

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1364 Session of  
2015

INTRODUCED BY SANTORA, THOMAS, READSHAW, KILLION, PICKETT,  
WATSON, DIAMOND, TAYLOR, ADOLPH, COHEN, DAVIS, TOOHIL,  
DRISCOLL, YOUNGBLOOD, PASHINSKI, HANNA AND BARBIN,  
JUNE 29, 2015

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, JUNE 29, 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 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

1 of such fund, seventy per cent of the retail sale price of the  
2 personal property or personal services so sold for future need.

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

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.

30 (d) Each deposit into the merchandise trust fund shall be

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

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

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

14 Section 3. Sections 5, 6 and 10 of the act are amended to  
15 read:

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

27 (b) There shall be no delivery of merchandise or products  
28 prior to need except for mausoleums and markers.

29 Section 6. (a) Every two years after effective date of this  
30 act, the trustee shall, prior to the first of December, file a

1 financial report of the merchandise trust fund with the real  
2 estate commission and the orphans' court of the county in which  
3 the trustee is situate, setting forth the principal thereof, the  
4 investments and payments made and income earned and disbursed[.]  
5 and the recipient of any payment or disbursement. The accounts  
6 may be audited by a forensic accountant on probable cause of a  
7 financial discrepancy.

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

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

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