

The Senate Regulated Industries and Utilities Committee offered the following substitute to HB 910:

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, Code Section 36-72-2 of the Official Code of Georgia
3 Annotated, relating to definitions relating to abandoned cemeteries and burial grounds, and
4 Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses,
5 so as to provide for definitions; to provide for certain requirements for preneed dealers
6 relating to escrow accounts; to provide for powers under Chapter 14 of Title 10; to provide
7 for certain license requirements prior to selling burial rights or merchandise; to provide for
8 certain fees; to regulate the profession of cemeterians; to provide for related matters; to
9 repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

11 Chapter 14 of Title 10 of the Official Code of Georgia Annotated, relating to cemetery and
12 funeral services, is amended by striking paragraphs (2), (3), (27), and (35) of Code Section
13 10-14-3, relating to definitions, and inserting in their place new paragraphs (2), (3), (27), and
14 (35) to read as follows:
15

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

18 (3) 'Burial merchandise,' 'funeral merchandise,' or 'merchandise' means any personal
19 property offered or sold by any person for use in connection with the final disposition,
20 memorialization, interment, entombment, or inurnment of human remains, including
21 without limitation a mausoleum, cremation urn, cremation bench, cremation marker, or
22 cremorial."

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

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

3 SECTION 2.

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

6 "(32.1) 'Principal' means a sum set aside or escrowed exclusive of income or interest or
 7 other return thereon."

8 SECTION 3.

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

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

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

29 SECTION 4.

30 Said chapter is further amended by striking Code Section 10-14-10, relating to minimum
 31 acreage for cemeteries and exceptions, and inserting in lieu thereof the following:

1 "10-14-10.

2 (a) Except as otherwise provided in subsections (b) and (c) of this Code section, every
3 cemetery initially registered according to the provisions of this chapter on or after July 1,
4 ~~2000~~ 1998, shall consist of not less than ten acres of land.

5 (b) The following cemeteries shall not be subject to the requirement of subsection (a) of
6 this Code section:

7 (1) All cemeteries registered according to this chapter prior to August 1, 1986; or

8 (2) Cemeteries initially registered on or after August 1, 1986, but before July 1, ~~2000~~
9 1998, which shall consist of not less than 25 acres of land, except for cemeteries subject
10 to a provision of previous law, which allowed cemeteries consisting of not less than ten
11 acres of land dedicated solely for burial purposes and located in counties having a
12 population of less than 10,000 according to the United States decennial census of 1990
13 or any future such census.

14 (c) The Secretary of State may provide by rule or regulation for a smaller minimum size
15 for a cemetery which consists solely of one or more columbaria."

16 SECTION 5.

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

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

23 SECTION 6.

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

28 "(7) To sell, offer to sell, solicit offers to buy, or otherwise engage in the sale of funeral
29 services if such person is not a licensed funeral director; ~~or~~

30 (7.1) To sell, offer to sell, solicit offers to buy, or otherwise engage in the sale of burial
31 rights or burial merchandise if such person is not registered pursuant to the provisions of
32 this chapter; or"

33 "(2) Charge a fee for the installation of merchandise purchased or obtained from and to
34 be installed by a person or firm other than the cemetery company or its agents, provided
35 that the cemetery owner may charge a fee not to exceed ~~\$50.00~~ \$125.00 to reimburse the

1 cemetery owner for its ~~actual~~ reasonable costs incurred in assisting in the siting of a
 2 monument on the lot on which it is to be installed, supervision and inspection of the
 3 installation to ensure compliance with the rules and regulations of the cemetery, and any
 4 administrative functions associated with the installation; provided, further, any such fee
 5 is properly disclosed and published as required by this chapter and charged regardless of
 6 whether the installer is or is not the cemetery owner or affiliated therewith;"

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

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

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

16 SECTION 7.

17 Code Section 36-72-2 of the Official Code of Georgia Annotated, relating to definitions
 18 relative to abandoned cemeteries and burial grounds, is amended by striking in its entirety
 19 paragraph (5) and inserting in lieu thereof the following:

20 "(5) 'Cemetery' or 'cemeteries' means any land or structure in this state dedicated to and
 21 used, ~~or intended to be used,~~ for interment of human remains. It may be either a burial
 22 park for earth interments or a mausoleum for vault or crypt interments or a combination
 23 of one or more thereof."

24 SECTION 8.

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

27 "CHAPTER 8B

28 43-8B-1.

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

30 43-8B-2.

31 As used in this chapter, the term:

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

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

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

4 43-8B-3.

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

8 43-8B-4.

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

12 43-8B-5.

13 (a) The board shall consist of six members who shall be practicing cemeterians with a
14 minimum of five years of registration as such in this state immediately preceding their
15 appointment and one member who shall have no connection whatsoever with the cemetery
16 profession but who shall have a recognized interest in consumer affairs and in consumer
17 protection concerns.

18 (b) The members of the board shall be appointed by the Governor for terms of office of
19 six years and all vacancies occurring on the board shall be filled by the Governor. When
20 an appointment is made to fill a vacancy caused by death or resignation of a member, such
21 appointment shall be for the remainder of the unexpired term of the member whose death
22 or resignation caused the vacancy so filled.

23 (c) A majority of the members of the board may remove any member who misses three or
24 more consecutive regular meetings of the board without a medical reason and may declare
25 that position on the board to be vacant. A member so removed shall not be eligible for
26 reappointment until the expiration of the term of office for which such person was serving.
27 The Governor shall have the power to remove from office any member of the board for
28 willful neglect of duty or for conviction of a crime involving moral turpitude.

29 43-8B-6.

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

1 (b) The board shall meet at least yearly and more often as the proper and efficient
2 discharge of its duties may require.

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

5 (d) No inspector shall own, operate, or be employed by any cemetery or perform any
6 services on behalf thereof.

7 43-8B-7.

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

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

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

12 (3) To adopt a common seal; and

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

19 **SECTION 9.**

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