

House Bill 933 (AS PASSED HOUSE AND SENATE)

By: Representatives Rogers of the 26th, Williams of the 4th, and Brockway of the 101st

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 cemeterians; 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:

12 style="text-align:center">**SECTION 1.**

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

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, re Cremated, 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, recremented, 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 Reserved.

54 **SECTION 5.**

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

57 "(c) The total period of apprenticeship shall be 3,120 hours and must be served in a
 58 minimum of 18 months, but the minimum period shall be in addition to the time required
 59 to graduate from a college of funeral service or other college pursuant to paragraph (1) of

60 subsection (b) of Code Section 43-18-41. An apprentice shall be authorized to earn
 61 apprenticeship hours in an amount to be determined by the board while attending a
 62 postgraduate school or a program at an accredited college of funeral service or other
 63 college approved by the board."

64 **SECTION 6.**

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

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

71 **SECTION 7.**

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

74 "10-14-3.1.

75 The ~~board~~ boards shall have all administrative powers and other powers necessary to carry
 76 out the provisions of this chapter, including the authority to promulgate rules and
 77 regulations, and the Secretary of State shall delegate to the ~~board~~ boards all such duties
 78 otherwise entrusted to the Secretary of State; provided, however, that the Secretary of State
 79 shall have sole authority over matters relating to the regulation of funds, trust funds, and
 80 escrow accounts and accounting and investigations concerning such matters but may
 81 delegate authority to the appropriate board for the review of such investigations and the
 82 determination as to disciplinary matters, necessary sanctions, and the enforcement of such
 83 decisions and sanctions. The State Board of Funeral Service shall have authority to
 84 promulgate rules and regulations and make disciplinary and sanctioning decisions relating
 85 to funeral services or funeral merchandise. The State Board of Cemeterians shall have
 86 authority to promulgate rules and regulations and make disciplinary and sanctioning
 87 decisions relating to burial services or burial merchandise. The Secretary of State may
 88 delegate to each board according to such duties and responsibilities of the boards."

89 **SECTION 8.**

90 Said chapter is further amended by revising paragraph (2) of subsection (b) of Code Section
 91 10-14-4, relating to registration of dealers and cemeteries, perpetual care cemeteries trust
 92 funds, nonperpetual care cemeteries, and preneed escrow accounts, as follows:

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

101 (A) The name of the applicant;

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

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

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

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

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

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

123 (H) A consent to service of process meeting the requirements of Code Section
124 10-14-24 for actions brought by the State of Georgia;

125 (I) A list of each individual employed, appointed, or authorized by the applicant to
126 offer for sale or to sell any grave lots, burial rights, burial or funeral merchandise, or
127 burial services on behalf of the applicant;

128 (J) A balance sheet of the applicant dated as of the end of the most recent fiscal year
 129 and in no event dated more than 15 months prior to the date of filing, which the
 130 Secretary of State shall treat as confidential and not open to public inspection;

131 (K) The name, address, location, and telephone number of the preneed trust or escrow
 132 account depository or depositories, the names of the accounts, and the account
 133 numbers;

134 (L) An executed copy of the trust or escrow agreement required by Code Section
 135 10-14-7 or 10-14-7.1;

136 (M) The name, address, and telephone number of the trust or escrow agent;

137 (N) Such other information and documents as the Secretary of State may require by
 138 rule; and

139 (O) A filing fee of \$250.00.

140 The provisions of this paragraph notwithstanding, a person licensed by the Board of
 141 Funeral Service as a funeral services director in full and continuous charge or an owner
 142 of a cemetery licensed by the State Board of Cemeterians as a cemeterian shall not be
 143 required to separately register as a preneed dealer provided that the requirements of
 144 subparagraphs (A) through (N) of this paragraph are satisfied."

145 **SECTION 9.**

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

148 "10-14-5.

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

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

160 (c) A preneed dealer shall be liable for the activities of all preneed sales agents who are
 161 employed by the preneed dealer or who perform any type of preneed related activity on
 162 behalf of the preneed dealer. If a preneed sales agent violates any provision of this chapter,
 163 such preneed sales agent and each preneed dealer who employs such preneed sales agent

164 shall be subject to the penalties and remedies set out in Code Sections 10-14-11, 10-14-19,
165 10-14-20, and 10-14-21.

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

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

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

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

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

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

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

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

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

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

193 (4) A representation, signed by the preneed dealer, that the applicant is authorized to
194 offer, sell, and sign preneed contracts on behalf of the preneed dealer and that the preneed
195 dealer has informed the applicant of the requirements and prohibitions of this chapter
196 relating to preneed sales, the provisions of the preneed dealer's preneed contract, and the
197 nature of the merchandise, services, or burial rights sold by the preneed dealer;

198 (5) A statement indicating whether the applicant has any type of working relationship
199 with any other preneed dealer or insurance company; and

200 (6) A signed agreement by the applicant consenting to an investigation of his or her
 201 background with regard to the matters set forth in this Code section, including, without
 202 limitation, his or her criminal history.

203 (h) An individual may be registered as a preneed sales agent on behalf of more than one
 204 preneed dealer, provided that the individual has received the written consent of all such
 205 preneed dealers.

206 (i) A preneed dealer who has registered a preneed sales agent shall notify the Secretary of
 207 State within three business days of a change in such individual's status as a preneed sales
 208 agent with such preneed dealer or upon the occurrence of any other event which would
 209 disqualify the individual as a preneed sales agent.

210 (j) Upon receipt and review of an application that complies with all of the requirements
 211 of this Code section, the Secretary of State shall register the applicant. The ~~department~~
 212 Secretary of State shall by rule provide for annual renewal of registration and a renewal fee
 213 of \$50.00.

214 (k) Each cemetery registered under this chapter shall maintain in its files for a period of
 215 five years a properly completed and executed application for employment in a form
 216 prescribed by the Secretary of State for each employee, officer, independent contractor, or
 217 other agent directly or indirectly involved in cemetery or preneed sales or any person
 218 occupying a similar status or performing similar functions. If a request is made, said forms
 219 shall be made available for inspection by authorized representatives of the Secretary of
 220 State."

221 **SECTION 10.**

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

223 "10-14-5.1.

224 Any individual engaged in the sale of life insurance shall not use the name of any funeral
 225 establishment or any price list which identifies the funeral establishment or any reference
 226 to a funeral establishment or crematory in connection with the sale of life insurance without
 227 the express written authorization of the funeral establishment. When a preneed funeral
 228 contract is funded by a life insurance policy, the funeral establishment shall be designated
 229 as the assignee of the death benefit payable under the policy in accordance with the terms
 230 of the preneed contract."

231 **SECTION 11.**

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

234 "10-14-7.

235 (a)(1) Each preneed dealer which sells burial or funeral merchandise on a preneed basis
 236 or preneed burial or funeral services, other than preneed funeral services described in
 237 Code section 10-14-7.1, shall establish and maintain a trust fund or a preneed escrow
 238 account.

239 (2) With respect to each monument and outer burial container, bench, coping, and other
 240 burial and funeral merchandise items except for caskets, and except as otherwise
 241 provided in paragraph (3) of this subsection, the amount to be deposited to said trust or
 242 escrow account shall be not less than 35 percent of the sales price of such monument or
 243 outer burial container; in no event shall the amount deposited be less than ~~110~~ 120
 244 percent of the wholesale price of such ~~monument or outer burial container~~ items. For any
 245 ~~other burial or funeral merchandise~~ caskets, the amount to be deposited to said trust or
 246 escrow account shall be not less than 100 percent of the sales price of such merchandise;
 247 in no event shall the amount deposited be less than 110 percent of the wholesale price of
 248 such merchandise. If the contract of sale shall include grave spaces or items not deemed
 249 to be burial or funeral merchandise, the portion of the sales price attributable to the sale
 250 of the burial or funeral merchandise shall be determined, and it shall only be as to such
 251 portion of the total contract as constitutes burial or funeral merchandise that the deposit
 252 described in this paragraph shall be required. In the event that the sale of burial or funeral
 253 merchandise is under an installment contract, the required trust deposit shall be a pro rata
 254 part of the principal portion of each installment payment, such deposit only being
 255 required as payments are made by the purchaser for such burial or funeral merchandise.
 256 In the event the installment contract is discounted or sold to a third party, the seller shall
 257 be required to deposit an amount equal to the undeposited portion of the required deposit
 258 of the sales price of such burial or funeral merchandise at such time as if the contract
 259 were paid in full.

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

264 (4) With respect to cash advance items and the sale of preneed funeral ~~or burial~~ services,
 265 the amount to be deposited to said trust or escrow account shall be 100 percent of the
 266 sales price of such funeral ~~or burial~~ services or the full amount of a cash advance item.
 267 The time and manner of deposit shall be the same as that specified for deposit of burial
 268 or funeral merchandise sale funds to the escrow account.

269 (5) With respect to preneed burial services, the amount to be deposited to said trust or
 270 escrow account shall be not less than 35 percent of the sales price of such burial services;
 271 in no event shall the amount deposited be less than 120 percent of the wholesale price of

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

274 (b) The deposit specified in paragraphs (2), and (3), and (4), and (5) of subsection (a) of
 275 this Code section shall be made not later than 30 days following the last day of the month
 276 in which any payment is received.

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

284 (d)(1) If the account is maintained with a trustee, the assets of the trust fund shall be
 285 invested and reinvested by the trustee subject to all the terms, conditions, limitations, and
 286 restrictions imposed by Georgia law upon executors and trustees regarding the making
 287 and depositing of investments with trust moneys pursuant to Code Sections 53-8-1
 288 through 53-8-4 of the 'Pre 1998 Probate Code,' if applicable, or Code Sections 53-8-1 and
 289 53-12-340 of the 'Revised Probate Code of 1998,' if applicable, or Chapter 12 of Title 53,
 290 'The Revised Georgia Trust Code of 2010.' Subject to said terms, conditions, limitations,
 291 and restrictions, the trustee of the preneed accounts shall have full power to hold,
 292 purchase, sell, assign, transfer, reinvest, and dispose of any of the securities and
 293 investments in which any of the assets of said account are invested, including proceeds
 294 of investments.

295 (2) Any state bank, national bank, or other financial institution authorized to act in a
 296 fiduciary capacity in this state, which presently or in the future serves as a fiduciary or
 297 cofiduciary of the trust fund of a preneed dealer, may invest part or all of such trust fund
 298 held by it for investment in interests or participation in one or more common trust funds
 299 established by that state bank, national bank, or other financial institution for collective
 300 investment, if such investment is not expressly prohibited by the instrument, judgment,
 301 decree, or order creating the fiduciary relationship and if, in the case of cofiduciaries, the
 302 trust institution procures the consent of its cofiduciary or cofiduciaries to such
 303 investment, and notwithstanding the fact that such common trust funds are not invested
 304 and reinvested subject to all the terms, conditions, limitations, and restrictions imposed
 305 by the laws of the State of Georgia upon executors and trustees in the making and
 306 disposing of their investments.

307 (e)(1) For burial or funeral merchandise, funds ~~Funds~~ shall be released from the trust or
 308 escrow account when the burial or funeral merchandise is delivered ~~at the time of need~~

309 ~~or to the purchaser at the purchaser's request or, in the case of a monument, attached to~~
 310 ~~realty, or at such times as described in the rules and regulations promulgated by the~~
 311 ~~Secretary of State, not exceeding the lesser of 30 days from receipt of application for~~
 312 ~~release or the time within which a preneed dealer is required by law to provide a refund~~
 313 ~~to a purchaser. A preneed dealer is prohibited from requiring preneed delivery to the~~
 314 ~~consumer as a condition of the sale. Outer burial containers may not be delivered prior~~
 315 ~~to need or, if the burial or funeral merchandise is not yet delivered, within the time~~
 316 ~~required by law after a purchaser requests a refund. The preneed dealer is considered to~~
 317 ~~have delivered burial or funeral merchandise when the burial or funeral merchandise is:~~
 318 (A) Actually delivered to the purchaser at the time of need;
 319 (B) Actually delivered to the purchaser at the purchaser's request;
 320 (C) In the case of a monument, when the monument is attached to realty;
 321 (D) In the case of a monument, when the preneed dealer has the monument
 322 manufactured for the purchaser and placed into storage with a responsible third party
 323 bonded and insured for the wholesale value thereof and evidenced by a receipt
 324 specifically identifying the monument, the specific preneed contract, the location of the
 325 monument, and identify and address of the bonding and insuring parties; or
 326 (E) At such other times as prescribed by the rule or order of the Secretary of State.
 327 Notwithstanding the foregoing, outer burial containers may not be delivered prior to need.
 328 (2) Deposits made from funds received in payment of preneed services shall remain in
 329 the trust or escrow account until such services are performed, at which time said funds
 330 may be released to the preneed dealer. The trustee may require certification by the
 331 preneed dealer of delivery of merchandise or performance of services before release of
 332 funds.
 333 ~~(2)(3) The funds on deposit under the terms of this subsection shall be deemed and~~
 334 ~~regarded as escrow funds pending delivery of the burial or funeral merchandise~~
 335 ~~concerned and said funds may not be pledged, hypothecated, transferred, or in any~~
 336 ~~manner encumbered by the escrow agent nor may said funds be offset or taken for the~~
 337 ~~debts of the preneed dealer until such time as the merchandise has been delivered or the~~
 338 ~~services performed; but after delivery of the burial or funeral merchandise concerned.~~
 339 ~~(e)(f) At any time, in the event that the preneed trust or escrow account contains an amount~~
 340 ~~less than the amount required by this Code section, the preneed dealer shall, within 15 days~~
 341 ~~after the earlier of becoming aware of such fact or having been so notified by the Secretary~~
 342 ~~of State, deposit into the preneed account an amount equal to such shortfall. In the event~~
 343 ~~that the Secretary of State and the preneed dealer disagree regarding the amount of such~~
 344 ~~shortfall, no penalty shall be imposed upon the preneed dealer for any failure to comply~~

345 with this provision unless such failure occurs after notice and opportunity for a hearing as
 346 provided in Code Section 10-14-23.

347 ~~(e.1)~~(g) In the case of release of trusted or escrowed funds to a purchaser at the purchaser's
 348 request pursuant to ~~paragraph (1) of~~ subsection ~~(d)~~ (e) of this Code section, a sum not less
 349 than the lesser of 10 percent of the trusted or escrowed amount or one-half of the interest
 350 earned or return upon such funds as of the date of release, as provided by the Secretary of
 351 State by rule or regulation, may be retained by the preneed dealer as an administrative fee
 352 for reimbursement of the preneed dealer for costs.

353 (h) The trustee shall furnish yearly to the Secretary of State a financial report in a form
 354 designated by the Secretary of State with respect to the preneed trust or escrow account.

355 (i) Trust funds shall not be invested in or loaned to any business venture controlled by the
 356 preneed dealer, a person who owns a controlling interest of a cemetery owner that is not
 357 a natural person, or an affiliate of any of these persons or entities.

358 ~~(f)~~(j) Upon a finding by a court of competent jurisdiction of failure to deposit or maintain
 359 funds in the preneed trust or escrow account as required by this chapter or of fraud, theft,
 360 or other misconduct by the preneed dealer or the officers or directors of the preneed dealer
 361 which has wasted or depleted such funds, the preneed dealer or the officers or directors of
 362 the preneed dealer may be held jointly and severally liable for any deficiencies in the
 363 preneed trust or escrow account."

364 SECTION 12.

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

366 "10-14-7.1.

367 (a) Notwithstanding any provision to the contrary contained in Chapter 1 of Title 7, the
 368 'Financial Institutions Code of Georgia,' or in any other provision of law, a preneed dealer
 369 registered or deemed registered pursuant to Code Section 10-14-5 who provides funeral
 370 services shall provide for funds to be deposited in an escrow account pursuant to Code
 371 Section 10-14-7 or with a depository institution in accordance with this Code section and
 372 placed in an individual trust fund account that is:

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

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

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

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

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

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

395 (B) Subject to said terms, conditions, limitations, and restrictions, the trustee of a
396 preneed account shall have full power to hold, purchase, sell, assign, transfer, reinvest,
397 and dispose of any of the securities and investments in which any of the assets of said
398 account are invested, including proceeds of investments. A personal representative
399 shall be authorized to invest funds in:

400 (i) Interest-bearing deposits in any chartered state or national bank or trust company
401 or savings and loan association located in this state to the extent the deposits are
402 insured by the Federal Deposit Insurance Corporation or comparable insurance; and
403 (ii) Direct and general obligations of the United States government, obligations
404 unconditionally guaranteed by the United States government, and obligations of the
405 agencies of the United States government enumerated in Code Section 53-8-3.

406 (C) In making investments pursuant to subparagraph (b)(2)(B) of this Code section and
407 in acquiring and retaining those investments and managing the property of the estate,
408 the personal representative shall exercise the judgment and care, under the
409 circumstances then prevailing, which persons of prudence, discretion, and intelligence
410 exercise in the management of their own affairs, not in regard to speculation but in
411 regard to the permanent disposition of their funds, considering the probable income as
412 well as the probable safety of their capital.

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

- 417 (c) The trustee shall furnish yearly to the Secretary of State a financial report in a form
 418 designated by the Secretary of State with respect to the preneed trust or escrow account.
 419 (d) Upon a finding by a court of competent jurisdiction of failure to deposit or maintain
 420 funds in the trust account as required by this Code section or of fraud, theft, or misconduct
 421 by a funeral establishment or a funeral director or his or her employee, representative, or
 422 agent which has wasted or depleted such funds, the funeral establishment owners, funeral
 423 director, or employee, representative, or agent of a funeral director or establishment may
 424 be held jointly and severally liable for any deficiencies in the trust account.
 425 (e) Any other provision of law notwithstanding, a trust fund account established and
 426 maintained under this Code section and the moneys contained therein shall not be deemed
 427 an asset or income for purposes of recapture of income or funds owed or for any other
 428 purpose.
 429 (f) Nothing contained herein shall preclude a licensed funeral director in full and
 430 continuous charge from maintaining an escrow account with aggregate escrow funds for
 431 100 percent of any preneed contract amount for purposes of passing through funds within
 432 60 days to a trust fund account or payment of a policy of insurance for preneed services."

433 **SECTION 13.**

434 Said chapter is further amended by revising subsection (d) of Code Section 10-14-17, relating
 435 to enumeration of fees, as follows:

436 "(d) Other than ~~the~~ fees for the processing and for the sale of burial rights, burial or
 437 funeral merchandise, and burial or funeral services, no other fee may be directly or
 438 indirectly charged, contracted for, or received by a cemetery company as a condition for
 439 a customer to use any burial right, burial or funeral merchandise, or burial or funeral
 440 service, except for:"

441 **SECTION 14.**

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

443 **SECTION 15.**

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