

SENATE 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), and (27) of Code Section
13 10-14-3, relating to definitions, and inserting in their place new paragraphs (2), (3) and (27)
14 to read as follows:
15

16 "(2) 'Board' means the State Board of ~~Funeral Service~~ Cemeterians as described and
17 authorized in Chapter ~~48~~ 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.~~"

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 2A.

Said chapter is further amended by inserting following Code Section 10-14-3 a new Code section to read as follows:

"10-14-3.1.

The board shall have all administrative powers and other powers necessary to carry out the provisions of this chapter, including the authority to promulgate rules and regulations, and the Secretary of State shall delegate to the board all such duties otherwise entrusted to the Secretary of State; provided, however, that the Secretary of State shall have sole authority over matters relating to the regulation of funds, trust funds, and escrow accounts and accounting and investigations concerning such matters."

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~~ shall 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

1 funds as of the date of release, as provided by the Secretary of State by rule or regulation,
2 may be retained by the preneed dealer as administrative costs."

3 SECTION 4.

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

6 "10-14-10.

7 (a) Except as otherwise provided in subsections (b) and (c) of this Code section, every
8 cemetery initially registered according to the provisions of this chapter on or after July 1,
9 ~~2000~~ 1998, shall consist of not less than ten acres of land.

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

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

13 (2) Cemeteries initially registered on or after August 1, 1986, but before July 1, ~~2000~~
14 1998, which shall consist of not less than 25 acres of land, except for cemeteries subject
15 to a provision of previous law, which allowed cemeteries consisting of not less than ten
16 acres of land dedicated solely for burial purposes and located in counties having a
17 population of less than 10,000 according to the United States decennial census of 1990
18 or any future such census.

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

21 SECTION 5.

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

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

28 SECTION 6.

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

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

1 (7.1) To sell, offer to sell, solicit offers to buy, or otherwise engage in the sale of burial
 2 rights or burial merchandise if such person is not registered pursuant to the provisions of
 3 this chapter; or"

4 "(2) Charge a fee for the installation of merchandise purchased or obtained from and to
 5 be installed by a person or firm other than the cemetery company or its agents, provided
 6 that the cemetery owner may charge a fee not to exceed ~~\$50.00~~ \$125.00 to reimburse the
 7 cemetery owner for its ~~actual~~ reasonable costs incurred in assisting in the siting of a
 8 monument on the lot on which it is to be installed, supervision and inspection of the
 9 installation to ensure compliance with the rules and regulations of the cemetery, and any
 10 administrative functions associated with the installation; provided, further, any such fee
 11 is properly disclosed and published as required by this chapter and charged regardless of
 12 whether the installer is or is not the cemetery owner or affiliated therewith;"

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

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

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

22 SECTION 7.

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

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

30 SECTION 8.

31 Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses,
 32 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 or a cemetery manager.

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. When
26 an appointment is made to fill a vacancy caused by death or resignation of a member, such
27 appointment shall be for the remainder of the unexpired term of the member whose death
28 or resignation caused the vacancy so filled.29 (c) A majority of the members of the board may remove any member who misses three or
30 more consecutive regular meetings of the board without a medical reason and may declare
31 that position on the board to be vacant. A member so removed shall not be eligible for
32 reappointment until the expiration of the term of office for which such person was serving.

1 The Governor shall have the power to remove from office any member of the board for
2 willful neglect of duty or for conviction of a crime involving moral turpitude.

3 43-8B-6.

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

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

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

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

13 43-8B-7.

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

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

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

18 (3) To adopt a common seal; and

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

25 **SECTION 9.**

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