

CEMETERY AND FUNERAL MERCHANDISE TRUST FUND LAW

Act of Aug. 14, 1963, P.L. 1059, No. 459

Cl. 63

AN ACT

Prohibiting future need sales of cemetery merchandise and services, funeral merchandise and services, except under certain conditions; requiring the establishment of and deposit into a merchandise trust fund of certain amount of the proceeds of any such sale; providing for the administration of such trust funds and the payment of money therefrom; conferring powers and imposing duties on orphans' courts, and prescribing penalties.

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

Section 1. Except as hereinafter provided, no person shall, directly or indirectly or through an agent, offer to enter into or enter into a contract for the sale of personal property or for the furnishing of personal services to be used in connection with the interment of a deceased human being wherein the personal property is not to be delivered or the personal services are not to be performed until the death at some future time of the person for whose interment such property or services are to be furnished.

Section 2. (a) Any person entering into any such contract as the seller shall deposit into a merchandise trust fund, established for that purpose with a banking institution in the Commonwealth authorized to perform trust functions, as trustee of such fund, seventy per cent of the retail sale price of the personal property or personal services so sold for future need.

(b) The deposit herein required to be made into such merchandise trust fund shall be made within thirty days after the end of the month in which the final payment of the purchase price provided for under such contract is received by the seller from the purchaser or otherwise. Prior to receipt by the seller of final payment of the purchase price provided for under any such contract, the seller, at the end of each month, shall deposit, in a special account in a banking institution properly identified as being for such purpose, all payments on account received under any such contract during the month and ensuing months commencing thereafter, after first deducting the percentage permitted to be retained by seller. Withdrawals from such special account shall be made by seller only for the purpose of transfer to the merchandise trust fund upon final payment of the purchase price by the purchaser under the contract.

(c) If, prior to final payment of the purchase price under the contract, the purchaser shall default in making payments on account thereof, the seller shall be entitled to retain as liquidated damages and withdraw from the special account thirty percent of the contract price, and shall refund to the purchaser the balance in the special account, if any.

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

Section 3. Nothing contained in this act shall be construed to require any funeral director or any cemetery to accept any personal property or perform any personal services contrary to law or ordinances pertaining to the burial of deceased human beings or contrary to rules and regulations of a cemetery pertaining to the quality and kind of personal property that may be used for the burial of deceased human beings in any such cemetery.

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

(b) If, for any reason, the seller, who has entered into a contract for the sale of personal property or services and has made the deposit herein required to be made, cannot or does not perform said contract promptly after the death of the person to be benefited and after request to do so, the family or next of kin of the deceased person, having provided for such personal property or services on behalf of the deceased person, shall be entitled to receive from the trustee the amount of money on deposit to the credit of that particular contract. An affidavit to that effect, delivered to the trustee, shall be sufficient authority to the trustee to make such a payment without any liability to the person making the deposit of such money into the trust fund or to any other person. Nothing herein contained shall relieve the seller under any such contract of his liability for nonperformance.

Section 5. After final payment, if the purchaser moves out of the State and upon written notice to the seller and to the trustee the purchaser may cancel any such contract for the furnishing of personal property or services prior to performance by seller and to the death of the person for whose benefit such contract was made, in which event, the purchaser shall be entitled to receive from the trustee the principal amount of money on deposit to the credit of that particular contract less the interest which shall be returned to the seller.

Section 6. Every two years after effective date of this act, the trustee shall, prior to the first of December, file a financial report of the merchandise trust fund with the orphans' court of the county in which the trustee is situate, setting forth the principal thereof, the investments and payments made and income earned and disbursed.

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

Section 7. A trustee of a merchandise trust fund created under the provisions of this act, upon the exercise of due care, shall not be liable to the person creating such fund, to the

purchaser or to any person for any disbursements made for the trust fund pursuant to the provisions of this act.

Section 8. This act shall not apply to the sale of cemetery lots or graves by a funeral director, cemetery or any other person, association, partnership or corporation.

Section 9. Any provision of any such contract whereby a person who pays money under or in connection therewith waives any provision of this act shall be void.

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

Section 11. The provisions of this act shall not be construed to repeal or affect the provisions of section 13 of the act of January 14, 1952 (P.L.1898), known as the "Funeral Director Law."

Section 12. All acts or parts of acts are repealed in so far as inconsistent herewith.

Section 13. This act shall take effect January 1, 1964.