

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1491 Session of 2014

INTRODUCED BY ERICKSON, VULAKOVICH, PILEGGI, RAFFERTY, COSTA AND SOLOBAY, OCTOBER 1, 2014

SENATOR TOMLINSON, CONSUMER PROTECTION AND PROFESSIONAL LICENSURE, AS AMENDED, OCTOBER 6, 2014

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 and MERCHANDISE TRUST FUNDS; PROVIDING FOR <--
11 PRICE AND DESCRIPTION REPORTS; AND FURTHER PROVIDING FOR
12 payments from merchandise trust funds, for filing of
13 financial reports and for penalty.

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

16 Section 1. Sections 2, 5, 6 and 10 of the act of August 14, <--
17 1963 (P.L.1059, No.459), referred to as the Cemetery and Funeral
18 Merchandise Trust Fund Law, are amended to read:

19 SECTION 1. SECTION 2 OF THE ACT OF AUGUST 14, 1963 <--
20 (P.L.1059, NO.459), REFERRED TO AS THE CEMETERY AND FUNERAL
21 MERCHANDISE TRUST FUND LAW, IS AMENDED TO READ:

22 Section 2. (a) Any person entering into any such contract as
23 the seller shall deposit into a merchandise trust fund,

1 established for that purpose with a banking institution in the
2 Commonwealth authorized to perform trust functions, as trustee
3 of such fund, ~~seventy~~ one hundred per cent of the retail sale <--
4 price of the personal property or personal services so sold for
5 future need. THE PERSON SHALL POST A SURETY BOND IN AN AMOUNT <--
6 EQUAL TO THE AMOUNT OF THE RETAIL SALE PRICE NOT DEPOSITED INTO
7 A MERCHANDISE TRUST FUND UNDER THIS SUBSECTION.

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

26 (c) If, prior to final payment of the purchase price under
27 the contract, the purchaser shall default in making payments on
28 account thereof, the seller shall not be entitled to retain [as
29 liquidated damages and withdraw from the special account thirty
30 percent of the contract price] any amount, and shall refund to

1 the purchaser the entire balance [in the special account, if
2 any.] paid into the merchandise trust fund pursuant to the
3 contract. The total refund shall be paid to the purchaser within
4 sixty days.

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

15 SECTION 1.1. THE ACT IS AMENDED BY ADDING A SECTION TO READ: <--

16 SECTION 2.1. A SELLER MUST PROVIDE A DETAILED PRICE LIST AND
17 DETAILED DESCRIPTION OF THE VAULT AND CASKET AND MUST ADHERE TO
18 FEDERAL TRADE COMMISSION RULES REGARDING THE SALE OF THE
19 MERCHANDISE.

20 SECTION 1.2. SECTIONS 5, 6 AND 10 OF THE ACT ARE AMENDED TO
21 READ:

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

1 seller.] The total refund shall be paid to the purchaser within
2 sixty days.

3 (b) Delivery of merchandise or products, EXCEPT MARKERS OR <--
4 MAUSOLEUMS prior to need is prohibited. The term "delivery"
5 shall not be construed to include constructive delivery.

6 Section 6. (a) Every two years after effective date of this
7 act, the trustee shall, prior to the first of December, file a
8 financial report of the merchandise trust fund with the REAL <--
9 ESTATE COMMISSION AND THE orphans' court of the county in which
10 the trustee is situate, setting forth the principal thereof, the
11 investments and payments made and income earned and disbursed
12 and the recipient of any payment or disbursement. THE ACCOUNTS <--
13 MAY BE AUDITED BY A FORENSIC ACCOUNTANT ON PROBABLE CAUSE OF
14 DEFICIENCY.

15 (b) The orphans' court OR REAL ESTATE COMMISSION having <--
16 jurisdiction over any such merchandise trust fund may, at any
17 time, require the person creating the same or the trustee to
18 file a report and submit its records in relation to any such
19 fund. If the court determines that the fund is not being
20 maintained in accordance with the provisions of this act, it
21 shall make such orders as may be necessary to compel compliance
22 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 2. This act shall take effect in 60 days.