

By: Representative Haney

To: Public Health and Human Services

HOUSE BILL NO. 1231

1 AN ACT TO AUTHORIZE PERSONS TO EXECUTE A WRITTEN DECLARATION  
2 ASSIGNING TO A REPRESENTATIVE THE RIGHT TO DIRECT DISPOSITION OF  
3 THE PERSON'S REMAINS AFTER DEATH AND PURCHASE GOODS AND SERVICES  
4 RELATED TO THE FUNERAL; TO AMEND SECTION 73-11-58, MISSISSIPPI  
5 CODE OF 1972, TO PROVIDE THAT WHEN THERE ARE MULTIPLE MEMBERS OF  
6 THE SAME CLASS HAVING PRIORITY AS TO THE DISPOSITION OF A  
7 DECEDENT'S BODY, A FUNERAL DIRECTOR, FUNERAL SERVICE PRACTITIONER  
8 OR FUNERAL ESTABLISHMENT SHALL ACT IN ACCORDANCE WITH THE  
9 DIRECTIVE OF A MAJORITY OF THE MEMBERS OF THE CLASS WHO CAN BE  
10 LOCATED WITH REASONABLE EFFORTS; TO AMEND SECTION 73-11-69,  
11 MISSISSIPPI CODE OF 1972, TO ALLOW A CREMATORY OR FUNERAL  
12 ESTABLISHMENT TO DISPOSE OF ANY REMAINS UNCLAIMED BY THE FAMILY  
13 AFTER ONE HUNDRED TWENTY DAYS AFTER CREMATION BY SCATTERING OR  
14 BURIAL; TO AMEND SECTION 75-63-55, MISSISSIPPI CODE OF 1972, TO  
15 AUTHORIZE THE INSURED UNDER A PRENEED CONTRACT TO MODIFY THE  
16 CONTRACT TO CHANGE THE METHOD OF DISPOSITION OF THE INSURED'S BODY  
17 FROM BURIAL IN A CASKET TO CREMATION OF THE BODY, OR FROM  
18 CREMATION TO BURIAL IN A CASKET; AND FOR RELATED PURPOSES.

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

20 **SECTION 1.** (1) As used in this section and Sections 2 and 3  
21 of this act:

22 (a) "Adult" means an individual who is eighteen (18)  
23 years of age or older.

24 (b) "Declarant" means an adult who has executed a  
25 written declaration described in subsection (2) of this section.



26 (c) "Representative" means an adult or a group of  
27 adults, collectively, to whom a declarant has assigned the right  
28 of disposition.

29 (d) "Right of disposition" means one or more of the  
30 rights described in subsection (2) of this section that a  
31 declarant chooses to assign to a representative in a written  
32 declaration executed under that subsection or all of the rights  
33 described in subsection (2) that are assigned to a person under  
34 Section 73-11-58.

35 (e) "Successor representative" means an adult or group  
36 of adults, collectively, to whom the right of disposition for a  
37 declarant has been reassigned because the declarant's  
38 representative is disqualified from exercising the right under  
39 Section 3 of this act. Each successor representative shall be  
40 considered in the order the representative is designated by the  
41 declarant.

42 (2) An adult who is of sound mind may execute at any time a  
43 written declaration assigning to a representative one (1) or more  
44 of the following rights:

45 (a) The right to direct the disposition, after death,  
46 of the declarant's body or any part of the declarant's body that  
47 becomes separated from the body before death. This right includes  
48 the right to determine the location, manner, and conditions of the  
49 disposition of the declarant's bodily remains.



50 (b) The right to make arrangements and purchase goods  
51 and services for the declarant's funeral. This right includes the  
52 right to determine the location, manner, and condition of the  
53 declarant's funeral.

54 (c) The right to make arrangements and purchase goods  
55 and services for the declarant's burial, cremation, or other  
56 manner of final disposition. This right includes the right to  
57 determine the location, manner, and condition of the declarant's  
58 burial, cremation, or other manner of final disposition.

59 (3) (a) Subject to paragraph (b) of this subsection, a  
60 declarant may designate a successor representative.

61 (b) If a representative is a group of persons and not  
62 all of the persons in the group meet at least one (1) criterion to  
63 be disqualified from serving as the representative, as described  
64 in Section 3 of this act, the persons in the group who are not  
65 disqualified shall remain the representative who has the right of  
66 disposition.

67 (4) The assignment or reassignment of a right of disposition  
68 to a representative and a successor representative supersedes an  
69 assignment of a right of disposition under Section 73-11-58.

70 (5) The assignment or reassignment of a right of disposition  
71 by a declarant under this section vests in a representative or a  
72 successor representative at the time of the declarant's death.

73 **SECTION 2.** (1) The written declaration described in Section  
74 1 of this act shall include all of the following:



75 (a) The declarant's legal name and present address;

76 (b) A statement that the declarant, an adult being of  
77 sound mind, willfully and voluntarily appoints a representative to  
78 have the declarant's right of disposition for the declarant's body  
79 upon the declarant's death;

80 (c) A statement that all decisions made by the  
81 declarant's representative with respect to the right of  
82 disposition are binding;

83 (d) The name, last known address, and last known  
84 telephone number of the representative or, if the representative  
85 is a group of persons, the name, last known address, and last  
86 known telephone number of each person in the group;

87 (e) If the declarant chooses to have a successor  
88 representative, a statement that if any person or group of persons  
89 named as the declarant's representative is disqualified from  
90 serving in such position as described in Section 3 of this act,  
91 the declarant appoints a successor representative;

92 (f) If applicable, the name, last known address, and  
93 last known telephone number of the successor representative or, if  
94 the successor representative is a group of persons, the name, last  
95 known address, and last known telephone number of each person in  
96 the group;

97 (g) A space where the declarant may indicate the  
98 declarant's preferences regarding how the right of disposition  
99 should be exercised, including any religious observances the



100 declarant wishes the person with the right of disposition to  
101 consider;

102 (h) A space where the declarant may indicate one or  
103 more sources of funds that may be used to pay for goods and  
104 services associated with the exercise of the right of disposition;

105 (i) A statement that the declarant's written  
106 declaration becomes effective on the declarant's death;

107 (j) A statement that the declarant revokes any written  
108 declaration that the declarant executed, in accordance with  
109 Section 1 of this act, before the execution of the present written  
110 declaration;

111 (k) A space where the declarant can sign and date the  
112 written declaration;

113 (l) A space where a notary public or two (2) witnesses  
114 can sign and date the written declaration as described in  
115 subsection (3) of this section.

116 (2) Completion of a federal Record of Emergency Data form,  
117 DD Form 93, or its successor form, by a member of the military, is  
118 sufficient to constitute a written declaration under Section 1 of  
119 this act if Section 13a of DD Form 93, entitled "Person Authorized  
120 to Direct Disposition," has been properly completed by the member  
121 of the military who has subsequently died while under active duty  
122 orders as described in 10 USC Section 1481.



123 (3) A written declaration executed by a declarant under  
124 Section 1 of this act shall be signed and dated by the declarant  
125 in the presence of one (1) of the following:

126 (a) A notary public.

127 (b) Two (2) witnesses who are adults and who are not  
128 related by blood, marriage, or adoption to the declarant.

129 (c) If the written declaration is a DD Form 93, Record  
130 of Emergency Data, by whomever the form requires.

131 **SECTION 3.** (1) A person shall be disqualified from serving  
132 as a representative or successor representative, or from having  
133 the right of disposition for a deceased adult under Section  
134 73-11-58, if any of the following occurs:

135 (a) The person dies.

136 (b) A court declares or determines that the person is  
137 incompetent.

138 (c) The person resigns or declines to exercise the  
139 right.

140 (d) The person refuses to exercise the right within two  
141 (2) days after notification of the declarant's death.

142 (e) The person cannot be located within two (2) days  
143 after reasonable efforts.

144 (2) No owner, employee, or agent of a funeral home,  
145 cemetery, or crematory providing funeral, burial, or cremation  
146 services for a declarant shall serve as a representative or  
147 successor representative for the declarant unless the owner,



148 employee, or agent is related to the declarant by blood, marriage,  
149 or adoption.

150 (3) Subject to subsections (3)(b) and (4) of Section 1 of  
151 this act, if a person is disqualified from serving as the  
152 declarant's representative or successor representative, or from  
153 having the right of disposition for a deceased adult under Section  
154 73-11-58, as described in subsection (1) of this section, the  
155 right is automatically reassigned to, and vests in, the next  
156 person who has the right under the declarant's written declaration  
157 or under the order of priority in Section 73-11-58.

158 **SECTION 4.** Section 73-11-58, Mississippi Code of 1972, is  
159 amended as follows:

160 73-11-58. (1) If a decedent has left no written \* \* \*  
161 declaration meeting the requirements of Sections 1 through 3 of  
162 this act for the cremation and/or disposition of the decedent's  
163 body \* \* \*, any of the following persons, in the order of priority  
164 listed below, may authorize any lawful manner of disposition of  
165 the decedent's body by completion of a written instrument:

166 (a) The person designated by the decedent as authorized  
167 to direct disposition pursuant to Public Law No. 109-163, Section  
168 564, as listed on the decedent's United States Department of  
169 Defense Record of Emergency Data, DD Form 93, or its successor  
170 form, if the decedent died during military service, as provided in  
171 10 USC Section 1481(a)(1) through (8), in any branch of the United



172 States Armed Forces, United States Reserve Forces or National  
173 Guard.

174 (b) The surviving spouse.

175 (c) A surviving child who is at least eighteen (18)  
176 years of age.

177 (d) A grandchild who is at least eighteen (18) years of  
178 age.

179 (e) Either surviving parent.

180 (f) A surviving sibling who is at least eighteen (18)  
181 years of age.

182 \* \* \*

183 ( \* \* \*g) The guardian of the person of the decedent at  
184 the time of the decedent's death, if a guardian has been  
185 appointed.

186 ( \* \* \*h) A person in the class of the next degree of  
187 kinship, in descending order, who, under state law, would inherit  
188 the decedent's estate if the decedent died intestate and who is at  
189 least eighteen (18) years of age.

190 ( \* \* \*i) A person who has exhibited special care and  
191 concern for the decedent and is willing and able to make decisions  
192 about the cremation and disposition.

193 ( \* \* \*j) In the case of individuals who have donated  
194 their bodies to science or whose death occurred in a nursing home  
195 or private institution and in which the institution is charged  
196 with making arrangements for the final disposition of the





197 decedent, a representative of the institution may serve as the  
198 authorizing agent in the absence of any of the above.

199 ( \* \* \*k) In the absence of any of the above, any  
200 person willing to assume responsibility for the cremation and  
201 disposition of the decedent.

202 ( \* \* \*l) In the case of indigents or any other  
203 individuals whose final disposition is the responsibility of the  
204 state or any of its instrumentalities, a public administrator,  
205 medical examiner, coroner, state-appointed guardian, or any other  
206 public official charged with arranging the final disposition of  
207 the decedent may serve as the authorizing agent.

208 (2) No funeral establishment shall accept a dead human body  
209 from any public officer or employee or from the official of any  
210 institution, hospital or nursing home, or from a physician or any  
211 person having a professional relationship with a decedent, without  
212 having first made due inquiry as to the desires of the persons who  
213 have the legal authority to direct the disposition of the  
214 decedent's body. If any persons are found, their authority and  
215 directions shall govern the disposal of the remains of the  
216 decedent. Any funeral establishment receiving the remains in  
217 violation of this subsection shall make no charge for any service  
218 in connection with the remains before delivery of the remains as  
219 stipulated by the persons having legal authority to direct the  
220 disposition of the body. This section shall not prevent any  
221 funeral establishment from charging and being reimbursed for



222 services rendered in connection with the removal of the remains of  
223 any deceased person in case of accidental or violent death and  
224 rendering necessary professional services required until the  
225 persons having legal authority to direct the disposition of the  
226 body have been notified.

227 (3) A person who does not exercise his or her right to  
228 dispose of the decedent's body under subsection (1) of this  
229 section within five (5) days \* \* \* from the date of the  
230 death \* \* \* shall be deemed to have waived his or her right to  
231 authorize disposition of the decedent's body or contest  
232 disposition in accordance with this section, and the funeral  
233 director, funeral service practitioner and/or funeral  
234 establishment may seek direction from the next person in line who  
235 is legally recognized to make disposition decisions under  
236 subsection (1) of this section. If, during \* \* \* that time  
237 period, the funeral director, funeral service practitioner and/or  
238 funeral establishment has been provided contrary written consent  
239 from members of the same class with the highest priority as to the  
240 disposition of the decedent's body, the licensed funeral director  
241 or service practitioner or funeral establishment shall act in  
242 accordance with the directive of a majority of the \* \* \* members  
243 of the class who can be located with reasonable effort. If that  
244 number is equal, the funeral director or funeral service  
245 practitioner and/or the funeral establishment shall act in  
246 accordance with the earlier consent unless the person(s) providing



247 the later consent is granted an order from a court of competent  
248 jurisdiction in which the funeral establishment is located within  
249 five (5) days from the date of the death.

250 (4) If no consent for the embalming, cremation or other  
251 disposition of a dead human body from any of the relatives or  
252 interested persons or institutions listed above in subsection (1)  
253 is received within ten (10) days of the decedent's death, the  
254 coroner for, or other person designated by, the county in which  
255 the funeral establishment is located is authorized to sign the  
256 consent authorizing the disposition of the decedent's remains.

257 (5) If none of the parties listed above in subsection (1) is  
258 financially capable of providing for the cremation, embalming or  
259 disposition of a dead human body, the coroner for, or other person  
260 designated by, the county in which the funeral establishment is  
261 located is authorized to sign the consent authorizing the  
262 disposition of the decedent's remains.

263 (6) The licensed funeral director, funeral service  
264 practitioner or funeral establishment shall have authority to  
265 control the disposition of the remains of a decedent and proceed  
266 to recover the costs for the disposition when: (a) none of the  
267 persons or parties described above in subsection (1)(a) through  
268 (1) assume responsibility for the disposition of the remains, and  
269 (b) the coroner or other public official designated in subsection  
270 (1)(m) fails to assume responsibility for disposition of the  
271 remains within seven (7) days after having been given written



272 notice of the facts. Written notice may be made by personal  
273 delivery, United States mail, facsimile or transmission. The  
274 method of disposition must be in the least costly and most  
275 environmentally sound manner that complies with law, and that does  
276 not conflict with known wishes of the decedent.

277 (7) A funeral director, funeral service and/or funeral  
278 establishment licensee acting in accordance with this section, or  
279 attempting in good faith to act in accordance with this section,  
280 shall not be subject to criminal prosecution or civil liability  
281 for carrying out the otherwise lawful instructions of the person  
282 or persons described in this section.

283 (8) The liability for the reasonable cost of the final  
284 disposition of the remains of the decedent devolves upon the  
285 individual or entity authorizing the disposition and/or upon the  
286 estate of the decedent and, in cases when the county board of  
287 supervisors has the right to control the disposition of the  
288 remains under this section, upon the county in which the death  
289 occurred.

290 **SECTION 5.** Section 73-11-69, Mississippi Code of 1972, is  
291 amended as follows:

292 73-11-69. (1) No person or party shall conduct, maintain,  
293 manage or operate a crematory unless a license for each such  
294 crematory has been issued by the board and is conspicuously  
295 displayed in such crematory.



296 (2) The operator of a crematory facility shall issue a  
297 certificate of cremation to the family of each person cremated in  
298 the facility. In addition, the operator of the crematory facility  
299 shall maintain a log of all cremations performed in the facility,  
300 and this log shall match the certificates of cremation that have  
301 been issued by the facility.

302 (3) No operator of a crematory facility shall knowingly  
303 represent that an urn or temporary container contains the  
304 recovered cremated remains of specific decedent or of body parts  
305 removed from a specific decedent when it does not. This  
306 subsection does not prohibit the making of such a representation  
307 because of the presence in the recovered cremated remains of de  
308 minimis amounts of the cremated remains of another decedent or of  
309 body parts.

310 (4) The board shall inspect each licensed crematory facility  
311 during each licensure period, and at such other times as  
312 necessary, to verify that the crematory facility is in compliance  
313 with the requirements of this section. Any person who operates a  
314 crematory facility in this state without a license, or any person  
315 who otherwise violates any provision of this section, is guilty of  
316 a felony. Upon conviction for a violation of this section, in  
317 addition to any penalty that may be imposed by the court, the  
318 board may revoke the person's crematory facility license.

319 (5) If the retort of a crematory becomes in need of repair,  
320 then the operator of the crematory shall notify the board in



321 writing and by telephone within forty-eight (48) hours of  
322 discovery of the need to repair, and no cremation shall be made  
323 from the time of discovery until satisfactory proof is provided to  
324 the board that the repair has been made.

325 (6) The board may promulgate such rules and regulations as  
326 deemed necessary for the proper licensure and regulation of  
327 crematory facilities in this state. Such rules and regulations  
328 shall include, but not be limited to, the following: crematory  
329 facility requirements, identification of deceased human beings,  
330 cremation process, processing of remains, commingling of human  
331 remains, disposition of cremated remains, removal of human remains  
332 and proper documentation requirements as prescribed by state  
333 agencies.

334 (7) Any crematory or funeral establishment may dispose of  
335 any remains unclaimed by the family after \* \* \* one hundred twenty  
336 (120) days after cremation by scattering or burial \* \* \*.

337 (8) The crematory retort operator must be a certified  
338 crematory operator as defined in Section 73-11-41.

339 (9) No crematory facility licensed by the board shall be  
340 used for the cremation of deceased animals.

341 (10) A crematory may be constructed on or adjacent to any  
342 cemetery, on or adjacent to any funeral establishment, or at any  
343 other location consistent with local zoning regulations.

344 **SECTION 6.** Section 75-63-55, Mississippi Code of 1972, is  
345 amended as follows:



346 75-63-55. (1) No person, firm, partnership, association or  
347 corporation may directly or indirectly, or through an agent,  
348 engage in the sale of preneed contracts or preneed contracts for  
349 caskets except as authorized under this article. Any person,  
350 establishment or company required to register under Section  
351 73-11-67 that sells preneed contracts for caskets, either directly  
352 or indirectly or through an agent, shall be required to meet all  
353 of the requirements of this article that are applicable to preneed  
354 contracts. All preneed contracts sold shall be evidenced in  
355 writing on forms approved by and on file with the Secretary of  
356 State. No contract form may be used without prior approval of the  
357 Secretary of State. No amendment or modification can be made to  
358 any preneed contract without prior approval of the Secretary of  
359 State. Any modification of the preneed contract to change the  
360 method of disposition of the insured's body shall be in accordance  
361 with subsection (10) of this section. The use of any oral preneed  
362 contract, or any written contract, in a form not approved by the  
363 Secretary of State, shall be a violation of the chapter and  
364 subject to the penalties provided in Section 75-63-69. The  
365 contract shall clearly indicate the names and addresses of the  
366 buyer, contract insured, contract provider and seller. The  
367 Secretary of State may by rule or regulation prescribe specific  
368 contract content or a standard contract form required for use by  
369 all contract providers describing the rights and responsibilities  
370 of the contract provider and the contract owner. However, no



371 standard form contract or contract language shall be inconsistent  
372 in any way with the provisions of this article. The Secretary of  
373 State is further authorized to implement a systematic method to  
374 identify and track preneed contract sales for the purpose of  
375 reconciling sales reported to the Secretary of State on the annual  
376 report required by Section 75-63-67 with trust fund activity  
377 statements and the provider's business records.

378 (2) The contract shall clearly indicate all merchandise  
379 covered by the contract, a description of the merchandise quality,  
380 and the total cost of all merchandise covered by the contract.  
381 The contract shall list all services covered by the contract and  
382 the total cost for all services covered by the contract. The  
383 contract shall list all cash advance items covered by the contract  
384 and the total cost for all cash advance items covered by the  
385 contract.

386 (3) All preneed contracts sold shall be funded by trust or  
387 insurance as defined in this article or evidenced by a warehouse  
388 receipt, as contemplated in Uniform Commercial Code-Documents of  
389 Title, Section 75-7-101 et seq. All merchandise placed on a  
390 warehouse receipt or placed in storage shall be reported to the  
391 Secretary of State in the preneed report as required by Section  
392 75-63-67.

393 (4) If the preneed contract is funded by a policy of  
394 insurance, as defined by Section 83-5-5, a copy of the insurance  
395 policy shall be furnished to the insured within fifteen (15) days





396 of issue. Such insurance shall be subject to the insurance laws  
397 of the state.

398 The insured shall be furnished the following:

399 (a) A list of the merchandise, including a description  
400 of the merchandise quality, and services which are applied or  
401 contracted for in the preneed contract and all relevant  
402 information concerning the price of the funeral services,  
403 including an indication that the purchase price is either  
404 guaranteed at the time of purchase or to be determined at the time  
405 of need;

406 (b) All relevant information concerning what occurs and  
407 whether any entitlements or obligations arise if there is a  
408 difference between the proceeds of the life insurance policy and  
409 the amount actually needed to fund the preneed contract; and

410 (c) Any penalties or restrictions, including, but not  
411 limited to, geographic restrictions or the inability of the  
412 provider to perform, on the delivery of merchandise, services or  
413 the preneed guarantees.

414 If the preneed contract is not funded by a policy of  
415 insurance, as defined by Section 83-5-5, a copy of the preneed  
416 contract shall be furnished to the contract insured at the time of  
417 purchase.

418 (5) If the preneed contract is funded by trust, the contract  
419 shall indicate the name, address and telephone number of the  
420 trustee; the trust institution; the amount to be paid; the



421 frequency of payment; and the length of time payments will be paid  
422 into the trust. The contract insured must initial on the contract  
423 the percentage required to be trusted and the designation of the  
424 trust officer. In addition, the contract should clearly indicate  
425 any exclusions or limitations of the preneed contract including,  
426 but not limited to, any additional payments that may be owed if  
427 the contract insured dies before the agreed upon payment period is  
428 completed.

429 (6) The preneed contract shall indicate whether it is a  
430 standard contract or an inflation proof contract. The contract  
431 shall clearly indicate which merchandise and services are  
432 guaranteed as to price.

433 (7) The preneed contract shall contain the address and phone  
434 number of the Secretary of State with instructions that consumer  
435 complaints may be filed with the Secretary of State.

436 (8) If the preneed contract is paid in multiple payments,  
437 the contract should indicate the amount, frequency and duration of  
438 the payments and the amount of any interest charged. The contract  
439 shall also include the impact on the contract if payments are not  
440 made.

441 (9) The use of any oral preneed contract, or any written  
442 contract, in a form not approved by the Secretary of State, shall  
443 be a violation of this article and subject to the penalties  
444 provided in Section 75-63-69.



445       (10) (a) The contract insured may modify the preneed  
446 contract to change the method of disposition of the insured's body  
447 from burial in a casket to cremation of the body, or from  
448 cremation to burial in a casket. The Secretary of State shall  
449 provide a form that must be used by the insured for making such a  
450 modification to the contract. The insured shall provide  
451 information in the form that includes, at minimum, a revised  
452 description of the merchandise and services to be covered and the  
453 cost of the merchandise and services under the contract as  
454 modified, and shall address each item of information required by  
455 subsection (2) of this section to be in the contract. The  
456 Secretary of State may require such additional information as  
457 deemed necessary to be included in the form. The modification of  
458 the contract shall not be effective until it has been approved by  
459 the Secretary of State, but the Secretary shall not withhold  
460 approval if the modification meets the requirements of this  
461 subsection.

462       (b) If the contract modification results in an  
463 overpayment, then the overpayment shall be refunded to the  
464 personal representative of the deceased who is designated in the  
465 decedent's written declaration, or if none, then the overpayment  
466 shall be refunded to the signer of the contract. If there is an  
467 additional balance owed for modified merchandise or services, then  
468 the insured may enter into a new preneed contract to cover the  
469 requested merchandise or services at the time of modification, or



470 the additional balance may be paid to the funeral service provider  
471 at the time of death where the additional merchandise or services  
472 may be based on pricing in place at that time.

473           **SECTION 7.** This act shall take effect and be in force from  
474 and after July 1, 2022.

