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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 1491 Session of  
2014

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

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REFERRED TO CONSUMER PROTECTION AND PROFESSIONAL LICENSURE,  
OCTOBER 1, 2014

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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 and payments from merchandise trust funds, for  
11 filing of financial reports and for penalty.

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

14 Section 1. Sections 2, 5, 6 and 10 of the act of August 14,  
15 1963 (P.L.1059, No.459), referred to as the Cemetery and Funeral  
16 Merchandise Trust Fund Law, are amended to read:

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

1 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.] five business days after any funds are received by  
18 the seller as provided for under the contract, including  
19 periodic payments.

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

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

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

20 (b) Delivery of merchandise or products prior to need is  
21 prohibited. The term "delivery" shall not be construed to  
22 include constructive delivery.

23 Section 6. (a) Every two years after effective date of this  
24 act, the trustee shall, prior to the first of December, file a  
25 financial report of the merchandise trust fund with the orphans'  
26 court of the county in which the trustee is situate, setting  
27 forth the principal thereof, the investments and payments made  
28 and income earned and disbursed and the recipient of any payment  
29 or disbursement.

30 (b) The orphans' court having jurisdiction over any such

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

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

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