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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 633 Session of  
2017

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INTRODUCED BY MCGARRIGLE, SCARNATI, KILLION, RAFFERTY AND  
BARTOLOTTA, APRIL 17, 2017

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REFERRED TO CONSUMER PROTECTION AND PROFESSIONAL LICENSURE,  
APRIL 17, 2017

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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  
20 as 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 the 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 be entitled to retain as  
24 liquidated damages [and withdraw from the special account]  
25 thirty percent of the contract price[, and shall refund to the  
26 purchaser the balance in the special account, if any]. The total  
27 refund shall be paid to the purchaser within sixty days of the  
28 default.

29 (d) Each deposit into the merchandise trust fund shall be  
30 identified by the seller by furnishing the trustee with the name

1 of the purchaser, the amount of the retail sales price and the  
2 percentage thereof herein required to be deposited, together  
3 with a statement of or a copy of the contract and the personal  
4 property and services to be furnished by the seller thereunder.  
5 Nothing herein contained shall prohibit the trustee from  
6 commingling the deposits in any such trust fund for purposes of  
7 the management thereof and the investment of funds therein.

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

9 Section 2.1. A seller shall provide a price list of all  
10 goods and services offered by the seller to the buyer prior to  
11 discussion of any choice by the buyer.

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

14 Section 4. (a) The funds held in trust shall remain intact  
15 until [delivery is made, services are performed or] the death of  
16 the person for whose benefit the said contract was made, and  
17 upon submission of certified copy of death certificate [or  
18 certification] by the seller to the trustees that delivery of  
19 the personal property or performance of the services contracted  
20 for have been fully completed. Upon such [certification]  
21 submission having been made, the amount of money on deposit to  
22 the credit of that particular contract shall be paid to the  
23 person creating the trust fund. Any trustee accepting the  
24 merchandise trust fund under the provisions of this act may rely  
25 upon all such certifications herein required to be made and  
26 shall not be liable to anyone for such reliance.

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28 Section 5. After final payment, if the purchaser moves out  
29 of the State and upon written notice to the seller and to the  
30 trustee the purchaser may cancel any such contract for the

1 furnishing of personal property or services prior to performance  
2 by seller and to the death of the person for whose benefit such  
3 contract was made, in which event, the purchaser shall be  
4 entitled to receive from the trustee the principal amount of  
5 money on deposit to the credit of that particular contract less  
6 the interest [which shall be returned to the seller]. The total  
7 refund shall be paid to the purchaser within sixty days of  
8 receipt of the written notice.

9 Section 6. (a) Every two years after effective date of this  
10 act, the trustee shall, prior to the first of December, file a  
11 financial report of the merchandise trust fund with the orphans'  
12 court of the county in which the trustee is situate, setting  
13 forth the principal thereof, the investments and payments made  
14 and income earned and disbursed and the recipient of any payment  
15 or disbursement.

16 (b) The orphans' court having jurisdiction over any such  
17 merchandise trust fund may, at any time, require the person  
18 creating the same or the trustee to file a report and submit its  
19 records in relation to any such fund. If the court determines  
20 that the fund is not being maintained in accordance with the  
21 provisions of this act, it shall make such orders as may be  
22 necessary to compel compliance with the provisions hereof.

23 Section 10. Any person knowingly violating the provisions of  
24 this act or failing to make the required deposits into a  
25 merchandise trust fund [or into a temporary special account]  
26 shall be guilty of a misdemeanor, and, upon conviction thereof,  
27 shall be sentenced to pay a fine of not less than five hundred  
28 dollars (\$500) nor more than one thousand dollars (\$1000), or  
29 undergo imprisonment for a term not exceeding one year, or both.  
30 If the person violating the provisions of this act is a

1 corporation or association, the officer responsible for the  
2 violation shall undergo any prison term imposed.

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