

Chapter No. 308

12/SS01/R1126

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SENATE BILL NO. 2579

Originated in Senate

Ly Welch

Secretary

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AN ACT TO AMEND SECTION 75-63-53, MISSISSIPPI CODE OF 1972, TO DEFINE THE TERM "SUBSTITUTE PROVIDER" AS USED IN THE PRENEED CEMETERY AND FUNERAL REGISTRATION ACT; TO AMEND SECTION 75-63-59, MISSISSIPPI CODE OF 1972, TO PROHIBIT TRUST FUNDS FROM BEING LOANED TO CERTAIN PERSONS OR INVESTED IN CERTAIN BUSINESSES; TO AMEND SECTION 75-63-63, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT PRENEED CONTRACTS ENTERED INTO THIS STATE ARE PORTABLE; TO AMEND SECTION 75-63-68, MISSISSIPPI CODE OF 1972, TO CONFORM; AND FOR RELATED PURPOSES.

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

SECTION 1. 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) "Substitute provider" means any funeral home, cemetery, or other provider of merchandise and/or services who furnishes final needs to a beneficiary of a preneed contract sold by another provider regardless of whether the substitute provider honors the terms and conditions of the original preneed contract.

(r) "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.

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

(t) "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 2. Section 75-63-59, Mississippi Code of 1972, is amended as follows:

75-63-59. (1) If the contract is funded by trust, the Secretary of State shall be given a copy of the trust agreement, which the Secretary of State shall review and approve in advance.

The Secretary of State may at any time require the submission of the trust agreement for review and approval from any preneed provider. The Secretary of State shall approve in advance any amendments or modifications to the trust agreement. The Secretary of State shall be informed in writing as to how the assets of the trust are held. In the event of any change in the investment composition of the trust assets, or change in the trustee or trust institution, the Secretary of State shall be informed within ten (10) days after the time the change occurs.

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

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

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

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

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

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

(6) At the time of death, if the contract provider provides the merchandise and services indicated in the contract, the contract provider shall furnish to the trustee a copy of the preneed contract, contract owner's death certificate or proof of death, and a letter of performance indicating that the contracted merchandise and services were provided by the contract provider to the contract insured. Upon receipt of the letter of performance and death certificate, or proof of death, the trustee shall pay to the contract provider all funds, which shall not be less than the amount deposited in trust. In the limited instance only when a preneed provider furnishes a personalized, engraved marker, headstone or monument before death, the trustee may disburse to the preneed provider compensation for the engraved marker, headstone or monument as well as any associated engraving, setting or delivery fees. In those instances, no disbursement from the

trust shall be made until the trustee receives from the preneed provider a delivery ticket or invoice, documentation for the engraving of identifying information regarding the purchaser, and a letter of performance indicating that the engraved marker, headstone or monument has been provided.

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

(7) If a substitute provider was named by the contract beneficiary, during his life, or by one with the legal authority to act on his behalf at any time, the substitute provider shall provide the trustee with a death certificate or published obituary along with an invoice verifying that the substitute provider serviced the final needs of the beneficiary. Within ten (10) days of receipt of the documentation of death and invoice from the substitute provider, the trustee shall pay the substitute provider or the estate of the contract beneficiary not less than the amount deposited in trust on behalf of the serviced beneficiary. For all trust funded preneed contracts sold on or after July 1, 2012, the trustee shall pay the substitute provider not less than the amount deposited into trust on behalf of the serviced beneficiary in addition to all earnings, interest and income on the beneficiary's principal.

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

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

75-63-63. Preneed contracts entered into in this state shall be portable. * * * The naming of a substitute provider shall be in writing by the contract beneficiary or by one who is authorized by law to act on their behalf. If the preneed contract is funded by trust, the notice of a substitute provider shall be made to the original preneed contract seller and the trustee * * * holding funds for the beneficiary. Upon receipt of the notice of substitute provider, the original provider shall be relieved of all obligations to perform the contract including all obligations of reporting and accounting. If the preneed contract is funded by insurance, the change of beneficiary shall be made in writing to the insurance company. If for any reason insurance proceeds are paid to a preneed seller who did not furnish the final needs of the beneficiary at their time of need, the policy proceeds shall be paid in full to the substitute provider or the estate of the preneed beneficiary within ten (10) days of receipt.

SECTION 4. Section 75-63-68, Mississippi Code of 1972, is amended as follows:

75-63-68. A registered preneed contract provider may convert trust funded prepaid funeral benefits to insurance funded prepaid funeral benefits or annuity contracts upon appeal to the Secretary of State. If approved, the Secretary of State shall issue an order authorizing the withdrawal of funds for the provider to purchase * * * preneed insurance * * * or annuity contracts * * *. The preneed seller shall disclose in writing to all affected preneed purchasers the terms of the insurance policy or annuity contract. Except as provided in this section, no funds deposited in trust with a trustee shall be withdrawn by the trustee to purchase a preneed insurance policy or annuity contracts.

SECTION 5. This act shall take effect and be in force from
and after July 1, 2012.

PASSED BY THE SENATE
March 7, 2012



PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
March 21, 2012



SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR



GOVERNOR

2:50pm