

House Bill 373

By: Representative Rogers of the 29th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 10 of the Official Code of Georgia Annotated, relating to commerce and
2 trade, so as to provide for separate chapters to regulate provisions relating to cemeteries and
3 funerals; to provide for a short title; to provide for legislative intent; to provide for definitions
4 relating to cemetery services; to provide for administrative powers and certain other powers
5 relating to cemetery services; to provide for certain requirements to perform certain actions
6 and activities relating to cemetery services; to provide for certain requirements to perform
7 certain actions relating to preneed contracts relating to cemetery services; to provide for
8 irrevocable trusts for every cemetery owned; to provide for a trust fund or escrow account
9 for transactions relating to preneed cemetery services; to provide certain powers to the
10 Secretary of State under certain conditions relating to the sale of burial rights, burial
11 merchandise, or burial services; to provide for certain procedures relating to the application
12 and registration with the Secretary of State for those performing certain cemetery services;
13 to provide for certain land requirements for cemeteries; to provide certain powers to the
14 Secretary of State regarding the revocation of a cemetery's registration; to provide for the
15 maintenance of certain accounts and records relating to cemetery and preneed services; to
16 provide for venue for any civil or criminal actions relating to cemetery services; to provide
17 the Secretary of State with certain powers relating to the administration of cemetery services;
18 to provide the Secretary of State with certain investigatory and police powers relating to the
19 enforcement of regulations regarding cemetery services; to provide cemetery owners with
20 certain powers to provide for regulations regarding the use of land within the grounds of such
21 cemetery; to provide for certain legal requirements regarding the sale of burial rights, burial
22 services, or burial merchandise; to provide for penalties for violating certain provisions
23 relating to cemetery services; to provide for causes of action arising out of cemetery services;
24 to provide for an appeal; to provide for certain notice requirements; to provide for certain
25 waiver of rights or defenses in funeral purchase agreements void; to provide for service of
26 process procedures for actions relating to cemetery services; to provide the Secretary of State
27 with certain immunity; to provide for the construction of mausoleums and columbaria; to
28 further amend said title by adding a new chapter, relating to regulation of funeral services;

29 to provide for short title; to provide for legislative intent; to provide for definitions; to
 30 provide for administrative powers and certain other powers; to provide for certain
 31 requirements to perform certain actions and activities relating to funeral services; to provide
 32 for the registration of individuals offering preneed funeral services; to provide that in the sale
 33 of life insurance reference to the funeral establishment shall not be permitted; to provide for
 34 and the maintenance of escrow accounts in relation to the funeral services; to provide the
 35 Secretary of State with certain powers relating to the restriction of certain funeral services,
 36 the revocation or denial of registrations and other punitive actions; to provide venue for civil
 37 and criminal actions arising out of funeral services; to provide the Secretary of State with
 38 certain powers relating to the administration of funeral services; to provide the Secretary of
 39 State with certain investigatory and police powers relating to the enforcement of regulations
 40 regarding funeral services; to provide for certain legal requirements regarding funeral
 41 services; to provide the Secretary of State with certain investigatory and police powers
 42 relating to the enforcement of regulations regarding funeral services; to provide for penalties
 43 for violating provisions relating to funeral services; to provide for an appeal; to provide for
 44 a hearing under certain conditions relating to the denial of the sale of funeral services; to
 45 provide for service of process procedures for cases relating to funeral services; to provide for
 46 certain waiver of rights or defenses in funeral purchase agreements void; to provide the
 47 Secretary of State with immunity in certain actions taken relating to funeral services; to
 48 amend Code Section 31-21-7 of the Official Code of Georgia Annotated, relating to preneed
 49 contracts and who is permitted to direct the disposition of a body, so as to correct a
 50 cross-reference; to provide for related matters; to provide for an effective date; to repeal
 51 conflicting laws; and for other purposes.

52 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

53 **SECTION 1.**

54 Title 10 of the Official Code of Georgia Annotated, relating to commerce and trade, is
 55 amended by revising Chapter 14, relating to cemetery and funeral services, in its entirety as
 56 follows:

57 "CHAPTER 14

58 10-14-1.

59 This chapter shall be known as and may be cited as the 'Georgia Cemetery and Funeral
 60 Services Act of 2000.'

61 10-14-2.

62 (a) The legislature recognizes that purchasers of preneed burial rights, ~~funeral or burial~~
 63 ~~merchandise, or funeral services~~ or burial services may suffer serious economic harm if
 64 purchase money is not set aside for future use as intended by the purchaser and that the
 65 failure to maintain cemetery grounds properly may cause significant emotional distress.
 66 Therefore, it is necessary in the interest of the public welfare to regulate preneed dealers,
 67 licensees, registrants, and cemetery companies in this state. However, restrictions shall be
 68 imposed only to the extent necessary to protect the public from significant or discernible
 69 harm or damage and not in a manner which will unreasonably affect the competitive
 70 market.

71 (b) Subject to certain interests of society, the legislature finds that every competent adult
 72 has the right to control the decisions relating to his or her own ~~funeral~~ burial arrangements.
 73 Accordingly, unless otherwise stated in this chapter, it is the legislature's express intent that
 74 nothing contained in this chapter should be construed or interpreted in any manner as to
 75 subject preneed contract purchasers to federal income taxation under the grantor trust rules
 76 contained in Sections 671 et seq. of the Internal Revenue Code of 1986, as amended.

77 (c) Nothing herein is intended to prohibit or restrict the sale or purchase of life insurance
 78 as a funding vehicle for preneed contracts under this chapter, nor to change the state of the
 79 law prior to July 1, ~~2000~~ 2013, with respect to prohibiting or restricting the sale or purchase
 80 of life insurance as a funding vehicle for preneed contracts under this chapter.

81 10-14-3.

82 As used in this chapter, the term:

83 (1) 'Affiliate' means a person who directly or indirectly owns or controls, is owned or
 84 controlled by, or is under common ownership or control with another person. Solely for
 85 purposes of this definition, the terms 'owns,' 'is owned,' and 'ownership' mean ownership
 86 of an equity interest, or the equivalent thereof, of 10 percent or more, and the term
 87 'person' means an individual, partnership, committee, association, corporation, or any
 88 other organization or group of persons.

89 (2) ~~'Boards' mean~~ 'Board' means the State Board of Cemeterians as described and
 90 authorized in Chapter 8B of Title 43 ~~and the State Board of Funeral Service as described~~
 91 ~~and authorized in Chapter 18 of Title 43.~~

92 (3) ~~'Burial merchandise' merchandise, 'funeral merchandise,' or 'merchandise'~~ means any
 93 personal property other than caskets offered or sold by any person for use in connection
 94 with the final disposition, memorialization, interment, entombment, or inurnment of
 95 human remains.

- 96 (4) 'Burial right' means the right to use a grave space, mausoleum, or columbarium for
97 the interment, entombment, or inurnment of human remains.
- 98 (5) 'Burial service' means any service other than a funeral service offered or provided by
99 any person in connection with the final disposition, memorialization, interment,
100 entombment, or inurnment of human remains.
- 101 (6) 'Care and maintenance' means the perpetual process of keeping a cemetery and its
102 lots, graves, grounds, landscaping, roads, paths, parking lots, fences, mausoleums,
103 columbaria, vaults, crypts, utilities, and other improvements, structures, and
104 embellishments in a well cared for and dignified condition, so that the cemetery does not
105 become a nuisance or place of reproach and desolation in the community. As specified
106 in the rules of the Secretary of State, care and maintenance may include, but is not limited
107 to, any or all of the following activities: mowing the grass at reasonable intervals; raking
108 and cleaning the grave spaces and adjacent areas; pruning of shrubs and trees;
109 suppression of weeds and exotic flora; and maintenance, upkeep, and repair of drains,
110 water lines, roads, buildings, and other improvements. Care and maintenance may
111 include, but is not limited to, reasonable overhead expenses necessary for such purposes,
112 including maintenance of machinery, tools, and equipment used for such purposes. Care
113 and maintenance may also include repair or restoration of improvements necessary or
114 desirable as a result of wear, deterioration, accident, damage, or destruction. Care and
115 maintenance does not include expenses for the construction and development of new
116 grave spaces or interment structures to be sold to the public.
- 117 (7) 'Casket' means a container which is designed for the encasement and viewing of a
118 dead human body.
- 119 (8) 'Cemetery' means a place dedicated to and used, or intended to be used, for
120 permanent interment of human remains. A cemetery may contain land or earth
121 interments; mausoleum, a vault, or crypt interments; a columbarium or other structure or
122 place used or intended to be used for the inurnment of cremated human remains; or any
123 combination of one or more of such structures or places. Such term shall not include
124 governmentally owned cemeteries; fraternal cemeteries; cemeteries owned and operated
125 by churches, synagogues, or communities; or family burial plots.
- 126 (9) 'Cemetery company' means any entity that owns or controls cemetery lands or
127 property.
- 128 (10) 'Columbarium' means a structure or building which is substantially exposed above
129 the ground and which is intended to be used for the inurnment of cremated human
130 remains.
- 131 (11) ~~'Common business enterprise' means a group of two or more business entities that~~
132 ~~share common ownership in excess of 50 percent.~~

133 ~~(12)~~ 'Cremation' includes any mechanical, chemical, thermal, or other professionally
 134 accepted process whereby a deceased human being is reduced to ashes. Cremation also
 135 includes any other mechanical, chemical, thermal, or other professionally accepted
 136 process whereby human remains are pulverized, burned, reinterred, or otherwise further
 137 reduced in size or quantity.

138 ~~(13)~~(12) 'Crypt' means a chamber of sufficient size to inter the remains of a deceased
 139 human being.

140 ~~(14)~~(13) 'Entombment' means the disposition of a dead human body in a mausoleum,
 141 including without limitation a crypt, private mausoleum, or any other permanent
 142 above-ground structure not used for inurnment, but shall not include the opening and
 143 closing of a grave space, crypt, or niche or the installation of a vault.

144 ~~(15)~~(14) 'Final disposition' means the final disposal of a deceased human being whether
 145 by interment, entombment, inurnment, burial at sea, cremation, or any other means and
 146 includes, but is not limited to, any other disposition of remains for which a segregated
 147 charge is imposed.

148 ~~(16)~~ 'Funeral director' means any person licensed in this state to practice funeral directing
 149 pursuant to the provisions of Chapter 18 of Title 43.

150 ~~(16.1)~~ 'Funeral director in full and continuous charge' means a funeral director who is
 151 approved by the State Board of Funeral Service to assume full responsibility for the
 152 operations of a particular funeral establishment and who shall ensure that said
 153 establishment complies with this chapter and with all rules promulgated pursuant thereto
 154 as provided in Chapter 18 of Title 43.

155 ~~(17)~~ 'Funeral service' means any service relating to the transportation, embalming,
 156 cremation, and interment of a deceased human being, as further described in Code
 157 Section 43-18-1.

158 ~~(18)~~(15) 'Grave space' or 'lot' means a space of ground in a cemetery intended to be used
 159 for the interment in the ground of human remains.

160 ~~(19)~~(16) 'Human remains' means the bodies of deceased human beings and includes the
 161 bodies in any stage of decomposition and the cremated remains.

162 ~~(20)~~(17) 'Interment' means the burial of human remains but shall not include the opening
 163 and closing of a grave space, crypt, or niche or the installation of a vault.

164 ~~(21)~~(18) 'Inurnment' means the disposition of the cremated remains of a deceased human
 165 being in any fashion, including without limitation in a columbarium niche, cremorial,
 166 cremation bench, cremation rock, urn, or other container but shall not include the opening
 167 and closing of a grave space, crypt, or niche or the installation of a vault.

168 ~~(22)~~(19) 'Mausoleum' means a structure or building which is substantially exposed above
 169 the ground and which is used, or intended to be used, for the entombment of human
 170 remains.

171 ~~(23)~~(20) 'Mausoleum section' means any construction unit of a mausoleum which is
 172 acceptable to the Secretary of State and which a cemetery uses to initiate its mausoleum
 173 program or to add to its existing mausoleum structures.

174 ~~(24)~~(21) 'Monument' means any product used for identifying or permanently decorating
 175 a grave site, including, without limitation, monuments, markers, benches, and vases and
 176 any base or foundation on which they rest or are mounted.

177 ~~(25)~~(22) 'Niche' means a space used, or intended to be used, for the interment of the
 178 cremated remains of one or more deceased human beings.

179 ~~(26)~~(23) 'Nonperpetual care' means any cemetery which does not offer perpetual care as
 180 defined in this Code section.

181 ~~(27)~~(24) 'Outer burial container' or 'vault' means an enclosure into which a casket is
 182 placed and includes, but is not limited to, containers made of concrete, steel, fiberglass,
 183 copper or other metals, polypropylene, sectional concrete enclosures, and crypts.

184 ~~(28)~~(25) 'Perpetual care' means the care and maintenance and the reasonable
 185 administration of the cemetery grounds and buildings at the present time and in the
 186 future.

187 ~~(29)~~(26) 'Person' or 'entity' means an individual, a corporation, a limited liability
 188 company, a general or limited partnership, an association, a joint-stock company, a trust,
 189 or any type of incorporated or unincorporated organization.

190 ~~(30)~~(27) 'Preneed contract' means any arrangement or method, of which the provider of
 191 burial ~~or funeral~~ merchandise or services has actual knowledge, whereby any person
 192 agrees to furnish burial ~~or funeral~~ merchandise or services in the future.

193 ~~(31)~~(28) 'Preneed dealer' means every person, other than a salesperson registered under
 194 this chapter, who engages, either for all or part of his or her time, directly or indirectly,
 195 as agent, broker, or principal in the retail business of offering, selling, or otherwise
 196 dealing in ~~funeral services or burial services or funeral~~ or burial merchandise which is not
 197 attached to realty or delivered to the purchaser at the time of sale.

198 ~~(32)~~(29) 'Preneed ~~interment service~~' or 'preneed service' means any service which is not
 199 performed at the time of sale and which is offered or provided by any person in
 200 connection with the interment of human remains, except those services offered regarding
 201 mausoleums and the normal and customary installation charges on burial ~~or funeral~~
 202 merchandise.

203 ~~(32.1)~~(30) 'Principal' means a sum set aside or escrowed exclusive of income or interest
 204 or other return thereon.

205 ~~(33)~~(31) 'Sale' or 'sell' means and shall include every contract of sale or disposition of
 206 burial rights, grave spaces, burial services, ~~funeral services~~, or burial ~~or funeral~~
 207 merchandise for value. The term 'offer to sell,' 'offer for sale,' or 'offer' shall include any
 208 attempt or offer to dispose of, or solicitation of an offer to buy, grave spaces, burial
 209 rights, burial ~~or funeral~~ services, or burial ~~or funeral~~ merchandise for value. This
 210 definition shall not include wholesalers of burial ~~or funeral~~ merchandise.

211 ~~(34)~~(32) 'Salesperson' or 'sales agent' means an individual employed or appointed or
 212 authorized by a cemetery, cemetery company, or preneed dealer to sell grave spaces,
 213 burial rights, burial ~~or funeral~~ merchandise, burial ~~or funeral~~ services, or any other right
 214 or thing of value in connection with the final disposition of human remains. The owner
 215 of a cemetery, the executive officers, and general partners of a cemetery company shall
 216 not be deemed to be salespersons within the meaning of this definition unless they are
 217 paid a commission for the sale of said property, lots, rights, burial ~~or funeral~~ merchandise,
 218 or burial ~~or funeral~~ services.

219 ~~(35)~~(33) 'Secretary of State' means the Secretary of State of the State of Georgia.

220 ~~(36)~~(34) 'Solicitation' means any communication in the context of an offer or sale of
 221 grave spaces, burial ~~or funeral~~ merchandise, or burial ~~or funeral~~ services which directly
 222 or implicitly requests a response from the recipient.

223 ~~10-14-3.1~~ 10-14-4.

224 The ~~boards~~ board shall have all administrative powers and other powers necessary to carry
 225 out the provisions of this chapter, including the authority to promulgate rules and
 226 regulations, and the Secretary of State shall delegate to the ~~boards~~ board all such duties
 227 otherwise entrusted to the Secretary of State; provided, however, that the Secretary of State
 228 shall have sole authority over matters relating to the regulation of funds, trust funds, and
 229 escrow accounts and accounting and investigations concerning such matters but may
 230 delegate authority to the ~~appropriate~~ board for the review of such investigations and the
 231 determination as to disciplinary matters, necessary sanctions, and the enforcement of such
 232 decisions and sanctions. ~~The State Board of Funeral Service shall have authority to~~
 233 ~~promulgate rules and regulations and make disciplinary and sanctioning decisions relating~~
 234 ~~to funeral services or funeral merchandise.~~ The ~~State Board of Cemeterians~~ board shall
 235 have authority to promulgate rules and regulations and make disciplinary and sanctioning
 236 decisions relating to burial services or burial merchandise. The Secretary of State may
 237 delegate to ~~each~~ the board according to such duties and responsibilities of the ~~boards~~ board.

238 ~~10-14-4~~ 10-14-5.

239 (a)(1) Unless exempt under this chapter, it shall be unlawful for any person to offer for
240 sale or to sell any cemetery burial rights, mausoleum interment rights, columbarium
241 inurnment rights, grave spaces, or other physical locations for the final disposition of
242 human remains in this state unless such person is registered as or employed by and acting
243 on behalf of and under the direction of a person registered as a cemetery owner pursuant
244 to this Code section.

245 (2) Unless exempt under this chapter, it shall be unlawful for any person to offer for sale
246 or sell burial ~~or funeral~~ merchandise or burial services in this state unless such person is
247 registered as or employed by and acting on behalf of and under the direction of a person
248 registered as a cemetery owner under this Code section, ~~a funeral director under Chapter~~
249 ~~18 of Title 43~~, or a burial ~~or funeral~~ merchandise dealer under this Code section.

250 (3) Unless exempt under this chapter, it shall be unlawful for any person to offer for sale
251 or to sell any preneed burial ~~or funeral~~ merchandise or preneed burial services in this state
252 unless such person is registered as a preneed dealer or preneed sales agent pursuant to this
253 Code section.

254 ~~(4) It shall be unlawful for any person to offer for sale or to sell any funeral services in~~
255 ~~this state unless such person is licensed as a funeral director under the provisions of~~
256 ~~Chapter 18 of Title 43.~~

257 (b)(1) Every person desiring to be a registered cemetery owner shall file with the
258 Secretary of State a separate registration application for each cemetery owned in a form
259 prescribed by the Secretary of State, executed and duly verified under oath by the
260 applicant, if the applicant is an individual, or by an executive officer or general partner,
261 if the applicant is a corporation or partnership, or by an individual of similar authority,
262 if the applicant is some other entity, and containing the following information:

263 (A) The name, mailing address, and telephone number of the applicant, which for the
264 purposes of this Code section shall be the legal owner of the land upon which the
265 cemetery is located;

266 (B) The location and, if different from the information submitted for subparagraph (A)
267 of this paragraph, the mailing address and telephone number of the cemetery;

268 (C) The location of all records of the applicant which relate to the cemetery;

269 (D) If the applicant is not a natural person, the names of the president, secretary, and
270 registered agent if the applicant is a corporation, of each general partner if the applicant
271 is a partnership, or of individuals of similar authority if the applicant is some other
272 entity and their respective addresses and telephone numbers; the name and address of
273 each person who owns 10 percent or more of any class of ownership interest in the

274 applicant and the percentage of such interest; and the date of formation and the
 275 jurisdiction of organization of the applicant;

276 (E) A copy of cemetery rules and regulations, a certified copy of a certificate of
 277 existence or certificate of authority issued in accordance with Code Section 14-2-128
 278 if the applicant is a corporation, and any amendments to such documents or any
 279 substantially equivalent documents. Any such document once filed with the Secretary
 280 of State pursuant to this chapter shall be deemed to be on file and incorporated into any
 281 subsequent renewal or filing of such cemetery registration; provided, however, that
 282 each applicant and registrant is under a continuing duty to update such filing and to
 283 notify the Secretary of State regarding any changes or amendments to the articles of
 284 incorporation, bylaws, cemetery rules and regulations, or substantially equivalent
 285 documents, and provided, further, that any applicant or registrant shall furnish to the
 286 Secretary of State additional copies of any such document upon request;

287 (F) A description of any judgment or pending litigation to which the applicant or any
 288 affiliate of the applicant is a party and which involves the operation of the cemetery or
 289 could materially affect the business or assets of the applicant;

290 (G) Whether the applicant or any affiliate of the applicant owns any other entities in
 291 ~~Georgia~~ this state regulated by this chapter and, if so, the location, mailing address,
 292 telephone number, and type of registration of such other entities;

293 (H) A consent to service of process meeting the requirements of Code Section
 294 ~~10-14-24~~ 10-14-25 for actions brought by the State of Georgia;

295 (I) The name and business address of each individual employed, appointed, or
 296 authorized by the applicant to offer for sale or to sell any grave lots, burial rights, burial
 297 ~~or funeral~~ merchandise, or burial services on behalf of the cemetery;

298 (J) A balance sheet of the applicant dated as of the end of the most recent fiscal year
 299 and in no event dated more than 15 months prior to the date of filing, which the
 300 Secretary of State shall treat as confidential and not open to public inspection;

301 (K) Evidence satisfactory to the Secretary of State that the applicant owns for the
 302 cemetery unencumbered fee simple title to contiguous land in the minimum acreage
 303 required by this chapter or by rules issued by the Secretary of State in accordance with
 304 this chapter, properly zoned for use as a cemetery, and dedicated for such use, and a
 305 copy of a plat of survey thereto, provided that nothing herein shall prohibit the
 306 encumbrance of the undeveloped portion of cemetery property for the purpose of
 307 securing debt incurred for the purpose of developing or improving such property;

308 (L) Evidence satisfactory to the Secretary of State that the applicant has recorded, in
 309 the public land records of the county in which the land described in subparagraph (K)
 310 of this paragraph is located, a notice that contains the following language:

311 NOTICE

312 The property described herein shall not be sold, conveyed, leased, mortgaged, or
 313 encumbered except as provided by the prior written approval of the Secretary of State,
 314 as provided in the Georgia Cemetery and Funeral Services Act of 2000.

315 Such notice shall have been clearly printed in boldface type of not less than ten points
 316 and may be included on the face of the deed of conveyance to the applicant or may be
 317 contained in a separate recorded instrument that contains a legal description of the
 318 property.

319 (M) The name, address, location, and telephone number of the perpetual care trust
 320 account depository or depositories, the names of the accounts, and the account
 321 numbers;

322 (N) The name, address, and telephone number of each trustee;

323 (O) A copy of a perpetual care trust fund agreement executed by the applicant and
 324 accepted by the trustee, and evidence satisfactory to the Secretary of State of the deposit
 325 into such account of the amount of the initial required deposit, the trust agreement being
 326 conditioned only upon issuance of a certificate of registration;

327 (P) Such other information and documents as the Secretary of State may require by
 328 rule; and

329 (Q) A filing fee of \$100.00.

330 (2) Every person desiring to be a registered preneed dealer, ~~other than a person already~~
 331 ~~licensed by the Board of Funeral Service as a funeral services director in full and~~
 332 ~~continuous charge or of burial services or burial merchandise, other than~~ an owner of a
 333 cemetery licensed by the ~~State Board of Cemeterians~~ board as a cemeterian, shall file
 334 with the Secretary of State a registration application in a form prescribed by the Secretary
 335 of State, executed and duly verified under oath by the applicant, if the applicant is an
 336 individual, or by an executive officer or general partner, if the applicant is a corporation
 337 or partnership, or by an individual of similar authority, if the applicant is some other
 338 entity, and containing the following information:

339 (A) The name of the applicant;

340 (B) The location, mailing address, and telephone number of the applicant's principal
 341 business location in ~~Georgia~~ this state and the same information for other locations
 342 where business is conducted, together with any trade names associated with each
 343 location;

344 (C) All locations of the records of the applicant which relate to preneed sales in
 345 ~~Georgia~~ this state;

346 (D) If the applicant is not a natural person, the names of the president, secretary, and
 347 registered agent if the applicant is a corporation, of each general partner if the applicant

348 is a partnership, or of individuals of similar authority, if the applicant is some other
 349 entity and their respective addresses and telephone numbers; the name and address of
 350 each person who owns 10 percent or more of any class of ownership interest in the
 351 applicant and the percentage of such interest; and the date of formation and the
 352 jurisdiction of organization of the applicant;

353 (E) A certified copy of a certificate of existence or certificate of authority issued in
 354 accordance with Code Section 14-2-128 if the applicant is a corporation;

355 (F) A description of any judgment or pending litigation to which the applicant or any
 356 affiliate of the applicant is a party and which involves the operation of the applicant's
 357 preneed business in ~~Georgia~~ this state or which could materially affect the business or
 358 assets of the applicant;

359 (G) Whether the applicant or any affiliate of the applicant owns any other entities in
 360 ~~Georgia~~ this state regulated by this chapter and, if so, the location, mailing address,
 361 telephone number, and type of registration of such other entities;

362 (H) A consent to service of process meeting the requirements of Code Section
 363 ~~10-14-24~~ 10-1-25 for actions brought by the State of Georgia;

364 (I) A list of each individual employed, appointed, or authorized by the applicant to
 365 offer for sale or to sell any grave lots, burial rights, burial ~~or funeral~~ merchandise, or
 366 burial services on behalf of the applicant;

367 (J) A balance sheet of the applicant dated as of the end of the most recent fiscal year
 368 and in no event dated more than 15 months prior to the date of filing, which the
 369 Secretary of State shall treat as confidential and not open to public inspection;

370 (K) The name, address, location, and telephone number of the preneed trust or escrow
 371 account depository or depositories, the names of the accounts, and the account
 372 numbers;

373 (L) An executed copy of the trust or escrow agreement required by Code Section
 374 ~~10-14-7 or 10-14-7.1~~ 10-14-8;

375 (M) The name, address, and telephone number of the trust or escrow agent;

376 (N) Such other information and documents as the Secretary of State may require by
 377 rule; and

378 (O) A filing fee of \$250.00.

379 The provisions of this paragraph notwithstanding, ~~a person licensed by the Board of~~
 380 ~~Funeral Service as a funeral services director in full and continuous charge or an owner~~
 381 ~~of a cemetery licensed by the State Board of Cemeterians~~ board as a cemeterian shall not
 382 be required to separately register as a preneed dealer provided that the requirements of
 383 subparagraphs (A) through (N) of this paragraph are satisfied.

384 (3) Every person desiring to be a registered burial ~~or funeral~~ merchandise dealer shall file
 385 with the Secretary of State a registration application in a form prescribed by the Secretary
 386 of State, executed and duly verified under oath by the applicant, if an individual, or by
 387 an executive officer or general partner, if the applicant is a corporation or partnership, or
 388 by an individual of similar authority, if the applicant is some other entity, and containing
 389 the following information:

390 (A) The name of the applicant;

391 (B) The location, mailing address, and telephone number of the applicant's principal
 392 business location in ~~Georgia~~ this state and the same information for other locations
 393 where business is conducted, together with any trade names associated with each
 394 location;

395 (C) All locations of the records of the applicant which relate to ~~funeral~~ or burial
 396 merchandise sales in ~~Georgia~~ this state;

397 (D) If the applicant is not a natural person, the names of the president, secretary, and
 398 registered agent if the applicant is a corporation, of each general partner if the applicant
 399 is a partnership, or of individuals of similar authority if the applicant is some other
 400 entity and their respective addresses and telephone numbers; the name and address of
 401 each person who owns 10 percent or more of any class of ownership interest in the
 402 applicant and the percentage of such interest; and the date of formation and the
 403 jurisdiction of organization of the applicant;

404 (E) A certified copy of a certificate of existence or certificate of authority issued in
 405 accordance with Code Section 14-2-128 if the applicant is a corporation;

406 (F) A description of any judgment or pending litigation to which the applicant or any
 407 affiliate of the applicant is a party and which involves the operation of the applicant's
 408 ~~funeral~~ or burial merchandise business in ~~Georgia~~ this state or which could materially
 409 affect the business or assets of the applicant;

410 (G) Whether the applicant or any affiliate of the applicant owns any other entities in
 411 ~~Georgia~~ this state regulated by this chapter and, if so, the location, mailing address,
 412 telephone number, and type of registration of such other entities;

413 (H) A consent to service of process meeting the requirements of Code Section
 414 ~~10-14-24~~ 10-14-25 for actions brought by the State of Georgia;

415 (I) The name and business address of each individual employed, appointed, or
 416 authorized by the applicant to offer for sale or to sell any burial ~~or funeral~~ merchandise
 417 on behalf of the applicant;

418 (J) A balance sheet of the applicant dated as of the end of the most recent fiscal year
 419 and in no event dated more than 15 months prior to the date of filing, which the
 420 Secretary of State shall treat as confidential and not open to public inspection;

- 421 (K) Such other information and documents as the Secretary of State may require by
 422 rule;
- 423 (L) A filing fee of \$100.00; and
- 424 (M) A bond, if required by the rules and regulations of the Secretary of State.
- 425 (c) The Secretary of State may approve an application only after he or she has conducted
 426 an investigation of the applicant and determined that such applicant is qualified by
 427 character, experience, and financial responsibility to conduct the business for which the
 428 applicant is seeking registration in a legal and proper manner. A registration application
 429 filed under this Code section shall become effective upon the issuing of a certificate of
 430 registration by the Secretary of State or at such earlier time as the Secretary of State
 431 determines.
- 432 (d) Every registration under this subsection shall expire on the first day of August of each
 433 year. The registration must be renewed with the Secretary of State each year by the
 434 submission of a renewal application containing the information required in an application
 435 for initial registration to the extent that such information had not been included in an
 436 application or renewal application previously filed together with a sworn statement that all
 437 information not provided remains accurate. The filing fee for renewal of registration shall
 438 be \$50.00 for each cemetery of cemetery owners, \$100.00 for preneed dealers, and \$50.00
 439 for burial ~~or funeral~~ merchandise dealers.
- 440 (e) The Secretary of State, by rule, may provide for exceptions from registration for
 441 cemeteries when the Secretary of State determines that the public interest does not require
 442 registration, provided that such cemeteries are in existence on or before July 1, 2000,
 443 consist of less than 25 acres, and are operated by nonprofit entities.
- 444 (f) Notwithstanding any provision to the contrary contained in this Code section, the
 445 following shall be exempt from registration as a burial ~~or funeral~~ merchandise dealer:
- 446 (1) Any registered cemetery owner;
 - 447 (2) The owner of any cemetery exempt from registration with respect to sales of burial
 448 ~~or funeral~~ merchandise sold for use at such cemetery;
 - 449 (3) Any licensed funeral director;
 - 450 (4) Any person providing interment and disinterment services exclusively at cemeteries
 451 exempt from registration;
 - 452 (5) Any monument manufacturer or dealer which does not install monuments in
 453 cemeteries required to be registered by this Code section;
 - 454 (6) Any person who does not offer for sale or sell burial ~~or funeral~~ services or
 455 merchandise to the general public; and
 - 456 (7) Any registered preneed dealer.

457 In addition, the Secretary of State, by rule, may provide for other exceptions from
458 registration.

459 (g)(1) Any cemetery in operation on August 1, 1986, which offers perpetual care for
460 some designated sections of its property but does not offer perpetual care to other
461 designated sections shall be considered a perpetual care cemetery for purposes of this
462 chapter. No cemetery formed or created on or after July 1, 2000, may fail to offer
463 perpetual care for any part of such cemetery.

464 (2) Any nonperpetual care cemetery which was registered with the Secretary of State
465 prior to August 1, 1986, may continue to be operated as such after that date and a renewal
466 of such registration shall not be required.

467 (3) Any nonperpetual care cemetery which is shown to be of historical significance and
468 is operated solely for historical nonprofit purposes shall be exempt from registration.

469 (4) Except as specifically authorized under paragraphs (2) and (3) of this subsection,
470 from and after August 1, 1986, it shall be unlawful for any person to operate or establish
471 a nonperpetual care cemetery.

472 ~~10-14-5~~ 10-14-6.

473 (a) All individuals who offer preneed contracts to the public, or who execute preneed
474 contracts on behalf of any entity required to be registered as a preneed dealer, and all
475 individuals who offer, sell, or sign contracts for the preneed sale of burial rights shall be
476 registered with the Secretary of State as preneed sales agents, pursuant to this Code section,
477 unless such individuals are exempted under this chapter or individually own a controlling
478 interest in a preneed dealer registered under this chapter. For purposes of this chapter, ~~any~~
479 ~~person licensed by or registered with the Board of Funeral Service as a funeral services~~
480 ~~director in full and continuous charge or an owner of a cemetery licensed by the State~~
481 ~~Board of Cemeterians~~ board as a cemeterian shall be deemed a registered preneed dealer,
482 and regulated pursuant to the rules governing same, by virtue thereof.

483 (b) All preneed sales agents must be employed by a registered preneed dealer.

484 (c) A preneed dealer shall be liable for the activities of all preneed sales agents who are
485 employed by the preneed dealer or who perform any type of preneed related activity on
486 behalf of the preneed dealer. If a preneed sales agent violates any provision of this chapter,
487 such preneed sales agent and each preneed dealer who employs such preneed sales agent
488 shall be subject to the penalties and remedies set out in Code Sections ~~10-14-11, 10-14-19,~~
489 10-14-12, 10-14-20, and 10-14-21, and 10-14-22.

490 (d) A preneed sales agent may be authorized to sell, offer, and execute preneed contracts
491 on behalf of all entities owned or operated by the agent's sponsoring preneed dealer.

492 (e) If the application for his or her registration is sent by certified mail, ~~return receipt~~
493 ~~requested~~, or statutory overnight delivery, return receipt requested, an individual may begin
494 functioning as a preneed sales agent as soon as a completed application for registration, as
495 set forth in subsection (g) of this Code section, is submitted to the Secretary of State,
496 provided that, if any such sales agent fails to meet the qualifications set forth in this
497 chapter, the preneed dealer shall immediately upon notification by the Secretary of State
498 cause such agent to cease any sales activity on its behalf.

499 (f) The qualifications for a preneed sales agent are as follows:

500 (1) The applicant must be at least 18 years of age;

501 (2) The applicant must not be subject to any order of the Secretary of State that restricts
502 his or her ability to be registered as a preneed sales agent; and

503 (3) The applicant must not have been adjudicated, civilly or criminally, to have
504 committed fraud or to have violated any law of any state involving fair trade or business
505 practices, have been convicted of a misdemeanor of which fraud is an essential element
506 or which involves any aspect of the funeral or cemetery business, or have been convicted
507 of a felony.

508 (g) An application for registration as a preneed sales agent shall be submitted to the
509 Secretary of State with an application fee of \$100.00 by the preneed dealer on a form that
510 has been designated by the Secretary of State and shall contain, at a minimum, the
511 following:

512 (1) The name, address, social security number, and date of birth of the applicant and such
513 other information as the Secretary of State may reasonably require of the applicant;

514 (2) The name, address, and license number of the sponsoring preneed dealer;

515 (3) A representation, signed by the applicant, that the applicant meets the requirements
516 set forth in subsection (f) of this Code section;

517 (4) A representation, signed by the preneed dealer, that the applicant is authorized to
518 offer, sell, and sign preneed contracts on behalf of the preneed dealer and that the preneed
519 dealer has informed the applicant of the requirements and prohibitions of this chapter
520 relating to preneed sales, the provisions of the preneed dealer's preneed contract, and the
521 nature of the merchandise, services, or burial rights sold by the preneed dealer;

522 (5) A statement indicating whether the applicant has any type of working relationship
523 with any other preneed dealer or insurance company; and

524 (6) A signed agreement by the applicant consenting to an investigation of his or her
525 background with regard to the matters set forth in this Code section, including, without
526 limitation, his or her criminal history.

527 (h) An individual may be registered as a preneed sales agent on behalf of more than one
 528 preneed dealer, provided that the individual has received the written consent of all such
 529 preneed dealers.

530 (i) A preneed dealer who has registered a preneed sales agent shall notify the Secretary of
 531 State within three business days of a change in such individual's status as a preneed sales
 532 agent with such preneed dealer or upon the occurrence of any other event which would
 533 disqualify the individual as a preneed sales agent.

534 (j) Upon receipt and review of an application that complies with all of the requirements
 535 of this Code section, the Secretary of State shall register the applicant. The Secretary of
 536 State shall by rule provide for annual renewal of registration and a renewal fee of \$50.00.

537 (k) Each cemetery registered under this chapter shall maintain in its files for a period of
 538 five years a properly completed and executed application for employment in a form
 539 prescribed by the Secretary of State for each employee, officer, independent contractor, or
 540 other agent directly or indirectly involved in cemetery or preneed sales or any person
 541 occupying a similar status or performing similar functions. If a request is made, said forms
 542 shall be made available for inspection by authorized representatives of the Secretary of
 543 State.

544 ~~10-14-5.1.~~

545 ~~Any individual engaged in the sale of life insurance shall not use the name of any funeral~~
 546 ~~establishment or any price list which identifies the funeral establishment or any reference~~
 547 ~~to a funeral establishment or crematory in connection with the sale of life insurance without~~
 548 ~~the express written authorization of the funeral establishment. When a preneed funeral~~
 549 ~~contract is funded by a life insurance policy, the funeral establishment shall be designated~~
 550 ~~as the assignee of the death benefit payable under the policy in accordance with the terms~~
 551 ~~of the preneed contract.~~

552 ~~10-14-6~~ 10-14-7.

553 (a)(1) Each cemetery or cemetery company required to be registered by this chapter shall
 554 establish and maintain an irrevocable trust fund for each cemetery owned.

555 (2) For trust funds established on or after July 1, 2000, the initial deposit to said
 556 irrevocable trust fund shall be the sum of \$10,000.00 and the deposit of said sum shall be
 557 made before selling or contracting to sell any burial right. No such initial deposit shall
 558 be required with respect to any cemetery for which there is an existing perpetual care
 559 account on July 1, 2000. The trust fund shall apply to sales or contracts for sale of lots,
 560 grave spaces, niches, mausoleums, columbaria, urns, or crypts in which perpetual care
 561 has been promised or guaranteed.

562 (3) The initial corpus of the trust fund and all subsequent required deposits shall be
563 deposited in a state bank, state savings and loan institution, savings bank, national bank,
564 or federal savings and loan institution, whose deposits are insured by the Federal Deposit
565 Insurance Corporation or other governmental agency, or a state or federally chartered
566 credit union insured under 12 U.S.C. Section 1781 of the Federal Credit Union Act, or
567 other depository or trustee which is approved by the Secretary of State or which meets
568 the standards contained in the rules and regulations promulgated by the Secretary of
569 State.

570 (4) Each perpetual care trust fund established on or after July 1, 2000, shall be named
571 'The _____ Cemetery _____ Perpetual Care Trust Fund' with the first
572 blank being filled by the name of the cemetery and the second blank being filled by the
573 month and year of the establishment of such trust fund. If a cemetery has a perpetual care
574 trust fund existing on July 1, 2000, and the perpetual care trust fund agreement permits,
575 the cemetery may make additional deposits to such a trust fund on the condition that the
576 entire corpus of the trust fund, any income earned by the trust fund, and any subsequent
577 deposits to the trust fund are thereafter governed by the provisions of this chapter, the
578 'Georgia Cemetery and Funeral Services Act of 2000,' as it existed on July 1, ~~2000~~ 2013,
579 except for the amount of the initial deposit to the trust fund. If a cemetery owner or
580 company elects to establish a new perpetual care trust fund subject to the provisions of
581 this chapter, the 'Georgia Cemetery and Funeral Services Act of 2000,' as it existed on
582 July 1, ~~2000~~ 2013, any perpetual care trust fund which existed on July 1, 2000, is subject
583 to the provisions of law in effect on the date of its establishment, and deposits for sales
584 transacted on or after July 1, 2000, shall be deposited in the trust fund established on or
585 after July 1, 2000. If a cemetery existing on July 1, 2000, has an existing perpetual care
586 trust fund which complies with provisions of law in effect on the date of its
587 establishment, a new trust fund created in compliance with this chapter shall not require
588 an initial deposit.

589 (b) Whenever any burial right, cemetery lot, grave space, niche, mausoleum, columbarium,
590 urn, or crypt wherein perpetual care or endowment care is promised or contracted for or
591 guaranteed is sold by any cemetery, the cemetery shall make deposits to the trust fund that
592 equal 15 percent of the sales price of the burial right or 7.5 percent of the total sales price
593 of any mausoleums, niches, columbaria, urns, or crypts, provided that the minimum deposit
594 for each burial right shall be \$50.00; provided, further, that on July 1, 2003, and every three
595 years thereafter, the amount of said minimum deposit shall be adjusted by the rate of
596 change in the Consumer Price Index as reported by the Bureau of Labor Statistics of the
597 United States Department of Labor. The Secretary of State shall adopt such adjustment to
598 the amount of said minimum deposit by rule. Deposits to the trust fund shall be made not

599 later than 30 days following the last day of the month in which payment therefor is made,
600 or, in the case of a free space, the month in which the space is given. In the event any sale
601 is made on an installment basis, not less than a pro rata share of the principal portion of
602 each payment made and allocated to the lot, grave, space, niche, mausoleum, columbarium,
603 urn, or crypt shall be allocated to the required trust fund deposit, provided that all deposits
604 to the trust fund shall be completed within six years from the date of the signing of the
605 perpetual care contract. The manner of any such allocation shall be clearly reflected on the
606 books of the registrant.

607 (c) The initial \$10,000.00 corpus of the perpetual care trust fund shall not be counted as
608 part of the required periodic deposits and shall be considered to be corpus or principal.

609 (d) The income earned by the trust fund shall be retained by the trust fund. At such time
610 as either:

611 (1) The cemetery owner is not licensed and has not been licensed for 90 or more
612 consecutive days to sell burial rights;

613 (2) The cemetery is under the management of a receiver; or

614 (3) Less than 50 percent of available lots are unsold,

615 95 percent of the income from the trust fund shall be paid to the owner or receiver
616 exclusively for covering the costs of care and maintenance of the cemetery, including
617 reasonable administrative expenses incurred in connection therewith. The income of the
618 trust fund shall be paid to the owner or receiver at intervals agreed upon by the recipient
619 and the trustee, but in no case shall the income be paid more often than monthly.

620 (e) There shall be no withdrawals from the trust fund except pursuant to the provisions of
621 this chapter or by court order.

622 (f)(1) The assets of a trust fund shall be invested and reinvested subject to all the terms,
623 conditions, limitations, and restrictions imposed by the laws of the State of Georgia upon
624 executors and trustees regarding the making and depositing of investments with trust
625 moneys pursuant to former Code Sections 53-8-1 through 53-8-4 as such existed on
626 December 31, 1997, if applicable; Code Section 53-8-1; or Code Section 53-12-340.
627 Subject to said terms, conditions, limitations, and restrictions, the trustee of the perpetual
628 care trust fund shall have full power to hold, purchase, sell, assign, transfer, reinvest, and
629 dispose of any of the securities and investments in which any of the assets of said fund
630 are invested, including proceeds of investments.

631 (2) Any state bank, national bank, or other financial institution authorized to act in a
632 fiduciary capacity in this state, which presently or in the future serves as a fiduciary or
633 cofiduciary of the trust fund of a perpetual care cemetery, may invest part or all of such
634 trust fund held by it for investment in interests or participation in one or more common
635 trust funds established by that state bank, national bank, or other financial institution for

636 collective investment, if such investment is not expressly prohibited by the instrument,
 637 judgment, decree, or order creating the fiduciary relationship and if, in the case of
 638 cofiduciaries the trust institution procures the consent of its cofiduciary or cofiduciaries
 639 to such investment, and notwithstanding the fact that such common trust funds are not
 640 invested and reinvested subject to all the terms, conditions, limitations, and restrictions
 641 imposed by the laws of the State of Georgia upon executors and trustees in the making
 642 and disposing of their investments.

643 (3) Notwithstanding any other provision of this subsection, the Secretary of State shall
 644 establish rules and regulations for investments of a trust fund established on or after July
 645 1, 2000, or otherwise governed by this chapter, the 'Georgia Cemetery and Funeral
 646 Services Act of 2000,' as it existed on July 1, ~~2000~~ 2013, as necessary to preserve the
 647 corpus and income of such a fund and for determining what restrictions are necessary for
 648 such purpose.

649 (4) At any time, in the event that the perpetual care trust fund contains an amount less
 650 than the amount required by this Code section, the cemetery owner shall, within 15 days
 651 after the earlier of becoming aware of such fact or having been so notified by the
 652 Secretary of State, deposit into the perpetual care trust fund an amount equal to such
 653 shortfall. In the event that the Secretary of State and the cemetery owner disagree
 654 regarding the amount of such shortfall, no penalty shall be imposed upon the cemetery
 655 owner for any failure to comply with this paragraph unless such failure occurs after notice
 656 and opportunity for a hearing as provided in Code Section ~~10-14-23~~ 10-14-24.

657 (g) Moneys of the perpetual care trust fund shall not be invested in or loaned to any
 658 business venture controlled by the cemetery owner, a person who owns a controlling
 659 interest of a cemetery owner that is not a natural person, or an affiliate of any of these
 660 persons or entities.

661 (h) The trustee shall furnish yearly to the Secretary of State a financial report in a form
 662 designated by the Secretary of State with respect to the perpetual care trust fund.

663 (i) Upon a finding by a court of competent jurisdiction of failure to deposit or maintain
 664 funds in the trust account as required by this chapter or of fraud, theft, or misconduct by
 665 the owners of the cemetery or the officers or directors of a cemetery company which has
 666 wasted or depleted such funds, the cemetery owners or the officers or directors of a
 667 cemetery company may be held jointly and severally liable for any deficiencies in the trust
 668 account as required in this chapter.

669 ~~10-14-7~~ 10-14-8.

670 (a)(1) Each preneed dealer which sells burial or funeral merchandise on a preneed basis
 671 or preneed burial or funeral services, ~~other than preneed funeral services described in~~

672 ~~Code Section 10-14-7.1~~, shall establish and maintain a trust fund or a preneed escrow
673 account.

674 (2) With respect to each monument and outer burial container, bench, coping, and other
675 burial ~~and funeral~~ merchandise items ~~except for caskets~~, and except as otherwise
676 provided in paragraph (3) of this subsection, the amount to be deposited to said trust or
677 escrow account shall be not less than 35 percent of the sales price of such monument or
678 outer burial container; in no event shall the amount deposited be less than 120 percent of
679 the wholesale price of such items. For caskets, the amount to be deposited to said trust
680 or escrow account shall be not less than 100 percent of the sales price of such
681 merchandise; in no event shall the amount deposited be less than 110 percent of the
682 wholesale price of such merchandise. If the contract of sale shall include grave spaces
683 or items not deemed to be burial ~~or funeral~~ merchandise, the portion of the sales price
684 attributable to the sale of the burial ~~or funeral~~ merchandise shall be determined, and it
685 shall only be as to such portion of the total contract as constitutes burial ~~or funeral~~
686 merchandise that the deposit described in this paragraph shall be required. In the event
687 that the sale of burial ~~or funeral~~ merchandise is under an installment contract, the required
688 trust deposit shall be a pro rata part of the principal portion of each installment payment,
689 such deposit only being required as payments are made by the purchaser for such burial
690 ~~or funeral~~ merchandise. In the event the installment contract is discounted or sold to a
691 third party, the seller shall be required to deposit an amount equal to the undeposited
692 portion of the required deposit of the sales price of such burial ~~or funeral~~ merchandise at
693 such time as if the contract were paid in full.

694 (3) With respect to a monument, outer burial container, bench, coping, and other burial
695 ~~and funeral~~ merchandise items except for caskets, the itemized sales price of which does
696 not include the installation of such item, 100 percent of the installation cost shall be
697 deposited in the trust or escrow account.

698 ~~(4) With respect to cash advance items and the sale of preneed funeral services, the~~
699 ~~amount to be deposited to said trust or escrow account shall be 100 percent of the sales~~
700 ~~price of such funeral services or the full amount of a cash advance item. The time and~~
701 ~~manner of deposit shall be the same as that specified for deposit of burial or funeral~~
702 ~~merchandise sale funds to the escrow account.~~

703 ~~(5)~~(4) With respect to preneed burial services, the amount to be deposited to said trust
704 or escrow account shall be not less than 35 percent of the sales price of such burial
705 services; in no event shall the amount deposited be less than 120 percent of the wholesale
706 price of such burial services. The time and manner of deposit shall be the same as that
707 specified for deposit of burial ~~or funeral~~ merchandise sale funds to the escrow account.

708 (b) The deposit specified in paragraphs (2), (3), and (4), ~~and (5)~~ of subsection (a) of this
 709 Code section shall be made not later than 30 days following the last day of the month in
 710 which any payment is received.

711 (c) A preneed escrow account governed by the provisions of this Code section shall be
 712 established and maintained in a state bank, state savings and loan institution, savings bank,
 713 national bank, federal savings and loan association, whose deposits are insured by the
 714 Federal Deposit Insurance Corporation or other governmental agency, or a state or
 715 federally chartered credit union insured under 12 U.S.C. Section 1781 of the Federal Credit
 716 Union Act, or other organization approved by the Secretary of State which is located and
 717 doing business in this state.

718 (d)(1) If the account is maintained with a trustee, the assets of the trust fund shall be
 719 invested and reinvested by the trustee subject to all the terms, conditions, limitations, and
 720 restrictions imposed by Georgia law upon executors and trustees regarding the making
 721 and depositing of investments with trust moneys pursuant to Code Sections 53-8-1
 722 through 53-8-4 of the 'Pre 1998 Probate Code,' if applicable, or Code Sections 53-8-1 and
 723 53-12-340 of the 'Revised Probate Code of 1998,' if applicable, or Chapter 12 of Title 53,
 724 'The Revised Georgia Trust Code of 2010.' Subject to said terms, conditions, limitations,
 725 and restrictions, the trustee of the preneed accounts shall have full power to hold,
 726 purchase, sell, assign, transfer, reinvest, and dispose of any of the securities and
 727 investments in which any of the assets of said account are invested, including proceeds
 728 of investments.

729 (2) Any state bank, national bank, or other financial institution authorized to act in a
 730 fiduciary capacity in this state, which presently or in the future serves as a fiduciary or
 731 cofiduciary of the trust fund of a preneed dealer, may invest part or all of such trust fund
 732 held by it for investment in interests or participation in one or more common trust funds
 733 established by that state bank, national bank, or other financial institution for collective
 734 investment, if such investment is not expressly prohibited by the instrument, judgment,
 735 decree, or order creating the fiduciary relationship and if, in the case of cofiduciaries, the
 736 trust institution procures the consent of its cofiduciary or cofiduciaries to such
 737 investment, and notwithstanding the fact that such common trust funds are not invested
 738 and reinvested subject to all the terms, conditions, limitations, and restrictions imposed
 739 by the laws of the State of Georgia upon executors and trustees in the making and
 740 disposing of their investments.

741 (e)(1) For burial ~~or funeral~~ merchandise, funds shall be released from the trust or escrow
 742 account when the burial ~~or funeral~~ merchandise is delivered or, if the burial ~~or funeral~~
 743 merchandise is not yet delivered, within the time required by law after a purchaser

744 requests a refund. The preneed dealer is considered to have delivered burial ~~or funeral~~
 745 merchandise when the burial ~~or funeral~~ merchandise is:

- 746 (A) Actually delivered to the purchaser at the time of need;
- 747 (B) Actually delivered to the purchaser at the purchaser's request;
- 748 (C) In the case of a monument, when the monument is attached to realty;
- 749 (D) In the case of a monument, when the preneed dealer has the monument
 750 manufactured for the purchaser and placed into storage with a responsible third party
 751 bonded and insured for the wholesale value thereof and evidenced by a receipt
 752 specifically identifying the monument, the specific preneed contract, the location of the
 753 monument, and identify and address of the bonding and insuring parties; or
- 754 (E) At such other times as prescribed by the rule or order of the Secretary of State.

755 Notwithstanding the foregoing, outer burial containers may not be delivered prior to need.

756 (2) Deposits made from funds received in payment of preneed services shall remain in
 757 the trust or escrow account until such services are performed, at which time said funds
 758 may be released to the preneed dealer. The trustee may require certification by the
 759 preneed dealer of delivery of merchandise or performance of services before release of
 760 funds.

761 (3) The funds on deposit under the terms of this subsection regarded as escrow funds
 762 may not be pledged, hypothecated, transferred, or in any manner encumbered by the
 763 escrow agent nor may said funds be offset or taken for the debts of the preneed dealer
 764 until such time as the merchandise has been delivered or the services performed, but after
 765 delivery of the burial ~~or funeral~~ merchandise concerned.

766 (f) At any time, in the event that the preneed trust or escrow account contains an amount
 767 less than the amount required by this Code section, the preneed dealer shall, within 15 days
 768 after the earlier of becoming aware of such fact or having been so notified by the Secretary
 769 of State, deposit into the preneed account an amount equal to such shortfall. In the event
 770 that the Secretary of State and the preneed dealer disagree regarding the amount of such
 771 shortfall, no penalty shall be imposed upon the preneed dealer for any failure to comply
 772 with this provision unless such failure occurs after notice and opportunity for a hearing as
 773 provided in Code Section ~~10-14-23~~ 10-14-24.

774 (g) In the case of release of trusted or escrowed funds to a purchaser at the purchaser's
 775 request pursuant to subsection (e) of this Code section, a sum not less than the lesser of 10
 776 percent of the trusted or escrowed amount or one-half of the interest earned or return upon
 777 such funds as of the date of release, as provided by the Secretary of State by rule or
 778 regulation, may be retained by the preneed dealer as an administrative fee for
 779 reimbursement of the preneed dealer for costs.

780 (h) The trustee shall furnish yearly to the Secretary of State a financial report in a form
781 designated by the Secretary of State with respect to the preneed trust or escrow account.

782 (i) Trust funds shall not be invested in or loaned to any business venture controlled by the
783 preneed dealer, a person who owns a controlling interest of a cemetery owner that is not
784 a natural person, or an affiliate of any of these persons or entities.

785 (j) Upon a finding by a court of competent jurisdiction of failure to deposit or maintain
786 funds in the preneed trust or escrow account as required by this chapter or of fraud, theft,
787 or other misconduct by the preneed dealer or the officers or directors of the preneed dealer
788 which has wasted or depleted such funds, the preneed dealer or the officers or directors of
789 the preneed dealer may be held jointly and severally liable for any deficiencies in the
790 preneed trust or escrow account.

791 ~~10-14-7.1.~~

792 ~~(a) Notwithstanding any provision to the contrary contained in Chapter 1 of Title 7, the~~
793 ~~'Financial Institutions Code of Georgia,' or in any other provision of law, a preneed dealer~~
794 ~~registered or deemed registered pursuant to Code Section 10-14-5 who provides funeral~~
795 ~~services shall provide for funds to be deposited in an escrow account pursuant to Code~~
796 ~~Section 10-14-7 or with a depository institution in accordance with this Code section and~~
797 ~~placed in an individual trust fund account that is:~~

798 ~~(1) Titled in the name of a funeral establishment;~~

799 ~~(2) Established for the purpose of providing preneed funeral services;~~

800 ~~(3) Payable upon the death of the purchaser in favor of a funeral establishment for~~
801 ~~purposes of providing funeral services; and~~

802 ~~(4) Refundable to the purchaser's designee or the estate of the deceased, such that 100~~
803 ~~percent of the trust funds following a deduction of any amounts paid or owing as taxes~~
804 ~~and a 3 percent charge for administrative costs shall be returned to the designee or estate~~
805 ~~where funeral services are not provided by the funeral establishment.~~

806 ~~(b)(1) One hundred percent of funds to be held in trust shall be deposited in the trust~~
807 ~~account. The deposit of such funds shall be made not later than 30 days following the last~~
808 ~~day of the month in which any payment is received. Trust fund accounts shall be~~
809 ~~established and maintained in a state bank, state savings and loan institution, savings~~
810 ~~bank, national bank, federal savings and loan association, whose deposits are insured by~~
811 ~~the Federal Deposit Insurance Corporation or other governmental agency, or a state or~~
812 ~~federally chartered credit union insured under 12 U.S.C. Section 1781 of the Federal~~
813 ~~Credit Union Act, or other organization approved by the Secretary of State which is~~
814 ~~located and doing business in this state.~~

815 ~~(2)(A) If the account is maintained with a trustee, the assets of the trust account shall~~
 816 ~~be invested and reinvested by the trustee subject to all the terms, conditions, limitations,~~
 817 ~~and restrictions imposed by Georgia law upon executors and trustees regarding the~~
 818 ~~making and depositing of investments with trust moneys and subject to the limitations~~
 819 ~~and restrictions imposed pursuant to this Code section.~~

820 ~~(B) Subject to said terms, conditions, limitations, and restrictions, the trustee of a~~
 821 ~~preneed account shall have full power to hold, purchase, sell, assign, transfer, reinvest,~~
 822 ~~and dispose of any of the securities and investments in which any of the assets of said~~
 823 ~~account are invested, including proceeds of investments. A personal representative~~
 824 ~~shall be authorized to invest funds in:~~

825 ~~(i) Interest-bearing deposits in any chartered state or national bank or trust company~~
 826 ~~or savings and loan association located in this state to the extent the deposits are~~
 827 ~~insured by the Federal Deposit Insurance Corporation or comparable insurance; and~~

828 ~~(ii) Direct and general obligations of the United States government, obligations~~
 829 ~~unconditionally guaranteed by the United States government, and obligations of the~~
 830 ~~agencies of the United States government enumerated in Code Section 53-8-3.~~

831 ~~(C) In making investments pursuant to subparagraph (b)(2)(B) of this Code section and~~
 832 ~~in acquiring and retaining those investments and managing the property of the estate,~~
 833 ~~the personal representative shall exercise the judgment and care, under the~~
 834 ~~circumstances then prevailing, which persons of prudence, discretion, and intelligence~~
 835 ~~exercise in the management of their own affairs, not in regard to speculation but in~~
 836 ~~regard to the permanent disposition of their funds, considering the probable income as~~
 837 ~~well as the probable safety of their capital.~~

838 ~~(3) In the event that the sale of burial or funeral merchandise is under an installment~~
 839 ~~contract, the required trust deposit shall be a pro rata part of the principal portion of each~~
 840 ~~installment payment, such deposit only being required as payments are made by the~~
 841 ~~purchaser for such burial or funeral merchandise.~~

842 ~~(c) The trustee shall furnish yearly to the Secretary of State a financial report in a form~~
 843 ~~designated by the Secretary of State with respect to the preneed trust or escrow account.~~

844 ~~(d) Upon a finding by a court of competent jurisdiction of failure to deposit or maintain~~
 845 ~~funds in the trust account as required by this Code section or of fraud, theft, or misconduct~~
 846 ~~by a funeral establishment or a funeral director or his or her employee, representative, or~~
 847 ~~agent which has wasted or depleted such funds, the funeral establishment owners, funeral~~
 848 ~~director, or employee, representative, or agent of a funeral director or establishment may~~
 849 ~~be held jointly and severally liable for any deficiencies in the trust account.~~

850 ~~(e) Any other provision of law notwithstanding, a trust fund account established and~~
 851 ~~maintained under this Code section and the moneys contained therein shall not be deemed~~

852 ~~an asset or income for purposes of recapture of income or funds owed or for any other~~
 853 ~~purpose.~~

854 ~~(f) Nothing contained herein shall preclude a licensed funeral director in full and~~
 855 ~~continuous charge from maintaining an escrow account with aggregate escrow funds for~~
 856 ~~100 percent of any preneed contract amount for purposes of passing through funds within~~
 857 ~~60 days to a trust fund account or payment of a policy of insurance for preneed services.~~

858 ~~10-14-8~~ 10-14-9.

859 (a) The Secretary of State, by order, may prohibit a person who is an employee, officer,
 860 independent contractor, or other agent directly involved in the sale of burial rights, burial
 861 ~~or funeral~~ merchandise, or burial ~~or funeral~~ services from employment or other association
 862 with a registrant under this chapter if the Secretary of State finds that such is in the public
 863 interest and that said person:

864 (1) Has willfully made or caused to be made, in any documents filed with the Secretary
 865 of State under this chapter, or in any hearings conducted by the Secretary of State, any
 866 statement which, at the time and in the light of the circumstances under which it was
 867 made, was false or misleading with respect to any material fact, or has willfully omitted
 868 to state in any application any material fact which is required to be stated therein or
 869 necessary in order to make the statements made, in light of the circumstances under
 870 which they were made, not misleading;

871 (2) Has willfully violated or willfully failed to comply with any provision of this chapter
 872 or a predecessor law or any regulation or order promulgated or issued under this chapter
 873 or any predecessor law;

874 (3) Has been adjudicated, civilly or criminally, to have committed fraud or to have
 875 violated any law of any state involving fair trade or business practices, has been
 876 convicted of a misdemeanor of which fraud is an essential element or which involves any
 877 aspect of the ~~funeral~~ or cemetery business, or has been convicted of a felony;

878 (4) Has engaged in any unethical or dishonest practices in the ~~funeral~~ or cemetery
 879 business; or

880 (5) Is permanently or temporarily enjoined, suspended, or barred by any court of
 881 competent jurisdiction or by any state or other jurisdiction from engaging in or continuing
 882 any conduct or practice involving any aspect of the ~~funeral~~ or cemetery business.

883 (b) Where the Secretary of State finds that there are grounds for the prohibition from
 884 employment provided in this Code section, he or she may issue an order prohibiting an
 885 employee, officer, independent contractor, or other agent directly or indirectly involved in
 886 cemetery or preneed sales or any person occupying a similar status or performing similar
 887 functions from employment with a registered cemetery or preneed dealer. Such an order

888 shall not be effective until notice and opportunity for hearing are provided in accordance
 889 with Code Section ~~10-14-23~~ 10-14-24 and until the Secretary of State shall issue a written
 890 order in accordance with Code Section ~~10-14-23~~ 10-14-24; but the Secretary of State may,
 891 if he or she finds that the public safety or welfare requires emergency action, immediately
 892 issue an order prohibiting such person from such employment. Such an order of immediate
 893 prohibition will expire automatically if the Secretary of State fails to afford notice and
 894 opportunity for hearing pursuant to Code Section ~~10-14-23~~ 10-14-24.

895 ~~10-14-9~~ 10-14-10.

896 (a) A registration application may be amended by filing with the Secretary of State an
 897 amended application signed by the persons required to sign the original application under
 898 Code Section ~~10-14-4~~ or 10-14-5 or 10-14-6.

899 (b) Every applicant registered pursuant to Code Section ~~10-14-4~~ or 10-14-5 or 10-14-6
 900 shall agree to deliver in ~~Georgia~~ this state, on demand of the Secretary of State, all records
 901 and documents concerning funds, accounts, transactions, and activities of said applicant or
 902 said applicant shall agree to pay the expenses incurred in sending an auditor approved by
 903 the Secretary of State to wherever such records and documents are located for the purpose
 904 of conducting an audit pursuant to the provisions of this chapter.

905 (c)(1) When any cemetery or preneed dealer registered under Code Section ~~10-14-4~~
 906 10-14-5 is sold or the ownership is otherwise transferred, or a controlling interest is sold
 907 or transferred, the vendor or the transferor of such cemetery, preneed dealer, or interest
 908 shall remain liable for any funds that should have been deposited prior to the date of such
 909 sale or transfer in the perpetual care trust fund or the preneed escrow account, or both.

910 ~~(1)~~(2) Prior to such sale or transfer, the vendor or transferor shall notify the Secretary of
 911 State of the proposed transfer and submit to the Secretary of State any document or
 912 record the Secretary of State may require in order to demonstrate that said vendor or
 913 transferor is not indebted to the perpetual care trust fund or the preneed escrow account,
 914 or both. After the transfer of ownership or control and the presentation of proof of
 915 currency of the perpetual care trust fund or the preneed escrow account, or both, by the
 916 vendor or transferor, the Secretary of State may require the presentation of proof of the
 917 continued current status of the perpetual care trust fund or the preneed escrow account,
 918 or both, by the vendee or transferee. The Secretary of State is authorized to recover from
 919 such vendor, transferor, vendee, or transferee, for the benefit of the perpetual care trust
 920 fund or the preneed escrow account, or both, all sums which the vendor, transferor,
 921 vendee, or transferee has not properly accounted for and paid into the trust fund.

922 ~~(2)~~(3) When the vendee or transferee has complied with the provisions of this subsection,
 923 he or she shall submit to the Secretary of State an application for registration and

924 appropriate fees pursuant to Code Section ~~10-14-4~~ 10-14-5. The Secretary of State shall
 925 then issue a certificate of registration to said vendee or transferee.

926 ~~10-14-10~~ 10-14-11.

927 (a) Except as otherwise provided in subsections (b) and (c) of this Code section, every
 928 cemetery initially registered according to the provisions of this chapter on or after July 1,
 929 1998, shall consist of not less than ten acres of land.

930 (b) The following cemeteries shall not be subject to the requirement of subsection (a) of
 931 this Code section:

932 (1) All cemeteries registered according to this chapter prior to August 1, 1986; or

933 (2) Cemeteries initially registered on or after August 1, 1986, but before July 1, 1998,
 934 which shall consist of not less than 25 acres of land, except for cemeteries subject to a
 935 provision of previous law, which allowed cemeteries consisting of not less than ten acres
 936 of land dedicated solely for burial purposes and located in counties having a population
 937 of less than 10,000 according to the United States decennial census of 1990 or any future
 938 such census.

939 (c) The Secretary of State may provide by rule or regulation for a smaller minimum size
 940 for a cemetery which consists solely of one or more columbaria.

941 ~~10-14-11~~ 10-14-12.

942 (a) The Secretary of State may issue a stop order denying effectiveness to, or suspending
 943 or revoking the effectiveness of, any registration and shall give notice of such issuance
 944 pursuant to Code Section ~~10-14-23~~ 10-14-24 if he or she finds that the order is in the public
 945 interest and that:

946 (1) The registration as of its effective date, or as of any earlier date in the case of an
 947 order denying effectiveness, contains an untrue statement of a material fact or omits to
 948 state a material fact required to be stated therein or necessary to make the statements
 949 therein not misleading;

950 (2) The applicant has failed to file financial reports required by subsection ~~(h)~~ (g) of
 951 Code Section ~~10-14-12~~ 10-14-13;

952 (3) The applicant has failed to pay the filing fees required by Code Section ~~10-4-4~~
 953 10-14-5;

954 (4) The person or entity registered or sought to be registered or the individual owner,
 955 corporate owner, or person who owns a controlling interest of the corporate owner has
 956 been adjudicated, civilly or criminally, to have committed fraud or to have violated any
 957 law of any state involving fair trade or business practices, has been convicted of a

958 misdemeanor of which fraud is an essential element or which involves any aspect of the
 959 funeral or cemetery business, or has been convicted of a felony;

960 (5) The trustee for the perpetual care trust fund or the escrow agent for the preneed
 961 escrow account has failed to file financial reports required by subsection (h) of Code
 962 Section ~~10-14-6~~ 10-14-7 or subsection (g) of Code Section 10-14-29;

963 (6) The person or entity registered or seeking to be registered has become insolvent or
 964 has filed a voluntary petition for protection from creditors; or

965 (7) Any provision of this chapter or any rule, order, or condition lawfully imposed under
 966 this chapter has been willfully violated by:

967 (A) The person filing the registration application;

968 (B) The registrant's individual owner, corporate owner, or person who owns a
 969 controlling interest of the corporate owner; or

970 (C) The trustee or escrow agent of a trust fund or escrow account established and
 971 maintained pursuant to the provisions of this chapter.

972 (b) The Secretary of State may deny registration or refuse to grant renewal of registration
 973 if he or she finds that such refusal or denial is in the public interest and that:

974 (1) The registration application does not contain a current list of preneed sales agents and
 975 accompanying information as required by Code Section ~~10-14-4~~ 10-14-5;

976 (2) The applicant has not paid filing fees or renewal fees as required by Code Section
 977 ~~10-14-4~~ 10-14-5; or

978 (3) The applicant has not filed the financial reports required by Code Section ~~10-14-4~~
 979 10-14-5 or subsection ~~(h)~~ (g) of Code Section ~~10-14-12~~ 10-14-13.

980 (c) In addition to the actions authorized in subsections (a) and (b) of this Code section, the
 981 Secretary of State shall be authorized to impose a penalty fee not to exceed \$500.00 for the
 982 late filing of an application for a renewal registration or late filing of financial reports
 983 required by this chapter, or both. However, the penalty fee or fees imposed for the late
 984 filing of an application for renewal of registration or financial reports may be waived by
 985 the Secretary of State upon a showing to the Secretary of ~~the~~ State that such late filing was
 986 due to circumstances beyond the control of the applicant or registrant despite the exercise
 987 by the applicant or registrant of due diligence in the timely filing of the application or
 988 report.

989 (d) The Secretary of State may by order summarily postpone or suspend the effectiveness
 990 of the registration or refuse to register any applicant pending final determination of any
 991 proceeding under this Code section. Upon the entry of the order, the Secretary of State
 992 shall promptly notify the applicant or registrant of the order and the reasons for the order
 993 and that, within 15 days after the receipt of a written request, the matter will be heard. If
 994 no hearing is requested and none is ordered by the Secretary of State, the order will remain

995 in effect until it is modified or vacated by the Secretary of State. If a hearing is requested
 996 or ordered, the Secretary of State, after notice of an opportunity for hearing to the persons
 997 affected, may modify or vacate the order or extend it until final determination.

998 (e) The Secretary of State may vacate or modify a stop order if he or she finds that the
 999 conditions which prompted its entry have changed or that it is otherwise in the public
 1000 interest to do so.

1001 (f) No stop order issued under any part of this Code section, except the first sentence of
 1002 subsection (d) of this Code section, shall become effective until and unless the Secretary
 1003 of State has complied with the provisions of Code Section ~~10-14-23~~ 10-14-24.

1004 ~~10-14-12~~ 10-14-13.

1005 (a) Each registrant under paragraph (1) or (2) of subsection (b), or both, of Code Section
 1006 ~~10-14-4~~ 10-14-5 shall establish and maintain a separate and distinct account for the
 1007 perpetual care trust fund for each cemetery and for the preneed escrow account. There
 1008 shall be no commingling, codeposits, or transfers of funds between the accounts, except
 1009 pursuant to court order and with the knowledge and consent of the Secretary of State.

1010 (b) Each registrant shall keep and maintain separate books, records, accounts, and
 1011 documents regarding the transaction of its business. The books, records, accounts, and
 1012 documents related to the keeping of funds pursuant to the provisions of this chapter and the
 1013 rules and regulations promulgated under this chapter shall be kept and maintained by the
 1014 registrant separately from the other books, records, accounts, and documents related to the
 1015 transaction of business.

1016 (c) A cemetery owner or an officer or director of a cemetery company may be a trustee of
 1017 the perpetual care trust fund of a cemetery which the individual or cemetery company owns
 1018 upon approval of the Secretary of State.

1019 (d) The Secretary of State shall have the authority to prescribe or approve the form of the
 1020 perpetual care trust agreement and shall have the authority to approve or disapprove any
 1021 amendments to said trust agreement as of July 1, 1983.

1022 (e) The Secretary of State shall have the authority to prescribe or approve the form of the
 1023 preneed escrow account agreement and shall have the authority to approve or disapprove
 1024 any amendments to said escrow account agreement as of July 1, 1983.

1025 (f) A trustee or escrow agent of a registrant may be removed pursuant to the provisions of
 1026 Code Section ~~10-14-19~~ 10-14-20 or by other means provided by the laws of this state.

1027 (g) Each perpetual care cemetery and preneed dealer shall file a report concerning the
 1028 perpetual care trust and the preneed escrow account annually with the Secretary of State,
 1029 provided that, after notice and a hearing, the Secretary of State may order more frequent
 1030 reports in the event any such report is not filed in a timely manner or if the report filed

1031 contains errors and deficiencies. The report shall be on a form prescribed by the Secretary
1032 of State.

1033 ~~10-14-13~~ 10-14-14.

1034 For the purposes of venue for any civil or criminal action under this chapter, any violation
1035 of this chapter or of any rule, regulation, or order promulgated under this chapter shall be
1036 considered to have been committed in any county in which any act was performed in
1037 furtherance of the transaction which violated this chapter, in the county of any violator's
1038 principal place of business in this state, in the county of the cemetery's or preneed dealer's
1039 or burial ~~or funeral~~ merchandise dealer's location or residence in this state, and in any
1040 county in which any violator had control or possession of any proceeds of said violation
1041 or of any books, records, documents, or other material or objects which were used in
1042 furtherance of said violation.

1043 ~~10-14-14~~ 10-14-15.

1044 (a) The administration of the provisions of this chapter shall be vested in the Secretary of
1045 State.

1046 (b) The Secretary of State shall keep a record of all proceedings related to his or her duties
1047 under this chapter and shall keep records in which shall be entered the names of all
1048 cemeteries, preneed dealers, preneed sales agents, and burial ~~or funeral~~ merchandise
1049 dealers to whom certificates of registration are issued, which records shall be open at all
1050 times for public inspection.

1051 (c) The Secretary of State shall have the authority to administer oaths in, and to prescribe
1052 forms for, all matters arising under this chapter.

1053 (d) The Secretary of State shall have authority to employ examiners, clerks and
1054 stenographers, and other employees as the administration of this law may require. The
1055 Secretary of State shall also have authority to appoint and employ investigators who shall
1056 have, in any case in which there is a reason to believe a violation of this chapter has
1057 occurred or is about to occur, the right and power to serve subpoenas and to swear out and
1058 execute search warrants and arrest warrants.

1059 (e) The Secretary of State shall have the power to make such rules and regulations from
1060 time to time as he or she may deem necessary and proper for the enforcement of this
1061 chapter including, without limitation, rules regarding the solicitation of burial ~~or funeral~~
1062 rights, merchandise, or services. The Secretary of State shall regulate such solicitation to
1063 protect the public from solicitation which is intimidating, overreaching, vexatious,
1064 fraudulent, or misleading; which utilizes undue influence; or which takes undue advantage

1065 of a person's ignorance or emotional vulnerability. Such rules and regulations shall be
1066 adopted, promulgated, and contested as provided in Chapter 13 of Title 50.

1067 ~~10-14-15~~ 10-14-16.

1068 (a) The Secretary of State, at his or her discretion:

1069 (1) May make such public or private investigations or examinations inside or outside this
1070 state as he or she deems necessary to determine whether any person has violated or is
1071 about to violate any provision of this chapter or any rule, regulation, or order under this
1072 chapter or to aid in the enforcement of this chapter or in the prescribing of rules and
1073 regulations under this chapter; and

1074 (2) May require or permit any person to file a statement in writing, under oath or
1075 otherwise as the Secretary of State determines, as to all the facts and circumstances
1076 concerning the matter to be investigated.

1077 (b) For the purpose of conducting any investigation as provided in this Code section, the
1078 Secretary of State shall have the power to administer oaths, to call any party to testify under
1079 oath at such investigations, to require the attendance of witnesses and the production of
1080 books, records, and papers, and to take the depositions of witnesses; and, for such purposes,
1081 the Secretary of State is authorized to issue a subpoena for any witness or a subpoena for
1082 the production of documentary evidence to compel the production of any books, records,
1083 or papers. Said subpoenas may be served by certified mail or statutory overnight delivery,
1084 return receipt requested, to the addressee's business mailing address or by investigators
1085 appointed by the Secretary of State or shall be directed for service to the sheriff of the
1086 county where such witness resides or is found or where such person in custody of any
1087 books, records, or papers resides or is found. The fees and mileage of the sheriff, witness,
1088 or person shall be paid from the funds in the state treasury for the use of the Secretary of
1089 State in the same manner that other expenses of the Secretary of State are paid.

1090 (c) In case of refusal to obey a subpoena issued under any Code section of this chapter to
1091 any person, a superior court of appropriate jurisdiction, upon application by the Secretary
1092 of State, may issue to the person an order requiring him or her to appear before the court
1093 to show cause why he or she should not be held in contempt for refusal to obey the
1094 subpoena. Failure to obey a subpoena may be punished by the court as contempt of court.

1095 (d) The Secretary of State is authorized to hold investigative hearings with respect to any
1096 matter under this chapter. A hearing as provided for in this Code section may be conducted
1097 by any person designated by the Secretary of State for that purpose. A transcript of the
1098 testimony and evidence resulting from such hearing may, but need not, be transcribed by
1099 the Secretary of State. A report of the investigative hearing shall be included in the
1100 investigative report prepared for the Secretary of State. Any recommendations of the

1101 designated representative of the Secretary of State shall be advisory only and shall not have
1102 the effect of an order of the Secretary of State.

1103 (e) The Secretary of State shall have the authority to inspect and review or cause to be
1104 reviewed the books of each registrant under this chapter. Said inspection or review may
1105 be conducted by the Secretary of State as frequently as the Secretary of State may deem
1106 appropriate.

1107 ~~10-14-16~~ 10-14-17.

1108 (a) The owner of every cemetery may make, adopt, and enforce rules and regulations for
1109 the use, care, control, management, restriction, and protection of such cemetery and of all
1110 parts and subdivisions thereof; for restricting, limiting, and regulating the use of all
1111 property within such cemetery; for regulating and preventing the introduction and care of
1112 plants or shrubs within such grounds; for regulating the conduct of persons and preventing
1113 improper assemblages therein; and for all other purposes deemed necessary by the owner
1114 of the cemetery for the proper conduct of the business of the cemetery and the protection
1115 of safeguarding the premises and the principles, plans, and ideas on which the cemetery
1116 was organized. From time to time, the owner may amend, add to, revise, change, modify,
1117 or abolish such rules and regulations. Such rules and regulations shall be plainly printed
1118 or typewritten, posted conspicuously, and maintained, subject to inspection and copy, at
1119 the usual place for transacting the regular business of the cemetery; provided, however, that
1120 no cemetery to which the provisions of this chapter are applicable shall have the power to
1121 adopt any rule or regulation in conflict with any of the provisions of this chapter or in
1122 derogation of the contract rights of lot owners or owners of burial rights. Upon request, the
1123 registrant shall provide a copy of said rules and regulations to any person who requests it.

1124 (b) The owner of every cemetery shall have the further right to establish reasonable rules
1125 and regulations regarding the type material, design, composition, finish, and specifications
1126 of any and all merchandise to be used or installed in the cemetery. Subject to the
1127 provisions of this Code section and rules of the Secretary of State, reasonable rules may
1128 further be adopted regarding the installing by the cemetery or others of all merchandise to
1129 be installed in the cemetery. Such rules and regulations shall be posted conspicuously and
1130 maintained, subject to inspection and copy, at the usual place for transacting the regular
1131 business of the cemetery. Upon request, the registrant shall provide a copy of said rules
1132 and regulations to any person requesting it. No cemetery owner shall have the right to
1133 prevent the use of any merchandise purchased by a lot owner or owner of a burial right, his
1134 or her representative, his or her agent, or his or her heirs or assigns from any source,
1135 provided the merchandise meets all rules and regulations.

1136 (c) All registrants shall have a full and complete schedule of all charges for grave lots,
 1137 burial rights, burial ~~or funeral~~ merchandise, and burial ~~or funeral~~ services provided by the
 1138 registrant plainly printed or typewritten, posted conspicuously, and maintained, subject to
 1139 inspection and copy, at the usual place for transacting the regular business of the cemetery.
 1140 Upon request, the registrant shall provide a copy of said schedule of charges to any person
 1141 requesting it.

1142 ~~10-14-17~~ 10-14-18.

1143 (a) It shall be unlawful for any person:

1144 (1) To sell or offer to sell any burial rights, burial ~~or funeral~~ services, or burial ~~or funeral~~
 1145 merchandise by means of any oral or written untrue statement of a material fact or any
 1146 omission to state a material fact necessary in order to make the statements made, in the
 1147 light of the circumstances under which they are made, not misleading, the buyer not
 1148 knowing of the untruth or omission, if such person shall not sustain the burden of proof
 1149 that he or she did not know, and in the exercise of reasonable care could not have known,
 1150 of the untruth or omission;

1151 (2) To sell or offer to sell any; burial rights, burial ~~or funeral~~ services, or burial ~~or funeral~~
 1152 merchandise in violation of any provision of this chapter or rule, regulation, or order
 1153 promulgated or issued by the Secretary of State under any provision of this chapter;

1154 (3) Except as otherwise provided in paragraph (4) of this subsection, in connection with
 1155 the sale of preneed merchandise or services requiring funds to be deposited into a preneed
 1156 escrow account, to fail to refund, within three business days of the request of the
 1157 purchaser or the purchaser's heirs or assigns, the sales prices plus applicable interest as
 1158 determined according to rules promulgated by the Secretary of State, provided that such
 1159 request is made prior to the earlier of:

1160 (A) The delivery of the merchandise or services; or

1161 (B) The death of the person for whose interment or inurnment the merchandise or
 1162 services are intended to be used.

1163 Certain solicitations during a person's last illness relating to refunds shall be a violation
 1164 of Part 2 of Article 15 of Chapter 1 of this title, the 'Fair Business Practices Act of 1975,'
 1165 as set out in Code Section 10-1-393.7;

1166 (4) In connection with the sale of monuments or vaults, to fail to refund within three
 1167 business days of the request of the purchaser or the purchaser's heirs or assigns the full
 1168 sales price, without interest, provided that such request is made prior to the earlier of:

1169 (A) The delivery of the merchandise or services; or

1170 (B) The death of the person for whose interment or inurnment the monument or vault
 1171 is intended to be used.

1172 Certain solicitations during a person's last illness relating to refunds shall be a violation
 1173 of Part 2 of Article 15 of Chapter 1 of this title, the 'Fair Business Practices Act of 1975,'
 1174 as set out in Code Section 10-1-393.7;

1175 (5) To misappropriate, convert, illegally withhold, or fail to account for any trust funds,
 1176 escrow funds, or other funds established or maintained pursuant to this chapter;

1177 (6) Knowingly to cause to be made, in any document filed with the Secretary of State or
 1178 in any proceeding under this chapter, any statement which is, at the time it is made and
 1179 in the light of the circumstances under which it is made, false or misleading in any
 1180 material respect;

1181 (7) To sell, offer to sell, solicit offers to buy, or otherwise engage in the sale of funeral
 1182 services if such person is not a licensed funeral director;

1183 ~~(7.1)~~(8) To sell, offer to sell, solicit offers to buy, or otherwise engage in the sale of
 1184 burial rights or burial merchandise if such person is not registered pursuant to the
 1185 provisions of this chapter; or

1186 ~~(8)~~(9) To sell any grave space which has not been platted and pinned.

1187 (b) It shall be unlawful for any person in connection with the ownership, offer, sale, or
 1188 purchase of any burial rights, burial ~~or funeral~~ services, or burial ~~or funeral~~ merchandise,
 1189 directly or indirectly:

1190 (1) To employ any device, scheme, or artifice to defraud; or

1191 (2) To engage in any transaction, act, practice, or course of business which operates or
 1192 would operate as a fraud or deceit upon the purchaser or seller.

1193 (c) In connection with the sale or installation of merchandise, it shall be unlawful for a
 1194 cemetery company to:

1195 (1) Impose any condition upon the installation of merchandise obtained from a third
 1196 party, other than to require installation by a registrant under this chapter or as may be
 1197 otherwise permitted by the rules and regulations of the Secretary of State;

1198 (2) Charge a fee for the installation of merchandise purchased or obtained from and to
 1199 be installed by a person or firm other than the cemetery company or its agents, provided
 1200 that the cemetery owner may charge a fee not to exceed \$125.00 to reimburse the
 1201 cemetery owner for its reasonable costs incurred in assisting in the siting of a monument
 1202 on the lot on which it is to be installed, supervision and inspection of the installation to
 1203 ensure compliance with the rules and regulations of the cemetery, and any administrative
 1204 functions associated with the installation; provided, further, that any such fee is properly
 1205 disclosed and published as required by this chapter and charged regardless of whether the
 1206 installer is or is not the cemetery owner or affiliated therewith;

- 1207 (3) Refuse to mark the place on the grave where the merchandise is to be installed and
 1208 inspect the installation when completed to ensure compliance with cemetery rules and
 1209 regulations;
- 1210 (4) Require any person or firm that installs, places, or sets merchandise to pay any fee
 1211 other than any fee charged pursuant to paragraph (2) of this subsection;
- 1212 (5) Tie the purchase of any grave space or burial right to the purchase of merchandise
 1213 from or through the seller or any other designated person or corporation;
- 1214 (6) Refuse to provide care or maintenance for any portion of a grave site on which a
 1215 monument has been placed, provided that installation has been in accordance with lawful
 1216 rules and regulations of the cemetery;
- 1217 (7) Attempt to waive liability with respect to damage caused by cemetery employees or
 1218 agents to merchandise after installation, where merchandise or installation service is not
 1219 purchased from the cemetery company providing grave space or from or through any
 1220 other person or corporation designated by the person authorized to sell grave space or the
 1221 cemetery company providing grave space; provided, however, that no cemetery company
 1222 may be held liable for the improper installation of merchandise where merchandise is not
 1223 installed by the cemetery company or its agents; or
- 1224 (8) After the promulgation of rules and regulations relating to the subject matter of this
 1225 subsection by the Secretary of State, ~~to~~ require any person who installs, places, or sets
 1226 merchandise to obtain any form of insurance, bond, or surety or make any form of pledge,
 1227 deposit, or monetary guarantee as a condition of entry or access to cemetery property or
 1228 the installation of merchandise thereon, other than as may be in accordance with said
 1229 rules and regulations.
- 1230 (d) Other than fees for the processing and for the sale of burial rights, burial ~~or funeral~~
 1231 merchandise, and burial ~~or funeral~~ services, no other fee may be directly or indirectly
 1232 charged, contracted for, or received by a cemetery company as a condition for a customer
 1233 to use any burial right, burial ~~or funeral~~ merchandise, or burial ~~or funeral~~ service, except
 1234 for:
- 1235 (1) Charges paid for opening and closing a grave and vault installation;
- 1236 (2) Charges paid for transferring burial rights from one purchaser to another; however,
 1237 no such fee may exceed \$75.00 and such fee must have been disclosed in writing to the
 1238 owner at the time of the initial purchase of the burial right from the cemetery;
- 1239 (3) Charges for sales, documentary, excise, and other taxes actually and necessarily paid
 1240 to a public official, which charges must be supported in fact;
- 1241 (4) Charges for credit life and credit disability insurance, but only as requested by the
 1242 purchaser, and the premiums for which do not exceed the applicable premium chargeable
 1243 in accordance with the rates filed with the Insurance Commissioner; or

1244 (5) Charges for interest on unpaid balances in accordance with applicable law.
 1245 Nothing herein shall prohibit a cemetery company from charging a reasonable fee for
 1246 services it provides in connection with a lawful disinterment, provided such charges do not
 1247 exceed the greater of the cemetery company's normal and customary charges for interment
 1248 or the actual costs incurred by the cemetery directly attributable to such disinterment.
 1249 Nothing herein shall prohibit a cemetery from charging a reasonable fee for actual costs it
 1250 incurs due to the commencement of a funeral service at a time other than previously agreed
 1251 by the cemetery company, the funeral establishment, and the owner of the burial rights, or
 1252 his or her heirs and assigns, provided that such charges are calculated in a manner which
 1253 is disclosed and published as required by this chapter and that such charges are directly
 1254 attributable to extra costs incurred by the cemetery company due to such late
 1255 commencement.

1256 (e) In connection with the sale of burial rights, burial ~~or funeral~~ merchandise, or burial ~~or~~
 1257 ~~funeral~~ services, it shall be unlawful for any person to fail to comply with the provisions
 1258 of Article 1 of Chapter 1 of this title, 'The Georgia Retail Installment and Home
 1259 Solicitation Sales Act' or Part 2 of Article 15 of Chapter 1 of this title, the 'Fair Business
 1260 Practices Act of 1975.' For the purposes of this subsection, burial rights, burial ~~or funeral~~
 1261 services, and burial ~~or funeral~~ merchandise shall constitute goods as that term is used in
 1262 said article and said part.

1263 (f) In connection with the installation of a monument:

1264 (1) It shall be unlawful for any person installing said monument to fail to comply with
 1265 the lawful rules and regulations of the cemetery regarding monument installation,
 1266 provided that said rules and regulations are provided in writing to the installer prior to the
 1267 installation. In the event such installation is not in conformity with said rules and
 1268 regulations, the installer shall be liable to the cemetery for the actual cost of correcting
 1269 such installation so it will be in conformity, provided that:

1270 (A) The cemetery has notified the installer by certified mail or statutory overnight
 1271 delivery, return receipt requested, of the reasons for the nonconformity not later than
 1272 one year after the date of the installation; and

1273 (B) The installer, provided it is registered under this chapter, shall have had not less
 1274 than 30 days from its receipt of such notice to correct such nonconformity; and

1275 (2) An installer of a monument shall be liable to the cemetery, to its customers, and to
 1276 third persons for damages to their respective property and for other damages arising due
 1277 to the negligence or intentional act of such installer, which liability may not be waived
 1278 by contract.

1279 (g) No program offering free burial rights may be conditioned on any requirement to
 1280 purchase additional burial rights, burial or funeral merchandise, or burial or funeral
 1281 services.

1282 (h) The contract rights of any purchaser of preneed merchandise shall be freely
 1283 transferable without fee except as provided in this chapter.

1284 (i) It shall be unlawful for any owner or operator of a perpetual care cemetery to fail to
 1285 provide care and maintenance for the cemetery.

1286 (j) The fees set forth in this Code section shall be annually adjusted to the rate of change
 1287 in the Consumer Price Index as reported by the Bureau of Labor Statistics of the United
 1288 States Department of Labor. The Secretary of State shall adopt such adjustments to the
 1289 amount of said fees by rule.

1290 ~~10-14-18~~ 10-14-19.

1291 (a) A registrant offering to provide burial rights, burial ~~or funeral~~ merchandise, or burial
 1292 ~~or funeral~~ services to the public shall:

1293 (1) Provide by telephone, upon request, accurate information regarding the retail prices
 1294 of burial ~~or funeral~~ merchandise and services offered for sale by the registrant;

1295 (2) Fully disclose all regularly offered services and merchandise prior to the selection of
 1296 burial rights, burial ~~or funeral~~ services, or burial ~~or funeral~~ merchandise. The full
 1297 disclosure required shall identify the prices of all burial ~~or~~ rights, burial ~~or funeral~~
 1298 services, and burial ~~or funeral~~ merchandise provided by the registrant;

1299 (3) Not make any false or misleading statements of the legal requirement as to the
 1300 necessity of a casket or outer burial container;

1301 (4) Provide a good faith estimate of all fees and costs the customer will incur to use any
 1302 burial rights, merchandise, or services purchased;

1303 (5) Provide to the customer a current copy of the rules and regulations of the registrant;

1304 (6) Provide the registrant's policy on cancellation and refunds to each customer;

1305 (7) Provide refunds if burial ~~or funeral~~ merchandise is not delivered as represented; and

1306 (8) Provide the customer, upon the purchase of any burial right or burial ~~or funeral~~
 1307 merchandise or service, a written contract, the form of which has been filed with the
 1308 Secretary of State.

1309 (b) In a manner established by rule of the Secretary of State, the written contract shall
 1310 provide on the signature page of the contract, clearly and conspicuously in boldface
 1311 ten-point type or larger, the following:

1312 (1) The words 'purchase price' together with the sum of all items set out in the contract
 1313 in accordance with subsection (d) of this Code section;

1314 (2) The amount to be placed in trust;

- 1315 (3) Either:
- 1316 (A) A statement that no further expenses will be incurred at the time of need; or
- 1317 (B) A statement that additional expenses will be incurred at the time of need, the
- 1318 registrant's current price for each such expense, and a statement that such prices may
- 1319 be expected to increase in the future; and
- 1320 (4) The telephone number designated by the Secretary of State for questions and
- 1321 complaints.
- 1322 (c) The written contract shall be completed prior to the signing of the contract by the
- 1323 customer and a copy of the contract shall be provided to the customer. As used in this
- 1324 subsection, the term 'signing' includes any manual, facsimile, conformed, or electronic
- 1325 signature, and the term 'electronic signature' means an electronic symbol or process
- 1326 attached to or logically associated with a document and executed or adopted by a person
- 1327 with the intent to sign the document.
- 1328 (d) The written contract shall provide an itemization of the amounts charged for all burial
- 1329 rights, burial ~~or funeral~~ services, burial ~~or funeral~~ merchandise, cash advances, and fees and
- 1330 other charges, which itemization shall be clearly and conspicuously segregated from
- 1331 everything else on the written contract.
- 1332 (e) The written contract shall contain a description of the burial ~~or funeral~~ merchandise
- 1333 covered by the contract to include, when applicable, size, materials from which the burial
- 1334 ~~or funeral~~ merchandise is made, and other relevant specifications as may be required by the
- 1335 Secretary of State.
- 1336 (f) The written contract shall disclose ~~the location at which funeral services are to be~~
- 1337 ~~provided~~ and the space number of each lot or grave space.
- 1338 ~~10-14-19~~ 10-14-20.
- 1339 (a) Whenever it may appear to the Secretary of State that any person has engaged in, or
- 1340 is engaging in, or is about to engage in any act or practice or transaction which is
- 1341 prohibited by this chapter or by any rule, regulation, or order of the Secretary of State
- 1342 promulgated or issued pursuant to any Code section of this chapter or which is declared to
- 1343 be unlawful under this chapter, the Secretary of State may, at his or her discretion, act
- 1344 under any or all of the following paragraphs:
- 1345 (1) Issue an order, if he or she deems it to be appropriate in the public interest or for the
- 1346 protection of consumers, prohibiting such person from continuing such act, practice, or
- 1347 transaction, subject to the right of such person to a hearing as provided in Code Section
- 1348 ~~10-14-23~~ 10-14-24;
- 1349 (2) Apply to any superior court of competent jurisdiction in this state for an injunction
- 1350 restraining such person and such person's agents, employees, partners, officers, and

1351 directors from continuing such act, practice, or transaction or engaging therein or doing
 1352 any acts in furtherance thereof, and for appointment of a receiver or an auditor and such
 1353 other and further relief as the facts may warrant; or

1354 (3) Transmit such evidence as may be available concerning such act, practice, or
 1355 transaction to any district attorney or to the Attorney General, who may, at his or her
 1356 individual discretion, institute the necessary criminal proceedings.

1357 (b) In any proceedings for an injunction, the Secretary of State may apply for and be
 1358 entitled to have issued the court's subpoena requiring the appearance forthwith of any
 1359 defendant and its agents, employees, partners, officers, or directors, and the production of
 1360 such documents, books, and records as may appear necessary for the hearing upon the
 1361 petition for an injunction. Upon proof of any of the offenses described in this Code
 1362 section, the court may grant such injunction and appoint a receiver or an auditor and issue
 1363 such other orders for the protection of the public as the facts may warrant.

1364 (c) In any criminal proceeding, either the district attorney or the Attorney General, or both,
 1365 may apply for and be entitled to have issued the court's subpoena requiring the appearance
 1366 forthwith of any defendant or its agents, employees, partners, officers, or directors and the
 1367 production of such documents, books, and records as may appear necessary for the
 1368 prosecution of such criminal proceedings.

1369 (d) In any civil proceeding brought under this Code section, if the Secretary of State shall
 1370 establish that a perpetual care trust fund or preneed escrow account has not been
 1371 established and maintained as required, the assets of the cemetery, cemetery company, or
 1372 preneed dealer may be seized and sold by the state under orders of the court to the extent
 1373 necessary to provide said perpetual care trust fund or preneed escrow account and set up
 1374 the same. In addition, where the registration has been revoked, the whole company
 1375 property may be ordered sold after the perpetual care trust fund and preneed escrow
 1376 account have been established so that the purchaser of the cemetery may continue to
 1377 operate the same and maintain it under the terms of this chapter.

1378 (e) The Secretary of State shall have the authority to petition a court of competent
 1379 jurisdiction to remove a trustee or escrow agent for violation of the provisions of this
 1380 chapter, the rules and regulations promulgated under this chapter, or for other unlawful acts
 1381 and practices.

1382 (f) In addition to any other penalties that may be imposed, any person willfully violating
 1383 any provisions of Code Section ~~10-14-17~~ or 10-14-18 or 10-14-19 or of Code Section
 1384 ~~10-14-11~~ 10-14-12 or any rule, regulation, or order of the Secretary of State made pursuant
 1385 to Code Section ~~10-14-17~~, 10-14-18, 10-14-19, or ~~10-14-11~~ 10-14-12 shall be subject to
 1386 a civil penalty not to exceed \$10,000.00 for a single violation and not exceeding
 1387 \$100,000.00 for multiple violations in a single proceeding or a series of related

1388 proceedings. The Secretary of State shall be authorized in his or her discretion to decline
 1389 to impose a penalty or to impose any lesser penalty that he or she may deem to be sufficient
 1390 and appropriate in any particular case. The amount of such penalty may be collected by
 1391 the Secretary of State in the same manner that money judgments are now enforced in the
 1392 superior courts of this state, except that the order or finding of the Secretary of State as to
 1393 such penalty may be appealed according to the provisions of Code Section ~~10-14-22~~
 1394 10-14-23.

1395 ~~10-14-20~~ 10-14-21.

1396 (a) Except as otherwise provided in subsection (b) of this Code section, any person who
 1397 shall willfully violate any provision of this chapter shall be guilty of a misdemeanor and,
 1398 upon conviction thereof, shall be subject to a fine of not more than \$1,000.00 or
 1399 imprisonment not to exceed 12 months, or both.

1400 (b) Any person who shall willfully violate Code Section ~~10-14-17~~, Code Section 10-14-18,
 1401 Code Section 10-14-19, or any provision of this chapter regarding the establishment,
 1402 maintenance, or reporting of any trust, reserve, or escrow funds mandated by this chapter
 1403 shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not
 1404 more than \$10,000.00 or imprisonment for not less than one and not more than five years,
 1405 or both.

1406 (c) Nothing in this chapter shall limit any statutory or common-law right of the state to
 1407 punish any person for violation of any provision of any law.

1408 ~~10-14-21~~ 10-14-22.

1409 (a) Any person who violates any provision of subsection (a) of Code Section ~~10-14-17~~
 1410 10-14-18 shall be liable to the person buying such burial lot, burial right, burial
 1411 merchandise, or burial service; and such buyer may bring action in any court of competent
 1412 jurisdiction to recover the consideration paid in cash for the burial lot, burial right, burial
 1413 merchandise, or burial service together with interest at the legal rate from the date of such
 1414 payment, and reasonable attorney's fees and costs.

1415 (b) In addition to the remedy set forth in subsection (a) of this Code section, a purchaser
 1416 may apply to a court of competent jurisdiction in this state for an order authorizing the
 1417 recovery of the preneed escrow deposit if a registrant fails to deliver burial merchandise
 1418 or perform preneed burial services in accordance with the terms of the preneed sales
 1419 contract.

1420 (c) No person may bring action under this Code section more than two years from the date
 1421 of the scheduled completion of the contract for sale or from the date of the sale if there is
 1422 no contract for sale.

1423 (d) Every cause of action under this chapter survives the death of any person who might
1424 have been a plaintiff or defendant.

1425 (e) Nothing in this chapter shall limit any statutory or common-law right of any person in
1426 any court for any act involving the sale of a burial lot, burial right, burial merchandise, or
1427 burial services.

1428 ~~10-14-22~~ 10-14-23.

1429 (a) An appeal may be taken from any order of the Secretary of State resulting from a
1430 hearing held in accordance with the provisions of Code Section ~~10-14-23~~ 10-14-24 by any
1431 person adversely affected thereby to the Superior Court of Fulton County, Georgia, by
1432 serving on the Secretary of State, within 20 days after the date of entry of such order, a
1433 written notice of appeal, signed by the appellant, stating:

1434 (1) The order from which the appeal is taken;

1435 (2) The ground upon which a reversal or modification of such order is sought; and

1436 (3) A demand for a certified transcript of the record of such order.

1437 (b) Upon receipt of such notice of appeal, the Secretary of State shall, within ten days
1438 thereafter, make, certify, and deliver to the appellant a transcript of the record of the order
1439 from which the appeal is taken, provided that the appellant shall pay the reasonable costs
1440 of such transcript. The appellant shall, within five days after receipt of such transcript, file
1441 such transcript and a copy of the notice of appeal with the clerk of the court. Said notice
1442 of appeal and transcript of the record shall constitute appellant's complaint. Said complaint
1443 shall thereupon be entered on the trial calendar of the court in accordance with the court's
1444 normal procedures.

1445 (c) If the order of the Secretary of State shall be reversed, the court shall by its mandate
1446 specifically direct the Secretary of State as to his or her further action in the matter,
1447 including the making and entering of any order or orders in connection therewith and the
1448 conditions, limitations, or restrictions to be contained therein.

1449 ~~10-14-23~~ 10-14-24.

1450 (a) Where the Secretary of State has issued any order forbidding the sale of burial lots,
1451 burial rights, burial merchandise, or burial services under any provision of this chapter, he
1452 or she shall promptly send to the cemetery owner, cemetery company, burial or funeral
1453 merchandise dealer, or preneed dealer and to the persons who have filed such application
1454 for registration a notice of opportunity for hearing. Before entering an order refusing to
1455 register any person or entity and after the entering of any order for revocation or
1456 suspension, the Secretary of State shall promptly send to such person or entity a notice of

1457 opportunity for hearing. Hearings shall be conducted by the Secretary of State pursuant
1458 to this Code section.

1459 (b) Notices of opportunity for hearing shall be served by investigators appointed by the
1460 Secretary of State or sent by certified mail or statutory overnight delivery, return receipt
1461 requested, to the addressee's business mailing address, and such notice shall state:

1462 (1) The order which has issued or which is proposed to be issued;

1463 (2) The ground for issuing such order or proposed order; and

1464 (3) That the person to whom such notice is sent will be afforded a hearing upon request
1465 if such request is made within ten days after receipt of the notice.

1466 (c) Whenever a person requests a hearing in accordance with the provisions of this Code
1467 section, there shall immediately be set a date, time, and place for such hearing, and the
1468 person requesting such hearing shall forthwith be notified thereof. The date set for such
1469 hearing shall be within 15 days, but not earlier than five days after the request for hearing
1470 has been made, unless otherwise agreed to by the issuer of the notice and the person
1471 requesting such hearing.

1472 (d) For the purpose of conducting any hearing as provided in this Code section, the
1473 Secretary of State shall have the power to administer oaths, to call any party to testify under
1474 oath at such hearings, to require the attendance of witnesses and the production of books,
1475 records, and papers, and to take the depositions of witnesses; and for such purposes the
1476 Secretary of State is authorized, at the request of the person requesting such hearing or
1477 upon the official's own initiative, to issue a subpoena for any witnesses or a subpoena for
1478 the production of documentary evidence to compel the production of any books, records,
1479 or papers. Said subpoenas may be served by certified mail or statutory overnight delivery,
1480 return receipt requested, to the addressee's business mailing address or by investigators
1481 appointed by the Secretary of State or shall be directed for service to the sheriff of the
1482 county where such witness resides or is found or where such person in custody of any
1483 books, records, or papers resides or is found. The fees and mileage of the sheriff, witness,
1484 or person shall be paid from the funds in the state treasury for the use of the Secretary of
1485 State in the same manner that other expenses of the Secretary of State are paid.

1486 (e) At any hearing conducted under this Code section, a party or an affected person may
1487 appear in his or her own behalf or may be represented by an attorney. A stenographic
1488 record of the testimony and other evidence submitted shall be taken unless the Secretary
1489 of State and the person requesting such hearing shall agree that such a stenographic record
1490 of the testimony shall not be taken. A transcript of the proceeding shall be made available
1491 to a party upon the payment of reasonable costs. The Secretary of State shall pass upon the
1492 admissibility of such evidence, but a party may at any time make objections to such rulings
1493 thereon; and, if the Secretary of State refuses to admit evidence, the party offering the same

1494 shall make a proffer thereof and such proffer shall be made a part of the record of such
1495 hearing.

1496 (f) If the Secretary of State does not receive a request for a hearing within the prescribed
1497 time, he or she may permit an order previously entered to remain in effect or he or she may
1498 enter a proposed order. If a hearing is requested and conducted as provided in this Code
1499 section, the Secretary of State shall issue a written order which shall set forth his or her
1500 findings with respect to the matters involved and enter an order in accordance with the
1501 Secretary's findings.

1502 ~~10-14-24~~ 10-14-25.

1503 When consent to service of process is required under this chapter, such consent to service
1504 of process shall be in the form prescribed by the Secretary of State, shall be irrevocable,
1505 and shall provide that actions brought by the State of Georgia arising out of or founded
1506 upon the sale of burial lots, burial rights, burial services, or burial merchandise in violation
1507 of this chapter may be commenced in any court of competent jurisdiction with proper
1508 venue within this state by the service of process or pleadings upon the Secretary of State
1509 against the person executing such consent. Notwithstanding any provision in any other law
1510 to the contrary, service of any such process or pleadings in any such action against a person
1511 who has filed a consent to service with the Secretary of State shall, if made on the
1512 Secretary of State, be by duplicate copies, one of which shall be filed in the office of the
1513 Secretary of State and the other shall immediately be forwarded by the Secretary of State
1514 by certified mail or statutory overnight delivery to the person against whom such process
1515 or pleadings are directed at such person's latest address on file in the office of the Secretary
1516 of State.

1517 ~~10-14-25~~ 10-14-26.

1518 Any condition, stipulation, or provision binding any person acquiring any burial lot, burial
1519 right, burial merchandise, or burial services to waive:

1520 (1) Compliance with any provision of this chapter or of the rules and regulations
1521 promulgated under this chapter;

1522 (2) Any rights provided by this chapter or by the rules and regulations promulgated
1523 under this chapter; or

1524 (3) Any defenses arising under this chapter or under the rules and regulations
1525 promulgated under this chapter

1526 shall be void.

1527 ~~10-14-26~~ 10-14-27.

1528 For any action taken or any proceeding had under the provisions of this chapter or under
1529 color of the law, the Secretary of State shall be immune from liability and action to the
1530 same extent that any judge of any court of general jurisdiction in this state would be
1531 immune.

1532 ~~10-14-27~~.

1533 ~~Reserved.~~

1534 10-14-28.

1535 (a) Prior law exclusively governs all actions, prosecutions, or proceedings which are
1536 pending or may be initiated on the basis of facts or circumstances occurring before July 1,
1537 ~~2000~~ 2013, except that no civil action may be maintained to enforce any liability under
1538 prior law unless brought within any period of limitation which applied when the cause of
1539 action accrued and, in any event, no later than July 1, ~~2000~~ 2013.

1540 (b) All effective registrations under prior law, all administrative orders relating to such
1541 registrations, and all conditions imposed upon such registrations remain in effect. They
1542 shall be deemed to have been filed, entered, or imposed under this chapter but are governed
1543 by prior law.

1544 (c) Judicial review of all administrative orders as to which review proceedings have not
1545 been instituted by July 1, ~~2000~~ 2013, are governed by Code Section ~~10-14-22~~ 10-14-23,
1546 except that no review proceeding may be instituted unless the petition is filed within any
1547 period of limitation which applied to a review proceeding when the order was entered and,
1548 in any event, no later than August 1, ~~2000~~ 2013.

1549 10-14-29.

1550 (a) A cemetery company shall start construction of that section of a mausoleum or
1551 columbarium ~~in~~ for which sales, contracts for sales, reservations for sales, or agreements
1552 for sales are being made within four years after the date of the first such sale or 50 percent
1553 of the mausoleum or columbarium has been sold and the purchase price has been received,
1554 whichever occurs first. The construction shall be completed within five years after the date
1555 of the first sale made. If the units have not been completely constructed at the earlier of
1556 time of need or the time specified in this subsection, all moneys paid shall be refunded
1557 upon request, plus interest earned thereon for that portion of the moneys deposited in the
1558 preneed escrow account and an amount equal to the interest that would have been earned
1559 on that portion of the moneys that were not so deposited.

1560 (b) A cemetery company that plans to offer for sale space in a section of a mausoleum or
1561 columbarium prior to construction shall establish a preconstruction trust fund by written
1562 instrument. The preconstruction trust fund shall be administered by a corporate trustee
1563 approved by the Secretary of State and not affiliated with the cemetery company and
1564 operated in conformity with applicable provisions of Code Section ~~10-14-7~~ 10-14-8. The
1565 preconstruction trust fund shall be separate from any other trust funds that may be required
1566 by this chapter.

1567 (c) Before a sale, contract for sale, reservation for sale, or agreement for sale in a
1568 mausoleum section or columbarium may be made, the cemetery company shall compute
1569 the amount to be deposited to the preconstruction trust fund. The total amount to be
1570 deposited in the fund for each unit of the project shall be computed by dividing the cost of
1571 the project plus 10 percent of the cost, as computed by a licensed contractor, engineer, or
1572 architect, by the number of crypts or niches in the mausoleum or columbarium. When
1573 payments are received in installments, the percentage of the installment payment placed
1574 in trust must be identical to the percentage which the payment received bears to the total
1575 cost of the contract, including other burial or funeral merchandise and services purchased.
1576 Preconstruction trust fund payments shall be made within 30 days after the end of the
1577 month in which payment is received.

1578 (d) When the cemetery company delivers a completed crypt, mausoleum, columbarium,
1579 or niche acceptable to the purchaser in lieu of the crypt or niche purchased prior to
1580 construction, all sums deposited to the preconstruction trust fund for that purchaser shall
1581 be paid to the cemetery company.

1582 (e) Upon completion of the mausoleum section or columbarium, the cemetery company
1583 shall certify completion to the trustee and shall be entitled to withdraw all funds deposited
1584 to the account of such mausoleum section or columbarium.

1585 (f) If the mausoleum section or columbarium is not completed within the time limits set
1586 out in this Code section, the trustee shall contract for and cause the project to be completed
1587 and pay therefor from the trust funds deposited to the project's account, paying any balance,
1588 less cost and expenses, to the cemetery company. The cemetery company shall be liable
1589 for any difference between the amount necessary to complete construction and the amount
1590 of trust funds.

1591 (g) On or before January 31 of each year, the trustee shall file with the Secretary of State,
1592 in the form prescribed by the Secretary of State, a full and true statement as to the activities
1593 of any trust established pursuant to this Code section for the preceding calendar year.

1594 10-14-30.

1595 The Secretary of State, by rule, may adopt minimum standards for interment of human
 1596 remains, including, without limitation, standards for depth of burial, composition of vaults,
 1597 caskets, and other containers, siting and marking of burial lots, and minimum standards for
 1598 construction of mausoleums and columbaria. In addition, the Secretary of State may, by
 1599 rule, provide for the minimum standards for or prohibition of aboveground burial
 1600 containers."

1601 **SECTION 2.**

1602 Said title is further amended by adding a new chapter, relating to funeral services, as follows:

1603 "CHAPTER 14A

1604 10-14A-1.

1605 This chapter shall be known as and may be cited as the 'Georgia Funeral Services Act.'

1606 10-14A-2.

1607 (a) The legislature recognizes that purchasers of preneed funeral merchandise or funeral
 1608 services may suffer serious economic harm if purchase money is not set aside for future use
 1609 as intended by the purchaser. Therefore, it is necessary in the interest of the public welfare
 1610 to regulate preneed dealers, licensees, and registrants in this state. However, restrictions
 1611 shall be imposed only to the extent necessary to protect the public from significant or
 1612 discernible harm or damage and not in a manner which will unreasonably affect the
 1613 competitive market.

1614 (b) Subject to certain interests of society, the legislature finds that every competent adult
 1615 has the right to control the decisions relating to his or her own funeral arrangements.
 1616 Accordingly, unless otherwise stated in this chapter, it is the legislature's express intent that
 1617 nothing contained in this chapter should be construed or interpreted in any manner as to
 1618 subject preneed contract purchasers to federal income taxation under the grantor trust rules
 1619 contained in Sections 671 et seq. of the Internal Revenue Code of 1986, as amended.

1620 (c) Nothing herein is intended to prohibit or restrict the sale or purchase of life insurance
 1621 as a funding vehicle for preneed contracts under this chapter, nor to change the state of the
 1622 law prior to July 1, 2000, with respect to prohibiting or restricting the sale or purchase of
 1623 life insurance as a funding vehicle for preneed contracts under this chapter.

1624 10-14A-3.

1625 As used in this chapter, the term:

- 1626 (1) 'Affiliate' means a person who directly or indirectly owns or controls, is owned or
1627 controlled by, or is under common ownership or control with another person. Solely for
1628 purposes of this definition, the terms 'owns,' 'is owned,' and 'ownership' mean ownership
1629 of an equity interest, or the equivalent thereof, of 10 percent or more, and the term
1630 'person' means an individual, partnership, committee, association, corporation, or any
1631 other organization or group of persons.
- 1632 (2) 'Board' means the State Board of Funeral Service as described and authorized in
1633 Chapter 18 of Title 43.
- 1634 (3) 'Burial right' means the right to use a grave space, mausoleum, or columbarium for
1635 the interment, entombment, or inurnment of human remains.
- 1636 (4) 'Casket' means a container which is designed for the encasement and viewing of a
1637 dead human body.
- 1638 (5) 'Cemetery' means a place dedicated to and used, or intended to be used, for
1639 permanent interment of human remains. A cemetery may contain land or earth
1640 interments; mausoleum, a vault, crypt interments; a columbarium or other structure or
1641 place used or intended to be used for the inurnment of cremated human remains; or any
1642 combination of one or more of such structures or places. Such term shall not include
1643 governmentally owned cemeteries, fraternal cemeteries, cemeteries owned and operated
1644 by churches, synagogues, or communities or family burial plots.
- 1645 (6) 'Cremation' includes any mechanical, chemical, thermal, or other professionally
1646 accepted process whereby a deceased human being is reduced to ashes. Cremation also
1647 includes any other mechanical, chemical, thermal, or other professionally accepted
1648 process whereby human remains are pulverized, burned, re Cremated, or otherwise further
1649 reduced in size or quantity.
- 1650 (7) 'Final disposition' means the final disposal of a deceased human being whether by
1651 interment, entombment, inurnment, burial at sea, cremation, or any other means and
1652 includes, but is not limited to, any other disposition of remains for which a segregated
1653 charge is imposed.
- 1654 (8) 'Funeral director' means any person licensed in this state to practice funeral directing
1655 pursuant to the provisions of Chapter 18 of Title 43.
- 1656 (9) 'Funeral director in full and continuous charge' means a funeral director who is
1657 approved by the board to assume full responsibility for the operations of a particular
1658 funeral establishment and who shall ensure that said establishment complies with this
1659 chapter and with all rules promulgated pursuant thereto as provided in Chapter 18 of Title
1660 43.

1661 (10) 'Funeral merchandise' or 'merchandise' means caskets and all items related to
1662 caskets offered or sold by any person for use in connection with the final disposition of
1663 human remains.

1664 (11) 'Funeral service' means any service relating to the transportation, embalming,
1665 cremation, and interment of a deceased human being, as further described in Code
1666 Section 43-18-1.

1667 (12) 'Human remains' means the bodies of deceased human beings and includes the
1668 bodies in any stage of decomposition and the cremated remains.

1669 (13) 'Outer burial container' or 'vault' means an enclosure into which a casket is placed
1670 and includes, but is not limited to, containers made of concrete, steel, fiberglass, copper
1671 or other metals, polypropylene, sectional concrete enclosures, and crypts.

1672 (14) 'Person' or 'entity' means an individual, a corporation, a limited liability company,
1673 a general or limited partnership, an association, a joint-stock company, a trust, or any type
1674 of incorporated or unincorporated organization.

1675 (15) 'Preneed contract' means any arrangement or method, of which the provider of
1676 funeral merchandise or services has actual knowledge, whereby any person agrees to
1677 furnish funeral merchandise or services in the future.

1678 (16) 'Preneed dealer' means every person, other than a salesperson registered under this
1679 chapter, who engages, either for all or part of his or her time, directly or indirectly, as
1680 agent, broker, or principal in the retail business of offering, selling, or otherwise dealing
1681 in funeral services or funeral merchandise which is not attached to realty or delivered to
1682 the purchaser at the time of sale.

1683 (17) 'Preneed service' means any service which is not performed at the time of sale and
1684 which is offered or provided by any person in connection with the interment of human
1685 remains, except those services offered regarding mausoleums and the normal and
1686 customary installation charges on funeral merchandise.

1687 (18) 'Principal' means a sum set aside or escrowed exclusive of income or interest or
1688 other return thereon.

1689 (19) 'Sale' or 'sell' means and shall include every contract of sale or disposition of funeral
1690 services or funeral merchandise for value. The term 'offer to sell,' 'offer for sale,' or 'offer'
1691 shall include any attempt or offer to dispose of, or solicitation of an offer to buy, funeral
1692 services or funeral merchandise for value. This definition shall not include wholesalers
1693 of funeral merchandise.

1694 (20) 'Salesperson' or 'sales agent' means an individual employed or appointed or
1695 authorized by a preneed dealer to sell funeral merchandise or funeral services, or any
1696 other right or thing of value in connection with the final disposition of human remains.

1697 (21) 'Secretary of State' means the Secretary of State of the State of Georgia.

1698 (22) 'Solicitation' means any communication in the context of an offer or sale of funeral
 1699 merchandise or funeral services which directly or implicitly requests a response from the
 1700 recipient.

1701 10-14A-4.

1702 The board shall have all administrative powers and other powers necessary to carry out the
 1703 provisions of this chapter, including the authority to promulgate rules and regulations, and
 1704 the Secretary of State shall delegate to the board all such duties otherwise entrusted to the
 1705 Secretary of State; provided, however, that the Secretary of State shall have sole authority
 1706 over matters relating to the regulation of funds, trust funds, and escrow accounts and
 1707 accounting and investigations concerning such matters but may delegate authority to the
 1708 board for the review of such investigations and the determination as to disciplinary matters,
 1709 necessary sanctions, and the enforcement of such decisions and sanctions. The board shall
 1710 have authority to promulgate rules and regulations and make disciplinary and sanctioning
 1711 decisions relating to funeral services or funeral merchandise. The Secretary of State may
 1712 delegate to the board according to such duties and responsibilities of the board.

1713 10-14A-5.

1714 (a)(1) Unless exempt under this chapter, it shall be unlawful for any person to offer for
 1715 sale or sell funeral merchandise in this state unless such person is employed by and acting
 1716 on behalf of and under the direction of a funeral director under Chapter 18 of Title 43, or
 1717 a funeral merchandise dealer under this Code section.

1718 (2) Unless exempt under this chapter, it shall be unlawful for any person to offer for sale
 1719 or to sell any preneed funeral merchandise in this state unless such person is registered
 1720 as a preneed dealer or preneed sales agent pursuant to this Code section.

1721 (3) It shall be unlawful for any person to offer for sale or to sell any funeral services in
 1722 this state unless such person is licensed as a funeral director under the provisions of
 1723 Chapter 18 of Title 43.

1724 (b)(1) Every person desiring to be a registered preneed dealer, other than a person
 1725 already licensed by the board as a funeral services director in full and continuous charge,
 1726 shall file with the Secretary of State a registration application in a form prescribed by the
 1727 Secretary of State, executed and duly verified under oath by the applicant, if the applicant
 1728 is an individual, or by an executive officer or general partner, if the applicant is a
 1729 corporation or partnership, or by an individual of similar authority, if the applicant is
 1730 some other entity, and containing the following information:

1731 (A) The name of the applicant;

- 1732 (B) The location, mailing address, and telephone number of the applicant's principal
1733 business location in this state and the same information for other locations where
1734 business is conducted, together with any trade names associated with each location;
1735 (C) All locations of the records of the applicant which relate to preneed sales in this
1736 state;
1737 (D) If the applicant is not a natural person, the names of the president, secretary, and
1738 registered agent if the applicant is a corporation, of each general partner if the applicant
1739 is a partnership, or of individuals of similar authority, if the applicant is some other
1740 entity and their respective addresses and telephone numbers; the name and address of
1741 each person who owns 10 percent or more of any class of ownership interest in the
1742 applicant and the percentage of such interest; and the date of formation and the
1743 jurisdiction of organization of the applicant;
1744 (E) A certified copy of a certificate of existence or certificate of authority issued in
1745 accordance with Code Section 14-2-128 if the applicant is a corporation;
1746 (F) A description of any judgment or pending litigation to which the applicant or any
1747 affiliate of the applicant is a party and which involves the operation of the applicant's
1748 preneed business in this state or which could materially affect the business or assets of
1749 the applicant;
1750 (G) Whether the applicant or any affiliate of the applicant owns any other entities in
1751 this state regulated by this chapter and, if so, the location, mailing address, telephone
1752 number, and type of registration of such other entities;
1753 (H) A consent to service of process meeting the requirements of Code Section
1754 10-14A-22 for actions brought by the State of Georgia;
1755 (I) A list of each individual employed, appointed, or authorized by the applicant to
1756 offer for sale or to sell any funeral merchandise on behalf of the applicant;
1757 (J) A balance sheet of the applicant dated as of the end of the most recent fiscal year
1758 and in no event dated more than 15 months prior to the date of filing, which the
1759 Secretary of State shall treat as confidential and not open to public inspection;
1760 (K) The name, address, location, and telephone number of the preneed trust or escrow
1761 account depository or depositories, the names of the accounts, and the account
1762 numbers;
1763 (L) An executed copy of the escrow agreement required by Code Section 10-14A-8;
1764 (M) The name, address, and telephone number of the trust or escrow agent;
1765 (N) Such other information and documents as the Secretary of State may require by
1766 rule; and
1767 (O) A filing fee of \$250.00.

1768 The provisions of this paragraph notwithstanding, a person licensed by the board as a
 1769 funeral services director in full and continuous charge shall not be required to separately
 1770 register as a preneed dealer provided that the requirements of subparagraphs (A)
 1771 through (N) of this paragraph are satisfied.

1772 (2) Every person desiring to be a registered funeral merchandise dealer shall file with the
 1773 Secretary of State a registration application in a form prescribed by the Secretary of State,
 1774 executed and duly verified under oath by the applicant, if an individual, or by an
 1775 executive officer or general partner, if the applicant is a corporation or partnership, or by
 1776 an individual of similar authority, if the applicant is some other entity, and containing the
 1777 following information:

1778 (A) The name of the applicant;

1779 (B) The location, mailing address, and telephone number of the applicant's principal
 1780 business location in this state and the same information for other locations where
 1781 business is conducted, together with any trade names associated with each location;

1782 (C) All locations of the records of the applicant which relate to funeral merchandise
 1783 sales in this state;

1784 (D) If the applicant is not a natural person, the names of the president, secretary, and
 1785 registered agent if the applicant is a corporation, of each general partner if the applicant
 1786 is a partnership, or of individuals of similar authority if the applicant is some other
 1787 entity and their respective addresses and telephone numbers; the name and address of
 1788 each person who owns 10 percent or more of any class of ownership interest in the
 1789 applicant and the percentage of such interest; and the date of formation and the
 1790 jurisdiction of organization of the applicant;

1791 (E) A certified copy of a certificate of existence or certificate of authority issued in
 1792 accordance with Code Section 14-2-128 if the applicant is a corporation;

1793 (F) A description of any judgment or pending litigation to which the applicant or any
 1794 affiliate of the applicant is a party and which involves the operation of the applicant's
 1795 funeral merchandise business in this state or which could materially affect the business
 1796 or assets of the applicant;

1797 (G) Whether the applicant or any affiliate of the applicant owns any other entities in
 1798 this state regulated by this chapter and, if so, the location, mailing address, telephone
 1799 number, and type of registration of such other entities;

1800 (H) A consent to service of process meeting the requirements of Code Section
 1801 10-14A-22 for actions brought by the State of Georgia;

1802 (I) The name and business address of each individual employed, appointed, or
 1803 authorized by the applicant to offer for sale or to sell any funeral merchandise on behalf
 1804 of the applicant;

1805 (J) A balance sheet of the applicant dated as of the end of the most recent fiscal year
 1806 and in no event dated more than 15 months prior to the date of filing, which the
 1807 Secretary of State shall treat as confidential and not open to public inspection;

1808 (K) Such other information and documents as the Secretary of State may require by
 1809 rule;

1810 (L) A filing fee of \$100.00; and

1811 (M) A bond, if required by the rules and regulations of the Secretary of State.

1812 (c) The Secretary of State may approve an application only after he or she has conducted
 1813 an investigation of the applicant and determined that such applicant is qualified by
 1814 character, experience, and financial responsibility to conduct the business for which the
 1815 applicant is seeking registration in a legal and proper manner. A registration application
 1816 filed under this Code section shall become effective upon the issuing of a certificate of
 1817 registration by the Secretary of State or at such earlier time as the Secretary of State
 1818 determines.

1819 (d) Every registration under this subsection shall expire on the first day of August of each
 1820 year. The registration must be renewed with the Secretary of State each year by the
 1821 submission of a renewal application containing the information required in an application
 1822 for initial registration to the extent that such information had not been included in an
 1823 application or renewal application previously filed together with a sworn statement that all
 1824 information not provided remains accurate. The filing fee for renewal of registration shall
 1825 be \$100.00 for preneed dealers and \$50.00 for funeral merchandise dealers.

1826 (e) Notwithstanding any provision to the contrary contained in this Code section, the
 1827 following shall be exempt from registration as a funeral merchandise dealer:

1828 (1) Any licensed funeral director;

1829 (2) Any person who does not offer for sale or sell funeral services or merchandise to the
 1830 general public; and

1831 (3) Any registered preneed dealer.

1832 In addition, the Secretary of State, by rule, may provide for other exceptions from
 1833 registration.

1834 10-14A-6.

1835 (a) All individuals who offer preneed contracts to the public, or who execute preneed
 1836 contracts on behalf of any entity required to be registered as a preneed dealer, shall be
 1837 registered with the Secretary of State as preneed sales agents, pursuant to this Code section,
 1838 unless such individuals are exempted under this chapter or individually own a controlling
 1839 interest in a preneed dealer registered under this chapter. For purposes of this chapter, any
 1840 person licensed by or registered with the board as a funeral services director in full and

1841 continuous charge shall be deemed a registered preneed dealer, and regulated pursuant to
1842 the rules governing same, by virtue thereof.

1843 (b) All preneed sales agents must be employed by a registered preneed dealer.

1844 (c) A preneed dealer shall be liable for the activities of all preneed sales agents who are
1845 employed by the preneed dealer or who perform any type of preneed related activity on
1846 behalf of the preneed dealer. If a preneed sales agent violates any provision of this chapter,
1847 such preneed sales agent and each preneed dealer who employs such preneed sales agent
1848 shall be subject to the penalties and remedies set out in Code Sections 10-14A-11,
1849 10-14A-18, and 10-14A-19.

1850 (d) A preneed sales agent may be authorized to sell, offer, and execute preneed contracts
1851 on behalf of all entities owned or operated by the agent's sponsoring preneed dealer.

1852 (e) If the application for his or her registration is sent by certified mail or statutory
1853 overnight delivery, return receipt requested, an individual may begin functioning as a
1854 preneed sales agent as soon as a completed application for registration, as set forth in
1855 subsection (g) of this Code section, is submitted to the Secretary of State, provided that, if
1856 any such sales agent fails to meet the qualifications set forth in this chapter, the preneed
1857 dealer shall immediately upon notification by the Secretary of State cause such agent to
1858 cease any sales activity on its behalf.

1859 (f) The qualifications for a preneed sales agent are as follows:

1860 (1) The applicant must be at least 18 years of age;

1861 (2) The applicant must not be subject to any order of the Secretary of State that restricts
1862 his or her ability to be registered as a preneed sales agent; and

1863 (3) The applicant must not have been adjudicated, civilly or criminally, to have
1864 committed fraud or to have violated any law of any state involving fair trade or business
1865 practices, have been convicted of a misdemeanor of which fraud is an essential element
1866 or which involves any aspect of the funeral or cemetery business, or have been convicted
1867 of a felony.

1868 (g) An application for registration as a preneed sales agent shall be submitted to the
1869 Secretary of State with an application fee of \$100.00 by the preneed dealer on a form that
1870 has been designated by the Secretary of State and shall contain, at a minimum, the
1871 following:

1872 (1) The name, address, social security number, and date of birth of the applicant and such
1873 other information as the Secretary of State may reasonably require of the applicant;

1874 (2) The name, address, and license number of the sponsoring preneed dealer;

1875 (3) A representation, signed by the applicant, that the applicant meets the requirements
1876 set forth in subsection (f) of this Code section;

1877 (4) A representation, signed by the preneed dealer, that the applicant is authorized to
 1878 offer, sell, and sign preneed contracts on behalf of the preneed dealer and that the preneed
 1879 dealer has informed the applicant of the requirements and prohibitions of this chapter
 1880 relating to preneed sales, the provisions of the preneed dealer's preneed contract, and the
 1881 nature of the merchandise or services sold by the preneed dealer;

1882 (5) A statement indicating whether the applicant has any type of working relationship
 1883 with any other preneed dealer or insurance company; and

1884 (6) A signed agreement by the applicant consenting to an investigation of his or her
 1885 background with regard to the matters set forth in this Code section, including, without
 1886 limitation, his or her criminal history.

1887 (h) An individual may be registered as a preneed sales agent on behalf of more than one
 1888 preneed dealer, provided that the individual has received the written consent of all such
 1889 preneed dealers.

1890 (i) A preneed dealer who has registered a preneed sales agent shall notify the Secretary of
 1891 State within three business days of a change in such individual's status as a preneed sales
 1892 agent with such preneed dealer or upon the occurrence of any other event which would
 1893 disqualify the individual as a preneed sales agent.

1894 (j) Upon receipt and review of an application that complies with all of the requirements
 1895 of this Code section, the Secretary of State shall register the applicant. The Secretary of
 1896 State shall by rule provide for annual renewal of registration and a renewal fee of \$50.00.

1897 10-14A-7.

1898 Any individual engaged in the sale of life insurance shall not use the name of any funeral
 1899 establishment or any price list which identifies the funeral establishment or any reference
 1900 to a funeral establishment or crematory in connection with the sale of life insurance without
 1901 the express written authorization of the funeral establishment. When a preneed funeral
 1902 contract is funded by a life insurance policy, the funeral establishment shall be designated
 1903 as the assignee of the death benefit payable under the policy in accordance with the terms
 1904 of the preneed contract.

1905 10-14A-8.

1906 (a) Notwithstanding any provision to the contrary contained in Chapter 1 of Title 7, the
 1907 'Financial Institutions Code of Georgia,' or in any other provision of law, a preneed dealer
 1908 registered or deemed registered pursuant to Code Section 10-14A-6 who provides funeral
 1909 services or merchandise shall provide for funds to be deposited in an escrow account or
 1910 with a depository institution in accordance with this Code section and placed in an
 1911 individual trust fund account that is:

- 1912 (1) Titled in the name of a funeral establishment;
 1913 (2) Established for the purpose of providing preneed funeral services;
 1914 (3) Payable upon the death of the purchaser in favor of a funeral establishment for
 1915 purposes of providing funeral services; and
 1916 (4) Refundable to the purchaser's designee or the estate of the deceased, such that 100
 1917 percent of the trust funds following a deduction of any amounts paid or owing as taxes
 1918 and a 3 percent charge for administrative costs shall be returned to the designee or estate
 1919 where funeral services are not provided by the funeral establishment.
- 1920 (b)(1) The amount to be deposited to said escrow account for funeral merchandise,
 1921 funeral services, or cash advance items shall be not less than 100 percent of the sales
 1922 price of such funeral merchandise, funeral services, or cash advance items. One hundred
 1923 percent of funds to be held in trust shall be deposited in the trust account. The deposit
 1924 of such funds shall be made not later than 30 days following the last day of the month in
 1925 which any payment is received. Trust fund accounts shall be established and maintained
 1926 in a state bank, state savings and loan institution, savings bank, national bank, federal
 1927 savings and loan association, whose deposits are insured by the Federal Deposit
 1928 Insurance Corporation or other governmental agency, or a state or federally chartered
 1929 credit union insured under 12 U.S.C. Section 1781 of the Federal Credit Union Act, or
 1930 other organization approved by the Secretary of State which is located and doing business
 1931 in this state.
- 1932 (2)(A) If the account is maintained with a trustee, the assets of the trust account shall
 1933 be invested and reinvested by the trustee subject to all the terms, conditions, limitations,
 1934 and restrictions imposed by Georgia law upon executors and trustees regarding the
 1935 making and depositing of investments with trust moneys and subject to the limitations
 1936 and restrictions imposed pursuant to this Code section.
- 1937 (B) Subject to said terms, conditions, limitations, and restrictions, the trustee of a
 1938 preneed account shall have full power to hold, purchase, sell, assign, transfer, reinvest,
 1939 and dispose of any of the securities and investments in which any of the assets of said
 1940 account are invested, including proceeds of investments. A personal representative
 1941 shall be authorized to invest funds in:
- 1942 (i) Interest-bearing deposits in any chartered state or national bank or trust company
 1943 or savings and loan association located in this state to the extent the deposits are
 1944 insured by the Federal Deposit Insurance Corporation or comparable insurance; and
 1945 (ii) Direct and general obligations of the United States government, obligations
 1946 unconditionally guaranteed by the United States government, and obligations of the
 1947 agencies of the United States government enumerated in Code Section 53-8-3.

1948 (C) In making investments pursuant to subparagraph (b)(2)(B) of this Code section and
 1949 in acquiring and retaining those investments and managing the property of the estate,
 1950 the personal representative shall exercise the judgment and care, under the
 1951 circumstances then prevailing, which persons of prudence, discretion, and intelligence
 1952 exercise in the management of their own affairs, not in regard to speculation but in
 1953 regard to the permanent disposition of their funds, considering the probable income as
 1954 well as the probable safety of their capital.

1955 (3) In the event that the sale of funeral merchandise is under an installment contract, the
 1956 required trust deposit shall be a pro rata part of the principal portion of each installment
 1957 payment, such deposit only being required as payments are made by the purchaser for
 1958 such burial or funeral merchandise.

1959 (c) The trustee shall furnish yearly to the Secretary of State a financial report in a form
 1960 designated by the Secretary of State with respect to the preneed trust or escrow account.

1961 (d) Upon a finding by a court of competent jurisdiction of failure to deposit or maintain
 1962 funds in the trust account as required by this Code section or of fraud, theft, or misconduct
 1963 by a funeral establishment or a funeral director or his or her employee, representative, or
 1964 agent which has wasted or depleted such funds, the funeral establishment owners, funeral
 1965 director, or employee, representative, or agent of a funeral director or establishment may
 1966 be held jointly and severally liable for any deficiencies in the trust account.

1967 (e) Any other provision of law notwithstanding, a trust fund account established and
 1968 maintained under this Code section and the moneys contained therein shall not be deemed
 1969 an asset or income for purposes of recapture of income or funds owed or for any other
 1970 purpose.

1971 (f) This Code section shall not preclude a licensed funeral director in full and continuous
 1972 charge from maintaining an escrow account with aggregate escrow funds for 100 percent
 1973 of any preneed contract amount for purposes of passing through funds within 60 days to
 1974 a trust fund account or payment of a policy of insurance for preneed services.

1975 10-14A-9.

1976 (a) The Secretary of State, by order, may prohibit a person who is an employee, officer,
 1977 independent contractor, or other agent directly involved in the sale of funeral merchandise
 1978 or funeral services from employment or other association with a registrant under this
 1979 chapter if the Secretary of State finds that such is in the public interest and that said person:

1980 (1) Has willfully made or caused to be made, in any documents filed with the Secretary
 1981 of State under this chapter, or in any hearings conducted by the Secretary of State, any
 1982 statement which, at the time and in the light of the circumstances under which it was
 1983 made, was false or misleading with respect to any material fact, or has willfully omitted

1984 to state in any application any material fact which is required to be stated therein or
 1985 necessary in order to make the statements made, in light of the circumstances under
 1986 which they were made, not misleading;

1987 (2) Has willfully violated or willfully failed to comply with any provision of this chapter
 1988 or a predecessor law or any regulation or order promulgated or issued under this chapter
 1989 or any predecessor law;

1990 (3) Has been adjudicated, civilly or criminally, to have committed fraud or to have
 1991 violated any law of any state involving fair trade or business practices, has been
 1992 convicted of a misdemeanor of which fraud is an essential element or which involves any
 1993 aspect of the funeral or cemetery business, or has been convicted of a felony;

1994 (4) Has engaged in any unethical or dishonest practices in the funeral or cemetery
 1995 business; or

1996 (5) Is permanently or temporarily enjoined, suspended, or barred by any court of
 1997 competent jurisdiction or by any state or other jurisdiction from engaging in or continuing
 1998 any conduct or practice involving any aspect of the funeral or cemetery business.

1999 (b) Where the Secretary of State finds that there are grounds for the prohibition from
 2000 employment provided in this Code section, he or she may issue an order prohibiting an
 2001 employee, officer, independent contractor, or other agent directly or indirectly involved in
 2002 preneed sales or any person occupying a similar status or performing similar functions from
 2003 employment with a registered preneed dealer. Such an order shall not be effective until
 2004 notice and opportunity for hearing are provided in accordance with Code Section
 2005 10-14A-21 and until the Secretary of State shall issue a written order in accordance with
 2006 Code Section 10-14A-21; but the Secretary of State may, if he or she finds that the public
 2007 safety or welfare requires emergency action, immediately issue an order prohibiting such
 2008 person from such employment. Such an order of immediate prohibition will expire
 2009 automatically if the Secretary of State fails to afford notice and opportunity for hearing
 2010 pursuant to Code Section 10-14A-21.

2011 10-14A-10.

2012 (a) A registration application may be amended by filing with the Secretary of State an
 2013 amended application signed by the persons required to sign the original application under
 2014 Code Section 10-14A-5 or 10-14A-6.

2015 (b) Every applicant registered pursuant to Code Section 10-14-5 or 10-14A-6 shall agree
 2016 to deliver in this state, on demand of the Secretary of State, all records and documents
 2017 concerning funds, accounts, transactions, and activities of said applicant or said applicant
 2018 shall agree to pay the expenses incurred in sending an auditor approved by the Secretary

2019 of State to wherever such records and documents are located for the purpose of conducting
 2020 an audit pursuant to the provisions of this chapter.

2021 (c)(1) When any preneed dealer registered under Code Section 10-14A-6 is sold or the
 2022 ownership is otherwise transferred, or a controlling interest is sold or transferred, the
 2023 vendor or the transferor of such preneed dealer or interest shall remain liable for any
 2024 funds that should have been deposited prior to the date of such sale or transfer in the
 2025 preneed escrow account, or both.

2026 (2) Prior to such sale or transfer, the vendor or transferor shall notify the Secretary of
 2027 State of the proposed transfer and submit to the Secretary of State any document or
 2028 record the Secretary of State may require in order to demonstrate that said vendor or
 2029 transferor is not indebted to the preneed escrow account. After the transfer of ownership
 2030 or control and the presentation of proof of currency of the preneed escrow account by the
 2031 vendor or transferor, the Secretary of State may require the presentation of proof of the
 2032 continued current status of the preneed escrow account by the vendee or transferee. The
 2033 Secretary of State is authorized to recover from such vendor, transferor, vendee, or
 2034 transferee, for the benefit of the preneed escrow account all sums which the vendor,
 2035 transferor, vendee, or transferee has not properly accounted for and paid into the escrow
 2036 account.

2037 (3) When the vendee or transferee has complied with the provisions of this subsection,
 2038 he or she shall submit to the Secretary of State an application for registration and
 2039 appropriate fees pursuant to Code Section 10-14A-5. The Secretary of State shall then
 2040 issue a certificate of registration to said vendee or transferee.

2041 10-14A-11.

2042 (a) The Secretary of State may issue a stop order denying effectiveness to, or suspending
 2043 or revoking the effectiveness of, any registration and shall give notice of such issuance
 2044 pursuant to Code Section 10-14A-21 if he or she finds that the order is in the public interest
 2045 and that:

2046 (1) The registration as of its effective date, or as of any earlier date in the case of an
 2047 order denying effectiveness, contains an untrue statement of a material fact or omits to
 2048 state a material fact required to be stated therein or necessary to make the statements
 2049 therein not misleading;

2050 (2) The applicant has failed to file financial reports required by subsection (e) of Code
 2051 Section 10-14A-12;

2052 (3) The applicant has failed to pay the filing fees required by Code Section 10-14A-5;

2053 (4) The person or entity registered or sought to be registered or the individual owner,
 2054 corporate owner, or person who owns a controlling interest of the corporate owner has

2055 been adjudicated, civilly or criminally, to have committed fraud or to have violated any
 2056 law of any state involving fair trade or business practices, has been convicted of a
 2057 misdemeanor of which fraud is an essential element or which involves any aspect of the
 2058 funeral or cemetery business, or has been convicted of a felony;

2059 (5) The escrow agent for the preneed escrow account has failed to file required financial
 2060 reports;

2061 (6) The person or entity registered or seeking to be registered has become insolvent or
 2062 has filed a voluntary petition for protection from creditors; or

2063 (7) Any provision of this chapter or any rule, order, or condition lawfully imposed under
 2064 this chapter has been willfully violated by:

2065 (A) The person filing the registration application;

2066 (B) The registrant's individual owner, corporate owner, or person who owns a
 2067 controlling interest of the corporate owner; or

2068 (C) The trustee or escrow agent of a trust fund or escrow account established and
 2069 maintained pursuant to the provisions of this chapter.

2070 (b) The Secretary of State may deny registration or refuse to grant renewal of registration
 2071 if he or she finds that such refusal or denial is in the public interest and that:

2072 (1) The registration application does not contain a current list of preneed sales agents and
 2073 accompanying information as required by Code Section 10-14A-5;

2074 (2) The applicant has not paid filing fees or renewal fees as required by Code Section
 2075 10-14A-5; or

2076 (3) The applicant has not filed the financial reports required by Code Section 10-14A-5
 2077 or subsection (e) of Code Section 10-14A-12.

2078 (c) In addition to the actions authorized in subsections (a) and (b) of this Code section, the
 2079 Secretary of State shall be authorized to impose a penalty fee not to exceed \$500.00 for the
 2080 late filing of an application for a renewal registration or late filing of financial reports
 2081 required by this chapter, or both. However, the penalty fee or fees imposed for the late
 2082 filing of an application for renewal of registration or financial reports may be waived by
 2083 the Secretary of State upon a showing to the Secretary of State that such late filing was due
 2084 to circumstances beyond the control of the applicant or registrant despite the exercise by
 2085 the applicant or registrant of due diligence in the timely filing of the application or report.

2086 (d) The Secretary of State may by order summarily postpone or suspend the effectiveness
 2087 of the registration or refuse to register any applicant pending final determination of any
 2088 proceeding under this Code section. Upon the entry of the order, the Secretary of State
 2089 shall promptly notify the applicant or registrant of the order and the reasons for the order
 2090 and that, within 15 days after the receipt of a written request, the matter will be heard. If
 2091 no hearing is requested and none is ordered by the Secretary of State, the order will remain

2092 in effect until it is modified or vacated by the Secretary of State. If a hearing is requested
2093 or ordered, the Secretary of State, after notice of an opportunity for hearing to the persons
2094 affected, may modify or vacate the order or extend it until final determination.

2095 (e) The Secretary of State may vacate or modify a stop order if he or she finds that the
2096 conditions which prompted its entry have changed or that it is otherwise in the public
2097 interest to do so.

2098 (f) No stop order issued under any part of this Code section, except the first sentence of
2099 subsection (d) of this Code section, shall become effective until and unless the Secretary
2100 of State has complied with the provisions of Code Section 10-14A-21.

2101 10-14A-12.

2102 (a) Each registrant under paragraph (1) or (2) of subsection (b), or both, of Code Section
2103 10-14A-5 shall establish and maintain a separate and distinct account for the preneed
2104 escrow account.

2105 (b) Each registrant shall keep and maintain separate books, records, accounts, and
2106 documents regarding the transaction of its business. The books, records, accounts, and
2107 documents related to the keeping of funds pursuant to the provisions of this chapter and the
2108 rules and regulations promulgated under this chapter shall be kept and maintained by the
2109 registrant separately from the other books, records, accounts, and documents related to the
2110 transaction of business.

2111 (c) The Secretary of State shall have the authority to prescribe or approve the form of the
2112 preneed escrow account agreement and shall have the authority to approve or disapprove
2113 any amendments to said escrow account agreement as of July 1, 1983.

2114 (d) An escrow agent of a registrant may be removed pursuant to the provisions of Code
2115 Section 10-14A-18 or by other means provided by the laws of this state.

2116 (e) Each preneed dealer shall file a report concerning the preneed escrow account annually
2117 with the Secretary of State, provided that, after notice and a hearing, the Secretary of State
2118 may order more frequent reports in the event any such report is not filed in a timely manner
2119 or if the report filed contains errors and deficiencies. The report shall be on a form
2120 prescribed by the Secretary of State.

2121 10-14A-13.

2122 For the purposes of venue for any civil or criminal action under this chapter, any violation
2123 of this chapter or of any rule, regulation, or order promulgated under this chapter shall be
2124 considered to have been committed in any county in which any act was performed in
2125 furtherance of the transaction which violated this chapter, in the county of any violator's
2126 principal place of business in this state, in the county of the preneed dealer's or funeral

2127 merchandise dealer's location or residence in this state, and in any county in which any
 2128 violator had control or possession of any proceeds of said violation or of any books,
 2129 records, documents, or other material or objects which were used in furtherance of said
 2130 violation.

2131 10-14A-14.

2132 (a) The administration of the provisions of this chapter shall be vested in the Secretary of
 2133 State.

2134 (b) The Secretary of State shall keep a record of all proceedings related to his or her duties
 2135 under this chapter and shall keep records in which shall be entered the names of all preneed
 2136 dealers, preneed sales agents, and funeral merchandise dealers to whom certificates of
 2137 registration are issued, which records shall be open at all times for public inspection.

2138 (c) The Secretary of State shall have the authority to administer oaths in, and to prescribe
 2139 forms for, all matters arising under this chapter.

2140 (d) The Secretary of State shall have authority to employ examiners, clerks and
 2141 stenographers, and other employees as the administration of this law may require. The
 2142 Secretary of State shall also have authority to appoint and employ investigators who shall
 2143 have, in any case in which there is a reason to believe a violation of this chapter has
 2144 occurred or is about to occur, the right and power to serve subpoenas and to swear out and
 2145 execute search warrants and arrest warrants.

2146 (e) The Secretary of State shall have the power to make such rules and regulations from
 2147 time to time as he or she may deem necessary and proper for the enforcement of this
 2148 chapter including, without limitation, rules regarding the solicitation of funeral rights,
 2149 merchandise, or services. The Secretary of State shall regulate such solicitation to protect
 2150 the public from solicitation which is intimidating, overreaching, vexatious, fraudulent, or
 2151 misleading; which utilizes undue influence; or which takes undue advantage of a person's
 2152 ignorance or emotional vulnerability. Such rules and regulations shall be adopted,
 2153 promulgated, and contested as provided in Chapter 13 of Title 50.

2154 10-14A-15.

2155 (a) The Secretary of State, at his or her discretion:

2156 (1) May make such public or private investigations or examinations inside or outside this
 2157 state as he or she deems necessary to determine whether any person has violated or is
 2158 about to violate any provision of this chapter or any rule, regulation, or order under this
 2159 chapter or to aid in the enforcement of this chapter or in the prescribing of rules and
 2160 regulations under this chapter; and

2161 (2) May require or permit any person to file a statement in writing, under oath or
2162 otherwise as the Secretary of State determines, as to all the facts and circumstances
2163 concerning the matter to be investigated.

2164 (b) For the purpose of conducting any investigation as provided in this Code section, the
2165 Secretary of State shall have the power to administer oaths, to call any party to testify under
2166 oath at such investigations, to require the attendance of witnesses and the production of
2167 books, records, and papers, and to take the depositions of witnesses; and, for such purposes,
2168 the Secretary of State is authorized to issue a subpoena for any witness or a subpoena for
2169 the production of documentary evidence to compel the production of any books, records,
2170 or papers. Said subpoenas may be served by certified mail or statutory overnight delivery,
2171 return receipt requested, to the addressee's business mailing address or by investigators
2172 appointed by the Secretary of State or shall be directed for service to the sheriff of the
2173 county where such witness resides or is found or where such person in custody of any
2174 books, records, or papers resides or is found. The fees and mileage of the sheriff, witness,
2175 or person shall be paid from the funds in the state treasury for the use of the Secretary of
2176 State in the same manner that other expenses of the Secretary of State are paid.

2177 (c) In case of refusal to obey a subpoena issued under any Code section of this chapter to
2178 any person, a superior court of appropriate jurisdiction, upon application by the Secretary
2179 of State, may issue to the person an order requiring him or her to appear before the court
2180 to show cause why he or she should not be held in contempt for refusal to obey the
2181 subpoena. Failure to obey a subpoena may be punished by the court as contempt of court.

2182 (d) The Secretary of State is authorized to hold investigative hearings with respect to any
2183 matter under this chapter. A hearing as provided for in this Code section may be conducted
2184 by any person designated by the Secretary of State for that purpose. A transcript of the
2185 testimony and evidence resulting from such hearing may, but need not, be transcribed by
2186 the Secretary of State. A report of the investigative hearing shall be included in the
2187 investigative report prepared for the Secretary of State. Any recommendations of the
2188 designated representative of the Secretary of State shall be advisory only and shall not have
2189 the effect of an order of the Secretary of State.

2190 (e) The Secretary of State shall have the authority to inspect and review or cause to be
2191 reviewed the books of each registrant under this chapter. Said inspection or review may
2192 be conducted by the Secretary of State as frequently as the Secretary of State may deem
2193 appropriate.

2194 10-14A-16.

2195 (a) It shall be unlawful for any person:

2196 (1) To sell or offer to sell any funeral services or funeral merchandise by means of any
 2197 oral or written untrue statement of a material fact or any omission to state a material fact
 2198 necessary in order to make the statements made, in the light of the circumstances under
 2199 which they are made, not misleading, the buyer not knowing of the untruth or omission,
 2200 if such person shall not sustain the burden of proof that he or she did not know, and in the
 2201 exercise of reasonable care could not have known, of the untruth or omission;

2202 (2) To sell or offer to sell any funeral services or funeral merchandise in violation of any
 2203 provision of this chapter or rule, regulation, or order promulgated or issued by the
 2204 Secretary of State under any provision of this chapter;

2205 (3) In connection with the sale of preneed merchandise or services requiring funds to be
 2206 deposited into a preneed escrow account, to fail to refund, within three business days of
 2207 the request of the purchaser or the purchaser's heirs or assigns, the sales prices plus
 2208 applicable interest as determined according to rules promulgated by the Secretary of
 2209 State, provided that such request is made prior to the earlier of:

2210 (A) The delivery of the merchandise or services; or

2211 (B) The death of the person for whose interment or inurnment the merchandise or
 2212 services are intended to be used.

2213 Certain solicitations during a person's last illness relating to refunds shall be a violation
 2214 of Part 2 of Article 15 of Chapter 1 of this title, the 'Fair Business Practices Act of 1975,'
 2215 as set out in Code Section 10-1-393.7;

2216 (4) To misappropriate, convert, illegally withhold, or fail to account for any trust funds,
 2217 escrow funds, or other funds established or maintained pursuant to this chapter;

2218 (5) Knowingly to cause to be made, in any document filed with the Secretary of State or
 2219 in any proceeding under this chapter, any statement which is, at the time it is made and
 2220 in the light of the circumstances under which it is made, false or misleading in any
 2221 material respect;

2222 (6) To sell, offer to sell, solicit offers to buy, or otherwise engage in the sale of funeral
 2223 services if such person is not a licensed funeral director; or

2224 (7) To sell, offer to sell, solicit offers to buy, or otherwise engage in the sale of burial
 2225 rights or burial merchandise if such person is not registered pursuant to the provisions of
 2226 this chapter.

2227 (b) It shall be unlawful for any person in connection with the ownership, offer, sale, or
 2228 purchase of any funeral services or funeral merchandise, directly or indirectly:

2229 (1) To employ any device, scheme, or artifice to defraud; or

2230 (2) To engage in any transaction, act, practice, or course of business which operates or
 2231 would operate as a fraud or deceit upon the purchaser or seller.

2232 (c) In connection with the sale of funeral merchandise or funeral services, it shall be
 2233 unlawful for any person to fail to comply with the provisions of Article 1 of Chapter 1 of
 2234 this title, 'The Georgia Retail Installment and Home Solicitation Sales Act' or Part 2 of
 2235 Article 15 of Chapter 1 of this title, the 'Fair Business Practices Act of 1975.' For the
 2236 purposes of this subsection, funeral services or funeral merchandise shall constitute goods
 2237 as that term is used in said article and said part.

2238 (d) No program offering free burial rights may be conditioned on any requirement to
 2239 purchase additional burial rights, burial or funeral merchandise, or burial or funeral
 2240 services.

2241 (e) The contract rights of any purchaser of preneed merchandise shall be freely
 2242 transferable without fee except as provided in this chapter.

2243 10-14A-17.

2244 (a) A registrant offering to provide funeral merchandise or funeral services to the public
 2245 shall:

2246 (1) Provide by telephone, upon request, accurate information regarding the retail prices
 2247 of funeral merchandise and services offered for sale by the registrant;

2248 (2) Fully disclose all regularly offered services and merchandise prior to the selection of
 2249 funeral services or funeral merchandise. The full disclosure required shall identify the
 2250 prices of all funeral services or funeral merchandise provided by the registrant;

2251 (3) Not make any false or misleading statements of the legal requirement as to the
 2252 necessity of a casket or outer burial container;

2253 (4) Provide a good faith estimate of all fees and costs the customer will incur to use any
 2254 merchandise or services purchased;

2255 (5) Provide to the customer a current copy of the rules and regulations of the registrant;

2256 (6) Provide the registrant's policy on cancellation and refunds to each customer;

2257 (7) Provide refunds if funeral merchandise is not delivered as represented; and

2258 (8) Provide the customer, upon the purchase of any funeral merchandise or service, a
 2259 written contract, the form of which has been filed with the Secretary of State.

2260 (b) In a manner established by rule of the Secretary of State, the written contract shall
 2261 provide on the signature page of the contract, clearly and conspicuously in boldface
 2262 ten-point type or larger, the following:

2263 (1) The words 'purchase price' together with the sum of all items set out in the contract
 2264 in accordance with subsection (d) of this Code section;

2265 (2) The amount to be placed in escrow;

2266 (3) Either:

2267 (A) A statement that no further expenses will be incurred at the time of need; or

2268 (B) A statement that additional expenses will be incurred at the time of need, the
 2269 registrant's current price for each such expense, and a statement that such prices may
 2270 be expected to increase in the future; and

2271 (4) The telephone number designated by the Secretary of State for questions and
 2272 complaints.

2273 (c) The written contract shall be completed prior to the signing of the contract by the
 2274 customer and a copy of the contract shall be provided to the customer. As used in this
 2275 subsection, the term 'signing' includes any manual, facsimile, conformed, or electronic
 2276 signature, and the term 'electronic signature' means an electronic symbol or process
 2277 attached to or logically associated with a document and executed or adopted by a person
 2278 with the intent to sign the document.

2279 (d) The written contract shall provide an itemization of the amounts charged for all funeral
 2280 services or funeral merchandise, cash advances, and fees and other charges, which
 2281 itemization shall be clearly and conspicuously segregated from everything else on the
 2282 written contract.

2283 (e) The written contract shall contain a description of the funeral merchandise covered by
 2284 the contract to include, when applicable, size, materials from which the funeral
 2285 merchandise is made, and other relevant specifications as may be required by the Secretary
 2286 of State.

2287 (f) The written contract shall disclose the location at which funeral services are to be
 2288 provided.

2289 10-14A-18.

2290 (a) Whenever it may appear to the Secretary of State that any person has engaged in, or
 2291 is engaging in, or is about to engage in any act or practice or transaction which is
 2292 prohibited by this chapter or by any rule, regulation, or order of the Secretary of State
 2293 promulgated or issued pursuant to any Code section of this chapter or which is declared to
 2294 be unlawful under this chapter, the Secretary of State may, at his or her discretion, act
 2295 under any or all of the following paragraphs:

2296 (1) Issue an order, if he or she deems it to be appropriate in the public interest or for the
 2297 protection of consumers, prohibiting such person from continuing such act, practice, or
 2298 transaction, subject to the right of such person to a hearing as provided in Code Section
 2299 10-14A-21;

2300 (2) Apply to any superior court of competent jurisdiction in this state for an injunction
 2301 restraining such person and such person's agents, employees, partners, officers, and
 2302 directors from continuing such act, practice, or transaction or engaging therein or doing

2303 any acts in furtherance thereof, and for appointment of a receiver or an auditor and such
 2304 other and further relief as the facts may warrant; or
 2305 (3) Transmit such evidence as may be available concerning such act, practice, or
 2306 transaction to any district attorney or to the Attorney General, who may, at his or her
 2307 individual discretion, institute the necessary criminal proceedings.
 2308 (b) In any proceedings for an injunction, the Secretary of State may apply for and be
 2309 entitled to have issued the court's subpoena requiring the appearance forthwith of any
 2310 defendant and its agents, employees, partners, officers, or directors, and the production of
 2311 such documents, books, and records as may appear necessary for the hearing upon the
 2312 petition for an injunction. Upon proof of any of the offenses described in this Code
 2313 section, the court may grant such injunction and appoint a receiver or an auditor and issue
 2314 such other orders for the protection of the public as the facts may warrant.
 2315 (c) In any criminal proceeding, either the district attorney or the Attorney General, or both,
 2316 may apply for and be entitled to have issued the court's subpoena requiring the appearance
 2317 forthwith of any defendant or its agents, employees, partners, officers, or directors and the
 2318 production of such documents, books, and records as may appear necessary for the
 2319 prosecution of such criminal proceedings.
 2320 (d) In any civil proceeding brought under this Code section, if the Secretary of State shall
 2321 establish that a preneed escrow account has not been established and maintained as
 2322 required, the assets of the preneed dealer may be seized and sold by the state under orders
 2323 of the court to the extent necessary to provide said preneed escrow account and set up the
 2324 same. In addition, where the registration has been revoked, the whole company property
 2325 may be ordered sold after the preneed escrow account has been established so that the
 2326 purchaser may continue to operate the same and maintain it under the terms of this chapter.
 2327 (e) The Secretary of State shall have the authority to petition a court of competent
 2328 jurisdiction to remove a trustee or escrow agent for violation of the provisions of this
 2329 chapter, the rules and regulations promulgated under this chapter, or for other unlawful acts
 2330 and practices.
 2331 (f) In addition to any other penalties that may be imposed, any person willfully violating
 2332 any provisions of Code Section 10-14A-11, 10-14A-16, or 10-14A-17 or any rule,
 2333 regulation, or order of the Secretary of State made pursuant to Code Section 10-14A-11,
 2334 10-14A-16, or 10-14A-17 shall be subject to a civil penalty not to exceed \$10,000.00 for
 2335 a single violation and not exceeding \$100,000.00 for multiple violations in a single
 2336 proceeding or a series of related proceedings. The Secretary of State shall be authorized
 2337 in his or her discretion to decline to impose a penalty or to impose any lesser penalty that
 2338 he or she may deem to be sufficient and appropriate in any particular case. The amount of
 2339 such penalty may be collected by the Secretary of State in the same manner that money

2340 judgments are now enforced in the superior courts of this state, except that the order or
2341 finding of the Secretary of State as to such penalty may be appealed according to the
2342 provisions of Code Section 10-14A-20.

2343 10-14A-19.

2344 (a) Except as otherwise provided in subsection (b) of this Code section, any person who
2345 shall willfully violate any provision of this chapter shall be guilty of a misdemeanor and,
2346 upon conviction thereof, shall be subject to a fine of not more than \$1,000.00 or
2347 imprisonment not to exceed 12 months, or both.

2348 (b) Any person who shall willfully violate Code Section 10-14A-16, Code Section
2349 10-14A-17, or any provision of this chapter regarding the establishment, maintenance, or
2350 reporting of any trust, reserve, or escrow funds mandated by this chapter shall be guilty of
2351 a felony and, upon conviction thereof, shall be punished by a fine of not more than
2352 \$10,000.00 or imprisonment for not less than one and not more than five years, or both.

2353 (c) Nothing in this chapter shall limit any statutory or common-law right of the state to
2354 punish any person for violation of any provision of any law.

2355 10-14A-20.

2356 (a) An appeal may be taken from any order of the Secretary of State resulting from a
2357 hearing held in accordance with the provisions of Code Section 10-14A-21 by any person
2358 adversely affected thereby to the Superior Court of Fulton County, Georgia, by serving on
2359 the Secretary of State, within 20 days after the date of entry of such order, a written notice
2360 of appeal, signed by the appellant, stating:

2361 (1) The order from which the appeal is taken;

2362 (2) The ground upon which a reversal or modification of such order is sought; and

2363 (3) A demand for a certified transcript of the record of such order.

2364 (b) Upon receipt of such notice of appeal, the Secretary of State shall, within ten days
2365 thereafter, make, certify, and deliver to the appellant a transcript of the record of the order
2366 from which the appeal is taken, provided that the appellant shall pay the reasonable costs
2367 of such transcript. The appellant shall, within five days after receipt of such transcript, file
2368 such transcript and a copy of the notice of appeal with the clerk of the court. Said notice
2369 of appeal and transcript of the record shall constitute appellant's complaint. Said complaint
2370 shall thereupon be entered on the trial calendar of the court in accordance with the court's
2371 normal procedures.

2372 (c) If the order of the Secretary of State shall be reversed, the court shall by its mandate
2373 specifically direct the Secretary of State as to his or her further action in the matter,

2374 including the making and entering of any order or orders in connection therewith and the
2375 conditions, limitations, or restrictions to be contained therein.

2376 10-14A-21.

2377 (a) Where the Secretary of State has issued any order forbidding the sale of funeral
2378 merchandise or funeral services under any provision of this chapter, he or she shall
2379 promptly send to the funeral merchandise dealer or preneed dealer and to the persons who
2380 have filed such application for registration a notice of opportunity for hearing. Before
2381 entering an order refusing to register any person or entity and after the entering of any
2382 order for revocation or suspension, the Secretary of State shall promptly send to such
2383 person or entity a notice of opportunity for hearing. Hearings shall be conducted by the
2384 Secretary of State pursuant to this Code section.

2385 (b) Notices of opportunity for hearing shall be served by investigators appointed by the
2386 Secretary of State or sent by certified mail or statutory overnight delivery, return receipt
2387 requested, to the addressee's business mailing address, and such notice shall state:

2388 (1) The order which has issued or which is proposed to be issued;

2389 (2) The ground for issuing such order or proposed order; and

2390 (3) That the person to whom such notice is sent will be afforded a hearing upon request
2391 if such request is made within ten days after receipt of the notice.

2392 (c) Whenever a person requests a hearing in accordance with the provisions of this Code
2393 section, there shall immediately be set a date, time, and place for such hearing, and the
2394 person requesting such hearing shall forthwith be notified thereof. The date set for such
2395 hearing shall be within 15 days, but not earlier than five days after the request for hearing
2396 has been made, unless otherwise agreed to by the issuer of the notice and the person
2397 requesting such hearing.

2398 (d) For the purpose of conducting any hearing as provided in this Code section, the
2399 Secretary of State shall have the power to administer oaths, to call any party to testify under
2400 oath at such hearings, to require the attendance of witnesses and the production of books,
2401 records, and papers, and to take the depositions of witnesses; and for such purposes the
2402 Secretary of State is authorized, at the request of the person requesting such hearing or
2403 upon the official's own initiative, to issue a subpoena for any witnesses or a subpoena for
2404 the production of documentary evidence to compel the production of any books, records,
2405 or papers. Said subpoenas may be served by certified mail or statutory overnight delivery,
2406 return receipt requested, to the addressee's business mailing address or by investigators
2407 appointed by the Secretary of State or shall be directed for service to the sheriff of the
2408 county where such witness resides or is found or where such person in custody of any
2409 books, records, or papers resides or is found. The fees and mileage of the sheriff, witness,

2410 or person shall be paid from the funds in the state treasury for the use of the Secretary of
 2411 State in the same manner that other expenses of the Secretary of State are paid.

2412 (e) At any hearing conducted under this Code section, a party or an affected person may
 2413 appear in his or her own behalf or may be represented by an attorney. A stenographic
 2414 record of the testimony and other evidence submitted shall be taken unless the Secretary
 2415 of State and the person requesting such hearing shall agree that such a stenographic record
 2416 of the testimony shall not be taken. A transcript of the proceeding shall be made available
 2417 to a party upon the payment of reasonable costs. The Secretary of State shall pass upon the
 2418 admissibility of such evidence, but a party may at any time make objections to such rulings
 2419 thereon; and, if the Secretary of State refuses to admit evidence, the party offering the same
 2420 shall make a proffer thereof and such proffer shall be made a part of the record of such
 2421 hearing.

2422 (f) If the Secretary of State does not receive a request for a hearing within the prescribed
 2423 time, he or she may permit an order previously entered to remain in effect or he or she may
 2424 enter a proposed order. If a hearing is requested and conducted as provided in this Code
 2425 section, the Secretary of State shall issue a written order which shall set forth his or her
 2426 findings with respect to the matters involved and enter an order in accordance with the
 2427 Secretary's findings.

2428 10-14A-22.

2429 When consent to service of process is required under this chapter, such consent to service
 2430 of process shall be in the form prescribed by the Secretary of State, shall be irrevocable,
 2431 and shall provide that actions brought by the State of Georgia arising out of or founded
 2432 upon the sale of funeral merchandise or funeral services in violation of this chapter may
 2433 be commenced in any court of competent jurisdiction with proper venue within this state
 2434 by the service of process or pleadings upon the Secretary of State against the person
 2435 executing such consent. Notwithstanding any provision in any other law to the contrary,
 2436 service of any such process or pleadings in any such action against a person who has filed
 2437 a consent to service with the Secretary of State shall, if made on the Secretary of State, be
 2438 by duplicate copies, one of which shall be filed in the office of the Secretary of State and
 2439 the other shall immediately be forwarded by the Secretary of State by certified mail or
 2440 statutory overnight delivery to the person against whom such process or pleadings are
 2441 directed at such person's latest address on file in the office of the Secretary of State.

2442 10-14A-23.

2443 Any condition, stipulation, or provision binding any person acquiring any funeral
 2444 merchandise or funeral services to waive:

2445 (1) Compliance with any provision of this chapter or of the rules and regulations
2446 promulgated under this chapter;
2447 (2) Any rights provided by this chapter or by the rules and regulations promulgated
2448 under this chapter; or
2449 (3) Any defenses arising under this chapter or under the rules and regulations
2450 promulgated under this chapter
2451 shall be void.

2452 10-14A-24.

2453 For any action taken or any proceeding had under the provisions of this chapter or under
2454 color of the law, the Secretary of State shall be immune from liability and action to the
2455 same extent that any judge of any court of general jurisdiction in this state would be
2456 immune.

2457 10-14A-25.

2458 (a) Prior law exclusively governs all actions, prosecutions, or proceedings which are
2459 pending or may be initiated on the basis of facts or circumstances occurring before July 1,
2460 2000, except that no civil action may be maintained to enforce any liability under prior law
2461 unless brought within any period of limitation which applied when the cause of action
2462 accrued and, in any event, no later than July 1, 2000.

2463 (b) All effective registrations under prior law, all administrative orders relating to such
2464 registrations, and all conditions imposed upon such registrations remain in effect. They
2465 shall be deemed to have been filed, entered, or imposed under this chapter but are governed
2466 by prior law.

2467 (c) Judicial review of all administrative orders as to which review proceedings have not
2468 been instituted by July 1, 2000, are governed by Code Section 10-14A-20, except that no
2469 review proceeding may be instituted unless the petition is filed within any period of
2470 limitation which applied to a review proceeding when the order was entered and, in any
2471 event, no later than August 1, 2000.

2472 10-14A-26.

2473 The Secretary of State, by rule, may adopt minimum standards for interment of human
2474 remains, including, without limitation, standards for depth of burial, composition of vaults,
2475 caskets, and other containers, siting and marking of burial lots, and minimum standards for
2476 construction of mausoleums and columbaria. In addition, the Secretary of State may, by
2477 rule, provide for the minimum standards for or prohibition of aboveground burial
2478 containers."

2479 **SECTION 3.**

2480 Code Section 31-21-7 of the Official Code of Georgia, relating to preneed contracts and who
2481 is permitted to direct the disposition of a body, is amended by revising subsection (a) as
2482 follows:

2483 "(a) A person who is 18 years of age or older and of sound mind, by entering into a
2484 preneed contract, as defined in paragraph ~~(30)~~ (27) of Code Section 10-14-3, may direct
2485 the location, manner, and conditions of the disposition of the person's remains and the
2486 arrangements for funeral goods and services to be provided upon the person's death. The
2487 disposition directions and funeral prearrangements that are contained in a preneed contract
2488 shall not be subject to cancellation or substantial revision unless the cancellation or
2489 substantial revision has been ordered by a person the decedent has appointed in the preneed
2490 contract as the person authorized to cancel or revise the terms of the preneed contract or
2491 unless any resources set aside to fund the preneed contract are insufficient under the terms
2492 of the preneed contract to carry out the disposition directions and funeral prearrangements
2493 contained therein."

2494 **SECTION 4.**

2495 This Act shall become effective upon its approval by the Governor or upon its becoming law
2496 without such approval.

2497 **SECTION 5.**

2498 All laws and parts of laws in conflict with this Act are repealed.