

By: Browning, Farris

To: Insurance

SENATE BILL NO. 2152

1 AN ACT TO CREATE THE "PRE-NEED CEMETERY AND FUNERAL CONSUMER
2 PROTECTION ACT"; TO DEFINE CERTAIN TERMS; TO REQUIRE ALL PRE-NEED
3 FUNERAL CONTRACTS SOLD TO BE EVIDENCED IN WRITING ON FORMS
4 REGISTERED WITH THE COMMISSIONER OF BANKING AND CONSUMER FINANCE;
5 TO PRESCRIBE THE CONTENTS OF SUCH WRITTEN PRE-NEED CONTRACT; TO
6 PROVIDE FOR RECORD-KEEPING REQUIREMENTS; TO PROVIDE TRUSTING
7 REQUIREMENTS IF THE PRE-NEED CONTRACT IS FUNDED BY A TRUST; TO
8 PROVIDE CERTAIN REQUIREMENTS IF THE PRE-NEED CONTRACT IS FUNDED BY
9 INSURANCE; TO REQUIRE LICENSURE OF ALL PERSONS AND ESTABLISHMENTS
10 SELLING PRE-NEED FUNERAL CONTRACTS; TO PROVIDE REPORTING
11 REQUIREMENTS TO THE COMMISSIONER OF BANKING AND CONSUMER FINANCE;
12 TO AUTHORIZE EXAMINATIONS OF THE BOOKS AND RECORDS OF LICENSED
13 ESTABLISHMENTS; TO PROVIDE CIVIL AND CRIMINAL PENALTIES FOR
14 VIOLATIONS OF THIS ACT; TO CLARIFY THAT NOTHING IN THE ACT SHALL
15 BE CONSTRUED TO AUTHORIZE THE SALE OF LIFE INSURANCE POLICIES BY
16 UNLICENSED AGENTS; TO REPEAL SECTIONS 75-63-1, 75-63-3, 75-63-5,
17 75-63-7, 75-63-9, 75-63-11, 75-63-13, 75-63-15, 75-63-17,
18 75-63-18, 75-63-19, 75-63-21 AND 75-63-23, MISSISSIPPI CODE OF
19 1972, WHICH REGULATE THE PRE-NEED SALES OF CEMETERY MERCHANDISE
20 AND FUNERAL SERVICES; AND FOR RELATED PURPOSES.

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

22 SECTION 1. This act shall be known and may be cited as the
23 "Pre-need Cemetery and Funeral Consumer Protection Act."

24 SECTION 2. As used in this act, unless the context requires
25 otherwise:

26 (a) "Buyer" means the person who purchases the pre-need
27 contract.

28 (b) "Cash advance item" means any item of service or
29 merchandise described to a purchaser as a "cash advance,"
30 "accommodation," "cash disbursement," or similar term. A cash
31 advance item is also any item obtained from a third party and paid
32 for by the funeral provider on the purchaser's behalf. Cash
33 advance items may include, but are not limited to: cemetery or
34 crematory services; pallbearers; public transportation; clergy
35 honoraria; flowers; musicians or singers; nurses; obituary

36 notices; gratuities and death certificates.

37 (c) "Commissioner" means the Commissioner of Banking
38 and Consumer Finance of the State of Mississippi.

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

41 (e) "Contract beneficiary" means the person upon whose
42 death will initiate the performance of the pre-need contract.
43 This person may also be the contract purchaser.

44 (f) "Contract provider" means the funeral home or
45 cemetery indicated in the pre-need contract that will be
46 responsible for performing the pre-need funeral contract.

47 (g) "Financial institution" means a bank, trust
48 company, savings bank, or savings and loan association authorized
49 by law to do business in this state.

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

52 (i) "Inflation proof contract" means a pre-need
53 contract that establishes a fixed price for funeral services and
54 merchandise without regard to future price increases.

55 (j) "Insurance" means a life insurance policy or
56 annuity contract, or other insurance contract or agreement in any
57 form, issued by an insurance company authorized by law to do
58 business in this state which, by assignment to a contract
59 provider, has for a purpose the funding of a pre-need funeral
60 contract.

61 (k) "Merchandise" means personal property associated
62 with the disposal of or memorializing a deceased human being such
63 as a casket, burial vault, burial clothes, urn or monument.

64 (l) "Pre-need contract" means any contract, agreement
65 or mutual understanding, or any series or combination of
66 contracts, agreements or mutual understandings, whether funded by
67 trust deposits or insurance, or any combination thereof, which has
68 for a purpose the furnishing or performance of funeral services,
69 or the furnishing of delivery of merchandise, of any nature in
70 connection with the final disposition of a dead human body, to be
71 furnished or delivered at a time determinable by the death of the
72 person whose body is to be disposed of, but shall not mean the

73 furnishing of a cemetery lot, crypt, niche or mausoleum.

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

76 (n) "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 funeral services and merchandise at the time of death of
81 the contract beneficiary without a guarantee against future price
82 increases.

83 (p) "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 beneficiary.

86 (q) "Trustee" means an original, added, or successor
87 trustee including its successor by merger or consolidation.

88 SECTION 3. (1) No person, firm, partnership, association or
89 corporation may directly or indirectly, or through an agent,
90 engage in the sale of pre-need funeral contracts except as
91 authorized under this act. All pre-need funeral contracts sold
92 shall be evidenced in writing on forms registered with the
93 commissioner. These forms shall be in twelve-point type and
94 clearly indicate the names and addresses of the buyer, contract
95 beneficiary, contract provider and seller.

96 (2) The contract shall clearly indicate all merchandise
97 covered by the contract and the total cost of all merchandise
98 covered by the contract. The contract shall list all services
99 covered by the contract and the total cost for all services
100 covered by the contract. The contract price shall not exceed the
101 sum of the total cost for all merchandise, the total cost for all
102 services and any interest.

103 (3) All pre-need funeral contracts sold shall be funded by
104 trust or by insurance as defined in this act.

105 (4) If the pre-need contract is funded by insurance, the

106 following information shall be adequately disclosed at the time
107 the contract is executed:

108 (a) The fact that a life insurance policy is involved
109 or being used to fund the contract, and the name, address and
110 telephone number of the insurance company issuing the insurance;

111 (b) The nature of the relationship among the soliciting
112 agent or agents, the provider of the funeral or cemetery
113 merchandise or service, the administrator and any other person;

114 (c) The relationship of the life insurance policy to
115 the funding of the pre-need contract and the nature and existence
116 of any guarantees relating to the pre-need contract;

117 (d) The impact on the pre-need contract:

118 (i) Of any changes in the life insurance policy
119 including, but not limited to, changes in the assignment,
120 beneficiary designation or use of the proceeds;

121 (ii) Of any penalties to be incurred by the policy
122 holder as a result of failure to make premium payments; and

123 (iii) Of any penalties to be incurred or monies to
124 be received as a result of cancellation or surrender of the life
125 insurance policy.

126 (e) A list of the merchandise and services which are
127 applied or contracted for in the pre-need contract and all
128 relevant information concerning the price of the funeral services,
129 including an indication that the purchase price is either
130 guaranteed at the time of purchase or to be determined at the time
131 of need;

132 (f) All relevant information concerning what occurs and
133 whether any entitlements or obligations arise if there is a
134 difference between the proceeds of the life insurance policy and
135 the amount actually needed to fund the pre-need contract; and

136 (g) Any penalties or restrictions, including, but not
137 limited to, geographic restrictions or the inability of the
138 provider to perform, on the delivery of merchandise, services or

139 the pre-need guarantees.

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

149 (6) The pre-need contract shall indicate whether it is a
150 standard contract or an inflation proof contract, and whether it
151 is revocable or irrevocable. The contract shall clearly indicate
152 which merchandise and services are guaranteed as to price, and
153 which cash advance items are not guaranteed as to price. Upon
154 written disclosure to the buyer, inflation-proof contracts may
155 permit the contract provider to retain all of the pre-need funeral
156 contract trust funds or all insurance proceeds, even those in
157 excess of the retail cost of the merchandise and services provided
158 when the contract provider has fully performed the pre-need
159 funeral contract.

160 (7) The pre-need contract shall contain the address and
161 phone number of the Commissioner of Banking and Consumer Finance
162 with instructions that consumer complaints may be filed with the
163 commissioner.

164 (8) If the pre-need contract is paid in multiple payments,
165 the contract should indicate the amount, frequency and duration of
166 the payments and the amount of any interest charged. The contract
167 shall also include the impact on the contract if payments are not
168 made.

169 (9) Any use or attempted use of any oral pre-need contract,
170 or any written contract in a form not registered with the
171 commissioner, shall be a violation of this act.

172 SECTION 4. (1) The contract provider or its successor shall
173 maintain a copy of all pre-need funeral contracts entered into by
174 the contract provider for a period of the lifetime of each
175 contract beneficiary and for two (2) years after the death of a
176 contract beneficiary. In addition, the contract provider shall
177 maintain a log of pre-need contracts in force. The contracts in
178 this log shall be sequentially numbered and the number of the
179 pre-need contract in the log shall correspond to the number on the
180 pre-need contract.

181 (2) The log shall indicate whether the pre-need contract is
182 standard or inflation proof, whether the contract is funded with
183 trust or insurance, and whether the contract is revocable or
184 irrevocable. If the contract is funded by trust, the log shall
185 indicate the trustee. If the contract is funded with insurance,
186 the log shall indicate the name of the insurance company and the
187 policy number of the insurance policy.

188 (3) The commissioner shall promulgate rules and regulations
189 to ensure that the copies of the pre-need contract and the log
190 kept by the contract provider are stored in a secure place.

191 SECTION 5. (1) If the contract is funded by trust, the
192 contract beneficiary shall be given a copy of the trust document
193 and shall be informed in writing as to how the assets of the trust
194 are held. In the event of any change in the assets of the trust,
195 or change in the trustee, the contract beneficiary shall be
196 informed of these changes within ten (10) days.

197 (2) The trustee shall not be the contract provider, the
198 seller, or an officer or director of the contract provider if the
199 contract provider is a corporation.

200 (3) Within ten (10) days from receipt of the funds, the
201 contract seller shall place in a trust account at least fifty
202 percent (50%) of the funds received. If the contract seller
203 places less than one hundred percent (100%) in the trust account,
204 the pre-need contract shall fully disclose to the contract

205 purchaser the amount deposited in trust and the amount withheld by
206 the contract seller.

207 (4) The trustee shall obtain a surety bond for the full
208 amount of deposits in the trust account. If the trust funds are
209 held in a financial institution whose deposits are insured by an
210 agency of the United States government, the trustee shall be
211 exempt from the bonding requirement to the extent these deposits
212 are insured.

213 (5) Reasonable annual trust fees including any income taxes
214 owed to the State of Mississippi or the United States Treasury, as
215 approved by the commissioner, may be withheld from the earnings of
216 the trust.

217 (6) At the time of death, if the contract provider actually
218 provides the merchandise and services indicated in the contract,
219 the contract provider shall furnish to the trustee a letter of
220 performance indicating the contracted merchandise and services
221 were provided by the contract provider to the contract
222 beneficiary. Upon receipt of the letter of performance, the
223 trustee shall pay to the contract provider all funds plus
224 accumulated interest in the trust.

225 (7) If the contract provider does not furnish merchandise
226 and services as provided in the pre-need contract, the trustee
227 shall pay to the estate of the contract beneficiary or the
228 substitute provider the amount deposited in trust plus any
229 accumulated interest in the trust within ten (10) days from
230 notification of the death of the contract beneficiary.

231 SECTION 6. (1) If the pre-need funeral contract is funded
232 with insurance, within ten (10) days from the receipt of funds,
233 the contract seller shall send to the insurance company a
234 completed application for insurance and all premiums collected
235 from the contract purchaser.

236 (2) At the time of death, the proceeds of the policy shall
237 be settled in accordance with the policy. If the contract

238 provider furnishes merchandise and services as indicated in the
239 contract, the contract provider is entitled to retain the proceeds
240 of the policy in accordance with the pre-need contract. If the
241 contract provider does not furnish merchandise and services as
242 provided in the pre-need contract, the contract provider shall pay
243 to the estate of the contract beneficiary or the substitute
244 provider of the merchandise and services the entire proceeds of
245 the policy within ten (10) days of receipt of these proceeds.

246 SECTION 7. At any time prior to the performance of the
247 contract, the contract beneficiary or his representatives may name
248 a substitute provider for the pre-need contract. The naming of
249 the substitute provider shall be in writing. If the pre-need
250 contract is funded by trust, the notice of substitution shall be
251 made in writing to the trustee. If the pre-need contract is
252 funded by insurance, the notice of substitution shall be made in
253 writing to the insurance company. Upon receipt of the notice of
254 substitute provider, the original provider shall be relieved of
255 all obligations to perform the contract including all obligations
256 of reporting and accounting, and the substitute provider shall
257 assume all obligations to perform the contract including all
258 obligations of reporting and accounting.

259 SECTION 8. (1) No person may offer or sell pre-need funeral
260 contracts or offer to make or make any funded funeral
261 pre-arrangements without first being licensed by the commissioner.

262 (2) There shall be two (2) types of license: a pre-need
263 establishment license and a pre-need sales license. The
264 commissioner shall establish regulations to license each funeral
265 home or cemetery selling pre-need. No establishment shall be
266 licensed to sell pre-need merchandise or services that the
267 establishment cannot lawfully provide at the time of a person's
268 death. The commissioner shall also maintain a record of all
269 individuals who are licensed to sell pre-need through the
270 registered establishment.

271 (3) The commissioner shall establish regulations to license
272 each person selling pre-need contracts, including the
273 establishment through which the seller will be selling. No person
274 shall be registered to sell pre-need contracts without indicating
275 which establishment he or she is selling. The commissioner shall
276 establish activities that are permitted and activities that are
277 prohibited under the pre-need sales license.

278 SECTION 9. Every pre-need establishment licensee shall
279 annually submit a written report to the commissioner of its
280 pre-need funeral contract sales and performance of such contracts.
281 This report shall be filed on or before March 31 of each year for
282 the calendar year ending the preceding December 31. The
283 commissioner shall adopt regulations concerning the content and
284 filing procedure of this report.

285 SECTION 10. The commissioner or his representative may
286 examine the books and records of each establishment licensed under
287 this act as frequent as necessary to ensure compliance with this
288 act and any rules and regulations promulgated hereunder.

289 SECTION 11. (1) The commissioner may, after notice and
290 hearing, suspend or revoke any pre-need establishment or sales
291 license for violation of statutes or regulations established under
292 this act.

293 (2) Any person, partnership or, if a corporation, the
294 officers and directors who sell or offer to sell a pre-need
295 contract with a suspended or revoked license or without a license
296 shall be guilty of a misdemeanor and, upon conviction thereof,
297 shall be punishable by a fine not less than Two Hundred Dollars
298 (\$200.00) nor more than Five Hundred Dollars (\$500.00) or by
299 imprisonment for a term of not less than one (1) year nor more
300 than two (2) years, or both fine and imprisonment.

301 (3) Any person, partnership or, if a corporation, the
302 officers and directors who embezzles or fraudulently or knowingly
303 and willfully misapplies or converts pre-need funeral funds shall,

304 upon conviction, be punished by imprisonment in the custody of the
305 Mississippi Department of Corrections for a term of not less than
306 ten (10) years, or be fined not more than One Thousand Dollars
307 (\$1,000.00) and imprisoned in the county jail not more than one
308 (1) year, or both fine and imprisonment. Each such violation
309 shall constitute a separate offense.

310 (4) Upon reasonable belief that a person or corporation is
311 acting in violation of the portions of this act requiring fines or
312 imprisonment, the commissioner shall immediately report this
313 violation accompanied by all relevant records to the district
314 attorney in the county where the violations may have taken place.

315 If the violations may have taken place in multiple counties, the
316 case shall be reported to the county of residence of the violator,
317 or if not a resident of the State of Mississippi, the District
318 Attorney of Hinds County.

319 (5) The commissioner may, after notice and a hearing, impose
320 an administrative fine against any licensee adjudged by the
321 commissioner to be in violation of the provisions of this act.
322 Such administrative fine shall not exceed Five Hundred Dollars
323 (\$500.00) per violation and shall be deposited into the Department
324 of Banking and Consumer Finance, "Consumer Finance Fund."

325 SECTION 12. The commissioner, for the purpose of discovering
326 violations of this act and for the purpose of determining whether
327 persons are subject to the provisions of this act, is hereby
328 authorized to examine persons or establishments licensed under
329 this act and persons or establishments reasonably suspected by the
330 commissioner of engaging in activities which require a license
331 under this act, including all relevant books, records and papers
332 employed by such persons or establishments in the transaction of
333 their business, and to summon witnesses and examine them under
334 oath concerning matters relating to the business of such persons
335 or establishments, or such other matters as may be relevant to the
336 discovery of violations of this act.

337 SECTION 13. Nothing in this act shall be construed to
338 authorize the sale of life insurance policies by unlicensed agents
339 which is prohibited by Section 83-17-105, Mississippi Code of
340 1972.

341 SECTION 14. The commissioner may employ the necessary
342 permanent full-time employees in addition to the number of
343 permanent full-time employees authorized for the Department of
344 Banking and Consumer Finance for fiscal year 2001 to carry out and
345 enforce the provisions of this act.

346 SECTION 15. Sections 75-63-1, 75-63-3, 75-63-5, 75-63-7,
347 75-63-9, 75-63-11, 75-63-13, 75-63-15, 75-63-17, 75-63-18,
348 75-63-19, 75-63-21 and 75-63-23, Mississippi Code of 1972, which
349 regulate the sales of cemetery merchandise and funeral services,
350 are hereby repealed.

351 SECTION 16. This act shall take effect and be in force from
352 and after July 1, 2000.