

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1491 Session of 2014

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

AS AMENDED ON THIRD CONSIDERATION, OCTOBER 14, 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 merchandise trust funds; providing for price
11 and description reports; and further providing for payments
12 from merchandise trust funds, for filing of financial reports
13 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 ~~The person shall post a surety bond in an amount equal to the~~ <--
3 ~~amount of the retail sale price not deposited into a merchandise~~
4 ~~trust fund under this subsection.~~

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

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

1 sixty days.

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

11 Section 1.1. The act is amended by adding a section to read:

12 Section 2.1. A seller must provide a detailed price list and
13 detailed description of the vault and casket and must adhere to
14 Federal Trade Commission rules regarding the sale of the
15 merchandise.

16 Section 1.2. Sections 5, 6 and 10 of the act are amended to
17 read:

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

29 ~~(b) Delivery of merchandise or products, except markers or~~ <--
30 ~~mausoleums prior to need is prohibited. The term "delivery"~~

1 ~~shall not be construed to include constructive delivery. THERE~~ <--
2 SHALL BE NO DELIVERY OF MERCHANDISE OR PRODUCTS PRIOR TO NEED
3 EXCEPT FOR MAUSOLEUMS AND MARKERS.

4 Section 6. (a) Every two years after effective date of this
5 act, the trustee shall, prior to the first of December, file a
6 financial report of the merchandise trust fund with the real
7 estate commission and the orphans' court of the county in which
8 the trustee is situate, setting forth the principal thereof, the
9 investments and payments made and income earned and disbursed
10 and the recipient of any payment or disbursement. The accounts
11 may be audited by a forensic accountant on probable cause of
12 deficiency A FINANCIAL DISCREPANCY. <--

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

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

1 Section 2. This act shall take effect in 60 days.