

SENATE BILL NO. 806 (Substitute of Senate Bill No. 131 by Senator LaFleur)

BY SENATOR LAFLEUR

1 AN ACT

2 To amend and reenact Part II of Chapter 10 of Title 37 of the Louisiana Revised Statutes of
3 1950, composed of R.S. 37:861 through 867, and R.S. 37:831(38) and to enact R.S.
4 37:831(71) through (80), relative to preneed funeral contracts; to provide for
5 definitions; to provide for preneed funeral plans; to provide for preneed funeral
6 contracts; to provide for funeral goods and services; to provide for cancellation; to
7 provide for restrictions; to provide for penalties; to provide for applicability; and to
8 provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Part II of Chapter 10 of Title 37 of the Louisiana Revised Statutes of
11 1950, composed of R.S. 37:861 through 867, and R.S. 37:831(38) are hereby amended and
12 reenacted and R.S. 37:831(71) through (80) are hereby enacted to read as follows:

13 §831. Definitions

14 For purposes of this Chapter and implementation thereof, the following terms
15 shall have the meaning as defined herein, unless the context clearly indicates
16 otherwise:

17 * * *

18 (38) "Funeral merchandise" means ~~those consumer goods used in connection~~
19 ~~with the casket, vault, or box, clothing, and any other merchandise used for the~~
20 ~~funeral of a dead human body, including but not limited to, the receptacle in which~~
21 ~~the body is directly placed; except that mausoleum crypts, tombs, interment~~
22 ~~receptacles, columbarium niches and copings shall be excluded from the above~~
23 ~~definition.~~ **caskets, rental caskets, rental casket inserts, alternative containers,**

1 combo/shipping caskets, and other receptacles, excluding urns, where human
 2 remains are directly placed for disposition.

3 * * *

4 (71) "Buyer" means the person entering into a preneed funeral contract
 5 with a licensed funeral establishment.

6 (72) "Financial institution" means a state or national bank, savings bank
 7 or savings association located in the state of Louisiana and whose deposits are
 8 insured by the Federal Deposit Insurance Corporation, including homesteads,
 9 building and loan associations and savings and loan associations.

10 (73) "Funeral goods and services" means goods which are sold or offered
 11 for sale directly to the public for use in connection with funeral services and any
 12 services which may be used to care for and prepare deceased human remains
 13 for burial, cremation, or other final disposition and to arrange, supervise or
 14 conduct the funeral ceremony or the final disposition of deceased human bodies,
 15 including, but not limited to, funeral merchandise.

16 (74) "Funeral recipient" means the individual for whom funeral goods
 17 and services are to be provided under the terms of a preneed funeral contract.

18 (75) "Funeral trust account" means an account established pursuant to
 19 R.S. 37:865(B)(1).

20 (76) "Guaranteed funeral goods and services" means funeral goods and
 21 services which a funeral establishment agrees to provide for a named funeral
 22 recipient upon death which are a specifically identified set of funeral goods and
 23 services designated as guaranteed and for which a funeral trust account has
 24 been established or a preneed insurance policy or annuity has been purchased
 25 or assigned to pay for those funeral goods and services, provided the buyer has
 26 fully funded a funeral trust account, or has fully paid for a preneed funeral
 27 policy or annuity, within a specified period of time after the preneed funeral
 28 contract is made and the funeral establishment has agreed to accept the funds
 29 available in the funeral trust account or preneed insurance policy or annuity
 30 during the term of the guarantee as payment in full for those funeral goods and

1 services so that there will be no additional cost to the funeral recipient's family
 2 or his or her estate for those funeral goods and services.

3 (77) "Prearrangement" means the non-binding gathering and exchange
 4 of information before the death of an individual that provides guidance for a
 5 funeral or final disposition of that individual and does not result in a preneed
 6 funeral contract.

7 (78) "Preneed funeral contract" means any written agreement between
 8 a buyer and a funeral establishment in which a funeral establishment agrees,
 9 prior to the death of a named funeral recipient, to furnish funeral goods and
 10 services for the funeral recipient upon death, and the buyer, pursuant to that
 11 agreement, transfers or tenders funds, or assigns an insurance policy or annuity
 12 to the funeral establishment for the purpose of paying all or part of the cost of
 13 those funeral goods and services at the time they are actually provided. The
 14 contract may be designated as revocable or irrevocable and may be guaranteed
 15 or nonguaranteed as to some or all of the funeral goods and services included
 16 therein.

17 (79) "Preneed insurance policy or annuity" means any policy or contract
 18 of insurance issued by an insurance company in accordance with Title 22 of the
 19 Louisiana Revised Statutes of 1950, and used to fund a preneed funeral
 20 contract.

21 (80) "Refund Designee" means the person designated in a preneed
 22 funeral contract by the buyer to receive any surplus of funds as provided in R.S.
 23 37:865(G) and (I).

24 * * *

25 ~~PART II. PREPAID FUNERAL SERVICES OR MERCHANDISE~~

26 PRENEED FUNERAL PLANS

27 ~~§861. Prepaid funeral services or merchandise~~ Preneed funeral plans

28 A. It shall be unlawful for a firm, partnership, corporation, an association of
 29 individuals, or anyone to ~~engage in the selling of prearranged or prepaid burial or~~
 30 ~~funeral services or merchandise, or distributing any contracts, certificates, or~~

1 coupons, or any other method of granting or promising, expressed or implied, these
2 benefits including caskets, grave vaults, and all other merchandise or services
3 incidental to a funeral or final disposition of a human remains, excluding grave
4 vaults when sold by a cemetery authority, grave lots, grave spaces, grave markers,
5 monuments, tombstones, niches, and mausoleums, other than: **enter into a preneed**
6 **funeral contract other than a duly licensed funeral establishment.**

7 (1) ~~A duly licensed funeral establishment to be identified as "seller."~~

8 (a) ~~In such case all amounts paid to or received by the seller shall be~~
9 ~~deposited within seven days in a savings and loan association or in a savings account~~
10 ~~in a bank, in this state. Such deposits shall be carried in individual accounts in the~~
11 ~~joint name of the seller and purchaser or in individual trust accounts, both for the~~
12 ~~exclusive use and benefit, including all earned interest, of the purchaser. There shall~~
13 ~~be no commingling of these accounts. The seller may withdraw the funds only at the~~
14 ~~death of the purchaser by presentation of a death certificate copy and a certified~~
15 ~~funeral statement for the amount to be withdrawn, together with other requirements~~
16 ~~of the financial institution. The purchaser may withdraw the funds by written notice~~
17 ~~to the seller requesting the release of the depository document held by seller, or, if~~
18 ~~he so desires, may by his own request and by written notice to the seller at any time~~
19 ~~during the life of the contract, render any amount of the prepaid contract irrevocable.~~

20 (b) ~~Each seller shall file annually a report with the Louisiana State Board of~~
21 ~~Embalmers and Funeral Directors as a prerequisite for licensing of said~~
22 ~~establishment. The report shall list the name, address, contract number, and principal~~
23 ~~amount and interest of each deposit or contract outstanding. This report shall be in~~
24 ~~affidavit form stating that the report is correct, that all funds received were deposited~~
25 ~~in a savings and loan association or bank as required under this Section; and that the~~
26 ~~seller has no other contracts or deposits effective after the date of this Part. Records~~
27 ~~used to complete this report shall be available to the board and shall be inspected~~
28 ~~annually.~~

29 (c) ~~No seller or representative thereof shall solicit by any personal means~~
30 ~~whatsoever for prearranged or prepaid funeral benefits herein defined.~~

1 ~~(2) Those licensed to sell contracts of funeral insurance as authorized by R.S.~~
2 ~~Title 22 with an insurance company licensed in Louisiana.~~

3 ~~B. It shall be unlawful for any seller to give or offer to give, directly or~~
4 ~~indirectly, orally or in writing, any money, credit, discount, gratuity or other thing~~
5 ~~of value, or advertise the offering of such benefits as an inducement for the business~~
6 ~~of a prospective customer. It shall also be unlawful for any seller to operate any~~
7 ~~burial insurance association or society, or issue, give, sell or distribute any contract~~
8 ~~or agreement, certificate or coupon, granting or promising any burial benefits or~~
9 ~~credit thereon, unless authorized under this Part or under R.S. Title 22.~~

10 ~~C. (1) Whoever violates the provisions of this Part shall be fined not less than~~
11 ~~five hundred dollars, nor more than two thousand five hundred dollars and costs of~~
12 ~~the court reporter and attorney for the board for each offense, or by imprisonment for~~
13 ~~not less than thirty days nor more than one hundred eighty days for each offense, or~~
14 ~~both such fine and imprisonment.~~

15 ~~(2) If a firm violates the provisions of this Part, all the members of the firm~~
16 ~~who knowingly violate such provisions shall be subject to the penalty. If a~~
17 ~~corporation violates the provisions of this Part, the members of the board of directors~~
18 ~~and the officers of the corporation who knowingly violate such provisions shall be~~
19 ~~subject to the penalty.~~

20 ~~D. Nothing in this Part, however, shall alter or affect any provisions of R.S.~~
21 ~~Title 22 authorizing the issuance of life or funeral insurance policies.~~

22 ~~E. Anything in this Part contained to the contrary notwithstanding, this Part~~
23 ~~shall not apply to any person, firm, corporation, trustee, partnership, association or~~
24 ~~other legal entity who now or hereafter exclusively engages in, owns, operates,~~
25 ~~controls and manages a cemetery authority located in the State of Louisiana, unless~~
26 ~~it sells, or attempts to sell, or contracts for merchandise or services commonly~~
27 ~~furnished by a funeral home such as caskets, embalming, funeral directing, use of~~
28 ~~funeral home facilities and use of a hearse or transportation of a dead human body.~~

29 **§862. Preneed funeral contracts**

30 **A. The preneed funeral contract shall:**

1 **(1) Be in writing and printed in not less than ten point typeface.**

2 **(2) State the name, address and telephone number of the funeral**
3 **establishment.**

4 **(3) State the name, address and telephone number of the buyer and the**
5 **funeral recipient, if the funeral recipient is not the buyer.**

6 **(4) Contain or be accompanied by a statement of funeral goods and**
7 **services which meets the requirements of the Federal Trade Commission**
8 **Funeral Rule, 16 CFR Part 453, and LAC Title 46, Part XXXVII, §111. If a**
9 **separate statement is used, it shall be attached to the preneed funeral contract**
10 **and incorporated by reference into that contract.**

11 **(5) State whether the contract will be funded by a preneed insurance**
12 **policy or annuity or a funeral trust account.**

13 **(6) If funded by a preneed insurance policy or annuity, state the name,**
14 **home office address, and telephone number of the insurance company. A copy**
15 **of the policy application with any medically related information expurgated**
16 **shall be attached to and incorporated by reference into the contract and shall**
17 **include a statement that the amount to be refunded if cancelled prior to the**
18 **death of the funeral recipient will be determined by the provisions of the**
19 **preneed insurance policy or annuity and a statement as to who is responsible for**
20 **paying the income tax on any earnings generated by the preneed insurance**
21 **policy or annuity.**

22 **(7) If funded by a deposit in a funeral trust account, provide the identity**
23 **of the financial institution in which the money delivered to the funeral**
24 **establishment by the buyer is to be deposited, and a statement as to who will be**
25 **responsible for paying the income tax on any earnings generated by the funeral**
26 **trust account.**

27 **(8) State the amount of the money initially deposited into a funeral trust**
28 **account and give a description of any preneed insurance policy or annuity, used**
29 **to fund the preneed funeral contract.**

30 **(9) State the effect on the contract benefits resulting from the failure to**

1 make any future payments required to fully fund the contract.

2 (10) Recite clearly and conspicuously whether the preneed funeral
3 contract or the funding is revocable or irrevocable.

4 (11) Specifically identify which funeral goods and services are
5 guaranteed funeral goods and services and state when the guarantee becomes
6 effective if other than upon execution of the contract and the term of the
7 guarantee if the term is other than for the life of the funeral recipient.

8 (12) State that the price to be paid for any funeral goods and services not
9 designated as guaranteed will be the prevailing retail prices as listed on the
10 general price list and casket price list of the funeral establishment at the time
11 of the death of the funeral recipient.

12 (13) Include a description of any casket, alternative container or other
13 funeral merchandise, burial vault or urn included in the preneed funeral
14 contract. The description of a casket shall include the exterior color, the
15 material the casket is constructed of, including but not limited to, the type and
16 thickness of metal expressed in gauge or ounces per square foot, type and color
17 of wood or other material and type and color of interior fabric; with respect to
18 an urn, the description shall be of the material of which it is constructed.

19 (14) Contain the signature of the buyer and the date the buyer signed the
20 contract.

21 (15) Contain the signature of a funeral director authorized by the funeral
22 establishment to enter into a preneed funeral contract, and the date signed.

23 (16) Clearly and conspicuously state that unless waived as provided in
24 R.S. 37:864(B), the preneed funeral contract may be cancelled and the buyer
25 receive a full refund of all monies delivered and a return and cancellation of the
26 assignment of all policies transferred or assigned in connection therewith
27 anytime within ten days after the buyer signed the contract.

28 (17) Include the name, address, and telephone number of any refund
29 designee designated by the buyer.

1 B. Until signed by a funeral director authorized by the funeral
2 establishment, the contract signed by the buyer shall be considered as an offer
3 to purchase. Upon acceptance of the offer, signified by the signature of its duly
4 authorized funeral director , the funeral establishment shall furnish a complete,
5 fully executed copy of the preneed funeral contract to the buyer.

6 §863. Substitution of guaranteed funeral goods and services

7 If any guaranteed funeral goods or services which were selected by the
8 buyer in a preneed funeral contract are unavailable at the time of the death of
9 the funeral recipient of that contract, the funeral establishment shall offer a
10 similar casket or other funeral goods or services of equal quality, value and
11 workmanship as the unavailable funeral goods or services.

12 §864. Cancellation of preneed funeral contracts

13 A. Unless waived as provided in Subsection B of this Section, any buyer
14 of a preneed funeral contract may cancel that contract and receive a full refund
15 of all monies connected with that contract at any time within ten days after the
16 buyer signed the contract. After the expiration of this ten day period, a preneed
17 funeral contract may be cancelled as hereinafter provided.

18 B. Where an application by the buyer or funeral recipient for
19 government benefits is pending, the buyer may waive his or her right to cancel
20 the preneed funeral contract as provided in Subsection A of this Section by
21 signing a written waiver of that right.

22 C. If a preneed funeral contract is revocable, the buyer, or his legal
23 representative, may cancel the preneed funeral contract at any time by sending
24 written notice of such cancellation, via certified mail, return receipt requested,
25 to the funeral establishment.

26 (1) If a funeral trust account has been established to fund that preneed
27 funeral contract, the funeral establishment shall within ten business days after
28 the notice of cancellation is received forward a copy of said notice of
29 cancellation to the financial institution holding on deposit the funeral trust
30 account, and take all necessary steps to ensure that all funds contained in that

1 funeral trust account are refunded to the buyer, less any charge for early
2 withdrawal imposed by the financial institution.

3 (2) If a preneed insurance policy or annuity was purchased or provided
4 to fund a preneed funeral contract, the funeral establishment shall forward a
5 copy of the notice of cancellation of that preneed funeral contract to the
6 insurance company which issued the preneed insurance policy or annuity.

7 D. If a preneed funeral contract is irrevocable during the life of the
8 funeral recipient the contract shall not be revocable by either party nor shall
9 the buyer be entitled to a return of the monies or any preneed insurance policy
10 or annuity delivered to the funeral establishment except by order of a court of
11 competent jurisdiction.

12 E. No funeral establishment shall impose any surcharge, fee, or other
13 penalty, monetary or otherwise, when any person seeks to exercise his right to
14 cancel a preneed funeral contract.

15 §865. Restriction on use or disposition of funds

16 A. No funeral establishment, or any agent or employee thereof, shall
17 borrow from, convert to another policy or surrender any preneed insurance
18 policy or annuity, nor use or pledge any funds or insurance policy or annuity
19 which is received in connection with any preneed funeral contract for any
20 personal use, payment of funeral goods and services prior to the death of the
21 funeral recipient, payment of the operating expenses of a funeral establishment,
22 issuance of a loan to any person, as collateral for any loan, or for any purpose
23 other than those expressly authorized by that preneed funeral contract and this
24 Section. There shall be no co-mingling of funeral trust accounts.

25 B. All funds delivered by a buyer to a funeral establishment in
26 connection with any preneed funeral contract shall be either:

27 (1) Deposited in a trust account with a financial institution not later than
28 five business days after the expiration of the ten day right of cancellation period
29 provided in R.S. 37:864(A). Such deposit shall be made in individual accounts
30 or certificates of deposits which name the funeral establishment and the funeral

1 recipient and shall be for the exclusive use and benefit, including all earned
2 interest, of the funeral recipient.

3 (2) Delivered to an insurance company for the purchase of a preneed
4 insurance policy or annuity not later than five business days after the expiration
5 of the ten day right to cancel period provided in R.S. 37:864(A).

6 C. A funeral establishment shall not be allowed to avoid the requirement
7 of Subsections A and B of this Section by constructive delivery of funeral goods
8 to the buyer, storing the funeral goods in a warehouse or other location, posting
9 of any type surety bond or other security or in any other manner or form.

10 D. Each funeral establishment shall file an annual report of funeral trust
11 accounts with the Louisiana State Board of Embalmers and Funeral Directors
12 as a prerequisite for licensing as a funeral establishment. The report shall list
13 the name of the funeral recipient, contract number, financial institution account
14 number, principal amount, and accumulated interest of each funeral trust
15 account outstanding. This report shall be in the form of a sworn affidavit
16 certifying that the report is true and correct, that all funds received were
17 deposited in a financial institution or delivered to an insurance company as
18 required under Subsection B of this Section and that the funeral establishment
19 has no other funds or deposits for funding prepaid funeral goods and services
20 effective as of the date of the report. All records used to complete the report
21 shall be made available to the board which shall make an inspection of such
22 records at least once annually.

23 E. A funeral establishment shall not have access to or use of any of the
24 funds in connection with a preneed funeral contract for any purpose other than
25 the following:

26 (1) If funded with a funeral trust account:

27 (a) Obtaining payment for providing funeral goods and services, upon
28 presentation of the documents required by Subsection F of this Section.

29 (b) Transferring those funds to another funeral trust account, or to a
30 preneed insurance policy or annuity, upon written authorization to do so from

1 the buyer of the preneed funeral contract, or the duly authorized representative
2 of the buyer.

3 (c) Refunding those funds to the buyer upon receipt of a written notice
4 of cancellation of the preneed funeral contract from the buyer or the duly
5 authorized legal representative thereof, to the extent permitted by R.S. 37:864.

6 (2) If funded with a preneed insurance policy or annuity, obtaining
7 payment for providing funeral goods and services, upon presentation of the
8 documents required by Subsection F of this Section.

9 F. Before obtaining or receiving payment for funeral goods and services
10 rendered to the funeral recipient of any preneed funeral contract, the funeral
11 establishment shall present a certified copy of the death certificate of the funeral
12 recipient to the financial institution with whom any funeral trust account has
13 been deposited and the insurer of any preneed insurance policy or annuity
14 which was used to fund that preneed funeral contract.

15 G. At the time of the funeral recipient's death, the funds available in any
16 funeral trust account established in connection with that preneed funeral
17 contract or from any preneed insurance policy or annuity purchased or
18 provided in connection with that preneed funeral contract shall be apportioned
19 between the guaranteed funeral goods and services and the nonguaranteed
20 funeral goods and services provided on the statement of goods and services
21 contained in the preneed funeral contract in accordance with the applicable
22 percentage pursuant to Subsection H of this Section. The preneed funeral
23 contract funds shall be allocated as follows:

24 (1) With respect to guaranteed funeral goods and services, if the amount
25 of apportioned funds to be applied to the costs of the guaranteed funeral goods
26 and services provided by the funeral establishment exceeds the current retail
27 price of those guaranteed funeral goods and services at the time of the funeral
28 recipient's death, the licensed funeral establishment may retain the resulting
29 surplus funds unless the preneed funeral contract provides otherwise. If the
30 amount of the apportioned funds to be applied to the current retail price of

1 those guaranteed funeral goods and services provided by the funeral
2 establishment is not sufficient to cover the current retail price of those funeral
3 goods and services at the time of the funeral recipient's death, the funeral
4 establishment shall bear the resulting loss and shall not bill the estate of the
5 funeral recipient or any other person for the deficiency.

6 (2) With respect to funeral goods and services which are not guaranteed,
7 if the amount of the apportioned funds to be applied to the cost of those funeral
8 goods and services exceeds the current retail price of such funeral goods and
9 services at the time of the funeral recipient's death, the licensed funeral
10 establishment shall refund the resulting surplus to the refund designee or, if
11 none has been designated in the contract or the refund designee predeceased the
12 funeral recipient, to the estate of the funeral recipient. If the amount of the
13 apportioned funds to be applied to the current retail price of those funeral
14 goods and services provided by the funeral establishment which are not
15 guaranteed are not sufficient to cover the current retail price of those funeral
16 goods and services at the time of the funeral recipient's death, the funeral
17 establishment may charge the responsible party or the estate of the funeral
18 recipient for the deficiency.

19 H. The "applicable percentage" means either of the following:

20 (1) The percentage of the total cost of the funeral which is attributable
21 to the guaranteed funeral goods and services shall be calculated by dividing the
22 total cost of the guaranteed funeral goods and services, as set forth in the
23 statement of funeral goods and services in the preneed funeral contract, by the
24 total cost of the funeral set forth in that statement.

25 (2) The percentage of total cost of the funeral which is attributable to the
26 nonguaranteed funeral goods and services shall be calculated by dividing the
27 total cost of the nonguaranteed funeral goods and services, as set forth in the
28 statement of funeral goods and services in the preneed funeral contract, by the
29 total cost of the funeral as set forth in that statement.

1 (3) The percentages so calculated as provided above shall be rounded off
2 to the nearest whole number and the sum of such percentages shall in all cases
3 equal one hundred percent.

4 I. If a funeral establishment which is a party to a preneed funeral
5 contract does not provide the funeral goods and services for the funeral
6 recipient of the contract upon his death, the contract shall be deemed null and
7 void except for the designation of the refund designee and, upon receipt of a
8 certified copy of the death certificate of such funeral recipient, the funeral
9 establishment shall comply with all of the following:

10 (1) Take all necessary and appropriate steps to relinquish all of its rights
11 and claims to any preneed insurance policy or annuity funding the preneed
12 funeral contact.

13 (2) Pay or cause to be paid the funds of any funeral trust account, up to
14 the amount available as follows:

15 (a) To the funeral establishment that provided the funeral goods and
16 services for the funeral of the funeral recipient in an amount equal to its total
17 charges as shown on the statement of funeral goods and services for the funeral
18 net of any proceeds to be received from any preneed insurance policy or
19 annuity.

20 (b) Any balance to the refund designee and if none is designated in the
21 preneed funeral contract or if the refund designee predeceased the funeral
22 recipient, then to the estate of the funeral recipient.

23 §866. Penalties

24 A. Whoever violates the provisions of this Part shall be fined not less
25 than five hundred dollars, nor more than five thousand dollars and costs of the
26 court reporter and attorney for the board for each offense, or by imprisonment
27 for not less than thirty days nor more than one hundred eighty days for each
28 offense, or both such fine and imprisonment.

29 B. If a firm violates the provisions of this Part, all the members of the
30 firm who knowingly violate such provisions shall be subject to the penalty. If

1 a corporation violates the provisions of this Part, the members of the board of
2 directors and the officers of the corporation who knowingly violate such
3 provisions shall be subject to the penalty.

4 §867. Applicability

5 Anything in this Part contained to the contrary notwithstanding, this
6 Part shall not apply to any person, firm, corporation, trustee, partnership,
7 association or other legal entity who now or hereafter exclusively engages in,
8 owns, operates, controls and manages a cemetery authority located in the state
9 of Louisiana, unless it sells, or attempts to sell, or contracts for merchandise or
10 services commonly furnished by a funeral home such as caskets, embalming,
11 funeral directing, use of funeral home facilities and use of a hearse or
12 transportation of a dead human body.

13 Section 2. This Act shall become effective on January 1, 2009.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____