

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 874 Session of 2015

INTRODUCED BY MCGARRIGLE, TOMLINSON, RAFFERTY, VANCE, PILEGGI AND SCARNATI, JUNE 4, 2015

SENATOR TOMLINSON, CONSUMER PROTECTION AND PROFESSIONAL LICENSURE, AS AMENDED, JUNE 30, 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 funds held
12 in trust, for payments from merchandise trust funds, for
13 filing of financial reports 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 (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] THE LAST DAY OF THE MONTH IN WHICH any funds are <--
18 received by the seller as provided for under the contract,
19 including periodic payments AFTER FIRST DEDUCTING THE PERCENTAGE <--
20 PERMITTED TO BE RETAINED BY SELLER.

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 of the default.

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 the Federal Trade Commission's Funeral Industry Practices
13 Revised Rules regarding the sale of the merchandise.

14 Section 3. Sections 4(a), 5, 6 and 10 of the act are amended
15 to read:

16 Section 4. (a) The funds held in trust shall remain intact
17 until delivery is made, services are performed or the death of
18 the person for whose benefit the said contract was made, and
19 upon submission of certified copy of death certificate or
20 certification by the seller to the trustees that delivery of the
21 personal property or performance of the services contracted for
22 have been fully completed. There shall be no delivery of
23 merchandise or product, except for mausoleums, markers and lawn
24 crypts, prior to the death of the person for whose benefit the
25 contract was made. Upon such certification having been made, the
26 amount of money on deposit to the credit of that particular
27 contract shall be paid to the person creating the trust fund.
28 Any trustee accepting the merchandise trust fund under the
29 provisions of this act may rely upon all such certifications
30 herein required to be made and shall not be liable to anyone for

1 such reliance.

2 * * *

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

14 Section 6. (a) Every two years after effective date of this
15 act, the trustee shall, prior to the first of December, file a
16 financial report of the merchandise trust fund with the ~~Consumer~~ <--
17 ~~Protection Bureau of the Office of Attorney General and the~~
18 orphans' court of the county in which the trustee is situate,
19 setting forth the principal thereof, the investments and
20 payments made and income earned and disbursed and the recipient
21 of any payment or disbursement[.] AND FORWARD A COPY OF THE <--
22 REPORT FILED WITH THE ORPHAN'S COURT TO THE CONSUMER PROTECTION
23 BUREAU OF THE OFFICE OF ATTORNEY GENERAL.

24 (b) The orphans' court having jurisdiction over any such
25 merchandise trust fund or the Consumer Protection Bureau of the
26 Office of Attorney General may, at any time, require the person
27 creating the same or the trustee to file a report and submit its
28 records in relation to any such fund. If the court determines
29 that the fund is not being maintained in accordance with the
30 provisions of this act, it shall make such orders as may be

1 necessary to compel compliance with the provisions hereof.

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

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