

House Bill 910 (COMMITTEE SUBSTITUTE) (AM)

By: Representatives Rogers of the 26th and Graves of the 137th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 14 of Title 10 of the Official Code of Georgia Annotated, relating to
2 cemetery and funeral services, and Title 43 of the Official Code of Georgia Annotated,
3 relating to professions and businesses, so as to provide for definitions; to provide for certain
4 requirements for preneed dealers relating to escrow accounts; to provide for powers under
5 Chapter 14 of Title 10; to provide for certain license requirements prior to selling burial
6 rights or merchandise; to provide for certain fees; to regulate the profession of ceterierians;
7 to provide for related matters; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Chapter 14 of Title 10 of the Official Code of Georgia Annotated, relating to cemetery and
11 funeral services, is amended by striking paragraphs (2), (3), (27), and (35) of Code Section
12 10-14-3, relating to definitions, and inserting in their place new paragraphs (2), (3), (27), and
13 (35) to read as follows:

14 "(2) 'Board' means the State Board of ~~Funeral Service~~ Cemeterians as described and
15 authorized in Chapter ~~18~~ 8B of Title 43.

16 (3) 'Burial merchandise,' 'funeral merchandise,' or 'merchandise' means any personal
17 property offered or sold by any person for use in connection with the final disposition,
18 memorialization, interment, entombment, or inurnment of human remains."

19 "(27) 'Outer burial container' or 'vault' means an enclosure into which a casket is placed
20 and includes, but is not limited to, containers made of concrete, steel, fiberglass, copper
21 or other metals, polypropolene materials, sectional concrete enclosures, crypts, and
22 wooden enclosures."

23 (35) 'Secretary of State' means the Secretary of State of the State of Georgia, acting by
24 and through the board."

SECTION 2.

Said chapter is further amended in said Code Section 10-14-3, relating to definitions, by inserting a new paragraph to be designated paragraph (32.1) to read as follows:

"(32.1) 'Principal' means a sum set aside or escrowed exclusive of income or interest or other return thereon."

SECTION 3.

Said chapter is further amended by striking paragraph (1) of subsection (d) of Code Section 10-14-7, relating to preneed escrow accounts, and inserting a new paragraph (1) and a new subsection to be designated subsection (e.1) to read as follows:

"(d)(1) Funds may be released from the escrow account when the burial or funeral merchandise is delivered at the time of need or to the purchaser at the purchaser's request or, in the case of a monument, attached to realty, or at such times as described in the rules and regulations promulgated by the Secretary of State, not exceeding the lesser of 30 days from receipt of application for release or the time within which a preneed dealer is required by law to provide a refund to a purchaser. A preneed dealer is prohibited from requiring preneed delivery to the consumer as a condition of the sale. Outer burial containers may not be delivered prior to need. Deposits made from funds received in payment of preneed services shall remain in the escrow account until such services are performed, at which time said funds may be released to the preneed dealer. The trustee may require certification by the preneed dealer of delivery of merchandise or performance of services before release of funds."

"(e.1) In the case of release of escrowed funds to a purchaser at the purchaser's request pursuant to paragraph (1) of subsection (d) of this Code section, a sum not less than the lesser of 10 percent of the escrowed amount or one-half of the interest earned upon such funds as of the date of release, as provided by the Secretary of State by rule or regulation, may be retained by the preneed dealer as administrative costs."

SECTION 4.

Said chapter is further amended by striking subsection (a) of Code Section 10-14-14, relating to administration of chapter and rules and regulations, and inserting in its place a new subsection (a) to read as follows:

"(a) The administration of the provisions of this chapter shall be vested in the Secretary of State, who may delegate such of his or her powers and duties under this chapter to a subordinate of the office as he or she shall deem appropriate."

SECTION 5.

Said chapter is further amended by adding a new subsection (j) and by striking paragraph (7) of subsection (a), paragraph (2) of subsection (c), paragraph (2) of subsection (d), and subsection (h) of Code Section 10-14-17, relating to enumeration of prohibited acts, and inserting in their respective places the following:

"(7) To sell, offer to sell, solicit offers to buy, or otherwise engage in the sale of funeral services or funeral merchandise if such person is not a licensed funeral director; ~~or~~
(7.1) To sell, offer to sell, solicit offers to buy, or otherwise engage in the sale of burial rights or burial merchandise if such person is not registered pursuant to the provisions of this chapter; or"

"(2) Charge a fee for the installation of merchandise purchased or obtained from and to be installed by a person or firm other than the cemetery company or its agents, provided that the cemetery owner may charge a fee not to exceed \$50.00 to reimburse the cemetery owner for its actual costs incurred in assisting in the siting of a monument on the lot on which it is to be installed, supervision and inspection of the installation to ensure compliance with the rules and regulations of the cemetery, and any administrative functions associated with the installation; provided, further, any such fee is properly disclosed and published as required by this chapter and charged regardless of whether the installer is or is not the cemetery owner or affiliated therewith;"

"(2) Charges paid for transferring burial rights or burial or funeral merchandise from one purchaser to another; however, no such fee may exceed ~~\$50.00~~ \$75.00 and such fee must have been disclosed in writing to the owner at the time of the initial purchase of the burial right from the cemetery;"

"(h) The contract rights of any purchaser of preneed merchandise shall be freely transferable without fee except as provided in this chapter."

"(j) The fees set forth in this Code section shall be annually adjusted to the rate of change in the Consumer Price Index as reported by the Bureau of Labor Statistics of the United States Department of Labor. The Secretary of State shall adopt such adjustments to the amount of said fees by rule."

SECTION 6.

Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses, is amended by adding a new chapter to be designated Chapter 8B to read as follows:

"CHAPTER 8B

1

2 43-8B-1.

3 This chapter shall be known and may be cited as the 'Georgia Cemeterians Board Act.'

4 43-8B-2.

5 As used in this chapter, the term:

6 (1) 'Board' means the State Board of Cemeterians established by this chapter.

7 (2) 'Cemeterian' means a person registered as a cemetery owner pursuant to Chapter 14
8 of Title 10.

9 (3) 'Cemetery' means a cemetery as defined in Chapter 14 of Title 10.

10 43-8B-3.

11 The practice of the profession of a cemeterian, as defined in this chapter, is declared to be
12 a business or profession affecting the public interest and involving the health and safety of
13 the public.

14 43-8B-4.

15 There shall be established in the Office of the Secretary of State the State Board of
16 Cemeterians to be constituted as provided in this chapter with the powers, duties, and
17 authority vested in such board by this chapter.

18 43-8B-5.

19 (a) The board shall consist of six members who shall be practicing cemeterians with a
20 minimum of five years of registration as such in this state immediately preceding their
21 appointment and one member who shall have no connection whatsoever with the cemetery
22 profession but who shall have a recognized interest in consumer affairs and in consumer
23 protection concerns.24 (b) The members of the board shall be appointed by the Governor for terms of office of
25 six years and all vacancies occurring on the board shall be filled by the Governor within
26 30 days after the occurrence thereof. When an appointment is made to fill a vacancy
27 caused by death or resignation of a member, such appointment shall be for the remainder
28 of the unexpired term of the member whose death or resignation caused the vacancy so
29 filled.30 (c) A majority of the members of the board may remove any member who misses three or
31 more consecutive regular meetings of the board without a medical reason and may declare
32 that position on the board to be vacant. A member so removed shall not be eligible for

1 reappointment until the expiration of the term of office for which such person was serving.
2 The Governor shall have the power to remove from office any member of the board for
3 willful neglect of duty or for conviction of a crime involving moral turpitude.

4 43-8B-6.

5 (a) The board shall each year elect from its members a president whose term shall be one
6 year and who shall serve during the period for which elected and until a successor shall be
7 elected.

8 (b) The board shall meet at least quarterly each year and more often as the proper and
9 efficient discharge of its duties may require.

10 (c) Each member of the board shall be reimbursed as provided for in subsection (f) of
11 Code Section 43-1-2.

12 (d) No board inspector shall own, operate, or be employed by any cemetery or perform any
13 services on behalf thereof without prior approval by the board and the division director.
14 However, this shall not prohibit any board member from acting as an inspector as
15 authorized in this chapter.

16 43-8B-7.

17 For the purpose of better protection of life and health the board is authorized:

18 (1) To fix and prescribe minimum standards of general appearance of cemeteries;

19 (2) To undertake such other duties and to exercise such other powers as may from time
20 to time be prescribed by law;

21 (3) To adopt a common seal; and

22 (4) To make and promulgate rules and regulations not inconsistent with the laws of this
23 state for the regulation of such board and pursuant to the provisions of Chapter 14 of Title
24 10. All rules and regulations of the Secretary of State promulgated pursuant to the
25 authority of Chapter 14 of Title 10 and existing immediately prior to July 1, 2006, which
26 are not inconsistent with this chapter shall continue in effect until repealed, amended, or
27 otherwise changed by the board."

28 SECTION 7.

29 All laws and parts of laws in conflict with this Act are repealed.