

The Senate Regulated Industries and Utilities Committee offered the following substitute to HB 933:

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
5 provide for the release of funds from an escrow account when a monument is placed into a
6 bonded memorial storage program; to allow for electronic signatures for funeral services and
7 related preneed contracts; to clarify definitions relating to funeral services; to clarify
8 registration requirements for preneed dealers; to provide for the oversight of funeral service
9 preneed providers by the State Board of Funeral Service; to provide for related matters; to
10 provide an effective date; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

12 Chapter 14 of Title 10 of the Official Code of Georgia Annotated, relating to cemetery and
13 funeral services, is amended in Code Section 10-14-3, relating to definitions applicable to
14 cemetery and funeral services, by revising paragraphs (12) and (17) and by adding a new
15 paragraph to read as follows:
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17 "(12) 'Cremation' includes any mechanical, chemical, or thermal, or other professionally
18 accepted process whereby a deceased human being is reduced to ashes. Cremation also
19 includes any other mechanical, chemical, or thermal, or other professionally accepted
20 process whereby human remains are pulverized, burned, recremented, or otherwise further
21 reduced in size or quantity."

22 "(16.1) 'Funeral director in full and continuous charge' means a funeral director who is
23 approved by the State Board of Funeral Service to assume full responsibility for the
24 operations of a particular funeral establishment and who shall ensure that said
25 establishment complies with this chapter and with all rules promulgated pursuant thereto
26 as provided in Chapter 18 of Title 43.

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

30 **SECTION 2.**

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

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

39 **SECTION 3.**

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

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

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

52 **SECTION 4.**

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

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

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SECTION 5.

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

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

SECTION 6.

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

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

SECTION 7.

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

"10-14-3.1.

The ~~board~~ boards 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~~ boards 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 but shall delegate authority to the appropriate board for the review of such investigations and the determination as to disciplinary matters, necessary sanctions, and the enforcement of such decisions and sanctions. The State Board of Funeral Service shall have authority to promulgate rules and regulations and make disciplinary and sanctioning decisions relating to funeral services and persons other than cemeterians who offer for sale or sell burial or funeral merchandise. The State Board of Cemeterians shall have authority to promulgate rules and regulations and make disciplinary and sanctioning decisions relating to

92 cemeteries and ceterians. The Secretary of State shall delegate to each board according
 93 to such duties and responsibilities of the boards."

94 **SECTION 8.**

95 Said chapter is further amended by revising paragraph (2) of subsection (b) of Code Section
 96 10-14-4, relating to registration of dealers and cemeteries, perpetual care cemeteries trust
 97 funds, nonperpetual care cemeteries, and preneed escrow accounts, as follows:

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

106 (A) The name of the applicant;

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

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

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

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

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

125 (G) Whether the applicant or any affiliate of the applicant owns any other entities in
 126 Georgia regulated by this chapter and, if so, the location, mailing address, telephone
 127 number, and type of registration of such other entities;

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

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

148 **SECTION 9.**

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

151 "10-14-5.

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

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

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

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

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

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

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

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

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

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

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

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

196 (4) A representation, signed by the preneed dealer, that the applicant is authorized to
197 offer, sell, and sign preneed contracts on behalf of the preneed dealer and that the preneed
198 dealer has informed the applicant of the requirements and prohibitions of this chapter

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

224 SECTION 10.

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

226 "10-14-5.1.

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

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SECTION 11.

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

"10-14-7.

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

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

(3) With respect to a monument, ~~or~~ outer burial container, bench, coping, and other burial and funeral merchandise items except for caskets, the itemized sales price of which does not include the installation of such item, 100 percent of the installation cost shall be deposited in the trust or escrow account.

(4) With respect to cash advance items and the sale of preneed funeral or burial services, the amount to be deposited to said trust or escrow account shall be 100 percent of the sales price of such funeral or burial services or the full amount of a cash advance item.

271 The time and manner of deposit shall be the same as that specified for deposit of burial
272 or funeral merchandise sale funds to the escrow account.

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

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

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

292 (d)(1) For burial or funeral merchandise, funds Funds shall be released from the ~~trust or~~
293 ~~escrow account when the burial or funeral merchandise is delivered at the time of need~~
294 ~~or to the purchaser at the purchaser's request or, in the case of a monument, attached to~~
295 ~~realty, or at such times as described in the rules and regulations promulgated by the~~
296 ~~Secretary of State, not exceeding the lesser of 30 days from receipt of application for~~
297 ~~release or the time within which a preneed dealer is required by law to provide a refund~~
298 ~~to a purchaser. A preneed dealer is prohibited from requiring preneed delivery to the~~
299 ~~consumer as a condition of the sale. Outer burial containers may not be delivered prior~~
300 ~~to need or, if the burial or funeral merchandise is not yet delivered, within the time~~
301 ~~required by law after a purchaser requests a refund. The preneed dealer is considered to~~
302 ~~have delivered burial or funeral merchandise when the burial or funeral merchandise is:~~

303 (A) Actually delivered to the purchaser at the time of need;

304 (B) Actually delivered to the purchaser at the purchaser's request;

305 (C) In the case of a monument, when the monument is attached to realty; or

306 (D) In the case of a monument, when the preneed dealer has the monument
307 manufactured for the purchaser and placed into storage with a responsible third party

308 bonded and insured for the wholesale value thereof and evidence by a receipt
 309 specifically identifying the monument, the specific preneed contract, the location of the
 310 monument, and identify and address of the bonding and insuring parties.

311 Notwithstanding the foregoing, outer burial containers may not be delivered prior to need.

312 (2) Deposits made from funds received in payment of preneed services shall remain in
 313 the trust or escrow account until such services are performed, at which time said funds
 314 may be released to the preneed dealer. The trustee may require certification by the
 315 preneed dealer of delivery of merchandise or performance of services before release of
 316 funds.

317 ~~(2)~~(3) The funds on deposit under the terms of this subsection shall be deemed and
 318 regarded as trust or escrow funds pending delivery of the burial or funeral merchandise
 319 concerned and said funds may not be pledged, hypothecated, transferred, or in any
 320 manner encumbered by the trust or escrow agent nor may said funds be offset or taken
 321 for the debts of the preneed dealer until such time as the merchandise has been delivered
 322 or the services performed; but after delivery of the burial or funeral merchandise
 323 concerned.

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

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

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

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SECTION 12.

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

"10-14-7.1.

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

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

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

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

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

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

(2)(A) If the account is maintained with a trustee, the assets of the trust account shall be invested and reinvested by the trust agent subject to all the terms, conditions, limitations, and restrictions imposed by Georgia law upon executors and trustees regarding the making and depositing of investments with trust moneys and subject to the limitations and restrictions imposed pursuant to this Code section.

(B) Subject to said terms, conditions, limitations, and restrictions, the trust agent of the a preneed account shall have full power to hold, purchase, sell, assign, transfer, reinvest, and dispose of any of the securities and investments in which any of the assets of said account are invested, including proceeds of investments. Unless otherwise expressly provided in the will, a personal representative shall be authorized to invest funds in:

381 (i) Interest-bearing deposits in any chartered state or national bank or trust company
382 or savings and loan association located in this state to the extent the deposits are
383 insured by the Federal Deposit Insurance Corporation or comparable insurance; and
384 (ii) Direct and general obligations of the United States government, obligations
385 unconditionally guaranteed by the United States government, and obligations of the
386 agencies of the United States government enumerated in Code Section 53-8-3. The
387 personal representative may invest in and hold such obligations either directly or in
388 the form of securities or other interests in any open-end or closed-end management
389 type investment company or investment trust registered under the Investment
390 Company Act of 1940, as now or hereafter amended, so long as:

391 (I) The portfolio of such investment company or investment trust is limited to such
392 obligations and repurchase agreements fully collateralized by such obligations;

393 (II) Such investment company or investment trust takes delivery of such collateral
394 either directly or through an authorized custodian; and

395 (III) Such investment company or investment trust is operated so as to provide a
396 constant net asset value or price per share.

397 (C) In making any other investments and in acquiring and retaining those investments
398 and managing the property of the estate, the personal representative shall exercise the
399 judgment and care, under the circumstances then prevailing, which persons of
400 prudence, discretion, and intelligence exercise in the management of their own affairs,
401 not in regard to speculation but in regard to the permanent disposition of their funds,
402 considering the probable income as well as the probable safety of their capital.

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

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

413 (d) Upon a finding by a court of competent jurisdiction of failure to deposit or maintain
414 funds in the trust account as required by this Code section or of fraud, theft, or misconduct
415 by a funeral establishment or a funeral director or his or her employee, representative, or
416 agent which has wasted or depleted such funds, the funeral establishment owners, funeral

417 director, or employee, representative, or agent of a funeral director or establishment may
418 be held jointly and severally liable for any deficiencies in the trust account.

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

423 (f) Nothing contained herein shall preclude a licensed funeral director in full and
424 continuous charge from maintaining an escrow account with aggregate escrow funds for
425 100 percent of any preneed contract amount for purposes of passing through funds within
426 60 days to a trust fund account or payment of a policy of insurance for preneed services."

427 **SECTION 13.**

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

429 **SECTION 14.**

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