

3/17. 6 55pm

Chapter No. 407
10/HR40/R1377
CT 1 JP

HOUSE BILL NO. 981

Originated in House Don Richardson Clerk

HOUSE BILL NO. 981

AN ACT TO AMEND SECTION 73-11-67, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT RETAIL SELLERS OF CASKETS THAT SELL PRENEED CONTRACTS FOR CASKETS SHALL BE REQUIRED TO MEET ALL OF THE REQUIREMENTS THAT ARE APPLICABLE TO PRENEED CONTRACTS FOR FUNERAL SERVICES; TO AMEND SECTIONS 75-63-53 AND 75-63-55, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING PROVISION; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 73-11-67, Mississippi Code of 1972, is amended as follows:

73-11-67. (1) Every person, establishment or company not licensed under this chapter that sells caskets at retail shall register annually with the board. The names of registrants under this section shall be made available to any person upon request during the regular business hours of the board. The procedure for conducting a disciplinary proceeding against any casket retailer accused of failing to register with the board, as well as the penal sanctions available to the board, shall be the same as those set forth in Section 73-11-57.

(2) Any person, establishment or company required to register under subsection (1) of this section that sells preneed contracts for caskets, either directly or indirectly or through an agent, shall be required to meet all of the requirements of Sections 75-63-51 through 75-63-75 that are applicable to preneed contracts for funeral services under those sections. For the purposes of this section, the term "preneed contract for caskets" means any contract, agreement or any series or combination of contracts or agreements, whether funded by trust deposits or insurance, or any combination thereof, that is for the purpose of

furnishing or delivering a casket or caskets for the final disposition of a dead human body, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of.

SECTION 2. Section 75-63-53, Mississippi Code of 1972, is amended as follows:

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

(a) "Buyer" means the person who purchases the preneed contract.

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

(c) "Cemetery" means an organization as defined in Section 41-43-33.

(d) "Contract insured" or "contract owner" means the person upon whose death will initiate the performance of a preneed contract.

(e) "Contract provider" means the funeral home, cemetery or other providers of merchandise and/or service in a preneed contract that will be responsible for performing a preneed contract.

(f) "Crematory" means an organization as defined in Section 73-11-41.

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

(h) "Funeral home" means a business licensed under Section 73-11-55.

(i) "Inflation proof contract" means a preneed contract that establishes a fixed price for funeral services and merchandise without regard to future price increases.

(j) "Insurance" means a life insurance policy, an annuity policy or a Class A or Class B burial insurance policy.

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

(l) "Preneed contract" means any contract, agreement or any series or combination of contracts or agreements, whether funded by trust deposits or insurance, or any combination thereof, which has for a purpose the furnishing or performance of funeral services, or the furnishing or delivery of merchandise, of any nature in connection with the final disposition of a dead human body, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of but shall not mean the furnishing of a cemetery lot, crypt, niche or mausoleum.

(m) "Preneed contract for caskets" means any contract, agreement or any series or combination of contracts or agreements, whether funded by trust deposits or insurance, or any combination thereof, that is for the purpose of furnishing or delivering a casket or caskets for the final disposition of a dead human body, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of.

(n) "Seller" means the person who sells a preneed contract.

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

(p) "Standard contract" means a preneed contract that applies the trust funds or insurance proceeds to the purchase

price of specific funeral services and specific merchandise at the time of death of the contract insured without a guarantee against future price increases.

(q) "Trust" means an express trust created by a trust instrument whereby a trustee has the duty to administer a trust asset for the benefit of a named preneed contract insured.

(r) "Trustee" or "trust officer" means an original, added or successor trustee including its successor by merger or consolidation.

(s) "Trust documents" means documents, including, but not limited to, preneed contracts, receipts, contract owner's death certificate, proof of death, the trust agreement, and any and all correspondence between the trustee or trust institution and the contract provider or contract insured.

SECTION 3. Section 75-63-55, Mississippi Code of 1972, is amended as follows:

75-63-55. (1) No person, firm, partnership, association or corporation may directly or indirectly, or through an agent, engage in the sale of preneed contracts or preneed contracts for caskets except as authorized under this article. Any person, establishment or company required to register under Section 73-11-67 that sells preneed contracts for caskets, either directly or indirectly or through an agent, shall be required to meet all of the requirements of this article that are applicable to preneed contracts. All preneed contracts sold shall be evidenced in writing on forms approved by and on file with the Secretary of State. No contract form may be used without prior approval of the Secretary of State. No amendment or modification can be made to any preneed contract without prior approval of the Secretary of State. The use of any oral preneed contract, or any written contract, in a form not approved by the Secretary of State, shall be a violation of the chapter and subject to the penalties provided in Section 75-63-69. The contract shall clearly indicate

the names and addresses of the buyer, contract insured, contract provider and seller. The Secretary of State may by rule or regulation prescribe specific contract content or a standard contract form required for use by all contract providers describing the rights and responsibilities of the contract provider and the contract owner. However, no standard form contract or contract language shall be inconsistent in any way with the provisions of this article. The Secretary of State is further authorized to implement a systematic method to identify and track preneed contract sales for the purpose of reconciling sales reported to the Secretary of State on the annual report required by Section 75-63-67 with trust fund activity statements and the provider's business records.

(2) The contract shall clearly indicate all merchandise covered by the contract, a description of the merchandise quality, and the total cost of all merchandise covered by the contract. The contract shall list all services covered by the contract and the total cost for all services covered by the contract. The contract shall list all cash advance items covered by the contract and the total cost for all cash advance items covered by the contract.

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

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

The insured shall be furnished the following:

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

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

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

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

(5) If the preneed contract is funded by trust, the contract shall indicate the name, address and telephone number of the trustee; the trust institution; the amount to be paid; the frequency of payment; and the length of time payments will be paid into the trust. The contract insured must initial on the contract the percentage required to be trusted and the designation of the trust officer. In addition, the contract should clearly indicate any exclusions or limitations of the preneed contract including, but not limited to, any additional payments that may be owed if the contract insured dies before the agreed upon payment period is completed.

(6) The preneed contract shall indicate whether it is a standard contract or an inflation proof contract. The contract

shall clearly indicate which merchandise and services are guaranteed as to price.

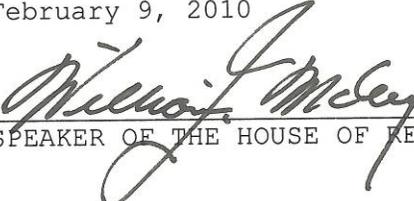
(7) The preneed contract shall contain the address and phone number of the Secretary of State with instructions that consumer complaints may be filed with the Secretary of State.

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

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

SECTION 4. This act shall take effect and be in force from and after July 1, 2010.

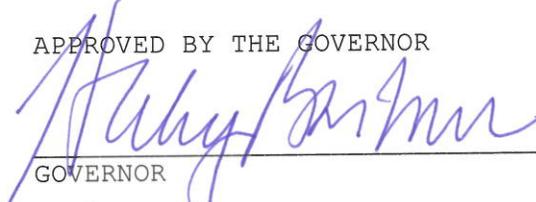
PASSED BY THE HOUSE OF REPRESENTATIVES
February 9, 2010


SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 8, 2010


PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR


GOVERNOR
3/17/10 6:55 PM