inducement  
514 to purchase any form of preneed contract covered under this  
515 article.

516 (9) The Secretary of State may establish rules and  
517 regulations necessary to implement the purposes of this section  
518 including, but not limited to, rules governing the association's  
519 operations, claim procedures, determination of solvency or  
520 insolvency of a preneed provider, claimant eligibility and  
521 determination of appropriate loss payee.

522 (10) No purchaser or representative of a purchaser is  
523 provided in this section with any administrative right or legal or  
524 equitable right to any funds collected for this association to



525 satisfy any judgment or economic loss of the purchaser from a  
526 prepaid funeral or cemetery organization except for the purposes  
527 of this section. This fund is established for the discretionary  
528 relief of purchasers and their representatives of prepaid funeral  
529 or cemetery contracts from insolvent prepaid funeral or cemetery  
530 organizations or prepaid funeral businesses with severe trust fund  
531 account shortages as determined by the directors. Coverage is  
532 limited to the claimant's actual contract payments made. There  
533 shall be no fund coverage for additional economic damages,  
534 attorney's fees, recovery costs, interest, other equitable relief  
535 or noneconomic damages.

536 Further, no claimant shall be eligible for compensation from  
537 the fund unless the contract purchaser for whom a claim is  
538 asserted paid to the preneed provider the loss recovery fee  
539 required by subsection (2) of this section. The fund shall have  
540 no liability for preneed contracts sold or claims that occurred or  
541 accrued before July 1, 2009.

542 (11) There shall be no liability on the part of and no cause  
543 of action of any nature shall arise against any director of the  
544 association, the Secretary of State, his representatives, agents  
545 or employees for any act or omission by them in the performance of  
546 their powers and duties under this article, or in its  
547 administration, dispensation, handling or collection of funds for  
548 the program.



549 (12) Directors of the association shall be appointed by the  
550 Secretary of State and shall consist of no fewer than five (5),  
551 one (1) from each of the Mississippi Supreme Court Districts and  
552 two (2) from the state at large. In making director appointments  
553 the Secretary of State shall consider, among other things, whether  
554 all association members are fairly represented. At least three  
555 (3) of the directors must possess five (5) years' or more  
556 experience in the preneed funeral service and merchandise business  
557 as an owner or manager. All directors shall be appointed for  
558 staggered six-year terms, with the exception of the initial terms  
559 of service for the original five (5) directors. The Secretary of  
560 State may appoint any director to a successive six-year term. The  
561 initial term of service for all directors shall begin on October  
562 1, 2009, with the initial term of two (2) directors to be  
563 determined by the Secretary of State at appointment expiring on  
564 September 30, 2011, and two (2) directors to be determined by the  
565 Secretary of State at appointment expiring on September 30, 2013.  
566 The initial term for the remaining director to be determined by  
567 the Secretary of State at appointment shall expire on September  
568 30, 2015.

569 (13) [Deleted]

570 (14) The association and its directors shall assist the  
571 Secretary of State and be subject to the applicable provisions of  
572 the laws of this state. The association shall be subject to  
573 examination and regulation by the Secretary of State. The



574 association by its directors shall prepare and submit to the  
575 Secretary of State each year, not later than March 1 of each year,  
576 a financial report in a form approved by the Secretary of State  
577 and a report of activities during the preceding calendar year.

578 (15) Appeal rights for claim decisions issued by the  
579 association directors exist in the chancery court in this state in  
580 which an estate has been open for probate by the representative of  
581 the claimant; the chancery court in the county in which the  
582 preneed contract was purchased; or the chancery court in this  
583 state of the claimant's or decedent's home county. A notice of  
584 appeal must be filed within thirty (30) days of the association's  
585 written order denying the claim, in whole or in part, and appeal  
586 to the chancery court is limited to a review of the record made  
587 before the association's directors on a substantial evidence  
588 evidentiary standard.

589 **SECTION 5.** This act shall take effect and be in force from  
590 and after July 1, 2018.

