

By: Browning, Farris

To: Insurance

SENATE BILL NO. 3005

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

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

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

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

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

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

35 notices; gratuities and death certificates.

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

38 (d) "Contract beneficiary" means the person upon whose
39 death will initiate the performance of the pre-need contract.
40 This person may also be the contract purchaser.

41 (e) "Contract provider" means the funeral home or
42 cemetery indicated in the pre-need contract that will be
43 responsible for performing the pre-need contract.

44 (f) "Financial institution" means a bank, trust
45 company, savings bank, or savings and loan association located in
46 this state.

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

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

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

57 (j) "Merchandise" means personal property associated
58 with the disposal of or memorializing a deceased human being such
59 as a casket, burial vault, burial clothes, urn or monument.

60 (k) "Pre-need contract" means any contract, agreement
61 or mutual understanding, or any series or combination of
62 contracts, agreements or mutual understandings, whether funded by
63 trust deposits or insurance, or any combination thereof, which has
64 for a purpose the furnishing or performance of funeral services,
65 or the furnishing of delivery of merchandise, of any nature in
66 connection with the final disposition of a dead human body, to be
67 furnished or delivered at a time determinable by the death of the
68 person whose body is to be disposed of, but shall not mean the
69 furnishing of a cemetery lot, crypt, niche or mausoleum or the
70 furnishing of merchandise that is delivered to the purchaser
71 within sixty (60) days from the date of purchase.

72 (1) "Seller" means the person who sells the pre-need
73 contract.

74 (m) "Services" means services of any nature in
75 connection with the final disposition of a dead human body.

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

81 (o) "Trust" means an express trust created by a trust
82 instrument whereby a trustee has the duty to administer a trust
83 asset for the benefit of a named beneficiary.

84 (p) "Trustee" means an original, added, or successor
85 trustee including its successor by merger or consolidation.

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

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

101 (3) All pre-need contracts sold shall be funded by trust or
102 insurance as defined in this act or evidenced by a warehouse
103 receipt.

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

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

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

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

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

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

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

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

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

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

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

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

138 the pre-need guarantees.

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

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

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

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

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

170 SECTION 4. (1) The contract provider or its successor shall

171 maintain a copy of all pre-need contracts entered into by the
172 contract provider for a period of the lifetime of each contract
173 beneficiary and for two (2) years after the death of a contract
174 beneficiary. In addition, the contract provider shall maintain a
175 log of pre-need contracts in force. The log shall be maintained
176 in chronological order of when contracts are sold.

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

184 (3) The Secretary of State shall promulgate rules and
185 regulations governing the form, maintenance and location of such
186 logs.

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

193 (2) The trustee shall not be the contract provider, the
194 seller, or an officer or director of the contract provider if the
195 contract provider is a corporation.

196 (3) Within ten (10) days from receipt of the funds, the
197 contract seller shall place in a trust account at least fifty
198 percent (50%) of the funds received. If the contract seller
199 places less than one hundred percent (100%) in the trust account,
200 the pre-need contract shall fully disclose to the contract
201 purchaser the amount deposited in trust and the amount withheld by
202 the contract seller.

203 (4) The trustee shall obtain a surety bond for the full

204 amount of deposits in the trust account. If the trust funds are
205 held in a financial institution whose deposits are insured by an
206 agency of the United States government, the trustee shall be
207 exempt from the bonding requirement to the extent these deposits
208 are insured.

209 (5) Reasonable annual trust fees including any income taxes
210 owed to the State of Mississippi or the United States Treasury may
211 be withheld from the earnings of the trust.

212 (6) At the time of death, if the contract provider provides
213 the merchandise and services indicated in the contract, the
214 contract provider shall furnish to the trustee a copy of the
215 buyer's death certificate and a letter of performance indicating
216 the contracted merchandise and services were provided by the
217 contract provider to the contract beneficiary. Upon receipt of
218 the letter of performance and death certificate, the trustee shall
219 pay to the contract provider all funds plus accumulated interest
220 in the trust.

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

227 SECTION 6. (1) If the pre-need contract is funded with
228 insurance, and payment is made to the contract seller rather than
229 directly to the life insurance company, the contract seller shall
230 send to the insurance company all premiums collected from the
231 contract purchaser.

232 (2) At the time of death, the proceeds of the policy shall
233 be settled in accordance with the policy. If the contract
234 provider furnishes merchandise and services as indicated in the
235 contract, the contract provider is entitled to retain the proceeds
236 of the policy in accordance with the pre-need contract. If the

237 contract provider does not furnish merchandise and services as
238 provided in the pre-need contract, the contract provider shall pay
239 to the estate of the contract beneficiary or the substitute
240 provider of the merchandise and services the entire proceeds of
241 the policy within ten (10) days of receipt of these proceeds.

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

256 SECTION 8. (1) No person may offer or sell pre-need
257 contracts or offer to make or make any funded pre-arrangements
258 without first being registered with the Secretary of State.

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

270 (3) The Secretary of State shall establish regulations to
271 register each person selling pre-need contracts, including the
272 establishment through which the seller will be selling. No person
273 shall be registered to sell pre-need contracts without indicating
274 which establishment he or she is selling.

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

282 SECTION 10. Whenever it appears to the Secretary of State
283 that any person has engaged, or is about to engage, in any act or
284 practice constituting a violation of any provision of this act or
285 any rule or order hereunder, he may, in his discretion, seek any
286 or all of the following remedies:

287 (1) Issue a cease and desist order with or without a
288 prior hearing against the person or persons engaged in the
289 prohibited activities directing them to cease and desist from
290 further illegal activity;

291 (2) (a) Issue an order in the case of any person,
292 partnership or, if a corporation, the officers and directors who
293 sell or offer to sell pre-need contracts, or other person who
294 violated this act, imposing an administrative penalty up to a
295 maximum of One Thousand Dollars (\$1,000.00) for each offense and
296 each violation shall be considered as a separate offense in a
297 single proceeding or a series of related proceedings; to be paid
298 to the Secretary of State and requiring reimbursement to the
299 Secretary of State for all costs and expenses incurred in the
300 investigation of the violation(s) and in the institution of
301 administrative proceedings, if any, as a result thereof;

302 (b) For the purpose of determining the amount or

303 extent of a sanction, if any, to be imposed under subparagraph
304 (2)(a) of this section, the Secretary of State shall consider,
305 among other factors, the frequency, persistence and willfulness of
306 the conduct constituting a violation of this act or a rule
307 promulgated thereunder, or an order of the Secretary of State, the
308 number of persons adversely affected by the conduct and the
309 resources of the person committing the violation; or

310 (3) Bring an action in chancery court to enjoin the
311 acts or practices to enforce compliance with this act or any rule
312 or order hereunder. Upon a proper showing, a permanent or
313 temporary injunction, restraining order or writ of mandamus shall
314 be granted and a receiver or conservator may be appointed for the
315 defendant or the defendant's assets. In addition, upon a proper
316 showing by the Secretary of State, the court may enter an order of
317 rescission, restitution or disgorgement directed to any person who
318 has engaged in any act constituting a violation of any provision
319 of this act or any rule or order hereunder, or the court may
320 impose a civil penalty up to a maximum of One Thousand Dollars
321 (\$1,000.00) for each offense and each violation shall be
322 considered as a separate offense in a single proceeding or a
323 series of related proceedings. The court may not require the
324 Secretary of State to post a bond.

325 (4) The Secretary of State may, with or without a prior
326 hearing, suspend or revoke any pre-need establishment or sales
327 registration for violation of statutes or regulations established
328 under this act.

329 (5) Any person, partnership or, if a corporation, the
330 officers and directors who sell or offer to sell a pre-need
331 contract with a suspended or revoked reward to reflect
332 registration or without a license shall be guilty of a misdemeanor
333 and, upon conviction thereof, shall be punishable by a fine not
334 less than Two Hundred Dollars (\$200.00) nor more than Five Hundred
335 Dollars (\$500.00) or by imprisonment for a term of not more than

336 one (1) year, or both fine and imprisonment.

337 (6) Any person, partnership or, if a corporation, the
338 officers and directors who embezzles or fraudulently or knowingly
339 and willfully misapplies or converts pre-need funds shall, upon
340 conviction, be punished by imprisonment in the custody of the
341 Mississippi Department of Corrections for a term of not less than
342 ten (10) years, or be fined not more than One Thousand Dollars
343 (\$1,000.00) and imprisoned in the county jail not more than one
344 (1) year, or both fine and imprisonment. Each such violation
345 shall constitute a separate offense.

346 (7) Upon reasonable belief that a person or corporation
347 is acting in violation of the portions of this act requiring fines
348 or imprisonment, the Secretary of State shall immediately report
349 this violation accompanied by all relevant records to the district
350 attorney in the county where the violations may have taken place.

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

355 (8) No order shall be entered under this section
356 without the following:

357 (a) An appropriate prior notice to the applicant
358 or registrant;

359 (b) An opportunity for a hearing; and

360 (c) Written findings of fact and conclusions of
361 law.

362 SECTION 11. The information contained in or filed with any
363 registration, statement, application or report may be made
364 available to the public under such rules as the Secretary of State
365 prescribes. Information in the possession of, filed with or
366 obtained by the Secretary of State in connection with any
367 investigation or examination under this act shall be confidential
368 and exempt from the requirements of the Mississippi Public Records

369 Act of 1983. No such information may be disclosed by the
370 Secretary of State, or any of his officers or employees, unless
371 necessary or appropriate in connection with a particular
372 investigation or proceeding under this act or for any law
373 enforcement purpose.

374 SECTION 12. For the purpose of any investigation or
375 proceeding under this act, the Secretary of State, or any officer
376 designated by him, may administer oaths and affirmations, subpoena
377 witnesses, compel their attendance, take evidence and require the
378 production of any books, papers, correspondence, memoranda,
379 agreements or other documents or records which the Secretary of
380 State deems relevant or material to the inquiry.

381 SECTION 13. Nothing in this act shall be construed to
382 authorize the sale of life insurance policies by unlicensed agents
383 which is prohibited by Section 83-17-105, Mississippi Code of
384 1972.

385 SECTION 14. Sections 75-63-1, 75-63-3, 75-63-5, 75-63-7,
386 75-63-9, 75-63-11, 75-63-13, 75-63-15, 75-63-17, 75-63-18,
387 75-63-19, 75-63-21 and 75-63-23, Mississippi Code of 1972, which
388 regulate the sales of cemetery merchandise and funeral services,
389 are hereby repealed.

390 SECTION 15. This act shall take effect and be in force from
391 and after July 1, 2000.