

TITLE 10. COMMERCE AND TRADE
CHAPTER 14. CEMETERY AND FUNERAL SERVICES

§ 10-14-1. Short title

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

HISTORY: Code 1981, § 44-3-130, enacted by Ga. L. 1983, p. 1508, § 1; Code 1981, § 10-14-1, as redesignated by Ga. L. 2000, p. 882, § 1.

§ 10-14-2. Regulation of preneed dealers, registrants, and cemetery companies; licenses

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

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

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

HISTORY: Code 1981, § 10-14-2, enacted by Ga. L. 2000, p. 882, § 1.

§ 10-14-3. Definitions

As used in this chapter, the term:

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

(2) "Boards" mean the State Board of Cemeterians as described and authorized in Chapter 8B of Title 43 and the State Board of Funeral Service as described and authorized in Chapter 18 of Title 43.

(3) "Burial merchandise," "funeral merchandise," or "merchandise" means any personal property offered or sold by any person for use in connection with the final disposition, memorialization, interment, entombment, or

inurnment of human remains.

(4) "Burial right" means the right to use a grave space, mausoleum, or columbarium for the interment, entombment, or inurnment of human remains.

(5) "Burial service" means any service other than a funeral service offered or provided by any person in connection with the final disposition, memorialization, interment, entombment, or inurnment of human remains.

(6) "Care and maintenance" means the perpetual process of keeping a cemetery and its lots, graves, grounds, landscaping, roads, paths, parking lots, fences, mausoleums, columbaria, vaults, crypts, utilities, and other improvements, structures, and embellishments in a well cared for and dignified condition, so that the cemetery does not become a nuisance or place of reproach and desolation in the community. As specified in the rules of the Secretary of State, care and maintenance may include, but is not limited to, any or all of the following activities: mowing the grass at reasonable intervals; raking and cleaning the grave spaces and adjacent areas; pruning of shrubs and trees; suppression of weeds and exotic flora; and maintenance, upkeep, and repair of drains, water lines, roads, buildings, and other improvements. Care and maintenance may include, but is not limited to, reasonable overhead expenses necessary for such purposes, including maintenance of machinery, tools, and equipment used for such purposes. Care and maintenance may also include repair or restoration of improvements necessary or desirable as a result of wear, deterioration, accident, damage, or destruction. Care and maintenance does not include expenses for the construction and development of new grave spaces or interment structures to be sold to the public.

(7) "Casket" means a container which is designed for the encasement and viewing of a dead human body.

(8) "Cemetery" means a place dedicated to and used, or intended to be used, for permanent interment of human remains. A cemetery may contain land or earth interments; mausoleum, a vault, crypt interments; a columbarium or other structure or place used or intended to be used for the inurnment of cremated human remains; or any combination of one or more of such structures or places. Such term shall not include governmentally owned cemeteries, fraternal cemeteries, cemeteries owned and operated by churches, synagogues, or communities or family burial plots.

(9) "Cemetery company" means any entity that owns or controls cemetery lands or property.

(10) "Columbarium" means a structure or building which is substantially exposed above the ground and which is intended to be used for the inurnment of cremated human remains.

(11) "Common business enterprise" means a group of two or more business entities that share common ownership in excess of 50 percent.

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

(13) "Crypt" means a chamber of sufficient size to inter the remains of a deceased human being.

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

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

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

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

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

(18) "Grave space" or "lot" means a space of ground in a cemetery intended to be used for the interment in the ground of human remains.

(19) "Human remains" means the bodies of deceased human beings and includes the bodies in any stage of decomposition and the cremated remains.

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

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

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

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

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

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

(26) "Nonperpetual care" means any cemetery which does not offer perpetual care as defined in this Code section.

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

(28) "Perpetual care" means the care and maintenance and the reasonable administration of the cemetery grounds and buildings at the present time and in the future.

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

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

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

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

(32.1) "Principal" means a sum set aside or escrowed exclusive of income or interest or other return thereon.

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

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

(35) "Secretary of State" means the Secretary of State of the State of Georgia.

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

HISTORY: Code 1981, § 44-3-131, enacted by Ga. L. 1983, p. 1508, § 1; Ga. L. 1984, p. 22, § 44; Ga. L. 1986, p. 10, § 44; Ga. L. 1986, p. 1468, § 1; Code 1981, § 10-14-3, as redesignated by Ga. L. 2000, p. 882, § 1; Ga. L. 2006, p. 1087, §§ 1, 2/HB 910; Ga. L. 2007, p. 47, § 10/SB 103; Ga. L. 2007, p. 398, § 1/HB 391; Ga. L. 2008, p. 324, § 10/SB 455; Ga. L. 2012, p. 625, §§ 1, 6/HB 933.

§ 10-14-3.1. Authority of boards

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

HISTORY: Code 1981, § 10-14-3.1, enacted by Ga. L. 2006, p. 1087, § 2A/HB 910; Ga. L. 2012, p. 625, § 7/HB 933.

§ 10-14-4. Registration of dealers and cemeteries; perpetual care cemeteries trust funds; nonperpetual care cemeteries; preneed escrow accounts

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOTICE

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

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

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

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

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

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

(Q) A filing fee of \$100.00.

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

(A) The name of the applicant;

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

(C) All locations of the records of the applicant which relate to preneed sales in Georgia;

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

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

(F) A description of any judgment or pending litigation to which the applicant or any affiliate of the applicant is a party and which involves the operation of the applicant's preneed business in Georgia or which could materially

affect the business or assets of the applicant;

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

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

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

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

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

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

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

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

(O) A filing fee of \$250.00.

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

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

(A) The name of the applicant;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) The Secretary of State, by rule, may provide for exceptions from registration for cemeteries when the Secretary of State determines that the public interest does not require registration, provided that such cemeteries are in existence on or before July 1, 2000, consist of less than 25 acres, and are operated by nonprofit entities.

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

(1) Any registered cemetery owner;

(2) The owner of any cemetery exempt from registration with respect to sales of burial or funeral merchandise sold for use at such cemetery;

(3) Any licensed funeral director;

(4) Any person providing interment and disinterment services exclusively at cemeteries exempt from registration;

(5) Any monument manufacturer or dealer which does not install monuments in cemeteries required to be registered by this Code section;

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

(7) Any registered preneed dealer.

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

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

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

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

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

HISTORY: Code 1981, § 44-3-134, enacted by Ga. L. 1983, p. 1508, § 1; Ga. L. 1984, p. 22, § 44; Ga. L. 1986, p. 10, § 44; Ga. L. 1986, p. 1468, §§ 4-6; Ga. L. 1994, p. 329, § 1; Ga. L. 1998, p. 128, § 44; Code 1981, § 10-14-4, as redesignated by Ga. L. 2000, p. 882, § 1; Ga. L. 2012, p. 625, § 8/HB 933.

§ 10-14-5. Preneed sales agents; contracts; retention of employee data

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HISTORY: Code 1981, § 44-3-132, enacted by Ga. L. 1983, p. 1508, § 1; Ga. L. 1984, p. 22, § 44; Ga. L. 1986, p. 1468, § 2; Code 1981, § 10-14-5, as redesignated by Ga. L. 2000, p. 882, § 1; Ga. L. 2012, p. 625, § 9/HB 933.

§ 10-14-5.1. Relationship between life insurance and funeral establishment

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

HISTORY: Code 1981, § 10-14-5.1, enacted by Ga. L. 2012, p. 625, § 10/HB 933.

§ 10-14-6. Irrevocable trust fund

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

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

(3) The initial corpus of the trust fund and all subsequent required deposits shall be deposited in a state bank, state savings and loan institution, savings bank, national bank, or federal savings and loan institution, whose deposits are insured by the Federal Deposit Insurance Corporation or other governmental agency, or a state or federally chartered

credit union insured under 12 U.S.C. Section 1781 of the Federal Credit Union Act, or other depository or trustee which is approved by the Secretary of State or which meets the standards contained in the rules and regulations promulgated by the Secretary of State.

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

(b) Whenever any burial right, cemetery lot, grave space, niche, mausoleum, columbarium, urn, or crypt wherein perpetual care or endowment care is promised or contracted for or guaranteed is sold by any cemetery, the cemetery shall make deposits to the trust fund that equal 15 percent of the sales price of the burial right or 7.5 percent of the total sales price of any mausoleums, niches, columbaria, urns, or crypts, provided that the minimum deposit for each burial right shall be \$50.00; provided, further, that on July 1, 2003, and every three years thereafter, the amount of said minimum deposit shall be adjusted by the rate of change in the Consumer Price Index as reported by the Bureau of Labor Statistics of the United States Department of Labor. The Secretary of State shall adopt such adjustment to the amount of said minimum deposit by rule. Deposits to the trust fund shall be made not later than 30 days following the last day of the month in which payment therefor is made, or, in the case of a free space, the month in which the space is given. In the event any sale is made on an installment basis, not less than a pro rata share of the principal portion of each payment made and allocated to the lot, grave, space, niche, mausoleum, columbarium, urn, or crypt shall be allocated to the required trust fund deposit, provided that all deposits to the trust fund shall be completed within six years from the date of the signing of the perpetual care contract. The manner of any such allocation shall be clearly reflected on the books of the registrant.

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

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

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

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

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

95 percent of the income from the trust fund shall be paid to the owner or receiver exclusively for covering the costs of care and maintenance of the cemetery, including reasonable administrative expenses incurred in connection therewith. The income of the trust fund shall be paid to the owner or receiver at intervals agreed upon by the

recipient and the trustee, but in no case shall the income be paid more often than monthly.

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

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

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

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

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

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

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

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

HISTORY: Code 1981, § 44-3-134, enacted by Ga. L. 1983, p. 1508, § 1; Ga. L. 1984, p. 22, § 44; Ga. L. 1986, p.

10, § 44; Ga. L. 1986, p. 1468, §§ 4-6; Ga. L. 1994, p. 329, § 1; Ga. L. 1998, p. 128, § 44; Code 1981, § 10-14-6, as redesignated by Ga. L. 2000, p. 882, § 1; Ga. L. 2010, p. 579, § 4/SB 131; Ga. L. 2011, p. 752, § 10/HB 142.

§ 10-14-7. Preneed escrow accounts

(a) (1) Each preneed dealer which sells burial or funeral merchandise on a preneed basis or preneed burial or funeral services, other than preneed funeral services described in Code Section 10-14-7.1, shall establish and maintain a trust fund or a preneed escrow account.

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

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

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

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

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

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

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

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

(e) (1) For burial or funeral merchandise, funds shall be released from the trust or escrow account when the burial or funeral merchandise is delivered or, if the burial or funeral merchandise is not yet delivered, within the time required by law after a purchaser requests a refund. The preneed dealer is considered to have delivered burial or funeral merchandise when the burial or funeral merchandise is:

(A) Actually delivered to the purchaser at the time of need;

(B) Actually delivered to the purchaser at the purchaser's request;

(C) In the case of a monument, when the monument is attached to realty;

(D) In the case of a monument, when the preneed dealer has the monument manufactured for the purchaser and placed into storage with a responsible third party bonded and insured for the wholesale value thereof and evidenced by a receipt specifically identifying the monument, the specific preneed contract, the location of the monument, and identify and address of the bonding and insuring parties; or

(E) At such other times as prescribed by the rule or order of the Secretary of State.

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

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

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

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

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

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

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

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

HISTORY: Code 1981, § 44-3-134, enacted by Ga. L. 1983, p. 1508, § 1; Ga. L. 1984, p. 22, § 44; Ga. L. 1986, p. 10, § 44; Ga. L. 1986, p. 1468, §§ 4-6; Ga. L. 1994, p. 329, § 1; Ga. L. 1998, p. 128, § 44; Code 1981, § 10-14-7, as redesignated by Ga. L. 2000, p. 882, § 1; Ga. L. 2006, p. 1087, § 3/HB 910; Ga. L. 2012, p. 625, § 11/HB 933.

§ 10-14-7.1. Trust accounts for preneed funds

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

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

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

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

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

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

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

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

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

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

(C) In making investments pursuant to subparagraph (b)(2)(B) of this Code section and in acquiring and retaining those investments and managing the property of the estate, the personal representative shall exercise the judgment and care, under the circumstances then prevailing, which persons of prudence, discretion, and intelligence

exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

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

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

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

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

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

HISTORY: Code 1981, § 10-14-7.1, enacted by Ga. L. 2012, p. 625, § 12/HB 933.

§ 10-14-8. Prohibition of certain persons from employment; notice and hearing; emergency orders

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

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

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

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

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

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

(b) Where the Secretary of State finds that there are grounds for the prohibition from employment provided in this Code section, he or she may issue an order prohibiting an employee, officer, independent contractor, or other agent directly or indirectly involved in cemetery or preneed sales or any person occupying a similar status or performing similar functions from employment with a registered cemetery or preneed dealer. Such an order shall not be effective until notice and opportunity for hearing are provided in accordance with Code Section 10-14-23 and until the Secretary of State shall issue a written order in accordance with Code Section 10-14-23; but the Secretary of State may, if he or she finds that the public safety or welfare requires emergency action, immediately issue an order prohibiting such person from such employment. Such an order of immediate prohibition will expire automatically if the Secretary of State fails to afford notice and opportunity for hearing pursuant to Code Section 10-14-23.

HISTORY: Code 1981, § 44-3-133, enacted by Ga. L. 1983, p. 1508, § 1; Ga. L. 1984, p. 22, § 44; Ga. L. 1986, p. 1468, § 3; Code 1981, § 10-14-8, as redesignated by Ga. L. 2000, p. 882, § 1.

§ 10-14-9. Amendment of registration application; state audit of records; change of ownership

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

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

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

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

(2) When the vendee or transferee has complied with the provisions of this subsection, he or she shall submit to the Secretary of State an application for registration and appropriate fees pursuant to Code Section 10-14-4. The Secretary of State shall then issue a certificate of registration to said vendee or transferee.

HISTORY: Code 1981, § 44-3-135, enacted by Ga. L. 1983, p. 1508, § 1; Ga. L. 1984, p. 22, § 44; Ga. L. 1986, p. 1468, §§ 7, 8; Ga. L. 1987, p. 3, § 44; Ga. L. 1992, p. 2397, § 1; Code 1981, § 10-14-9, as redesignated by Ga. L. 2000, p. 882, § 1.

§ 10-14-10. Minimum acreage for cemeteries; exceptions

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

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

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

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

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

HISTORY: Code 1981, § 44-3-135, enacted by Ga. L. 1983, p. 1508, § 1; Ga. L. 1984, p. 22, § 44; Ga. L. 1986, p. 1468, §§ 7, 8; Ga. L. 1987, p. 3, § 44; Ga. L. 1992, p. 2397, § 1; Code 1981, § 10-14-10, as redesignated by Ga. L. 2000, p. 882, § 1; Ga. L. 2006, p. 1087, § 4/HB 910.

§ 10-14-11. Stop order suspending or revoking a registration; denial or refusal of application for registration; penalties

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

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

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

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

(4) The person or entity registered or sought to be registered or the individual owner, corporate owner, or person who owns a controlling interest of the corporate owner has been adjudicated, civilly or criminally, to have committed fraud or to have violated any law of any state involving fair trade or business practices, has been convicted of a misdemeanor of which fraud is an essential element or which involves any aspect of the funeral or cemetery business, or has been convicted of a felony;

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

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

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

(A) The person filing the registration application;

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

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

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

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

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

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

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

(d) The Secretary of State may by order summarily postpone or suspend the effectiveness of the registration or refuse to register any applicant pending final determination of any proceeding under this Code section. Upon the entry of the order, the Secretary of State shall promptly notify the applicant or registrant of the order and the reasons for the order and that, within 15 days after the receipt of a written request, the matter will be heard. If no hearing is requested and none is ordered by the Secretary of State, the order will remain in effect until it is modified or vacated by the Secretary of State. If a hearing is requested or ordered, the Secretary of State, after notice of an opportunity for hearing to the persons affected, may modify or vacate the order or extend it until final determination.

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

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

HISTORY: Code 1981, § 44-3-136, enacted by Ga. L. 1983, p. 1508, § 1; Ga. L. 1984, p. 22, § 44; Ga. L. 1986, p. 10, § 44; Code 1981, § 10-14-11, as redesignated by Ga. L. 2000, p. 882, § 1.

§ 10-14-12. Separate accounts and records; agreement form approval; owner acting as trustee; bond; removal of trustee or escrow agent; allocation of funds; financial reports

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

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

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

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

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

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

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

HISTORY: Code 1981, § 44-3-137, enacted by Ga. L. 1983, p. 1508, § 1; Ga. L. 1984, p. 22, § 44; Ga. L. 1992, p. 6, § 44; Code 1981, § 10-14-12, as redesignated by Ga. L. 2000, p. 882, § 1.

§ 10-14-13. Venue for civil or criminal actions

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

HISTORY: Code 1981, § 44-3-138, enacted by Ga. L. 1983, p. 1508, § 1; Code 1981, § 10-14-13, as redesignated by Ga. L. 2000, p. 882, § 1.

§ 10-14-14. Administration of chapter; rules and regulations

- (a) The administration of the provisions of this chapter shall be vested in the Secretary of State.
- (b) The Secretary of State shall keep a record of all proceedings related to his or her duties under this chapter and shall keep records in which shall be entered the names of all cemeteries, preneed dealers, preneed sales agents, and burial or funeral merchandise dealers to whom certificates of registration are issued, which records shall be open at all times for public inspection.
- (c) The Secretary of State shall have the authority to administer oaths in, and to prescribe forms for, all matters arising under this chapter.
- (d) The Secretary of State shall have authority to employ examiners, clerks and stenographers, and other employees as the administration of this law may require. The Secretary of State shall also have authority to appoint and employ investigators who shall have, in any case in which there is a reason to believe a violation of this chapter has occurred or is about to occur, the right and power to serve subpoenas and to swear out and execute search warrants and arrest warrants.
- (e) The Secretary of State shall have the power to make such rules and regulations from time to time as he or she may deem necessary and proper for the enforcement of this chapter including, without limitation, rules regarding the solicitation of burial or funeral rights, merchandise, or services. The Secretary of State shall regulate such solicitation to protect the public from solicitation which is intimidating, overreaching, vexatious, fraudulent, or misleading; which utilizes undue influence; or which takes undue advantage of a person's ignorance or emotional vulnerability. Such rules and regulations shall be adopted, promulgated, and contested as provided in Chapter 13 of Title 50.

HISTORY: Code 1981, § 44-3-139, enacted by Ga. L. 1983, p. 1508, § 1; Ga. L. 1984, p. 22, § 44; Ga. L. 1985, p. 149, § 44; Code 1981, § 10-14-14, as redesignated by Ga. L. 2000, p. 882, § 1; Ga. L. 2006, p. 1087, § 5/ HB 910.

§ 10-14-15. Investigations by Secretary of State; subpoenas; hearings

- (a) The Secretary of State, at his or her discretion:
 - (1) May make such public or private investigations or examinations inside or outside this state as he or she deems necessary to determine whether any person has violated or is about to violate any provision of this chapter or any rule, regulation, or order under this chapter or to aid in the enforcement of this chapter or in the prescribing of rules and regulations under this chapter; and
 - (2) May require or permit any person to file a statement in writing, under oath or otherwise as the Secretary of State determines, as to all the facts and circumstances concerning the matter to be investigated.
- (b) For the purpose of conducting any investigation as provided in this Code section, the Secretary of State shall have the power to administer oaths, to call any party to testify under oath at such investigations, to require the attendance of witnesses and the production of books, records, and papers, and to take the depositions of witnesses; and, for such purposes, the Secretary of State is authorized to issue a subpoena for any witness or a subpoena for the production of documentary evidence to compel the production of any books, records, or papers. Said subpoenas may

be served by certified mail or statutory overnight delivery, return receipt requested, to the addressee's business mailing address or by investigators appointed by the Secretary of State or shall be directed for service to the sheriff of the county where such witness resides or is found or where such person in custody of any books, records, or papers resides or is found. The fees and mileage of the sheriff, witness, or person shall be paid from the funds in the state treasury for the use of the Secretary of State in the same manner that other expenses of the Secretary of State are paid.

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

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

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

HISTORY: Code 1981, § 44-3-140, enacted by Ga. L. 1983, p. 1508, § 1; Ga. L. 1984, p. 22, § 44; Ga. L. 1985, p. 149, § 44; Ga. L. 1986, p. 1468, § 9; Ga. L. 1987, p. 3, § 44; Code 1981, § 10-14-15, as redesignated by Ga. L. 2000, p. 882, § 1; Ga. L. 2000, p. 1589, § 3.

§ 10-14-16. Cemetery rules and regulations; service charges

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

(b) The owner of every cemetery shall have the further right to establish reasonable rules and regulations regarding the type material, design, composition, finish, and specifications of any and all merchandise to be used or installed in the cemetery. Subject to the provisions of this Code section and rules of the Secretary of State, reasonable rules may further be adopted regarding the installing by the cemetery or others of all merchandise to be installed in the cemetery. Such rules and regulations shall be posted conspicuously and maintained, subject to inspection and copy, at the usual place for transacting the regular business of the cemetery. Upon request, the registrant shall provide a

copy of said rules and regulations to any person requesting it. No cemetery owner shall have the right to prevent the use of any merchandise purchased by a lot owner or owner of a burial right, his or her representative, his or her agent, or his or her heirs or assigns from any source, provided the merchandise meets all rules and regulations.

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

HISTORY: Code 1981, § 44-3-141, enacted by Ga. L. 1983, p. 1508, § 1; Ga. L. 1984, p. 22, § 44; Ga. L. 1985, p. 149, § 44; Code 1981, § 10-14-16, as redesignated by Ga. L. 2000, p. 882, § 1.

§ 10-14-17. Enumeration of prohibited acts; fees

(a) It shall be unlawful for any person:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Refuse to mark the place on the grave where the merchandise is to be installed and inspect the installation when completed to ensure compliance with cemetery rules and regulations;

(4) Require any person or firm that installs, places, or sets merchandise to pay any fee other than any fee charged pursuant to paragraph (2) of this subsection;

(5) Tie the purchase of any grave space or burial right to the purchase of merchandise from or through the seller or any other designated person or corporation;

(6) Refuse to provide care or maintenance for any portion of a grave site on which a monument has been placed, provided that installation has been in accordance with lawful rules and regulations of the cemetery;

(7) Attempt to waive liability with respect to damage caused by cemetery employees or agents to merchandise after installation, where merchandise or installation service is not purchased from the cemetery company providing grave space or from or through any other person or corporation designated by the person authorized to sell grave space or the cemetery company providing grave space; provided, however, that no cemetery company may be held liable for the improper installation of merchandise where merchandise is not installed by the cemetery company or its agents;

(8) After the promulgation of rules and regulations relating to the subject matter of this subsection by the Secretary of State, to require any person who installs, places, or sets merchandise to obtain any form of insurance, bond, or surety or make any form of pledge, deposit, or monetary guarantee as a condition of entry or access to cemetery property or the installation of merchandise thereon, other than as may be in accordance with said rules and regulations.

(d) Other than fees for the processing and for the sale of burial rights, burial or funeral merchandise, and burial or funeral services, no other fee may be directly or indirectly charged, contracted for, or received by a cemetery company as a condition for a customer to use any burial right, burial or funeral merchandise, or burial or funeral service, except for:

(1) Charges paid for opening and closing a grave and vault installation;

(2) Charges paid for transferring burial rights from one purchaser to another; however, no such fee may exceed \$75.00 and such fee must have been disclosed in writing to the owner at the time of the initial purchase of the burial right from the cemetery;

(3) Charges for sales, documentary, excise, and other taxes actually and necessarily paid to a public official, which charges must be supported in fact;

(4) Charges for credit life and credit disability insurance, but only as requested by the purchaser, and the premiums for which do not exceed the applicable premium chargeable in accordance with the rates filed with the Insurance Commissioner; or

(5) Charges for interest on unpaid balances in accordance with applicable law.

Nothing herein shall prohibit a cemetery company from charging a reasonable fee for services it provides in connection with a lawful disinterment, provided such charges do not exceed the greater of the cemetery company's normal and customary charges for interment or the actual costs incurred by the cemetery directly attributable to such disinterment. Nothing herein shall prohibit a cemetery from charging a reasonable fee for actual costs it incurs due to the commencement of a funeral service at a time other than previously agreed by the cemetery company, the funeral establishment, and the owner of the burial rights, or his or her heirs and assigns, provided such charges are calculated in a manner which is disclosed and published as required by this chapter and that such charges are directly attributable to extra costs incurred by the cemetery company due to such late commencement.

(e) In connection with the sale of burial rights, burial or funeral merchandise, or burial or funeral services, it shall be unlawful for any person to fail to comply with the provisions of Article 1 of Chapter 1 of this title, "The Georgia Retail Installment and Home Solicitation Sales Act" or Part 2 of Article 15 of Chapter 1 of this title, the "Fair Business Practices Act of 1975." For the purposes of this subsection, burial rights, burial or funeral services, and

burial or funeral merchandise shall constitute goods as that term is used in said article and said part.

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

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

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

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

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

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

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

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

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

HISTORY: Code 1981, § 44-3-142, enacted by Ga. L. 1983, p. 1508, § 1; Code 1981, § 10-14-17, as redesignated by Ga. L. 2000, p. 882, § 1; Ga. L. 2006, p. 1087, § 6/HB 910; Ga. L. 2012, p. 625, § 13/HB 933.

§ 10-14-18. Duties of registrant; written contract

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

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

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

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

burial container;

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

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

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

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

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

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

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

(2) The amount to be placed in trust;

(3) Either:

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

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

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

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

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

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

(f) The written contract shall disclose the location at which funeral services are to be provided and the space number of each lot or grave space.

HISTORY: Code 1981, § 10-14-18, enacted by Ga. L. 2000, p. 882, § 1; Ga. L. 2012, p. 625, § 2/HB 933

§ 10-14-19. Enforcement of article; civil penalties

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

(1) Issue an order, if he or she deems it to be appropriate in the public interest or for the protection of consumers, prohibiting such person from continuing such act, practice, or transaction, subject to the right of such person to a hearing as provided in Code Section 10-14-23;

(2) Apply to any superior court of competent jurisdiction in this state for an injunction restraining such person and such person's agents, employees, partners, officers, and directors from continuing such act, practice, or transaction or engaging therein or doing any acts in furtherance thereof, and for appointment of a receiver or an auditor and such other and further relief as the facts may warrant; or

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

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

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

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

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

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

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

HISTORY: Code 1981, § 44-3-143, enacted by Ga. L. 1983, p. 1508, § 1; Ga. L. 1984, p. 22, § 44; Code 1981, § 10-14-19, as redesignated by Ga. L. 2000, p. 882, § 1.

§ 10-14-20. Criminal penalties

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

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

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

HISTORY: Code 1981, § 44-3-144, enacted by Ga. L. 1983, p. 1508, § 1; Code 1981, § 10-14-20, as redesignated by Ga. L. 2000, p. 882, § 1.

§ 10-14-21. Purchaser's remedy for violations

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

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

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

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

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

HISTORY: Code 1981, § 44-3-145, enacted by Ga. L. 1983, p. 1508, § 1; Ga. L. 1984, p. 22, § 44; Code 1981, § 10-14-21, as redesignated by Ga. L. 2000, p. 882, § 1.

§ 10-14-22. Judicial appeal of order of Secretary of State

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

- (1) The order from which the appeal is taken;
- (2) The ground upon which a reversal or modification of such order is sought; and
- (3) A demand for a certified transcript of the record of such order.

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

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

HISTORY: Code 1981, § 44-3-146, enacted by Ga. L. 1983, p. 1508, § 1; Ga. L. 1984, p. 22, § 44; Code 1981, § 10-14-22, as redesignated by Ga. L. 2000, p. 882, § 1.

§ 10-14-23. Administrative appeal of order of Secretary of State

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

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

- (1) The order which has issued or which is proposed to be issued;
- (2) The ground for issuing such order or proposed order; and
- (3) That the person to whom such notice is sent will be afforded a hearing upon request if such request is made within ten days after receipt of the notice.

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

(d) For the purpose of conducting any hearing as provided in this Code section, the Secretary of State shall have the power to administer oaths, to call any party to testify under oath at such hearings, to require the attendance of witnesses and the production of books, records, and papers, and to take the depositions of witnesses; and for such purposes the Secretary of State is authorized, at the request of the person requesting such hearing or upon the

official's own initiative, to issue a subpoena for any witnesses or a subpoena for the production of documentary evidence to compel the production of any books, records, or papers. Said subpoenas may be served by certified mail or statutory overnight delivery, return receipt requested, to the addressee's business mailing address or by investigators appointed by the Secretary of State or shall be directed for service to the sheriff of the county where such witness resides or is found or where such person in custody of any books, records, or papers resides or is found. The fees and mileage of the sheriff, witness, or person shall be paid from the funds in the state treasury for the use of the Secretary of State in the same manner that other expenses of the Secretary of State are paid.

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

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

HISTORY: Code 1981, § 44-3-147, enacted by Ga. L. 1983, p. 1508, § 1; Ga. L. 1984, p. 22, § 44; Ga. L. 1992, p. 6, § 44; Code 1981, § 10-14-23, as redesignated by Ga. L. 2000, p. 882, § 1; Ga. L. 2000, p. 1589, § 3.

§ 10-14-24. Effect of consent to service of process

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

HISTORY: Code 1981, § 44-3-148, enacted by Ga. L. 1983, p. 1508, § 1; Ga. L. 1984, p. 22, § 44; Code 1981, § 10-14-24, as redesignated by Ga. L. 2000, p. 882, § 1; Ga. L. 2000, p. 1589, § 3.

§ 10-14-25. Waiver of rights or defenses in cemetery purchase agreements void

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

- (1) Compliance with any provision of this chapter or of the rules and regulations promulgated under this chapter;
- (2) Any rights provided by this chapter or by the rules and regulations promulgated under this chapter; or
- (3) Any defenses arising under this chapter or under the rules and regulations promulgated under this chapter shall be void.

HISTORY: Code 1981, § 44-3-149, enacted by Ga. L. 1983, p. 1508, § 1; Ga. L. 1984, p. 22, § 44; Ga. L. 1985, p. 149, § 44; Code 1981, § 10-14-25, as redesignated by Ga. L. 2000, p. 882, § 1.

§ 10-14-26. Secretary of State immune from liability

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

HISTORY: Code 1981, § 44-3-150, enacted by Ga. L. 1983, p. 1508, § 1; Code 1981, § 10-14-26, as redesignated by Ga. L. 2000, p. 882, § 1.

§ 10-14-27. Evidence in civil or criminal actions under article

Reserved. Repealed by Ga. L. 2011, p. 99, § 18/HB 24, effective January 1, 2013.

§ 10-14-28. Actions pending under prior law

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

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

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

HISTORY: Code 1981, § 44-3-152, enacted by Ga. L. 1983, p. 1508, § 1; Ga. L. 1984, p. 22, § 44; Code 1981, § 10-14-28, as redesignated by Ga. L. 2000, p. 882, § 1.

§ 10-14-29. Construction regulations; preconstruction trust funds

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

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

(c) Before a sale, contract for sale, reservation for sale, or agreement for sale in a mausoleum section or columbarium may be made, the cemetery company shall compute the amount to be deposited to the preconstruction trust fund. The total amount to be deposited in the fund for each unit of the project shall be computed by dividing the cost of the project plus 10 percent of the cost, as computed by a licensed contractor, engineer, or architect, by the number of crypts or niches in the mausoleum or columbarium. When payments are received in installments, the percentage of the installment payment placed in trust must be identical to the percentage which the payment

received bears to the total cost of the contract, including other burial or funeral merchandise and services purchased. Preconstruction trust fund payments shall be made within 30 days after the end of the month in which payment is received.

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

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

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

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

HISTORY: Code 1981, § 10-14-29, enacted by Ga. L. 2000, p. 882, § 1.

§ 10-14-30. Adoption of minimum standards by Secretary of State

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

HISTORY: Code 1981, § 10-14-30, enacted by Ga. L. 2000, p. 882, § 1.

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