

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 874 Session of 2015

INTRODUCED BY McGARRIGLE, TOMLINSON, RAFFERTY, VANCE, PILEGGI AND SCARNATI, JUNE 4, 2015

AS AMENDED ON THIRD CONSIDERATION, OCTOBER 20, 2015

AN ACT

1 Amending the act of August 14, 1963 (P.L.1059, No.459), entitled
2 "An act prohibiting future need sales of cemetery merchandise
3 and services, funeral merchandise and services, except under
4 certain conditions; requiring the establishment of and
5 deposit into a merchandise trust fund of certain amount of
6 the proceeds of any such sale; providing for the
7 administration of such trust funds and the payment of money
8 therefrom; conferring powers and imposing duties on orphans'
9 courts, and prescribing penalties," further providing for
10 deposits into merchandise trust funds; providing for price
11 and description reports; and further providing for funds held
12 in trust, for payments from merchandise trust funds, for
13 filing of financial reports and for penalty.

14 The General Assembly of the Commonwealth of Pennsylvania
15 hereby enacts as follows:

16 Section 1. Section 2 of the act of August 14, 1963
17 (P.L.1059, No.459), referred to as the Cemetery and Funeral
18 Merchandise Trust Fund Law, is amended to read:

19 Section 2. (a) Any person entering into any such contract as
20 the seller shall deposit into a merchandise trust fund,
21 established for that purpose with a banking institution in the
22 Commonwealth authorized to perform trust functions, as trustee
23 of such fund, seventy per cent of the retail sale price of the

1 personal property or personal services so sold for future need.

2 (b) The deposit herein required to be made into such  
3 merchandise trust fund shall be made within thirty days after  
4 [the end of the month in which the final payment of the purchase  
5 price provided for under such contract is received by the seller  
6 from the purchaser or otherwise. Prior to receipt by the seller  
7 of final payment of the purchase price provided for under any  
8 such contract, the seller, at the end of each month, shall  
9 deposit, in a special account in a banking institution properly  
10 identified as being for such purpose, all payments on account  
11 received under any such contract during the month and ensuing  
12 months commencing thereafter, after first deducting the  
13 percentage permitted to be retained by seller. Withdrawals from  
14 such special account shall be made by seller only for the  
15 purpose of transfer to the merchandise trust fund upon final  
16 payment of the purchase price by the purchaser under the  
17 contract] the last day of the month in which any funds are  
18 received by the seller as provided for under the contract,  
19 including periodic payments after first deducting the percentage  
20 permitted to be retained by seller.

21 ~~(c) If, prior to final payment of the purchase price under~~ <--  
22 ~~the contract, the purchaser shall default in making payments on~~  
23 ~~account thereof, the seller shall not be entitled to retain [as~~  
24 ~~liquidated damages and withdraw from the special account thirty~~  
25 ~~percent of the contract price] any amount, and shall refund to~~  
26 ~~the purchaser the entire balance [in the special account, if~~  
27 ~~any] paid into the merchandise trust fund pursuant to the~~  
28 ~~contract. The total refund shall be paid to the purchaser within~~  
29 ~~sixty days of the default.~~

30 (C) IF, PRIOR TO FINAL PAYMENT OF THE PURCHASE PRICE UNDER <--

1 THE CONTRACT, THE PURCHASER SHALL DEFAULT IN MAKING PAYMENTS ON  
2 ACCOUNT THEREOF, THE SELLER SHALL BE ENTITLED TO RETAIN AS  
3 LIQUIDATED DAMAGES [AND WITHDRAW FROM THE SPECIAL ACCOUNT]  
4 THIRTY PERCENT OF THE CONTRACT PRICE[, AND SHALL REFUND TO THE  
5 PURCHASER THE BALANCE IN THE SPECIAL ACCOUNT, IF ANY]. THE TOTAL  
6 REFUND SHALL BE PAID TO THE PURCHASER WITHIN SIXTY DAYS OF THE  
7 DEFAULT.

8 (d) Each deposit into the merchandise trust fund shall be  
9 identified by the seller by furnishing the trustee with the name  
10 of the purchaser, the amount of the retail sales price and the  
11 percentage thereof herein required to be deposited, together  
12 with a statement of or a copy of the contract and the personal  
13 property and services to be furnished by the seller thereunder.  
14 Nothing herein contained shall prohibit the trustee from  
15 commingling the deposits in any such trust fund for purposes of  
16 the management thereof and the investment of funds therein.

17 Section 2. The act is amended by adding a section to read:

18 Section 2.1. A seller must provide a detailed price list and  
19 detailed description of the vault and casket and must adhere to  
20 the Federal Trade Commission's Funeral Industry Practices  
21 Revised Rules regarding the sale of the merchandise.

22 Section 3. Sections 4(a), 5, 6 and 10 of the act are amended  
23 to read:

24 Section 4. (a) The funds held in trust shall remain intact  
25 until delivery is made, services are performed or the death of  
26 the person for whose benefit the said contract was made, and  
27 upon submission of certified copy of death certificate or  
28 certification by the seller to the trustees that delivery of the  
29 personal property or performance of the services contracted for  
30 have been fully completed. There shall be no delivery of

1 merchandise or product, except for mausoleums, cremation  
2 gardens, markers and lawn crypts, prior to the death of the  
3 person for whose benefit the contract was made. Upon such  
4 certification having been made, the amount of money on deposit  
5 to the credit of that particular contract shall be paid to the  
6 person creating the trust fund. Any trustee accepting the  
7 merchandise trust fund under the provisions of this act may rely  
8 upon all such certifications herein required to be made and  
9 shall not be liable to anyone for such reliance.

10 \* \* \*

11 Section 5. After final payment, if the purchaser moves out  
12 of the State and upon written notice to the seller and to the  
13 trustee the purchaser may cancel any such contract for the  
14 furnishing of personal property or services prior to performance  
15 by seller and to the death of the person for whose benefit such  
16 contract was made, in which event, the purchaser shall be  
17 entitled to receive from the trustee the principal amount of  
18 money on deposit to the credit of that particular contract less  
19 the interest [which shall be returned to the seller]. The total  
20 refund shall be paid to the purchaser within sixty days of  
21 receipt of the written notice.

22 Section 6. (a) Every two years after effective date of this  
23 act, the trustee shall, prior to the first of December, file a  
24 financial report of the merchandise trust fund with the orphans'  
25 court of the county in which the trustee is situate, setting  
26 forth the principal thereof, the investments and payments made  
27 and income earned and disbursed[.] and the recipient of any  
28 payment or disbursement and forward a copy of the report filed <--  
29 with the orphan's court to the Consumer Protection Bureau of the  
30 Office of Attorney General.

1       (b) The orphans' court having jurisdiction over any such  
2 merchandise trust fund ~~or the Consumer Protection Bureau of the~~ <--  
3 ~~Office of Attorney General~~ may, at any time, require the person  
4 creating the same or the trustee to file a report and submit its  
5 records in relation to any such fund. If the court determines  
6 that the fund is not being maintained in accordance with the  
7 provisions of this act, it shall make such orders as may be  
8 necessary to compel compliance with the provisions hereof.

9       Section 10. Any person knowingly violating the provisions of  
10 this act or failing to make the required deposits into a  
11 merchandise trust fund [or into a temporary special account]  
12 shall be guilty of a misdemeanor, and, upon conviction thereof,  
13 shall be sentenced to pay a fine of not less than five hundred  
14 dollars (\$500) nor more than one thousand dollars (\$1000), or  
15 undergo imprisonment for a term not exceeding one year, or both.  
16 If the person violating the provisions of this act is a  
17 corporation or association, the officer responsible for the  
18 violation shall undergo any prison term imposed.

19       Section 4. This act shall take effect in 60 days.