

House Bill 953

By: Representative Sims of the 169th

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 Article 1 of Chapter 18 of Title 43 of the Official Code
3 of Georgia Annotated, relating to funeral directors and establishments, embalmers, and
4 crematories, so as to modify provisions relating to funeral directors and ceterierians; to allow
5 for electronic signatures for funeral services and related preneed contracts; to clarify
6 definitions relating to funeral services; to clarify registration requirements for preneed
7 dealers; to provide for the oversight of funeral service preneed providers by the State Board
8 of Funeral Service; to provide for related matters; to provide an effective date; to repeal
9 conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 I.
12 Funeral Services Generally.

13 **SECTION 1.**

14 Chapter 14 of Title 10 of the Official Code of Georgia Annotated, relating to cemetery and
15 funeral services, is amended by revising paragraphs (12) and (17) of and by adding a new
16 paragraph to Code Section 10-14-3, relating to definitions applicable to cemetery and funeral
17 services, as follows:

18 "(12) 'Cremation' includes any mechanical, chemical, or thermal, or other professionally
19 accepted process whereby a deceased human being is reduced to ashes. Cremation also
20 includes any other mechanical, chemical, or thermal, or other professionally accepted
21 process whereby human remains are pulverized, burned, recremented, or otherwise further
22 reduced in size or quantity."

23 "(16.1) 'Funeral director in full and continuous charge' means a funeral director who is
24 approved by the State Board of Funeral Service to assume full responsibility for the
25 operations of a particular funeral establishment and who shall ensure that said

26 establishment complies with this chapter and with all rules promulgated pursuant thereto
 27 as provided in Chapter 18 of Title 43.

28 (17) 'Funeral service' means any service relating to the transportation, embalming,
 29 cremation, and interment of a deceased human being, as further described in ~~paragraphs~~
 30 ~~(10), (18), and (19)~~ of Code Section 43-18-1."

31 **SECTION 2.**

32 Said chapter is further amended by revising subsection (c) of Code Section 10-14-18, relating
 33 to duties of registrant and written contract, as follows:

34 "(c) The written contract shall be completed prior to the signing of the contract by the
 35 customer and a copy of the contract shall be provided to the customer. As used in this
 36 subsection, the term 'signing' includes any manual, facsimile, conformed, or electronic
 37 signature, and the term 'electronic signature' means an electronic symbol or process
 38 attached to or logically associated with a document and executed or adopted by a person
 39 with the intent to sign the document."

40 **SECTION 3.**

41 Article 1 of Chapter 18 of Title 43 of the Official Code of Georgia Annotated, relating to
 42 funeral directors and establishments, embalmers, and crematories, is amended by revising
 43 paragraphs (5) and (10) of Code Section 43-18-1, relating to definitions pertaining to funeral
 44 directors and establishments, embalmers, and crematories, as follows:

45 "(5) 'Cremation' means the reduction of the dead human body to residue by intense heat
 46 or any mechanical, chemical, thermal, or other professionally accepted process.
 47 Cremation also includes any other mechanical, chemical, thermal, or other professionally
 48 accepted process whereby human remains are pulverized, burned, recremented, or
 49 otherwise further reduced in size or quantity."

50 "(10) 'Funeral' or 'funeral services' means the observances, services, or ceremonies held
 51 for dead human bodies and includes any service relating to the transportation, embalming,
 52 cremation, and interment of a dead human body."

53 **SECTION 4.**

54 Said article is further amended by revising paragraph (19) of Code Section 43-18-46, relating
 55 to grounds for denial or revocation of license or registration, and other discipline, as follows:

56 "(19) Promoting or participating in a burial, funeral, or cremation society, burial, funeral,
 57 or cremation association, burial certificate plan, ~~or~~ burial membership plan, or other
 58 similar societies, plans, or associations;"

59 **SECTION 5.**

60 Said article is further amended by revising subsection (c) of Code Section 43-18-50, relating
61 to application for funeral service apprenticeship and period of apprenticeship, as follows:

62 "(c) The total period of apprenticeship shall be 3,120 hours and must be served in a
63 minimum of 18 months, but the minimum period shall be in addition to the time required
64 to graduate from a college of funeral service or other college pursuant to paragraph (1) of
65 subsection (b) of Code Section 43-18-41. An apprentice shall be authorized to earn
66 apprenticeship hours in an amount to be determined by the board while attending a
67 postgraduate school or a program at an accredited college of funeral service or other
68 college approved by the board."

69 **II.**

70 Regulation of Preneed Dealers.

71 **SECTION 6.**

72 Chapter 14 of Title 10 of the Official Code of Georgia Annotated, relating to cemetery and
73 funeral services, is amended by revising paragraph (2) of Code Section 10-14-3, relating to
74 definitions applicable to cemetery and funeral services, as follows:

75 "(2) ~~'Board' means~~ 'Boards' mean the State Board of Cemeterians as described and
76 authorized in Chapter 8B of Title 43 and the State Board of Funeral Service as described
77 and authorized in Chapter 18 of Title 43."

78 **SECTION 7.**

79 Said chapter is further amended by revising Code Section 10-14-3.1, relating to the authority
80 of the State Board of Cemeterians, as follows:

81 "10-14-3.1.

82 The ~~board~~ boards shall have all administrative powers and other powers necessary to carry
83 out the provisions of this chapter, including the authority to promulgate rules and
84 regulations, and the Secretary of State shall delegate to the ~~board~~ boards all such duties
85 otherwise entrusted to the Secretary of State; provided, however, that the Secretary of State
86 shall have ~~sole~~ authority over matters relating to the regulation of funds, trust funds, and
87 escrow accounts and accounting and investigations concerning such matters but shall
88 delegate authority to the appropriate board for the review of such investigations and the
89 determination as to disciplinary matters, necessary sanctions, and the enforcement of such
90 decisions and sanctions. The State Board of Funeral Service shall have authority to
91 promulgate rules and regulations and make disciplinary and sanctioning decisions relating
92 to funeral services and persons other than cemeterians who offer for sale or sell burial or

93 funeral merchandise. The State Board of Cemeterians shall have authority to promulgate
 94 rules and regulations and make disciplinary and sanctioning decisions relating to
 95 cemeteries and cemeterians. The Secretary of State shall delegate to each board according
 96 to such duties and responsibilities of the boards."

97 **SECTION 8.**

98 Said chapter is further amended by revising paragraph (2) of subsection (b) of Code Section
 99 10-14-4, relating to registration of dealers and cemeteries, perpetual care cemeteries trust
 100 funds, nonperpetual care cemeteries, and preneed escrow accounts, as follows:

101 "(2) Every person desiring to be a registered preneed dealer, other than a person already
 102 licensed by the Board of Funeral Service as a funeral services director in full and
 103 continuous charge or an owner of a cemetery licensed by the State Board of Cemeterians
 104 as a cemeterian, shall file with the Secretary of State a registration application in a form
 105 prescribed by the Secretary of State, executed and duly verified under oath by the
 106 applicant, if the applicant is an individual, or by an executive officer or general partner,
 107 if the applicant is a corporation or partnership, or by an individual of similar authority,
 108 if the applicant is some other entity, and containing the following information:

109 (A) The name of the applicant;

110 (B) The location, mailing address, and telephone number of the applicant's principal
 111 business location in Georgia and the same information for other locations where
 112 business is conducted, together with any trade names associated with each location;

113 (C) All locations of the records of the applicant which relate to preneed sales in
 114 Georgia;

115 (D) If the applicant is not a natural person, the names of the president, secretary, and
 116 registered agent if the applicant is a corporation, of each general partner if the applicant
 117 is a partnership, or of individuals of similar authority, if the applicant is some other
 118 entity and their respective addresses and telephone numbers; the name and address of
 119 each person who owns 10 percent or more of any class of ownership interest in the
 120 applicant and the percentage of such interest; and the date of formation and the
 121 jurisdiction of organization of the applicant;

122 (E) A certified copy of a certificate of existence or certificate of authority issued in
 123 accordance with Code Section 14-2-128 if the applicant is a corporation;

124 (F) A description of any judgment or pending litigation to which the applicant or any
 125 affiliate of the applicant is a party and which involves the operation of the applicant's
 126 preneed business in Georgia or which could materially affect the business or assets of
 127 the applicant;

- 128 (G) Whether the applicant or any affiliate of the applicant owns any other entities in
 129 Georgia regulated by this chapter and, if so, the location, mailing address, telephone
 130 number, and type of registration of such other entities;
- 131 (H) A consent to service of process meeting the requirements of Code Section
 132 10-14-24 for actions brought by the State of Georgia;
- 133 (I) A list of each individual employed, appointed, or authorized by the applicant to
 134 offer for sale or to sell any grave lots, burial rights, burial or funeral merchandise, or
 135 burial services on behalf of the applicant;
- 136 (J) A balance sheet of the applicant dated as of the end of the most recent fiscal year
 137 and in no event dated more than 15 months prior to the date of filing, which the
 138 Secretary of State shall treat as confidential and not open to public inspection;
- 139 (K) The name, address, location, and telephone number of the preneed escrow account
 140 depository or depositories, the names of the accounts, and the account numbers;
- 141 (L) An executed copy of the escrow agreement required by Code Section 10-14-7;
- 142 (M) The name, address, and telephone number of the escrow agent;
- 143 (N) Such other information and documents as the Secretary of State may require by
 144 rule; and
- 145 (O) A filing fee of \$250.00.

146 The provisions of this chapter notwithstanding, a person already licensed by the Board
 147 of Funeral Service as a funeral services director in full and continuous charge or an owner
 148 of a cemetery licensed by the State Board of Cemeterians as a cemeterian shall not be
 149 required to separately reregister as a preneed dealer; such person shall be deemed
 150 registered by virtue of obtaining and maintaining such license."

151 **SECTION 9.**

152 Said chapter is further amended by revising Code Section 10-14-5, relating to preneed sales
 153 agents, contracts, and retention of employee data, as follows:

154 "10-14-5.

- 155 (a) All individuals who offer preneed contracts to the public, or who execute preneed
 156 contracts on behalf of any entity required to be registered as a preneed dealer, and all
 157 individuals who offer, sell, or sign contracts for the preneed sale of burial rights shall be
 158 registered with the Secretary of State as preneed sales agents, pursuant to this Code section,
 159 unless such individuals are exempted under this chapter or individually own a controlling
 160 interest in a preneed dealer registered under this chapter. For purposes of this Code
 161 section, any person licensed by or registered with the Board of Funeral Service as a funeral
 162 services director in full and continuous charge or an owner of a cemetery licensed by the

163 State Board of Cemeterians as a cemeterian shall be deemed a registered preneed dealer by
164 virtue of such license.

165 (b) All preneed sales agents must be employed by a registered preneed dealer.

166 (c) A preneed dealer shall be liable for the activities of all preneed sales agents who are
167 employed by the preneed dealer or who perform any type of preneed related activity on
168 behalf of the preneed dealer. If a preneed sales agent violates any provision of this chapter,
169 such preneed sales agent and each preneed dealer who employs such preneed sales agent
170 shall be subject to the penalties and remedies set out in Code Sections 10-14-11, 10-14-19,
171 10-14-20, and 10-14-21.

172 (d) A preneed sales agent may be authorized to sell, offer, and execute preneed contracts
173 on behalf of all entities owned or operated by the agent's sponsoring preneed dealer.

174 (e) If the application for his or her registration is sent by certified mail, return receipt
175 requested, or statutory overnight delivery, an individual may begin functioning as a
176 preneed sales agent as soon as a completed application for registration, as set forth in
177 subsection (g) of this Code section, is ~~mailed~~ submitted to the Secretary of State, provided
178 that, if any such sales agent fails to meet the qualifications set forth in this chapter, the
179 preneed dealer shall immediately upon notification by the Secretary of State cause such
180 agent to cease any sales activity on its behalf.

181 (f) The qualifications for a preneed sales agent are as follows:

182 (1) The applicant must be at least 18 years of age;

183 (2) The applicant must not be subject to any order of the Secretary of State that restricts
184 his or her ability to be registered as a preneed sales agent; and

185 (3) The applicant must not have been adjudicated, civilly or criminally, to have
186 committed fraud or to have violated any law of any state involving fair trade or business
187 practices, have been convicted of a misdemeanor of which fraud is an essential element
188 or which involves any aspect of the funeral or cemetery business, or have been convicted
189 of a felony.

190 (g) An application for registration as a preneed sales agent shall be submitted to the
191 Secretary of State with an application fee of \$100.00 by the preneed dealer on a form that
192 has been designated by the Secretary of State and shall contain, at a minimum, the
193 following:

194 (1) The name, address, social security number, and date of birth of the applicant and such
195 other information as the Secretary of State may reasonably require of the applicant;

196 (2) The name, address, and license number of the sponsoring preneed dealer;

197 (3) A representation, signed by the applicant, that the applicant meets the requirements
198 set forth in subsection (f) of this Code section;

- 199 (4) A representation, signed by the preneed dealer, that the applicant is authorized to
 200 offer, sell, and sign preneed contracts on behalf of the preneed dealer and that the preneed
 201 dealer has informed the applicant of the requirements and prohibitions of this chapter
 202 relating to preneed sales, the provisions of the preneed dealer's preneed contract, and the
 203 nature of the merchandise, services, or burial rights sold by the preneed dealer;
- 204 (5) A statement indicating whether the applicant has any type of working relationship
 205 with any other preneed dealer or insurance company; and
- 206 (6) A signed agreement by the applicant consenting to an investigation of his or her
 207 background with regard to the matters set forth in this Code section, including, without
 208 limitation, his or her criminal history.
- 209 (h) An individual may be registered as a preneed sales agent on behalf of more than one
 210 preneed dealer, provided that the individual has received the written consent of all such
 211 preneed dealers.
- 212 (i) A preneed dealer who has registered a preneed sales agent shall notify the Secretary of
 213 State within three business days of a change in such individual's status as a preneed sales
 214 agent with such preneed dealer or upon the occurrence of any other event which would
 215 disqualify the individual as a preneed sales agent.
- 216 (j) Upon receipt and review of an application that complies with all of the requirements
 217 of this Code section, the Secretary of State shall register the applicant. The ~~department~~
 218 Secretary of State shall by rule provide for annual renewal of registration and a renewal fee
 219 of \$50.00.
- 220 (k) Each cemetery registered under this chapter shall maintain in its files for a period of
 221 five years a properly completed and executed application for employment in a form
 222 prescribed by the Secretary of State for each employee, officer, independent contractor, or
 223 other agent directly or indirectly involved in cemetery or preneed sales or any person
 224 occupying a similar status or performing similar functions. If a request is made, said forms
 225 shall be made available for inspection by authorized representatives of the Secretary of
 226 State."

227 SECTION 10.

228 Said chapter is further amended by adding a new Code section to read as follows:

229 "10-14-5.1.

230 Any preneed insurance policy contract provided by a licensed insurance agent shall not
 231 reference or state the name of any funeral service provider, funeral director, or funeral
 232 establishment unless such contract is signed by the director of such establishment so named
 233 in the agreement. Any preneed insurance policy contract shall be signed by the insurance
 234 agent, consumer, and licensed funeral director of the funeral establishment named in said

235 agreement. When a funeral establishment is named in a preneed insurance policy, the
 236 named funeral establishment shall be designated in full and continuous charge of such
 237 insurance funds."

238 **SECTION 11.**

239 Said chapter is further amended by revising Code Section 10-14-7, relating to preneed
 240 escrow accounts, as follows:

241 "10-14-7.

242 (a)(1) The provisions of this Code section shall apply only to preneed dealers not
 243 governed by the provisions of Code Section 10-14-7.1. Each such preneed dealer which
 244 sells burial or funeral merchandise on a preneed basis or preneed burial or funeral
 245 services shall establish and maintain a trust or a preneed escrow account.

246 (2) With respect to each monument and outer burial container, and except as otherwise
 247 provided in paragraph (3) of this subsection, the amount to be deposited to said trust or
 248 escrow account shall be not less than 35 percent of the sales price of such monument or
 249 outer burial container; in no event shall the amount deposited be less than 110 percent of
 250 the wholesale price of such monument or outer burial container. For any other burial or
 251 funeral merchandise, the amount to be deposited to said trust or escrow account shall be
 252 not less than 100 percent of the sales price of such merchandise; in no event shall the
 253 amount deposited be less than 110 percent of the wholesale price of such merchandise.
 254 If the contract of sale shall include grave spaces or items not deemed to be burial or
 255 funeral merchandise, the portion of the sales price attributable to the sale of the burial or
 256 funeral merchandise shall be determined, and it shall only be as to such portion of the
 257 total contract as constitutes burial or funeral merchandise that the deposit described in
 258 this paragraph shall be required. In the event that the sale of burial or funeral
 259 merchandise is under an installment contract, the required trust deposit shall be a pro rata
 260 part of the principal portion of each installment payment, such deposit only being
 261 required as payments are made by the purchaser for such burial or funeral merchandise.
 262 In the event the installment contract is discounted or sold to a third party, the seller shall
 263 be required to deposit an amount equal to the undeposited portion of the required deposit
 264 of the sales price of such burial or funeral merchandise at such time as if the contract
 265 were paid in full.

266 (3) With respect to a monument or outer burial container the itemized sales price of
 267 which does not include the installation of such item, 100 percent of the installation cost
 268 shall be deposited in the trust or escrow account.

269 (4) With respect to cash advance items and the sale of preneed funeral or burial services,
 270 the amount to be deposited to said trust or escrow account shall be 100 percent of the

271 sales price of such funeral or burial services or the full amount of a cash advance item.
 272 The time and manner of deposit shall be the same as that specified for deposit of burial
 273 or funeral merchandise sale funds to the escrow account.

274 (b) The deposit specified in paragraphs (2) and (3) of subsection (a) of this Code section
 275 shall be made not later than 30 days following the last day of the month in which any
 276 payment is received.

277 (c)(1) The preneed trust or escrow account shall be established and maintained in a state
 278 bank, state savings and loan institution, savings bank, national bank, federal savings and
 279 loan association, whose deposits are insured by the Federal Deposit Insurance
 280 Corporation or other governmental agency, or a state or federally chartered credit union
 281 insured under 12 U.S.C. Section 1781 of the Federal Credit Union Act, or other
 282 organization approved by the Secretary of State which is located and doing business in
 283 this state.

284 (2) If the account is maintained with a trustee, the assets of the trust account shall be
 285 invested and reinvested by the trust agent subject to all the terms, conditions, limitations,
 286 and restrictions imposed by Georgia law upon executors and trustees regarding the
 287 making and depositing of investments with trust moneys pursuant to Code Sections
 288 53-8-1 through 53-8-4 of the 'Pre-1998 Probate Code,' if applicable, or Code Sections
 289 53-8-1 and 53-12-287 of the 'Revised Probate Code of 1998.' Subject to said terms,
 290 conditions, limitations, and restrictions, the trust agent of the preneed accounts shall have
 291 full power to hold, purchase, sell, assign, transfer, reinvest, and dispose of any of the
 292 securities and investments in which any of the assets of said account are invested,
 293 including proceeds of investments.

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

306 (2) The funds on deposit under the terms of this subsection shall be deemed and regarded
 307 as trust or escrow funds pending delivery of the burial or funeral merchandise concerned

308 and said funds may not be pledged, hypothecated, transferred, or in any manner
 309 encumbered by the trust or escrow agent nor may said funds be offset or taken for the
 310 debts of the preneed dealer until such time as the merchandise has been delivered or the
 311 services performed; but after delivery of the burial or funeral merchandise concerned.

312 (e) At any time, in the event that the preneed trust or escrow account contains an amount
 313 less than the amount required by this Code section, the preneed dealer shall, within 15 days
 314 after the earlier of becoming aware of such fact or having been so notified by the Secretary
 315 of State, deposit into the preneed account an amount equal to such shortfall. In the event
 316 that the Secretary of State and the preneed dealer disagree regarding the amount of such
 317 shortfall, no penalty shall be imposed upon the preneed dealer for any failure to comply
 318 with this provision unless such failure occurs after notice and opportunity for a hearing as
 319 provided in Code Section 10-14-23.

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

326 ~~(f)~~(g) Upon a finding by a court of competent jurisdiction of failure to deposit or maintain
 327 funds in the preneed trust or escrow account as required by this chapter or of fraud, theft,
 328 or other misconduct by the preneed dealer or the officers or directors of the preneed dealer
 329 which has wasted or depleted such funds, the preneed dealer or the officers or directors of
 330 the preneed dealer may be held jointly and severally liable for any deficiencies in the
 331 preneed trust or escrow account."

332 SECTION 12.

333 Said chapter is further amended by adding a new Code section to read as follows:

334 "10-14-7.1.

335 (a) Notwithstanding any provision to the contrary contained in Chapter 1 of Title 7, the
 336 'Financial Institutions Code of Georgia,' or in any other provision of law, a funeral
 337 establishment or a funeral director in full and continuous charge or his or her agent,
 338 representative, or employee may provide for funds to be deposited with a depository
 339 institution in accordance with this Code section and placed in an individual trust fund
 340 account that is:

341 (1) Titled in the name of a funeral establishment;

342 (2) Established for the purpose of providing preneed funeral services;

343 (3) Payable upon the death of the purchaser in favor of a funeral establishment for
344 purposes of providing funeral services; and

345 (4) Refundable to the purchaser's designee or the estate of the deceased, such that 100
346 percent of the trust funds following a deduction of any amounts paid or owing as taxes
347 and a 3 percent charge for administrative costs shall be returned to the designee or estate
348 where funeral services are not provided by the funeral establishment.

349 (b)(1) One hundred percent of funds to be held in trust shall be deposited in the trust
350 account. The deposit of such funds shall be made not later than 30 days following the last
351 day of the month in which any payment is received. Trust fund accounts shall be
352 established and maintained in a state bank, state savings and loan institution, savings
353 bank, national bank, federal savings and loan association, whose deposits are insured by
354 the Federal Deposit Insurance Corporation or other governmental agency, or a state or
355 federally chartered credit union insured under 12 U.S.C. Section 1781 of the Federal
356 Credit Union Act, or other organization approved by the Secretary of State which is
357 located and doing business in this state.

358 (2) If the account is maintained with a trustee, the assets of the trust account shall be
359 invested and reinvested by the trust agent subject to all the terms, conditions, limitations,
360 and restrictions imposed by Georgia law upon executors and trustees regarding the
361 making and depositing of investments with trust moneys pursuant to Code Sections
362 53-8-1 through 53-8-4 of the 'Pre-1998 Probate Code,' if applicable, or Code Sections
363 53-8-1 and 53-12-287 of the 'Revised Probate Code of 1998.' Subject to said terms,
364 conditions, limitations, and restrictions, the trust agent of the preneed accounts shall have
365 full power to hold, purchase, sell, assign, transfer, reinvest, and dispose of any of the
366 securities and investments in which any of the assets of said account are invested,
367 including proceeds of investments.

368 (3) In the event that the sale of burial or funeral merchandise is under an installment
369 contract, the required trust deposit shall be a pro rata part of the principal portion of each
370 installment payment, such deposit only being required as payments are made by the
371 purchaser for such burial or funeral merchandise.

372 (c) Any person holding money in trust pursuant to this Code section shall first be required
373 to register with the Secretary of State and pay an annual registration fee of \$100.00 for the
374 reimbursement of the office for administrative costs. The Secretary of State shall establish
375 rules and regulations for investments of trust funds as necessary to preserve the corpus and
376 income of such a fund and for determining what restrictions are necessary for such
377 purposes.

378 (d) Upon a finding by a court of competent jurisdiction of failure to deposit or maintain
379 funds in the trust account as required by this Code section or of fraud, theft, or misconduct

380 by a funeral establishment or a funeral director or his or her employee, representative, or
381 agent which has wasted or depleted such funds, the funeral establishment owners, funeral
382 director, or employee, representative, or agent of a funeral director or establishment may
383 be held jointly and severally liable for any deficiencies in the trust account.

384 (e) Any other provision of law notwithstanding, a trust fund account established and
385 maintained under this Code section and the moneys contained therein shall not be deemed
386 an asset or income for purposes of recapture of income or funds owed or for any other
387 purpose.

388 (f) Nothing contained herein shall preclude a licensed funeral director in full and
389 continuous charge from maintaining an escrow account with aggregate escrow funds for
390 100 percent of any preneed contract amount for purposes of passing through funds within
391 60 days to a trust fund account or payment of a policy of insurance for preneed services."

392

III.

393

Effective date and repealer.

394

SECTION 13.

395 This Act shall become effective on July 1, 2012.

396

SECTION 14.

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