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**MISSISSIPPI CEMETERY
AND FUNERAL LAWS
MISSISSIPPI CODE OF 1972 AS AMENDED**

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INTRODUCTION

The following is a compilation of laws that pertain to cemeteries, funeral homes, and pre-need funeral arrangements in the State of Mississippi. It is divided into five sections: Mississippi Cemetery laws, Mississippi Pre-Need Cemetery and Funeral Laws, Mississippi State Board of Funeral Service and Licensing Laws, Mississippi Burial Association Laws, and Miscellaneous Provisions of law that affect the operation of cemeteries and funeral services in general.

It is provided in the hopes that it will serve as a resource for those in the cemetery and/or funeral services industries and those who come in contact with those industries from time to time. It is for informational purposes only and provided as a service to the public. It is not legal advice or a substitute for legal counsel and it is not intended to create nor does it create an attorney-client relationship.

MISSISSIPPI CEMETERY LAWS

§ 41-43-1. Proximity to medical facilities

(1) No person, firm, association, or corporation shall locate a new public or private cemetery for burial of human beings within five hundred (500) yards of a public or private hospital or other medical facility wherein sick or injured persons are usually kept overnight for medical treatment and rehabilitation, without such person, firm, association, or corporation having first obtained a written order of approval from the board of supervisors if the proposed cemetery or burial ground is located outside the corporate limits of a municipality, or without such person, firm, association, or corporation having first obtained a written order of approval from the governing authorities of the municipality if the proposed cemetery or burial ground is located inside the corporate limits of a municipality.

Any realty used for burial purposes in violation of this subsection shall be deemed a common nuisance, and may be abated by the chancery court upon a petition filed therefor by the district attorney or county attorney, city attorney, attorney for the board of supervisors, or any person or persons aggrieved by the violation of this subsection.

This subsection shall not apply to any established cemeteries or burial grounds which now have human remains interred thereon.

(2) The board of supervisors of any county is authorized and empowered, upon petition and request to do so, to establish or designate the location of any private family cemetery to be located in the county.

§ 41-43-3. Appointment of trustee

When any donation or bequest is made by any person, company or corporation, of money or property to be used for the maintenance and preservation of any private or family cemetery or burying ground, and no trustee be appointed by such person, company or corporation, or if appointed, the trustee should die, resign, or otherwise become incompetent, the chancellor, on petition of any person having, or feeling, any interest therein, may, in vacation or in term-time, appoint a trustee to administer the trust on such terms as he may deem proper. If a trustee shall improperly administer the trust, he may be removed by the chancellor and another appointed.

41-43-31. Short title

Sections 41-43-31 to 41-43-53 may be cited as the "Cemetery Law."

41-43-35. Categories of cemeteries

All such organizations subject to the provisions of sections 41-43-31 to 41-43-53 shall be, for the purposes hereof, designated as "perpetual care cemeteries" or "nonperpetual care cemeteries."

41-43-37. Irrevocable perpetual care trust fund

(1) The owner of every cemetery, subject to the provisions of sections 41- 43-31 to 41-43-53, which is organized, commences, or continues to do business in the State of Mississippi after May 6, 1958, and desires to operate as a perpetual care cemetery, shall provide for the creation and establishment of an irrevocable perpetual care trust fund, the principal of which shall permanently remain intact except as hereinafter provided and only the income thereof shall be devoted to the perpetual care of such cemetery, and which principal shall be known as the perpetual care fund of such cemetery. This fund shall be created and established as follows:

(a) In respect to a cemetery for earth burials, by the application and payment thereto of an amount equivalent to fifteen percent (15%) of the sale price, or forty cents (40¢) per square foot of ground interment rights sold, whichever is greater;

(b) In respect to an above-ground community or public mausoleum, by the application and payment thereto of an amount equivalent to five percent (5%) of the sale price, or fifty dollars (\$50.00) per crypt sold, whichever is greater; and

(c) In respect to a community columbarium, by the application and payment thereto of an amount equivalent to five percent (5%) of the sale price, or ten dollars (\$10.00) per niche sold, whichever is greater.

(2) From the sale price the owner shall pay to the perpetual care fund an amount in proportion to the requirements in subsection (1) of this section, which payment shall be in cash and shall be deposited with the custodian or trustee of the fund not later than thirty (30) days after the close of the month in which the total payment on such sale is received.

(3) In addition to the provisions of subsections (1) and (2) of this section, any cemetery organized after May 6, 1958, or any mausoleum or columbarium which is built at any location other than upon property owned by an existing cemetery after such date, whether it be by incorporation, association, individually or by any other means, or having its first burial after such date, shall, before disposing of any burial lot or right or making any sale thereof and/or making its first burial, cause to be deposited the sum of five thousand

dollars (\$5,000.00) in cash into an irrevocable perpetual care trust fund as provided in subsection (1) of this section for the maintenance of such cemetery.

(4) Whenever the cemetery shall have deposited in the perpetual care fund, as required by this section, a sum amounting to ten thousand dollars (\$10,000.00), it shall submit proof of such fact to its trustee, and it shall be the duty of the trustee to thereupon pay over to the cemetery the amount of five thousand dollars (\$5,000.00) so originally deposited by it in the perpetual care fund.

(5) The perpetual care fund shall be permanently set aside in trust to be administered under the jurisdiction of the chancery court of the chancery court district wherein the cemetery is located. The chancery courts so having jurisdiction shall have full jurisdiction over the reports and accounting of trustees, amount of surety bond required, and investment of funds. The courts may waive the surety bond and control of investments in the case of trusts placed with an established bank or corporate trustee. Only the income from such fund shall be used for the care and maintenance of the cemetery for which it was established.

(6) Each geographic location of a cemetery shall constitute a separate and distinct cemetery for the purpose of interpretation and application of this section.

41-43-38. Accounting and reporting, perpetual care cemeteries

(1) The provisions of this section shall apply to every cemetery which is required to establish and maintain a perpetual care trust fund as provided in section 41-43-37.

(2) Within thirty (30) days after the end of the calendar or its fiscal year, each cemetery shall file with the clerk of the chancery court having jurisdiction thereof an annual account, which account shall contain the following information:

(a) The name of the cemetery, the date of incorporation, if incorporated, and the location of the cemetery or cemeteries owned;

(b) The amounts of sales of cemetery lots, grave spaces, mausoleum crypts or columbarium niches for which payment has been made in full or deeds of conveyance or perpetual easements issued thereon during the preceding calendar or fiscal year;

(c) The amounts paid into the perpetual care fund, and the income earned therefrom during the preceding fiscal year;

(d) The number of acres embraced within each cemetery and held by the cemetery for cemetery purposes; and

(e) The names and addresses of the owners of the cemetery or the officers and directors of the corporation and any change of control which has occurred during the past fiscal or calendar year.

(3) The custodian or trustee of the perpetual care fund of each cemetery shall annually prepare and file with the owner of the cemetery a detailed accounting and report of such fund on or before March 31 of each year for the calendar year ending the preceding December 31 or within ninety (90) days after the end of the fiscal year of the trust agreement, which report shall include, among other things, properly itemized, the securities in which the monies in the fund are then invested. The accounting and report shall be at all times available to inspection and copy by any owner of a burial right in the cemetery, or the family, legal representative or next of kin of such owner, at the usual place for transacting the regular business of the cemetery. Within forty-five (45) days after the time by which the custodian or trustee's accounting and report is required to be filed with the cemetery owner, the cemetery owner shall file a copy of such accounting and report with the clerk of the chancery court.

(4) As a condition to the transfer of any perpetual care trust fund monies from one trustee or trust institution to another, the cemetery for which such fund is maintained shall, not less than thirty (30) days prior to the time when such transfer is to occur, file with the chancery clerk a written notice of intent to transfer accompanied with a letter of intent to receive such trust fund monies from the trustee or trust institution to which such trust fund monies are to be transferred. Such fund monies shall be transferred directly from the existing custodian or trustee to the receiving custodian or trustee.

(5) Prior to any sale or transfer of a perpetual care cemetery or a controlling interest therein, an independent audit of the perpetual care trust fund shall be performed at the expense of the seller and/or buyer or transferor and transferee and filed with the chancery clerk. Such audit shall be current within thirty (30) days of the proposed sale or transfer.

(6) Each chancery clerk shall maintain a properly indexed book in which there shall be kept, preserved and open for public inspection a copy of each record, report and notice required to be filed with the chancery clerk under the provisions of this section. For filing and indexing the records, reports and notices under this section, the chancery clerk shall be authorized to charge such fees as are provided in section 25-7-9 for the recording and indexing of deeds.

(7) The clerk of the chancery court having jurisdiction shall, upon the failure to timely receive any of the records, reports or notices provided for in this section, immediately give notice by registered letter to the cemetery owner or owners, or, if incorporated, its officers and directors, at its or their last-known address, that such records, reports or notices have not been received. Failure of such persons to file such records, reports or notices within fifteen (15) days after such registered letter is mailed shall, in the absence of clear justification or excuse, constitute a misdemeanor and each owner of such cemetery and, if incorporated, its officers and directors, shall be subject to the penalties provided for in section 41-43-53.

(8) Whenever it reasonably appears to the court upon complaint filed with the chancery court having jurisdiction thereof by any owner or purchaser, or the family, legal representative or next of kin of any such owner or purchaser, of any lot, plot, grave, crypt, niche or burial space within a perpetual care cemetery, that (a) such cemetery is insolvent or about to become insolvent; or (b) no perpetual care trust fund has been established for such cemetery or, if established, the trust fund does not contain such funds as are required to be contained therein, the court shall order a private audit and examination of any perpetual care trust fund of such cemetery and of all the books, records and papers employed in the transaction of such cemetery business.

In the event that such audit and examination shows that the cemetery is insolvent or is about to become insolvent, or that a sufficient trust fund is not established or being maintained for such cemetery, the court shall exercise such jurisdiction and make and issue such orders and decrees as may be necessary to correct and enforce compliance with the provisions of sections 41-43-31 to 41-43-53 and all such other orders and decrees as shall be just, equitable and in the public interest, including the appointment of receivers to continue or terminate the operation of such business.

(9) All the necessary expenses of any examination or audit performed or court proceedings conducted under the provisions of subsection (8) of this section shall be paid by the cemetery owner or owners or, if incorporated, its officers and directors, and in the event that a sale of any cemetery is ordered by the court, the proceeds of such sale shall first be applied to the costs expended under the provisions of subsection (8) of this section.

41-43-39. Qualification as perpetual care cemetery

Any such organization, subject to the provisions of sections 41-43-31 to 41-43-53, which is organized and engaged in business prior to May 6, 1958, shall be a perpetual care cemetery if:

(1) It shall, by July 5, 1958, have placed the entire principal and all accrued interest in any perpetual care fund then in its possession, or in the possession of trustees designated by it, in trust, to be administered as set forth in sections 41-43-37 and 41-43-38. Should such perpetual care fund be less than ten percent (10%) of the gross selling price of all burial spaces, crypts or inurnment niches sold, such organization shall have deposited into the perpetual care fund such additional money as may be necessary to cause the fund to be ten percent (10%) of all gross sales prior to May 6, 1958.

(2) It shall, at all times after May 6, 1958, comply with the requirements of a perpetual care cemetery as set forth in sections 41-43-37 and 41-43-38.

41-43-41. Becoming perpetual care cemetery

Any nonperpetual care cemetery, after May 6, 1958, may become a perpetual care cemetery by complying with the requirement for a perpetual care cemetery as provided in sections 41-43-31 to 41-43-53.

41-43-43. Notice; nonperpetual care cemetery

All nonperpetual care cemeteries shall have printed at the top of all contracts of sales and deeds the words "this is a nonperpetual care cemetery."

41-43-45. Sales and transfers

All lots and grave spaces offered for sale to the public shall be free and clear of liens or encumbrances. On payment of the purchase price, the purchaser shall be delivered a warranty deed or a perpetual easement for interment purposes.

Only the owner of a cemetery, or its agents, may sell or convey lots, plots, or parts thereof.

The purchaser of any lot, plot or part thereof may sell or transfer the same by giving notice thereof to the cemetery authorities or organization. Before acknowledging any transfer as valid, said cemetery authorities or organization may require the transferee to personally appear in the cemetery's principal place of business to accept any deed or transfer rights to the property conveyed, in order that the transfer may be properly enrolled on the books of the cemetery. A memorandum of all transfers shall be made on the books of the cemetery corporation or organization.

41-43-47. Rules and regulations

The owner of any cemetery may make and enforce reasonable rules and regulations for the use, care, control, management, restriction and protection of such cemetery.

§ 41-43-49. Repealed by Laws 1982, Ch. 371, § 7, eff. July 1, 1982

§ 41-43-51. Rule against perpetuities not applicable

The rule against perpetuities shall not be applicable to perpetual care funds provided for in sections 41-43-31 to 41-43-53.

§ 41-43-53. Penalties for violations

Violation of any of the provisions of sections 41-43-31 to 41-43-53 by any person, partnership, corporation or organization shall be punished by fine of not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000.00) or by imprisonment in the county jail for a period not exceeding one (1) year, or by both.

MISSISSIPPI PRE-NEED CEMETERY AND FUNERAL LAWS

§ 75-63-5. Acceptance of property; performance of services

Nothing contained in this chapter shall be construed to require any cemetery to accept any personal property, or perform any personal services contrary to law or ordinances pertaining to the burial of deceased human beings, or contrary to rules and regulations of a cemetery pertaining to the quality and kind of personal property that may be used in connection with the burial of deceased human beings in any such cemetery.

§ 75-63-25. Construction with wishes of next-of-kin; reliance by contract provider

(1) Any pre-need contract which is executed by the decedent for his own arrangements and is fully funded overrules, following the decedent's death, the conflicting wishes of the decedent's next of kin, unless a compelling public interest makes it impossible to comply with a decedent's directions in a pre-need contract.

(2) The provisions of this section shall not prevent the decedent's next of kin or surviving heirs at law from, at their own expense, pursuing reasonable services and making reasonable arrangements that do not conflict with the decedent's directions in a pre-need contract.

(3) All contract providers shall have the right to rely on the pre-need contract and perform obligations in accordance with the pre-need contract. There shall be no liability for any contract provider who in good faith performs his obligations pursuant to the pre-need contract, provided the pre-need contract is in compliance with Section 75-63-51 et seq. and any rules promulgated thereunder.

§ 75-63-51. Short title

This article shall be known and may be cited as the "Pre-need Cemetery and Funeral Registration Act."

§ 75-63-53. Definitions

As used in this article, unless the context requires otherwise:

(a) "Buyer" means the person who purchases the pre-need contract.

(b) "Cash advance item" means any item of service or merchandise described to a purchaser as a "cash advance," "accommodation," "cash disbursement" or similar term. A

cash advance item is also any item obtained from a third party and paid for by the funeral provider on the purchaser's behalf. Cash advance items may include, but are not limited to: cemetery or crematory services; pallbearers; public transportation; clergy honoraria; flowers; musicians or singers; nurses; obituary notices; gratuities and death certificates.

(c) "Cemetery" means an organization as defined in Section 41-43-33, Mississippi Code of 1972.

(d) "Contract insured" means the person upon whose death will initiate the performance of a pre-need contract.

(e) "Contract provider" means the funeral home, cemetery or other providers of merchandise and/or service in a pre-need contract that will be responsible for performing a pre-need contract.

(f) "Financial institution" means a bank, trust company, savings bank, or savings and loan association chartered and authorized to do business in this state.

(g) "Funeral home" means a business licensed under Section 73-11-55, Mississippi Code of 1972.

(h) "Inflation proof contract" means a pre-need contract that establishes a fixed price for funeral services and merchandise without regard to future price increases.

(i) "Insurance" means a life insurance policy or a Class A or Class B burial insurance policy.

(j) "Merchandise" means personal property associated with the disposal of or memorializing a deceased human being, including, but not limited to, a casket, burial vault, burial clothes, urn or monument.

(k) "Pre-need contract" means any contract, agreement or any series or combination of contracts or agreements, whether funded by trust deposits or insurance, or any combination thereof, which has for a purpose the furnishing or performance of funeral services, or the furnishing or delivery of merchandise, of any nature in connection with the final disposition of a dead human body, to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of but shall not mean the furnishing of a cemetery lot, crypt, niche or mausoleum.

(l) "Seller" means the person who sells a pre-need contract.

(m) "Services" means services of any nature in connection with the final disposition of a dead human body.

(n) "Standard contract" means a pre-need contract that applies the trust funds or insurance proceeds to the purchase price of specific funeral services and specific merchandise at the time of death of the contract insured without a guarantee against future price increases.

(o) "Trust" means an express trust created by a trust instrument whereby a trustee has the duty to administer a trust asset for the benefit of a named pre-need contract insured.

(p) "Trustee" means an original, added, or successor trustee including its successor by merger or consolidation.

§ 75-63-55. Pre-need contracts; sales; contents; funding

(1) No person, firm, partnership, association or corporation may directly or indirectly, or through an agent, engage in the sale of pre-need contracts except as authorized under this article. All pre-need contracts sold shall be evidenced in writing on forms registered with the Secretary of State. These forms shall clearly indicate the names and addresses of the buyer, contract insured, contract provider and seller.

(2) The contract shall clearly indicate all merchandise covered by the contract and the total cost of all merchandise covered by the contract. The contract shall list all services covered by the contract and the total cost for all services covered by the contract. The contract shall list all cash advance items covered by the contract and the total cost for all cash advance items covered by the contract.

(3) All pre-need contracts sold shall be funded by trust or insurance as defined in this article or evidenced by a warehouse receipt, as contemplated in Uniform Commercial Code-Documents of Title, Section 75-7-101 et seq.

(4) If the pre-need contract is funded by a policy of insurance, as defined by Section 83-5-5, a copy of the insurance policy shall be furnished to the insured within fifteen (15) days of issue. Such insurance shall be subject to the insurance laws of the state.

The insured shall be furnished the following:

(a) A list of the merchandise and services which are applied or contracted for in the pre-need contract and all relevant information concerning the price of the funeral services, including an indication that the purchase price is either guaranteed at the time of purchase or to be determined at the time of need;

(b) All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the proceeds of the life insurance policy and the amount actually needed to fund the pre-need contract; and

(c) Any penalties or restrictions, including, but not limited to, geographic restrictions or the inability of the provider to perform, on the delivery of merchandise, services or the pre-need guarantees.

If the pre-need contract is not funded by a policy of insurance, as defined by Section 83-5-5, a copy of the pre-need contract shall be furnished to the contract insured within fifteen (15) days of purchase.

(5) If the pre-need contract is funded by trust, the contract shall indicate the name, address and telephone number of the trustee; the amount to be paid; the frequency of payment; and the length of time payments will be paid into the trust. In addition, the contract should clearly indicate any exclusions or limitations of the pre-need contract including, but not limited to, any additional payments that may be owed if the contract insured dies before the agreed upon payment period is completed.

(6) The pre-need contract shall indicate whether it is a standard contract or an inflation proof contract, and whether it is revocable or irrevocable. The contract shall clearly indicate which merchandise and services are guaranteed as to price.

(7) The pre-need contract shall contain the address and phone number of the Secretary of State with instructions that consumer complaints may be filed with the Secretary of State.

(8) If the pre-need contract is paid in multiple payments, the contract should indicate the amount, frequency and duration of the payments and the amount of any interest charged. The contract shall also include the impact on the contract if payments are not made.

(9) Any use of any oral pre-need contract, or any written contract in a form not registered by the Secretary of State, shall be a violation of this article.

§ 75-63-57. Retention of records

The contract provider or its successor shall maintain a copy of all pre-need contracts entered into by the contract provider for a period of the lifetime of each contract and for two (2) years after the death of a contract insured.

§ 75-63-59. Funding by trust

(1) If the contract is funded by trust, the Secretary of State shall be given a copy of the trust document and shall be informed in writing as to how the assets of the trust are held. In the event of any change in the investments of the assets of the trust, or change in the trustee or trust institution, the Secretary of State shall be informed not less than thirty (30) days after the time such change occurs.

(2) Any trustee, other than a financial institution, shall not be the contract provider, the seller, or an officer or director of the contract provider if the contract provider is a corporation.

(3) Within twenty (20) days from the end of the month in which the funds were received, the contract seller shall place in a trust account in a financial institution as defined by this article at least fifty percent (50%) of the funds received. If the contract seller places less than one hundred percent (100%) in the trust account, the pre-need contract shall fully disclose to the contract purchaser the amount deposited in trust and the amount withheld by the contract seller.

(4) Reasonable annual trust fees including any income taxes owed to the State of Mississippi and/or the United States Treasury may be withheld from the earnings of the trust.

(5) At the time of death, if the contract provider provides the merchandise and services indicated in the contract, the contract provider shall furnish to the trustee a copy of the buyer's death certificate or proof of death and a letter of performance indicating that the contracted merchandise and services were provided by the contract provider to the contract insured. Upon receipt of the letter of performance and death certificate, or proof of death, the trustee shall pay to the contract provider all funds.

(6) If the contract provider does not furnish merchandise and services as provided in the pre-need contract, the trustee shall pay to the estate of the contract insured or the substitute provider not less than the amount deposited in trust, within ten (10) days from notification of the death of the contract insured.

§ 75-63-61. Funding by insurance

(1) If the pre-need contract is funded with insurance, and payment is made to the contract seller rather than directly to the life insurance company, the contract seller shall send to the insurance company all premiums collected from the contract purchaser.

(2) At the time of death, the proceeds of the policy shall be settled in accordance with the policy. If the contract provider furnishes merchandise and services as indicated in the contract, the contract provider is entitled to retain the proceeds of the policy in accordance with the pre-need contract. If the contract provider does not furnish merchandise and/or services as provided in the pre-need contract, the contract provider shall pay to the estate of the contract insured or the substitute provider of the merchandise and/or services the proceeds of the policy within ten (10) days of receipt of these proceeds.

§ 75-63-63. Revocation clauses; substitute providers

If the pre-need contract contains a revocation clause, the contract insured or his representatives may name a substitute provider for the pre-need contract at any time prior to the performance of the contract. The naming of the substitute provider shall be in writing. If the pre-need contract is funded by trust, the notice of substitution shall be made in writing to the trustee and the Secretary of State. If the pre-need contract is funded by insurance, the change of beneficiary shall be made in writing to the insurance company. Upon receipt of the notice of substitute provider, the original provider shall be relieved of all obligations to perform the contract including all obligations of reporting and accounting, and the substitute provider shall assume all obligations to perform the contract including all obligations of reporting and accounting.

§ 75-63-65. Pre-need establishment registration requirements

(1) Any establishment or organization which engages in the business of selling pre-need merchandise and/or services shall register with the Secretary of State and shall pay a registration fee. A separate registration is required for each separate corporation or business entity. The establishment or organization shall pay to the Secretary of State for the registration of the main establishment or organization a fee of Two Hundred Fifty Dollars (\$250.00).

(2) Any person who engages in the business of selling pre-need contracts shall register with the Secretary of State.

(3) The Secretary of State shall establish regulations to register each establishment or organization selling pre-need merchandise or services. No establishment or organization shall be registered to sell pre-need merchandise or services that the establishment or organization cannot lawfully provide at the time of a person's death. The Secretary of State shall also maintain a record of all individuals who are registered to sell pre-need merchandise or services through the registered establishment.

(4) The Secretary of State shall establish regulations to register each person selling pre-need contracts, including the establishment through which the seller will be selling. No person shall be registered to sell pre-need contracts without indicating the establishment for which he or she is selling.

(5) The Secretary of State shall develop and furnish the forms necessary for the registration of establishments and individuals selling pre-need contracts.

§ 75-63-67. Reporting

Every registered pre-need establishment shall annually submit a written report to the Secretary of State of its pre-need contract sales and performance of such contracts. This report shall be filed on or before March 31 of each year for the calendar year ending the preceding December 31 or within ninety (90) days of the end of the establishment's fiscal year. The Secretary of State shall adopt regulations concerning the content and filing procedure of this report.

§ 75-63-69. Violations; remedies

(1) Whenever it appears to the Secretary of State that any person has engaged, or is about to engage, in any act or practice constituting a violation of any provision of this article or any rule or order hereunder, he may, in his discretion, seek any or all of the following remedies:

(a) Issue a cease and desist order with a prior hearing against the person or persons engaged in the prohibited activities directing them to cease and desist from further illegal activity;

(b) (i) Issue an order in the case of any person, partnership or, if a corporation, the officers and directors who sell or offer to sell pre-need contracts, or other person who violated this article, imposing an administrative penalty up to a maximum of One Thousand Dollars (\$1,000.00) for each offense and each violation shall be considered as a separate offense in a single proceeding or a series of related proceedings, with total penalties not to exceed Five thousand Dollars (\$5,000.00) in any such proceedings, to be paid to the Secretary of State and requiring reimbursement to the Secretary of State for all costs and expenses incurred in the investigation of the violation(s) and in the institution of administrative proceedings, if any, as a result thereof;

(ii) For the purpose of determining the amount or extent of a sanction, if any, to be imposed under paragraph (b)(i) of this subsection, the Secretary of State shall consider, among other factors, the frequency, persistence and willfulness of the conduct constituting a violation of this act or a rule promulgated thereunder, or an order of the Secretary of State, the number of persons adversely affected by the conduct and the resources of the person committing the violation;

(c) Bring an action in chancery court to enjoin the acts or practices to enforce compliance with this article or any rule or order hereunder. Upon a proper showing, a permanent or temporary injunction, restraining order or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. In addition, upon a proper showing by

the Secretary of State, the court may enter an order of rescission or restitution directed to any person who has engaged in any act constituting a violation of any provision of this

article or any rule or order hereunder, or the court may impose a civil penalty up to a maximum of One Thousand Dollars (\$1,000.00) for each offense and each violation shall be considered as a separate offense in a single proceeding or a series of related proceedings, with total penalties not to exceed Five Thousand Dollars (\$5,000.00) in any such proceedings. The court may not require the Secretary of State to post a bond.

(2) The Secretary of State may, with a prior hearing, suspend or revoke any pre-need establishment or salesperson registration for violation of statutes or regulations established under this article.

(3) Any person, partnership or, if a corporation, the officers and directors who sell or offer to sell a pre-need contract with a suspended or revoked registration shall be guilty of a misdemeanor and, upon conviction thereof, shall be punishable by a fine not less than Two Hundred Dollars (\$200.00) nor more than Five Hundred Dollars (\$500.00) or by imprisonment for a term of not more than one (1) year, or both fine and imprisonment.

(4) Any person, partnership or, if a corporation, the officers and directors who embezzle or fraudulently or knowingly and willfully misapply or convert pre-need funds shall, upon conviction, be punished by imprisonment in the custody of the Mississippi Department of Corrections for a term of not less than ten (10) years, or be fined not more than One Thousand Dollars (\$1,000.00) and imprisoned in the county jail not more than one (1) year, or both fine and imprisonment. Each such violation shall constitute a separate offense.

(5) Upon reasonable belief that a person or corporation is acting in violation of the portions of this article requiring fines or imprisonment, the Secretary of State shall immediately report this violation accompanied by all relevant records to the Insurance Integrity Enforcement Bureau within the Office of Attorney General created in Section 7-5-301.

(6) No order shall be entered under this section without the following:

(a) An appropriate prior notice to the applicant or registrant;

(b) An opportunity for a hearing; and

(c) Written findings of fact and conclusions of law.

§ 75-63-71. Confidentiality of information

The information contained in or filed with any registration, statement, application or report may be made available to the public under such rules as the Secretary of State prescribes. Information in the possession of, filed with or obtained by the Secretary of State in connection with any investigation or examination under this act shall be

confidential and exempt from the requirements of the Mississippi Public Records Act of 1983. No such information may be disclosed by the Secretary of State, or any of his officers or employees, unless necessary or appropriate in connection with a particular investigation or proceeding under this article or for any law enforcement purpose.

§ 75-63-73. Powers of secretary of state

For the purpose of any investigation or proceeding under this article, the Secretary of State, or any officer designated by him, may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records which the Secretary of State deems relevant or material to the inquiry.

§ 75-63-75. Construction as to life insurance sales

Nothing in this article shall be construed to authorize the sale of life insurance policies by unlicensed agents which is prohibited by Section 83- 17-105, Mississippi Code of 1972.

MISSISSIPPI STATE BOARD OF FUNERAL SERVICE AND LICENSING LAWS

§ 73-11-33. Expiration of provisions

Sections 73-11-41 through 73-11-69, which create the State Board of Funeral Service and prescribe its duties and powers, shall stand repealed as of July 1, 2010.

§ 73-11-41. Definitions

The following terms shall have the meanings ascribed herein unless the context shall otherwise require:

(a) "Board" means the State Board of Funeral Service of the State of Mississippi as created by Section 73-11-43, or any successor thereof.

(b) "Branch establishment" means an auxiliary facility or division of a main funeral establishment licensed under this chapter that is within seventy-five (75) miles of the main facility.

(c) "Embalming" means the disinfection of the dead human body by replacing certain body fluids with preserving and disinfecting chemicals.

(d) "Funeral establishment" means a fixed place or premise duly licensed by the board that is devoted to or used in the immediate post-death activities of custody, shelter, care, preparation and/or embalming for final disposition of the body; or used for religious services or other rites or ceremonies associated with the final disposition of human dead; or maintained or held out to the public by advertising or otherwise as such, for the convenience and comfort of the bereaved and the community for viewing or other services in connection with the human dead, and as the office or place for carrying on the profession of funeral service and/or funeral directing.

(e) "License for funeral establishment" means a license issued to a place or premise devoted to or used in the immediate post-death activities of custody, shelter, care, preparation and/or embalming for final disposition of the body; or used for religious services or other rites or ceremonies associated with the final disposition of human dead; or maintained for the convenience and comfort of the bereaved and the community for viewing or other services in connection with the human dead, and as the office or place for carrying on the profession of funeral service and/or funeral directing.

(f) "License for the practice of funeral directing" means the license given to a person engaging in the "practice of funeral service" who is not engaged in the practice of embalming.

(g) "License for the practice of funeral service" means the license given to a person engaging in the "practice of funeral service," including the practice of embalming.

(h) "Practice of funeral service" means:

(i) Providing shelter, care and custody of the human dead;

(ii) Conducting immediate post-death activities;

(iii) Preparing of the human dead by embalming or other methods for burial or other disposition;

(iv) Being responsible for the transportation of the human dead, bereaved relatives and friends;

(v) Making arrangements, financial or otherwise, for the providing of such services;

(vi) The sale of funeral merchandise; or

(vii) The practice or performance of any function of funeral directing and/or embalming as presently known, including those stipulated herein.

This definition shall not include persons or corporations engaging only in the preneed sale of funeral merchandise or service.

(i) "Resident trainee" means a person who is preparing to become licensed for the practice of funeral service or funeral directing and who is serving under the supervision and instruction of a person duly licensed for the practice of funeral service or funeral directing in this state.

(j) "Solicitation" means the act or practice of approaching someone with a request or plea, or urging someone toward a particular cause, as it may pertain to the care, custody or disposition of a dead human body.

(k) "Casket" is defined as a rigid container that is designed for the encasement of human remains and that is usually constructed of wood, metal, fiberglass, plastic or like material and ornamented and lined with fabric.

(l) "Cremation" is the technical process, using heat, that reduces human remains to bone fragments.

(m) "Crematory" is defined as any person, partnership or corporation that performs cremation. A crematory must comply with any applicable public health laws and rules and must contain the equipment and meet all of the standards established by the rules and regulations adopted by the board.

(n) "Direct cremation" means a disposition of human remains by cremation without formal viewing, visitation or ceremony with the body present.

(o) "Crematory operator" means the legal entity that operates a crematory and performs cremations.

§ 73-11-43. State Board of Funeral Service established

There is hereby created the State Board of Funeral Service which shall consist of seven (7) members, one (1) funeral service licensee and one (1) funeral director licensee to be appointed from each Mississippi Supreme Court district. Three (3) members shall have been licensed for the practice of funeral service under this chapter for five (5) consecutive years and/or have had at least five (5) consecutive years' experience as a funeral director and embalmer in this state immediately preceding his appointment. Three (3) members shall have been licensed for the practice of funeral directing under this chapter for five (5) consecutive years and/or have had at least five (5) consecutive years' experience as a funeral director immediately preceding his appointment. One (1) member shall be a public member and be appointed from the public at large. The members of the board shall be appointed by the Governor with the advice and consent of the Senate. All appointments shall be for terms of four (4) years from the expiration date of the previous term. No board member shall serve more than two (2) consecutive full terms. Vacancies in office shall be filled by appointment by the Governor in the same manner as the appointment to the position which becomes vacant, subject to the advice and consent of the Senate at the next regular session of the Legislature. Appointments for vacancies in office, except those from the public at large, may be made from a joint list of four (4) qualified persons, two (2) each submitted by the Mississippi Funeral Directors Association and the Mississippi Funeral Directors and Morticians Association. Nothing in this chapter or any other statute shall preclude the members of the State Embalming Board from serving as members of the State Board of Funeral Service.

§ 73-11-45. Oath required of board members

The members of the board, before entering upon their duties, shall take and subscribe to the oath of office prescribed for other state officers, which oath shall be administered by properly qualified authority and shall be filed in the office of the Secretary of State.

§ 73-11-47. Meetings of board

The board shall hold not less than two (2) meetings annually for the purpose of conducting the business of the board and for examining applications for licenses. Four (4) or more members shall comprise a quorum. Any member who shall not attend two (2) consecutive meetings of the board shall be subject to removal by the Governor. The chairman of the board shall notify the Governor in writing when any such member has failed to attend two (2) consecutive regular meetings.

§ 73-11-49. Powers and authority of board

(1) The board is authorized to select from its own membership a chairman, vice chairman and secretary-treasurer. Election of officers shall be held at the first regularly scheduled meeting of the fiscal year.

(2) All members of the board shall be reimbursed for their necessary traveling expenses and mileage incident to their attendance upon the business of the board, as provided in Section 25-3-41, and shall receive a per diem as provided in Section 25-3-69 for every day actually spent upon the business of the board, not to exceed twenty (20) days per year unless authorized by a majority vote of the board.

(3) All monies received by the board shall be paid into a special fund in the State Treasury to the credit of the board and shall be used by the board for paying the traveling and necessary expenses and per diem of the members of the board while on board business, and for paying other expenses necessary for the operation of the board in carrying out and involving the provisions of this chapter.

(4) The board shall employ an administrator of the board, who shall have complete supervision and be held responsible for the direction of the office of the board, shall have supervision over field inspections and enforcement of the provisions of this chapter, shall have such other duties as may be assigned by the board, shall be responsible and answerable to the board. The board may employ such other clerical assistants and employees as may be necessary to carry out the provisions of this chapter, and the terms and conditions of such employment shall be determined by the board in accordance with applicable state law and rules and regulations of the State Personnel Board.

(5) The board, when it shall deem necessary, shall be represented by an assistant Attorney General duly appointed by the Attorney General of this state, and may also request and receive the assistance of other state agencies and county and district attorneys, all of whom are authorized to provide the assistance requested.

(6) The board shall have subpoena power in enforcing the provisions of this chapter.

(7) The board shall adopt and promulgate rules and regulations for the transaction of its business in accordance with the provisions of the Mississippi Administrative Procedures

Law (Section 25-43-1 et seq.). No rule or regulation promulgated by the board affecting any person or agency outside the board shall be adopted, amended or repealed without a public hearing on the proposed action. The board shall give written notice at least thirty (30) days in advance of any meeting with respect to any proposed adoption, amendment or repeal of a rule or regulation of the board, in accordance with the Administrative Procedures Act, as well as notifying the duly elected presidents and secretaries of the Mississippi Funeral Directors Association and the Mississippi Funeral Directors and Morticians Association, or their successors.

(8) The board may designate the administrator to perform inspections under this chapter, may employ an individual to perform such inspections or may contract with any other individual or entity to perform such inspections. Any individual or entity that performs such inspections shall have the right of entry into any place in which the business or practice of funeral service and/or funeral directing is carried on or advertised as being carried on, for the purpose of inspection, for the investigation of complaints coming before the board and for such other matters as the board may direct.

(9) The board shall not adopt any rule or regulation pertaining to the transportation of dead bodies, and shall not adopt any rule or regulation requiring dead bodies to be embalmed except as required by the State Department of Health's Rule 43 or any subsequent rule adopted by the department.

§ 73-11-51. Licensing, examination, qualifications and exemptions

(1) No person shall engage in the business or practice of funeral service, including embalming, and/or funeral directing or hold himself out as transacting or practicing or being entitled to transact or practice funeral service, including embalming, and/or funeral directing in this state unless duly licensed under the provisions of this chapter.

(2) The board is authorized and empowered to examine applicants for licenses for the practice of funeral service and funeral directing and shall issue the proper license to those persons who successfully pass the applicable examination and otherwise comply with the provisions of this chapter.

(3) To be licensed for the practice of funeral directing under this chapter, a person must:

(a) Be at least eighteen (18) years of age;

(b) Have a high school diploma or the equivalent thereof;

(c) Have served as a resident trainee for not less than twenty-four (24) months under the supervision of a person licensed for the practice of funeral service or funeral directing in this state;

(d) Have successfully passed a written and/or oral examination as prepared or approved by the board; and

(e) Be of good moral character.

(4) To be licensed for the practice of funeral service under this chapter, a person must:

(a) Be at least eighteen (18) years of age;

(b) Have a high school diploma or the equivalent thereof;

(c) Have successfully completed twelve (12) months or more of academic and professional instruction from an institution accredited by the United States Department of Education for funeral service education and have a certificate of completion from an institution accredited by the American Board of Funeral Service Education or any other successor recognized by the United States Department of Education for funeral service education;

(d) Have served as a resident trainee for not less than twelve (12) months, either before or after graduation from an accredited institution mentioned above, under the supervision of a person licensed for the practice of funeral service in this state and in an establishment licensed in this state;

(e) Have successfully passed the National Conference of Funeral Examiners examination as approved by the board; and

(f) Be of good moral character.

(5) All applications for examination and license for the practice of funeral service or funeral directing shall be upon forms furnished by the board and shall be accompanied by an examination fee, a licensing fee and a nonrefundable application fee in amounts fixed by the board in accordance with Section 73- 11-56. The fee for an initial license, however, may be prorated in proportion to the period of time from the date of issuance to the date of biennial license renewal prescribed in subsection (8) of this section. All applications for examination shall be filed with the board office at least sixty (60) days before the date of examination. A candidate shall be deemed to have abandoned the application for examination if he does not appear on the scheduled date of examination unless such failure to appear has been approved by the board.

(6) The practice of funeral service or funeral directing must be engaged in at a licensed funeral establishment, at least one (1) of which is listed as the licensee's place of business; and no person, partnership, corporation, association or other organization shall open or maintain a funeral establishment at which to engage in or conduct or hold himself or itself out as engaging in the practice of funeral service or funeral directing until such

establishment has complied with the licensing requirements of this chapter. A license for the practice of funeral service or funeral directing shall be used only at licensed funeral establishments; however, this provision shall not prevent a person licensed for the practice of funeral service or funeral directing from conducting a funeral service at a church, a residence, public hall, lodge room or cemetery chapel, if such person maintains a fixed licensed funeral establishment of his own or is in the employ of or an agent of a licensed funeral establishment.

(7) Any person holding a valid, unrevoked and unexpired nonreciprocal license in another state or territory having requirements greater than or equal to those of this state as determined by the board may apply for a license to practice in this state by filing with the board a certified statement from the secretary of the licensing board of the state or territory in which the applicant holds his license certifying to his qualifications and good standing with that board by having successfully passed a written and/or oral examination on the Mississippi Funeral Service licensing law and rules and regulations as prepared or approved by the board, and by paying a nonrefundable application fee set by the board under Section 73-11-56. If the board finds that the applicant has fulfilled substantially similar requirements, the board shall grant such license upon receipt of a fee in an amount equal to the renewal fee set by the board for a license for the practice of funeral service or funeral directing, as the case may be, in this state. The board may issue a temporary funeral service or funeral directing work permit before a license is granted, before the next regular meeting of the board, if the applicant for a reciprocal license has complied with all requirements, rules and regulations of the board. The temporary permit will expire at the next regular meeting of the board.

(8)(a) Any person holding a license for the practice of funeral service or funeral directing may have the same renewed for a period of two (2) years by making and filing with the board an application on or before the due date. Payment of the renewal fee shall be in an amount set by the board in accordance with Section 73-11-56. The board shall mail the notice of renewal and the due date for the payment of the renewal fee to the last known address of each licensee at least thirty (30) days before that date. It is the responsibility of the licensee to notify the board in writing of any change of address. An application will be considered late if the application and proper fees are not in the board's office or postmarked by the due date.

(b) If the renewal fee is not paid on or postmarked by the due date, the license of such person shall by operation of law automatically expire and become void without further action of the board. The board may reinstate such license if application for licensure is made within a period of five (5) years, upon payment of the renewal fee for the current year, all renewal fees in arrears, and a reinstatement fee. After a period of five (5) years, the licensee must make application, pay the current renewal fee, all fees in arrears, and pass a written and/or oral examination as prepared or approved by the board.

(9) No license shall be assignable or valid for any person other than the original licensee.

(10) The board may, in its discretion, if there is a major disaster or emergency where

human death is likely to occur, temporarily authorize the practice of funeral directing and funeral service by persons licensed to practice in another state but not licensed to practice in this state, provided that such services are only rendered by members of disaster mortuary teams authorized by federal or appropriate local authorities to provide such services. Only persons licensed in this state, however, may sign death certificates.

(11) A person who is licensed for the practice of funeral service by another state is authorized to make a removal of a deceased person, embalm a deceased person or conduct a funeral or burial service in this state, and a funeral director who is licensed by another state is authorized to conduct a funeral or burial service in this state, in the same manner and to the same extent as provided by the laws of that state to persons licensed by the State of Mississippi for the practice of funeral service or for the practice of funeral directing. The board is authorized to enter into written agreements with those states detailing the manner and extent to which persons licensed by the State of Mississippi may practice funeral service or directing in that state.

(12) Any funeral service technology or mortuary science program accredited by the American Board of Funeral Service Education in the State of Mississippi, as well as students enrolled in such a program, shall be exempt from licensing under this chapter when embalming or otherwise preparing a deceased human body for disposition as part of a student practicum experience, when the student is directly supervised by an instructor or preceptor who holds a current funeral service license. This exemption shall apply to practicum experiences performed at an accredited institution of funeral service technology or mortuary science program or at a duly licensed funeral establishment or commercial mortuary service. Nothing in this subsection shall be construed to allow any funeral service technology or mortuary science program, or those students enrolled in such a program, to engage in practicum experiences for remuneration.

(13) Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11- 64.

§ 73-11-53. Resident trainees

(1) A person desiring to become a resident trainee for the practice of funeral service or funeral directing shall make application to the board. Such application shall be sustained by the licensee under whom the applicant is serving, and shall be accompanied by a nonrefundable application fee in an amount set by the board in accordance with Section 73-11-56. When the board is satisfied as to the qualifications of an applicant, it shall issue a certificate of resident traineeship. No credit toward the resident traineeship will be allowed before the receipt of a properly completed application and applicable fee at the board office.

(2) The board shall have the power to suspend or revoke a certificate of a resident traineeship for violation of any provision of this chapter.

(3) A resident trainee must serve the apprenticeship in a funeral establishment that is licensed by the State of Mississippi and the preceptor must be a Mississippi licensee who is employed by a Mississippi licensed funeral establishment.

(4) A resident traineeship certificate shall be renewable upon payment of a renewal fee as set by the board. The certificate will expire on December 31 of each year. The fee and application will be considered late if the fee and application are not in the office or show a postmark of December 31. Applications received late may be reinstated by the payment of a renewal fee and a reinstatement fee.

§ 73-11-55. Licensing requirement for funeral establishments

(1) No person or party shall conduct, maintain, manage or operate a funeral establishment or branch thereof unless a license for each such establishment has been issued by the board and is conspicuously displayed in such funeral establishment. In case of funeral services held in any private residence, church, cemetery, cemetery chapel, cemetery facility, or lodge hall, no license shall be required.

(2) To be licensed as a funeral establishment, a place or premise must be at a fixed and specified address or location and must be used for immediate post-death activities, whether used for the custody, shelter, care, preparation and/or embalming of the human dead. Every funeral establishment shall be under the charge and personal supervision of a Mississippi funeral director licensee or a Mississippi funeral service licensee. The licensee in charge and the licensee with personal supervisory responsibilities need not be the same licensee. Each licensed funeral establishment shall be inspected at least once during each licensing period. Such inspections may be unannounced. After inspection of a funeral establishment, if the board cites the funeral establishment for failure to comply with any provision of this chapter or a rule or regulation of the board, the funeral establishment shall resolve the violation to the satisfaction of the board and be in full compliance with this chapter and board rules and regulations not later than thirty (30) days after the board files the inspection report.

(3)(a) A funeral establishment must contain a preparation and/or embalming room, adequate casket and/or vault selection room, and holding facilities or proper room or rooms in which rites and ceremonies may be held. A funeral establishment shall be subject to an inspection at least once during a two-year license period. Each new establishment must be inspected before the opening. All portions of each facility licensed under this section shall be kept in a clean and sanitary condition.

(b) A branch establishment must contain an office and/or an arrangement room, and a room for viewing and/or a chapel or proper place for ceremonies. A branch establishment need not meet all requirements specified in paragraph (a) of this subsection and need not

be under the personal supervision of a Mississippi funeral director licensee or a Mississippi funeral service licensee.

If the branch meets all requirements of a funeral establishment as specified in paragraph (a) of this subsection, such establishment must be under the charge and personal supervision of a Mississippi funeral director licensee or a Mississippi funeral service licensee.

(c) A commercial mortuary service is a funeral establishment that embalms and transports for licensed funeral establishments and does not sell any services or merchandise directly or at retail to the public.

(4) Applications for funeral establishment licenses, branch establishment licenses or commercial mortuary service licenses shall be made on blanks furnished by the board and shall be accompanied by a fee in an amount fixed by the board under Section 73-11-56. All establishment licenses shall be issued for a period of two (2) years, except initial licenses may be prorated from the date of issuance to the next renewal date.

Renewal funeral establishment and branch establishment license applications and license fees shall be due and payable to the board on or before the expiration date of the license. The board shall mail the notice of renewal and the due date for payment of the renewal fee at least thirty (30) days before that date.

(5) If the renewal fee is not paid on or postmarked by the due date, the license shall by operation of law automatically expire and become void without further action of the board. All establishments whose licenses have expired under this section may be reinstated by filing with the board an application for reinstatement, submitting to an inspection during which time the licensee in charge of such establishment shall be interviewed by the board or its designee and by paying all renewal fees in arrears and a reinstatement fee.

(6) No license shall be assignable or transferable or valid for any establishment other than the original licensee. License fees and application fees are nonrefundable.

(7) A license for each new establishment shall not be issued until an inspection has been made, license and inspection fees have been paid, and the licensee in charge and/or owners of such establishment has been interviewed by the board or its designee.

(8) The board is authorized to establish rules and regulations for the issuance of a special funeral establishment work permit.

§ 73-11-56. Fees established by board

On or before October 1 of each year, the board shall determine the amount of funds that will be required during the next ensuing two (2) years to properly administer the laws which the board is directed to enforce and administer and by rule and regulation shall fix fees in such reasonable sums as may be necessary for such purposes within the following limitations:

Funeral establishment:

- Application fee, not more than \$150.00
- Inspection fee, not more than \$ 75.00
- Funeral establishment license fee, not more than \$150.00
- Branch establishment license fee, not more than \$150.00
- Commercial mortuary service license fee, not more than \$150.00
- Crematory application fee, not more than \$150.00
- Renewal application and license fee, not more than \$300.00
- Crematory renewal license fee, not more than \$300.00
- Special work permit \$150.00

Funeral service:

- Application fee, not more than \$ 50.00
- Reciprocal application fee, not more than \$100.00
- License fee, not more than \$ 75.00
- Renewal license fee, not more than \$ 75.00
- Work permit, not more than \$ 50.00
- Examination fee Cost of the examination

Funeral director:

- Application fee, not more than \$ 50.00
- Reciprocal application fee, not more than \$100.00
- License fee, not more than \$ 50.00
- Renewal license fee, not more than \$ 50.00
- Work permit, not more than \$ 50.00
- Examination fee Cost of the examination

Resident trainee certificate:

- Funeral service application fee, not more than \$ 50.00
- Funeral director application fee, not more than \$ 50.00
- Funeral service renewal application fee, not more than \$ 50.00
- Funeral director renewal application fee, not more than \$ 50.00

Other fees:

- Duplicate license fee, not more than \$ 25.00
- Reinstatement of lapsed license fee, equal to the amount of the applicable license fee.

All licenses will have a reinstatement fee added to the renewal fee if the payment is not in the board's office or postmarked by the due date.

At least thirty (30) days prior to the expiration date of any license issued by the board, the board shall notify the licensee of the applicable renewal fee therefor.

§ 73-11-57. License denial, suspension, or revocation

(1) The board may refuse to examine or to issue or renew, or may suspend or revoke, any license, or may reprimand or place the holder thereof on a term of probation, after proper hearing, upon finding the holder of such license to be guilty of acts of commission or omission including the following:

(a) The employment of fraud or deception in applying for a license or in passing the examination provided for in this chapter;

(b) The erroneous issuance of a license to any person;

(c) The conviction of a felony by any court in this state or any federal court or by the court of any other state or territory of the United States;

(d) The practice of embalming under a false name or without a license for the practice of funeral service;

(e) The impersonation of another funeral service or funeral directing licensee;

(f) The permitting of a person other than a funeral service or funeral directing licensee to make arrangements for a funeral and/or form of disposition;

(g) Violation of any provision of this chapter or any rule or regulation of the board;

(h) Having had a license for the practice of funeral service or funeral directing suspended or revoked in any jurisdiction, having voluntarily surrendered his license in any jurisdiction, having been placed on probation in any jurisdiction, having been placed under disciplinary order(s) or other restriction in any manner for funeral directing and/or funeral service, or operating a funeral establishment (a certified copy of the order of suspension, revocation, probation or disciplinary action shall be prima facie evidence of such action);

(i) Solicitation of dead human bodies by the licensee, his agents, assistants or employees, whether such solicitation occurs after death or when death is imminent; if the person solicited has made known a desire not to receive the communication, or if the solicitation

involves coercion, duress or harassment, or if the solicitation takes place at the residence of the client or prospective client, is uninvited by the client or prospective client and has not been previously agreed to by the client or prospective client; however, this shall not be deemed to prohibit general advertising;

(j) Employment directly or indirectly of any apprentice, agent, assistant, employee, or other person, on a part-time or full-time basis or on commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral establishment;

(k) Failure to make responses to communications or requests of the board within thirty (30) days;

(l) Knowingly performing any act that in any way assists an unlicensed person to practice funeral service or funeral directing;

(m) Knowingly making a false statement on death certificates; or

(n) Unprofessional conduct which includes, but is not limited to:

(i) Retaining a dead human body for the payment of a fee for the performance of services that are not authorized;

(ii) Knowingly performing any act which in any way assists an unlicensed person to practice funeral service or funeral directing;

(iii) Being guilty of any dishonorable conduct likely to deceive, defraud or harm the public;

(iv) Any act or omission in the practice of funeral service or directing which constitutes dishonesty, fraud or misrepresentation with the intent to benefit the licensee, another person or funeral establishment, or with the intent to substantially injure another person, licensee or funeral establishment; or

(v) Any act or conduct, whether the same or of a different character than specified above, which constitutes or demonstrates bad faith, incompetency or untrustworthiness; or dishonest, fraudulent or improper dealing; or any other violation of the provisions of this chapter, the rules and regulations established by the board or any rule or regulation promulgated by the Federal Trade Commission relative to the practice of funeral service or funeral directing.

(2) The board may, upon satisfactory proof that the applicant or licensee has been guilty of any of the offenses above enumerated, refuse to examine or issue a license to the

applicant, or may refuse to renew or revoke or suspend the license of the licensee, or place on probation or reprimand him, upon a majority vote of the board members, after a hearing thereon. The board is vested with full power and authority to hold and conduct such hearings, compel the attendance of witnesses and the production of books, records and documents, issue subpoenas therefor, administer oaths, examine witnesses, and do all things necessary to properly conduct such hearings. The board may waive the necessity of a hearing if the person accused of a violation admits that he has been guilty of such offense. Any person who has been refused a license or whose license has been revoked or suspended may, within thirty (30) days after the decision of the board, file with the board a written notice stating that he feels himself aggrieved by such decision and may appeal therefrom to the circuit court of the county and judicial district of residence of the person, or if the person is a nonresident of the State of Mississippi, to the Circuit Court of the First Judicial District of Hinds County. Upon the filing of such notice, the secretary of the board shall transmit to the clerk of the circuit court the records and findings of such proceedings. The circuit court shall hear and determine as to whether the action of the board was in accord or consistent with law, or was arbitrary, unwarranted or in abuse of discretion. An appeal from the circuit court judgment or decree may be reviewed by the Supreme Court as is provided by law for other appeals. An appeal of a decision or order of the board does not act as a supersedeas.

(3) In a proceeding conducted under this section by the board for the revocation or suspension of a license, the board shall have the power and authority for the grounds stated for such revocation or suspension, and in addition thereto or in lieu of such revocation or suspension may assess and levy upon any person licensed under this chapter, a monetary penalty, as follows:

(a) For the first violation of any of the subparagraphs of subsection (1) of this section, a monetary penalty of Five Hundred Dollars (\$500.00).

(b) For the second violation of any of the subparagraphs of subsection (1) of this section, a monetary penalty of One Thousand Dollars (\$1,000.00).

(c) For the third and any subsequent violation of any of the subparagraphs of subsection (1) of this section, a monetary penalty of Five Thousand Dollars (\$5,000.00).

(d) For any violation of any of the subparagraphs of subsection (1) of this section, those reasonable costs that are expended by the board in the investigation and conduct of a proceeding for licensure revocation or suspension, including, but not limited to, the cost of process service, court reporters, expert witnesses and investigators.

(4) The power and authority of the board to assess and levy such monetary penalties hereunder shall not be affected or diminished by any other proceeding, civil or criminal, concerning the same violation or violations except as provided in this section.

(5) A licensee shall have the right of appeal from the assessment and levy of a monetary

penalty as provided in this section under the same conditions as a right of appeal is provided elsewhere for appeals from an adverse ruling, order or decision of the board.

(6) Any monetary penalty assessed and levied under this section shall not take effect until after the time for appeal shall have expired.

(7) A monetary penalty assessed and levied under this section shall be paid to the board by the licensee upon the expiration of the period allowed for appeal of such penalties under this section or may be paid sooner if the licensee elects. With the exception of subsection (3)(d) of this section, monetary penalties collected by the board under this section shall be deposited in the State Treasury to the credit of the State Board of Funeral Service. Any monies collected by the board under subsection (3)(d) of this section shall be deposited into the special fund operating account of the board.

(8) When payment of a monetary penalty assessed and levied by the board against a licensee in accordance with this section is not paid by the licensee when due under this section, the board shall have power to institute and maintain proceedings in its name for enforcement of payment in the chancery court of the county and judicial district of residence of the licensee, or if the licensee is a nonresident of the State of Mississippi, in the Chancery Court of the First Judicial District of Hinds County, Mississippi.

(9) In addition to the reasons specified in subsection (1) of this section, the board shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. Actions taken by the board in suspending a license when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. Any appeal of a license suspension that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

§ 73-11-58. Disposition of body where no written authorization left by decedent

(1) If a decedent has left no written authorization for the cremation and/or disposition of the decedent's body as permitted by law, the following competent persons, in the order of priority listed below, may authorize the type, method, place, cremation and/or other disposition of the decedent's body:

(a) The surviving spouse.

(b) The surviving children who are at least eighteen (18) years of age and can be located after reasonable efforts.

(c) The surviving parents.

(d) The surviving siblings who are at least eighteen (18) years of age and can be located after reasonable efforts.

(e) A person in the class of the next degree of kinship, in descending order, who, under state law, would inherit the decedent's estate if the decedent died intestate who are at least eighteen (18) years of age and can be located with reasonable effort.

(f) A person who has exhibited special care and concern for the decedent and is willing and able to make decisions about the cremation and disposition.

(g) In the case of indigents or any other individuals whose final disposition is the responsibility of the state or any of its instrumentalities, a public administrator, medical examiner, coroner, state-appointed guardian, or any other public official charged with arranging the final disposition of the decedent may serve as the authorizing agent.

(h) In the case of individuals who have donated their bodies to science or whose death occurred in a nursing home or private institution and in which the institution is charged with making arrangements for the final disposition of the decedent, a representative of the institution may serve as the authorizing agent in the absence of any of the above.

(i) In the absence of any of the above, any person willing to assume responsibility for the cremation and disposition of the decedent.

(2) No funeral establishment shall accept a dead human body from any public officer or employee or from the official of any institution, hospital or nursing home, or from a physician or any person having a professional relationship with a decedent, without having first made due inquiry as to the desires of the persons who have the legal authority to direct the disposition of the decedent's body. If any persons are found, their authority and directions shall govern the disposal of the remains of the decedent. Any funeral establishment receiving the remains in violation of this subsection shall make no charge for any service in connection with the remains before delivery of the remains as stipulated by the persons having legal authority to direct the disposition of the body. This section shall not prevent any funeral establishment from charging and being reimbursed for services rendered in connection with the removal of the remains of any deceased person in case of accidental or violent death and rendering necessary professional services required until the persons having legal authority to direct the disposition of the body have been notified.

§ 73-11-59. Offenses and penalties

Any person, partnership, corporation, association or his or her or its agents or representatives who shall violate any of the provisions of this chapter shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of Five Thousand Dollars (\$5,000.00), or by imprisonment for not more than six (6) months in the county jail, or by both such fine and imprisonment.

§ 73-11-61. Price lists and statement required

Every funeral director or funeral service licensee shall provide, before the rendering of services, the funeral establishment's current general price list, casket price list, outer container price list, and a statement of goods and services to the person or persons who authorize the services and is responsible for payment of the expenses therefor, in a manner and format as prescribed by the Federal Trade Commission's Funeral Rule of 1984 and any future changes with regard to required disclosures. The general price list must be made available to any person upon request.

§ 73-11-63. Provisions inapplicable to cemeteries and religious denominations

Nothing in this chapter shall be construed to authorize the regulation or licensing of cemeteries or cemetery chapels by the board, except the regulation or licensing of any funeral establishment operated by a cemetery. In addition, nothing in this chapter shall be construed to prevent or interfere with the ceremonies, customs, religious rites or religion of any people, denomination, or sect, or to prevent or interfere with any religious denomination, sect or anybody composed of persons of a denomination, or to prevent or interfere with any church or synagogue from having its committee or committees prepare human bodies for burial or the families, friends or neighbors of deceased persons who prepare and bury their dead without charge.

§ 73-11-65. Supervision of service or interment

Every funeral service or interment, or part thereof, that is conducted in Mississippi must be in the actual charge and under the supervision of a funeral director or funeral service licensee who is licensed under this chapter. However, this section shall not prevent a family from burying its own dead without charge.

§ 73-11-67. Registration of retail casket sellers

Every person, establishment or company not licensed under this chapter that sells caskets at retail shall register annually with the board. The names of registrants under this section shall be made available to any person upon request during the regular business hours of the board. The procedure for conducting a disciplinary proceeding against any casket retailer accused of failing to register with the board, as well as the penal sanctions available to the board, shall be the same as those set forth in Section 73-11-57.

§ 73-11-69. Crematory facilities; regulation and licensing; certificate of cremation; violations; inspections; disposition of unclaimed remains

(1) No person shall operate a crematory facility in this state unless the person is licensed by the State Board of Funeral Service. An application for a crematory facility license shall be accompanied by a fee in an amount not to exceed the fee fixed by the board for a funeral establishment license.

(2) The operator of a crematory facility shall issue a certificate of cremation to the family of each person cremated in the facility. In addition, the operator of the crematory facility shall maintain a log of all cremations performed in the facility, and this log shall match the certificates of cremation that have been issued by the facility.

(3) No operator of a crematory facility shall knowingly represent that an urn or temporary container contains the recovered cremated remains of specific decedent or of body parts removed from a specific decedent when it does not. This subsection does not prohibit the making of such a representation because of the presence in the recovered cremated remains of de minimis amounts of the cremated remains of another decedent or of body parts.

(4) The board shall inspect each licensed crematory facility during each licensure period, and at such other times as necessary, to verify that the crematory facility is in compliance with the requirements of this section. Any person who operates a crematory facility in this state without a license, or any person who otherwise violates any provision of this section, is guilty of a felony. Upon conviction for a violation of this section, in addition to any penalty that may be imposed by the court, the board may revoke the person's crematory facility license.

(5) The board may promulgate such rules and regulations as deemed necessary for the proper licensure and regulation of crematory facilities in this state.

(6) Any crematory or funeral establishment may dispose of any remains unclaimed by the family after twelve (12) months after cremation by scattering or burial upon a final notification to the next of kin by certified mail to their last known address.

MISSISSIPPI BURIAL ASSOCIATION LAWS

§ 83-37-1. Mandatory conditions for organization

It shall be unlawful for any person, firm, association, church burial club or association, or corporation to engage in the business of a burial association or to make contracts in advance of death to bury or to pay the funeral expenses of any person or persons or to make contracts in advance of death to pay any person or persons a sum of money in lieu of funeral expenses except under the conditions hereafter set out.

If a church burial club or association enters into any kind of informal agreement or understanding, written or otherwise, to pay for funerals of its members and if it collects premiums, contributions, or any other funds therefore in competition with other burial associations, it shall come under the above definition of a burial association and be subject to all the provisions of this chapter. The secretary, treasurer, secretary-treasurer, or any other officer, by whatever name called, who handles the funds for the purposes set forth in this section shall be required to file annual reports, as required by section 83-37-19, Mississippi Code of 1972; and failure to file such annual reports or knowingly making any false statement in the reports required shall be punished as provided by section 83-37-29, Mississippi Code of 1972.

§ 83-37-3. Procedures for organization

Any person, firm, or association desiring to engage in the business above set out shall apply to the insurance commissioner of the State of Mississippi for a permit or license; file with the said commissioner a copy or statement in writing of the plan on which he or they propose to operate such business, the forms of all such contracts as he or they propose to make and enter into, the residence and post-office address of any such person, firm, or association, the rates to be charged, which rates shall in all cases be subject to the approval of the insurance commissioner except in cases where burial associations operate under a mutual benefit plan, and the names of all persons interested in such business other than members with whom contracts are made to pay burial expenses; and shall secure from the insurance commissioner of this state annually a license to engage in said business before engaging therein. Any corporation desiring to engage in the business above set out shall comply with all of the conditions of this section and, furthermore, be incorporated or admitted to do business as hereinafter provided.

§ 83-37-5. Contents of articles of incorporation

(1) Until July 1, 1996, companies may be formed and organized to engage in the business herein mentioned with a capital stock of not less than Five Thousand Dollars (\$5,000.00). The proposed incorporators, a majority of whom must be residents of the state, and not less than three (3), shall subscribe articles of incorporation in which shall be stated:

(a) The proposed corporate name of the company, which shall not so closely resemble the name of any corporation already transacting business in this state as to mislead the public or lead to confusion;

(b) The purpose for which it was formed and the business plan or principle of the operation of its business;

(c) The names, residences and official titles of all the officers who are to have and exercise the general control and management of the affairs and the funds of the corporation;

(d) The domicile of the proposed corporation;

(e) The amount of the capital stock.

The charter or articles of incorporation shall be approved by the Insurance Commissioner, and a certificate of approval shall be executed by the commissioner. The charter as thus approved shall be recorded in the Office of the Insurance Commissioner of this state and shall also be recorded in the Office of the Secretary of State.

(2) After July 1, 1996, no new companies may be formed and organized to engage in the business mentioned herein.

(3) No companies formed and organized to engage in the business herein mentioned may be sold, transferred or exchanged without prior approval of the Commissioner of Insurance. Before approval by the commissioner is granted, the commissioner shall verify and require that the company has an enforceable agreement with a duly licensed funeral service establishment pursuant to Section 73-11-55 to service the policies, contracts or certificates of the company; however, there shall be no reduction in benefits paid under the policy if the policyholder is affected by a merger or assumption and elects not to use the funeral home so designated under the assumption agreement.

§ 83-37-7. Foreign corporations, admission

Any foreign corporation organized to engage in the business of a burial association may be admitted to do business in this state on the following conditions:

(a) It shall deposit with the Commissioner of Insurance a certified copy of its charter and a statement of its financial condition and business in such form and detail as he may require, signed and sworn to by its president and secretary or other proper officer, and shall pay for the filing of such statement the sum of Twenty Dollars (\$20.00).

(b) It shall satisfy the commissioner that it is fully and legally organized under the laws of its state or government to do the business it proposes to transact and that it has a fully paid up and unimpaired capital of not less than Five Thousand Dollars (\$5,000.00). After July 1, 1996, no foreign corporation organized to engage in the business of a burial association or unincorporated Class A burial association shall be admitted to do business in this state.

(c) It shall, by duly executed instrument filed in his office, constitute and appoint the Commissioner of Insurance and his successor its true and lawful attorney upon whom all process in any action or legal proceeding against it may be served, and therein shall agree that any process against it which may be served upon its attorney shall be of the same force and validity as if served on the company; and the authority thereof shall continue in force irrevocable so long as any liability of the company remains outstanding in this state. The service of such process shall be made by leaving a copy of the same in the hands or office of the commissioner. Copies of such instrument certified by the commissioner shall be deemed sufficient evidence thereof, and service upon such attorney shall be deemed sufficient service upon the principal.

(d) It shall appoint as its agent or agents in this state some resident or residents thereof other than the commissioner, such appointment to be made in writing, signed by the president and secretary or manager or general agent, and filed in the office of the commissioner, authorizing the agent to acknowledge service of process for and on behalf of the company, and consenting that service of process on the agent shall be as valid as if served upon the company, according to the laws of this state, and waiving all claim of error by reason of such service.

(e) It shall obtain from the commissioner a certificate that it has complied with the laws of the state and is authorized to make contracts authorized hereunder.

§ 83-37-9. Filing of forms and schedules

Any domestic or foreign corporation engaging in the business set forth herein shall also file with the insurance commissioner sample forms of all such contracts as it proposes to make and enter into and the rates to be charged, and shall secure from the insurance commissioner of this state annually a license to engage in said business before engaging therein, in like manner as if such corporation were a person, firm, or association as hereinabove set forth.

§ 83-37-11. Securities deposits; contracts or certificates; bond in lieu of securities deposit

Before engaging in said business, any such person, firm, association, or corporation, both foreign and domestic, shall deposit with the Treasurer of the State of Mississippi such securities as may be approved by the Commissioner of Insurance, consisting of certificates of deposit or bonds of the United States, of the State of Mississippi, or of any county, municipality, levee district, or road district in this state. The securities so deposited shall be not less than par value of Five Hundred Dollars (\$500.00) for each One Hundred Twenty-five Thousand Dollars (\$125,000.00), or fraction thereof, of face value and in-force certificates.

Any such person, firm, association, or corporation organized under this section may issue contracts or burial certificates in amounts not to exceed One Hundred Fifty Dollars (\$150.00), provided said person, firm, association, or corporation deposits securities with the Treasurer of the State of Mississippi according to the schedule set out heretofore, with a minimum deposit of not less than One Thousand Dollars (\$1,000.00) par value. Said person, firm, association, or corporation organized under this section may also issue contracts or burial certificates in amounts not to exceed Three Hundred Dollars (\$300.00), provided said person, firm, association, or corporation deposits securities with the Treasurer of the State of Mississippi according to the schedule set out heretofore, with a minimum deposit of not less than Two Thousand Dollars (\$2,000.00) par value. Said person, firm, association, or corporation organized under this section may also issue contracts or burial certificates in amounts not to exceed Four Hundred Fifty Dollars (\$450.00), provided said person, firm, association, or corporation deposits securities with the Treasurer of the State of Mississippi according to the schedule set out heretofore, with a minimum deposit of not less than Three Thousand Dollars (\$3,000.00) par value.

Any such person, firm, association, or corporation who prior hereto had on deposit with the Treasurer of the State of Mississippi the maximum amount of securities heretofore required shall not be required to deposit additional securities except on the net increase in liability of in-force certificates issued after January 1, 1974.

No individual benefit shall exceed the sum of Four Hundred Fifty Dollars (\$450.00) unless said benefit in excess of Four Hundred Fifty Dollars (\$450.00) is written on a schedule of rates approved by the State Commissioner of Insurance, and unless said contract specifically stipulates that anyone insured thereunder may receive in cash at his or her option the face value thereof; and with the further provision that any and all burial certificates in excess of Four Hundred Fifty Dollars (\$450.00) shall come under and be subject to all the qualifications and all provisions of law governing life insurance contracts and policies in the State of Mississippi.

All contracts issued by a person, firm, association, or corporation of any of the above classifications will be issued in amounts of One Hundred Fifty Dollars (\$150.00), Three Hundred Dollars (\$300.00), or Four Hundred Fifty Dollars (\$450.00) only. The provisions of this subsection shall not apply to funeral benefit certificates already in force in excess of Four Hundred Fifty Dollars (\$450.00). No person, firm, association, or corporation shall write or issue a paid-up certificate.

A surety bond made by some company authorized to do business in Mississippi for an amount equal to twice the amount of securities required above may be filed with the Treasurer, after approval by the insurance department, in lieu of the other securities above referred to.

§ 83-37-12. Commissioner's buyer's guide

Each policy or contract or certificate issued under Section 83-37-11 shall have attached a buyer's guide which shall be developed by the Commissioner of Insurance and shall contain a definition of the burial contract, its provisions, its benefits and notice of the freedom of choice as provided by Section 83-37-13.

§ 83-37-13. Contracts to contain standard provisions

Contracts written under the provisions of section 83-37-11 must first be approved by the commissioner of insurance and must be substantially in the following form and language; any variation thereof shall in no manner be less favorable to the insured than the form and language prescribed herein.

All policies written under authority of section 83-37-11 shall contain the standard provisions hereinafter enumerated:

"STANDARD PROVISIONS"

"(1) The association will not be responsible for casket or any other funeral supplies or expenses contracted for by anyone unless authorized by the association, subject to minimum cash settlement hereinafter provided.

"(2) When this policy has been maintained in force for not less than two (2) consecutive months, there will be a grace period of thirty (30) days for the payment of any subsequent premium; and during such period of grace, the funeral benefit provided herein shall continue in force, provided all other conditions and stipulations herein contained shall have been complied with by such member or members.

"(3) This contract shall lapse, and the association shall not be liable for any benefits hereunder, when any premium payment on same is more than thirty (30) days in arrears; and in such event all premiums paid hereon shall be forfeited to the association.

"(4) If the contract is allowed to lapse, it may be reinstated by furnishing the association with satisfactory evidence that all members named hereon are in good health, and by the payment of the premiums required by the association, provided the policy is not over six (6) months in arrears. Acceptance of premium as of date of lapse shall reinstate the contract as of date premium is applied on lapse period.

"(5) No agent has the power on behalf of the association to modify this contract or to extend the time for payment of premium, the entire contract being that contained herein, together with the application thereof.

"(6) The association reserves the right to investigate within one (1) year from date of application all statements made in the application as to age or condition of health, and should any of the statements made therein be found to be false, the association's liability shall be limited to the return of all premiums paid hereon, and the policyholder shall forfeit all rights to the funeral benefits. All applicants must be in good health when this contract is delivered.

"(7) This contract shall be incontestable after one (1) year, except for nonpayment of premiums.

"(8) If death and/or burial occurs more than fifty (50) miles from any location of the funeral home named herein and should the beneficiary therefore deem it impractical for the association to service this contract, the association shall pay in cash to the member not less than fifty percent (50%) of the face value of the certificate to which the member is entitled or the full return of the premium paid by the member, not to exceed three-fourths percent ($\frac{3}{4}$ %) of the face value of the certificate, whichever amount is larger. Provided, however, if premium rates of not less than ten percent (10%) in excess of the rates described herein are requested by the association and approved by the commissioner, the standard provisions contained in this paragraph may provide for a cash settlement up to one hundred percent (100%) of the face value of the contract. If death

and/or burial occurs within fifty (50) miles of any location of the funeral home named herein, and the member desires to use a funeral home other than the funeral home named in this contract, the association's liability shall be the full return of the premium paid by the member not to exceed the face value of the certificate.

"(9) There shall be no liability to any person or persons insured hereunder if death should occur through self-destruction or suicide, whether sane or insane, within one (1) year from date of issuance of this contract, or within one (1) year from the date of any reinstatement. In the event of death by suicide or self-destruction, no return of premium shall be due under this contract."

§ 83-37-15. Conditions precedent

A burial association may enter into burial insurance contracts with citizens of this state in a face amount of not less than two hundred fifty dollars (\$250.00) nor more than five hundred dollars (\$500.00) for the funeral of any one person to be paid by any such burial association, subject to strict compliance with the following requirements as an absolute condition precedent to any such policy or contract being written or in force in this state:

(a) Such a burial association must be incorporated under the provisions of this chapter, and at least twenty-five thousand dollars (\$25,000.00) in capital stock paid up before the commencement of business by any such corporation may be authorized.

(b) Only contracts with uniform benefits may be written, which must be first approved by the commissioner of insurance, and such contracts may be written on a basis of payment of premiums for life or, alternatively, to be paid up in not less than fifteen (15) years after date of issuance. Contract benefits shall be limited to applying the face amount of the contract toward the retailed value of funeral merchandise and service; however, such contracts may provide for cash settlement benefits.

(c) The commissioner of insurance shall require compliance with minimum premium rates governing the payment of premiums on burial insurance contracts issued under the alternative plans provided in subsection (b) of this section, and any such corporation willfully collecting rates less than those so prescribed shall have its license cancelled and revoked in accordance with the provisions of this chapter. For continuing to do business thereafter, such corporation shall be enjoined therefrom in a court of competent jurisdiction.

(d) The commissioner of insurance shall promulgate such rules and regulations as may be necessary or advisable in order to carry out the provisions of sections 83-37-11 to 83-37-17 insofar as the same shall not conflict herewith, and shall make examinations as required of domestic life insurance companies.

(e) No corporation shall write or issue a paid-up certificate except as provided in the cited sections.

(f) Securities shall be deposited with the state treasurer equal to one half (1/2) of the capital stock of such companies and associations, and securities covering reserve liabilities shall likewise be deposited with the state treasurer in the amounts and manner as is now required of domestic life insurance companies.

§ 83-37-17. Taxation of premiums

(1) Those burial associations operating under the provisions of section 83- 37-11 shall not be required to pay any premium taxes.

(2) Those burial associations incorporated under the provisions of section 83-37-15 shall be required to pay premium taxes as follows:

(a) Such foreign burial insurance companies and associations of every kind and description writing burial insurance contracts under the provisions of section 83-37-15 shall be required to pay an annual premium tax of three per cent (3%) of the gross amount of premium receipts received from and on burial insurance contracts written in or covering risks located in this state.

(b) Such domestic burial insurance companies and associations of every kind and description writing burial insurance contracts under the provisions of section 83-37-15 shall be required to pay an annual premium tax of one half (1/2) of the amount hereinabove levied upon foreign burial insurance companies and associations.

§ 83-37-19. Annual statements

All such persons, firms, associations, or corporations shall, annually before the fifteenth day of February of each year, in accordance with the requirements of a form prepared and furnished by the commissioner of insurance for that purpose and in such detail as the commissioner shall prescribe, file with the commissioner a sworn statement of its business during the year previous, ending with December 31, showing the number of contracts in force, the number of contracts matured and unpaid, the amount of liability in force on said contracts at the end of the year, the business standing and the financial conditions of said persons, firms, associations, or corporations, and such other information as may be required by the commissioner of insurance.

§ 83-37-21. Privilege tax

When the above and foregoing provisions have been complied with by any person, firm, association or corporation, the insurance commissioner shall issue a license to such person, firm, association or corporation upon the payment to him of a privilege tax to engage in such business, according to the following schedule, to-wit:

Any person, firm, association or corporation beginning the business or having not exceeding five hundred contracts	\$ 50.00
Same, where contracts exceed five hundred (500) but do not exceed one thousand (1,000)	100.00
Same, where contracts exceed one thousand (1,000) but do not exceed fifteen hundred (1500)	150.00
Same, where contracts exceed fifteen hundred (1500) but do not exceed two thousand (2,000)	200.00
Same, where contracts exceed two thousand (2,000)	250.00

and the payment of said license shall exempt such person, firm, association, or corporation from any other privilege tax on account of said business. Provided, however, that nothing in this chapter shall exempt any such person, firm, association or corporation from the payment of any tax now imposed by law for conducting an undertaker's business or selling coffins. Every agent of any corporation organized or admitted to do business hereunder shall be required to obtain from the Commissioner of Insurance a perpetual agent certificate as prescribed in Sections 83-5-73 and 83-17-5, Mississippi Code of 1972, under the seal of his office showing that the company for which he or she is agent is licensed to do business in this state and that he or she is an agent of said company and duly authorized to do business for it. Every such agent on demand shall exhibit the said certificate to the person from whom he or she shall solicit contracts, and every such agent shall annually pay a privilege tax of Five Dollars (\$5.00). The insurance commissioner may issue a duplicate certificate in case of loss or destruction of the original certificate and charge therefor a fee of Five Dollars (\$5.00), and the insurance commissioner shall have the right to pass upon the qualifications of any such agent before issuing to him or her a license, and for good cause shall have the right to cancel such license.

Any person, firm, association or corporation liable for the privilege tax imposed herein who shall fail to procure the license therefor before beginning the business for which such privilege tax is required, or who shall fail to renew, during the month in which it is due, the license on said business for which a privilege license has theretofore been issued, shall, in each or either instance, be liable for the amount of the tax required for such business and fifty percent (50%) thereof. It is hereby made the duty of the insurance commissioner to collect the said tax and penalty, and the commissioner, or his duly authorized representative, may make immediate demand upon such person, firm, association or corporation for the payment of such tax and penalty, and proceed to collect the same as is provided by law for the collection of other privilege licenses, penalties and damages.

§ 83-37-23. License cancellation

The failure of any person, firm, association, or corporation to promptly pay or fulfill any contract in force at the time of maturity, when legally determined that the contract was in force, the failure to pay promptly when due the examination fee required, the failure to pay the license fee, privilege license when due, or penalties when assessed, the failure to fulfill any contract when services are performed by another person, firm, association, or corporation with whom the deceased or his legal representative had contracted, or the failure to adhere to the approved policy form, or to collect and retain the filed and approved rate for premium as filed in the office of the commissioner of insurance, each and all shall be grounds for the cancellation by the commissioner of insurance of its license to do business in this state.

Procedure for revocation of license under the above offenses shall be the same procedure as provided in the case of insurance agents engaging in the business of life, accident, and health insurance.

§ 83-37-25. Financial examinations

The insurance commissioner shall have full authority to examine the books, records, papers, and all other data belonging to or bearing on the business of any such person, firm, association, or corporation and may designate any practical accountant to make said examination at a reasonable per diem and expenses not to exceed the sum of one hundred (\$100.00) dollars for any one year, to be paid by such person, firm, association, or corporation. If upon examination the insurance commissioner be of the opinion that the capital stock of a domestic corporation has become impaired, or that any foreign company admitted to do business hereunder is insolvent, the commissioner may thereupon for said reason cancel its license to do business in this state.

Any person, firm, or corporation that may refuse to permit the insurance commissioner or any practical accountant designated by him to examine the books, records, papers, and all other data belonging to or bearing on the business of any such person, firm, or corporation shall have his, their, or its license canceled and revoked by the commissioner.

The insurance commissioner shall have full power in the regulation of any person, firm, or corporation, foreign or domestic, and anyone attempting to write burial certificate contracts without first having secured a license and having qualified under the provisions of statutes which govern, may be prosecuted under the provisions of section 83-37-29.

§ 83-37-27. License expiration

The annual license granted under this chapter shall be dated as of the first day of March and be good for one year from date. All such persons, firms, associations, or corporations beginning the business herein described after the first day of March in any year shall pay a proportionate part of the privilege tax herein required.

§ 83-37-29. Violations

Any person, firm, association, or corporation engaging in the business herein described without first having complied with the provisions hereof, or any person who shall knowingly make any false statement in the reports required by this chapter as determined by the Commissioner of Insurance after written notice and hearing, shall be assessed a penalty for each violation of not less than Two Hundred Fifty Dollars (\$250.00) nor more than Five Hundred Dollars (\$500.00), and in addition thereto shall forfeit the license to do business in this state. Funds from such penalties shall be deposited with the State Treasurer to be placed in a fund designated as the "Insurance Department Fund."

§ 83-37-31. Receivership

Should the insurance commissioner find that any person, firm, association, or corporation engaged in the business herein described has refused to pay any just claim or demand based on the contracts, or that he or they be unable to pay same after the claim or demand has been legally determined to be just and outstanding, or fail to comply with any of the licensing provisions of this chapter, the commissioner shall notify the Attorney General. The Attorney General shall apply to the chancery court for a receivership to wind up the business of such person, firm, association, or corporation, shall represent the interest of all claimants under such contracts, and shall have a right of action for the use and benefit of the claimants against the bond or security herein required for the full amount of all such claims, together with all necessary costs of such receivership.

§ 83-37-33. Application of chapter

This chapter shall not apply to any labor union or labor union organization, whether organized in this state or not, making contracts with its members to pay money or provide funeral expenses in the event of the death of any member or any member's family. Nor shall it apply to any duly organized fraternal order making contracts with its bona fide members to pay money or provide funeral expenses in the event of the death of any such bona fide members, provided such fraternal organization do not make such contracts for profit. Nor shall it apply to any duly organized church or church associations or societies making such contracts with its bona fide members only, and not making such contracts for profit.

§ 83-37-35. Rules and regulations; orders

The Commissioner of Insurance is hereby authorized to promulgate rules and regulations to the extent necessary to regulate the sale and solicitation of burial contracts and in addition may issue a cease and desist order and conduct hearings on any association or individual who is deemed to be in violation of Section 83-37-29.

MISCELLANEOUS PROVISIONS OF LAW RELATING TO CEMETERIES AND FUNERAL HOMES IN MISSISSIPPI

§ 77-3-707. Prohibition on solicitations; "no-calls" database

(1) Except as otherwise provided pursuant to Section 77-3-709 or 77-3-711 of this article, a telephone solicitor may not make or cause to be made any telephone solicitation to any consumer in this state unless the telephone solicitor has purchased the "no-calls" database from the commission or the entity under contract with the commission.

(2) Except as otherwise provided pursuant to Section 77-3-709 or 77-3-711 of this article, a telephone solicitor may not make or cause to be made any telephone solicitation to any consumer in this state who has given notice to the commission, or the entity under contract with the commission, of his or her objection to receiving telephone solicitations.

(3) The commission, or an entity under contract with the commission, shall establish and operate a "no-calls" database composed of a list of telephone numbers of consumers who have given notice of their objection to receiving telephone solicitations. The "no-calls" database may be operated by the commission or by another entity under contract with the commission.

(4) Each local exchange company and each competing local exchange carrier shall provide written notification on a semiannual basis to each of its consumers of the opportunity to provide notification to the commission or the entity under contract with the commission, that the consumer objects to receiving telephone solicitations. The notification must be disseminated at the option of the carrier, by television, radio or newspaper advertisements, written correspondence, bill inserts or messages, a publication in the consumer information pages of the local telephone directory, or any other method not expressly prohibited by the commission.

§ 77-3-711. Exemptions

The provisions of this article shall not apply to:

(a) A person soliciting:

(i) Who does not make the major sales presentation during the telephone solicitation;

(ii) Without the intent to complete or obtain provisional acceptance of a sale during the telephone solicitation; or

(iii) Without the intent to complete, and who does not complete, the sales presentation during the telephone solicitation, but who completes the sales

presentation at a later face-to-face meeting between the person soliciting and the prospective purchaser or consumer.

(b) A person who is a licensee under Chapter 35, Title 73, Mississippi Code of 1972, who is a resident of the State of Mississippi, and whose telephone solicitation is for the sole purpose of selling, exchanging, purchasing, renting, listing for sale or rent or leasing real estate in connection with his real estate license and not in conjunction with any other offer.

(c) A motor vehicle dealer as that term is defined in Section 63-17-55, who is a resident of the State of Mississippi and who maintains a current motor vehicle dealer's license issued by the Mississippi Motor Vehicle Commission, whose telephone solicitation is for the sole purpose of selling, offering to sell, soliciting or advertising the sale of motor vehicles in connection with his motor vehicle dealer's license and not in conjunction with any other offer.

(d) An agent as that term is defined in Section 83-17-1 whose telephone solicitation is for the sole purpose of soliciting, consulting, advising, or adjusting in the business of insurance.

(e) A broker-dealer, agent, or investment advisor registered under Chapter 71, Title 75, Mississippi Code of 1972, whose telephone solicitation is for the sole purpose of effecting or attempting to effect the purchase or sale of securities or has the purpose of providing or seeking to provide investment or financial advice.

(f) A person calling on behalf of a charitable organization which is registered under Chapter 11, Title 79, Mississippi Code of 1972, whose telephone solicitation is for the sole purpose of soliciting for the charitable organization and who receives no compensation for his activities on behalf of the organization.

(g) A person calling on behalf of a newspaper of general circulation, whose telephone solicitation is for the sole purpose of soliciting a subscription to the newspaper from, or soliciting the purchase of advertising by, the consumer.

(h) A person calling on behalf of any supervised financial institution or parent, subsidiary or affiliate thereof. As used in this section, "supervised financial institution" means any commercial bank, trust company, savings and loan association, mutual savings bank, credit union, industrial loan company, small loan company, consumer finance lender, commercial finance lender or insurer, provided that the institution has a physical office located in the State of Mississippi and is subject to supervision by an official or agency of the State of Mississippi or of the United States.

(i) A person calling on behalf of a funeral establishment licensed under Section 73-11-41, cemetery or monument dealer, if the sole purpose of the telephone solicitation relates to services provided by the funeral or death related establishments in the course of its ordinary business.

(j) Any telephone solicitor who solicits a consumer with whom he has an established business relationship.

§ 81-27-1.101. Companies authorized to act as a fiduciary

(a) No company shall act as a fiduciary in this state except:

(1) A state trust company;

(2) A state bank;

(3) A savings association organized under the laws of this state and authorized to act as a fiduciary pursuant to Section 81-12-1 et seq. or Section 81- 14-1 et seq.;

(4) A national bank having its principal office in this state and authorized by the Comptroller of the Currency to act as a fiduciary pursuant to 12 USCS 92a;

(5) A federally chartered savings association having its principal office in this state and authorized by its federal chartering authority to act as a fiduciary;

(6) An out-of-state bank with a branch in this state established or maintained pursuant to Section 81-23-1 et seq. or a trust office licensed by the commissioner pursuant to this chapter;

(7) An out-of-state trust company with a trust office licensed by the commissioner pursuant to this chapter; or

(8) A foreign bank with a trust office licensed by the commissioner pursuant to this chapter.

(b) No company shall engage in an unauthorized trust activity.

§ 81-27-1.102. Activities not requiring a charter, etc.

Notwithstanding any other provision of this chapter, a company does not engage in the trust business or in any other business in a manner requiring a charter, license or registration under this chapter or in an unauthorized trust activity by:

(a) Acting in a manner authorized by law and in the scope of authority as an agent of a trust institution with respect to an activity which is not an unauthorized trust activity;

- (b) Rendering a service customarily performed as an attorney or law firm in a manner approved and authorized by the Supreme Court of this state;
- (c) Acting as trustee under a deed of trust delivered only as security for the payment of money or for the performance of another act;
- (d) Receiving and distributing rents and proceeds of sale as a licensed real estate broker on behalf of a principal in a manner authorized by the Mississippi Real Estate Commission;
- (e) Engaging in a securities transaction or providing an investment advisory service as a licensed and registered broker-dealer, investment advisor or registered representative thereof, provided the activity is regulated by the Secretary of State or the Securities and Exchange Commission;
- (f) Rendering service as a financial advisor or financial planner, provided that the person rendering that service has successfully completed the education and training requirements prescribed by a national certifying organization, has received certification from that organization, and holds current certification from that organization;
- (g) Engaging in the sale and administration of an insurance product by an insurance company or agent licensed by the Department of Insurance to the extent that the activity is regulated by the Department of Insurance;
- (h) Engaging in the lawful sale of prepaid funeral benefits under a permit issued by the Insurance Commissioner under Section 83-37-1 et seq. or engaging in the lawful business of a perpetual care cemetery corporation under Sections 41-43-35 through 41-43-53;
- (i) Acting as trustee under a voting trust as provided by Section 91-9-1 et seq.;
- (j) Acting as trustee by a public, private, or independent institution of higher education or a university system, including its affiliated foundations or corporations, with respect to endowment funds or other funds owned, controlled, provided to or otherwise made available to such institution with respect to its educational or research purposes;
- (k) Engaging in other activities expressly excluded from the application of this chapter by rule of the department;
- (l) Rendering services customarily performed by a certified public accountant in a manner authorized by the State Board of Public Accountancy;
- (m) Provided the company is a trust institution and is not barred by order of the commissioner from engaging in a trust business in this state pursuant to Section 81-27-2.302(b), (1) marketing or soliciting in this state through the mails, telephone, any electronic means or in person with respect to acting or proposing to act as a fiduciary outside of this state, (2) delivering money or other intangible assets and receiving the

same from a client or other person in this state, or (3) accepting or executing outside of this state a trust of any client or otherwise acting as a fiduciary outside of this state for any client.

§ 79-11-33. Religious organizations, property permitted

Any religious society, ecclesiastical body and/or any congregation thereof may hold and own the following real property, but no other, viz.:

(a) Each house or building used as a place of worship, with a reasonable quantity of ground annexed to such building or house.

(b) Each house or building, together with a reasonable quantity of ground thereto annexed, used:

(i) As a parish house;

(ii) As a community facility;

(iii) As a Sunday school facility;

(iv) As an educational facility;

(v) For the care of children on a nonprofit basis.

(c) Each house used for a place of residence for its minister, bishop or representative, together with a reasonable quantity of ground thereto annexed. For purposes of this paragraph, the term "minister" shall mean a minister, priest, pastor, rabbi, nun or other clergy who: (i) has been duly ordained, licensed or qualified according to the principles and procedures prescribed by his religious society, (ii) is regularly engaged as a vocation in preaching and teaching the beliefs of his religious society, in administering its rites and sacraments, and in conducting public worship services in the tradition of his religious society, and (iii) who discharges the duties of a minister in the tradition of his religious society.

(d) A hospital or infirmary and a nurses' home in connection therewith, together with a reasonable quantity of ground thereto annexed.

(e) All buildings used by a school, college or seminary of learning contiguous to and/or a part of the college or seminary plant, for administration, classrooms, laboratories, observatories, dormitories, and for housing the faculty and students thereof, together with a reasonable quantity of land in connection therewith.

(f) All buildings used for an orphan asylum or institution, together with a reasonable quantity of ground used in connection therewith.

(g) All buildings used for a campground or assembly for religious purposes, together with a reasonable quantity of land in connection therewith.

(h) Lands for a cemetery or cemeteries of sufficient dimensions.

(i) All buildings and grounds used for denominational headquarters and/or administrative purposes, together with a reasonable quantity of ground annexed thereto. The title to any buildings and grounds heretofore acquired under this subsection shall not be hereafter held invalid because of the lack of authority of the owner thereof to obtain or hold such title. Provided, however, that the provisions of this subsection shall not affect any pending litigation.

(j) Any land which is maintained and used as a parking area for the convenience of the members of the congregation, church, cathedral, mission or other unit or administrative unit from which the society receives no revenue, fee, charge or assessment. The land on which the parking area is located may be noncontiguous to the land on which the building used as the place of worship is located.