

Amendment No. 1 to SB0621

Johnson
Signature of Sponsor

AMEND Senate Bill No. 621

House Bill No. 199*

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 62-5-403, is amended by adding the following language as a new subdivision:

() "Funeral merchandise":

(A) Means merchandise, whether sold by a funeral establishment, cemetery company, or any other individual, partnership, company, corporation, or association, intended for use in the final disposition of a dead human body;

(B) Includes caskets and containers designed to be used in the grave around the casket or around cremated remains, commonly known as urns, urn vaults, outer burial containers, burial vaults, grave boxes, and grave liners; and

(C) Does not include cemetery merchandise as defined in § 46-1-102;

SECTION 2. Tennessee Code Annotated, Section 62-5-403(8)(B), is amended by deleting the subdivision and substituting instead the following:

(B) Except as otherwise provided in § 62-5-406, "pre-need funeral contract" does not mean the furnishing of cemetery merchandise and services otherwise regulated under title 46, chapter 1, part 2;

SECTION 3. Tennessee Code Annotated, Section 62-5-406(a), is amended by deleting the subsection and substituting instead the following:

(1) No pre-need funeral contract shall be offered in this state until a copy of the contract has been issued by the commissioner for general use.

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(2) If no contract has been issued by the commissioner pursuant to subdivision (a)(1), then no pre-need funeral contract shall be offered in this state until a copy of the contract has been filed with and approved by the commissioner. If the commissioner does not disapprove the contract within sixty (60) days after receipt of the request for approval, the contract shall be deemed approved. The commissioner may disapprove a previously approved pre-need funeral contract if the pre-need funeral contract violates this section upon giving notice and an opportunity for a hearing to the pre-need seller.

SECTION 4. Tennessee Code Annotated, Section 62-5-406, is amended by adding the following language as a new subsection:

(f) A pre-need seller that is a cemetery company may offer a pre-need funeral contract that covers cemetery merchandise as defined in § 46-1-102, or a pre-need funeral contract that covers both funeral merchandise and cemetery merchandise, on a contract issued by the commissioner or, if the commissioner has not issued a contract, on a contract approved by the commissioner. The pre-need seller that is a cemetery company shall comply with the requirements provided in title 46, chapter 1, for selling cemetery merchandise.

SECTION 5. Tennessee Code Annotated, Section 46-1-206(c), is amended by deleting the subsection and substituting instead the following:

(c) Except as provided in subsection (d), nothing in this part shall apply to contracts for the sale of funeral merchandise and services, such contracts being regulated under title 62, chapter 5, and other general laws of this state.

SECTION 6. Tennessee Code Annotated, Section 46-1-206, is amended by adding the following as a new subsection:

(d) A cemetery company may offer a pre-need sales contract that covers funeral merchandise as defined in § 62-5-403, or a pre-need sales contract that covers both cemetery merchandise as defined in § 46-1-102 and funeral merchandise, if:

(1) The cemetery company uses a contract issued by the commissioner for general use. If the commissioner has not issued a contract pursuant to this subdivision (d)(1), then the cemetery company may use a contract that has been approved by the commissioner. To submit a contract for approval, the cemetery company shall submit a request for approval to the commissioner prior to the execution of the contract. If the cemetery company has not received approval from the commissioner within sixty (60) days of submitting the request or receives no disapproval of the contract within the sixty-day period, then the contract shall be deemed approved; provided, that the commissioner may disapprove a previously approved contract if the contract violates this section upon giving notice and an opportunity for a hearing to the pre-need seller;

(2) The cemetery company deposits all moneys received for funeral merchandise as defined in § 62-5-403 under the contract in a pre-need merchandise and services trust account or a pre-need trust account established pursuant to § 46-1-207;

(3) The cemetery company complies with the requirements of selling funeral merchandise as provided in the Tennessee Prepaid Funeral Benefits Act, compiled in title 62, chapter 5, part 4; and

(4) The cemetery company submits a price list to the commissioner for the funeral merchandise as defined in § 62-5-403.

SECTION 7. Tennessee Code Annotated, Section 62-5-407(b), is amended by deleting the language "the pre-need seller shall deposit all funds with the trustee, to be held in trust, within fifteen (15) calendar days of receipt" and substituting instead the language "the pre-need seller shall deposit all funds with the trustee, to be held in trust, by the twentieth day of the month following the month of receipt. Upon finding that a pre-need seller has failed to appropriately and timely deposit into any trust, the commissioner may, in addition to or in lieu of any other disciplinary action, require that deposits be made within a shorter time frame, after receipt of the funds, for a period not more than two (2) years after the finding of a violation".

SECTION 8. Tennessee Code Annotated, Section 46-1-207(b)(1)(B), is amended by deleting the language "The seller, within sixty (60) days following receipt of any consideration paid pursuant to the contract, deposits an amount equal to the procurement costs of the merchandise and services identified in the sales contract, plus twenty percent (20%) of the costs, in a special general fund trust account in a state or national bank authorized by law to administer trust funds" and substituting instead the language "The seller, by the twentieth day of the month following the month of receipt of any consideration paid pursuant to the contract, deposits an amount equal to the procurement costs of the merchandise and services identified in the sales contract, plus twenty percent (20%) of the costs, in a special general fund trust account in a state or national bank authorized by law to administer trust funds. Upon finding that a cemetery company has failed to appropriately and timely deposit into any trust, the commissioner may, in addition to or in lieu of any other disciplinary action, require that deposits be made within a shorter time frame, after receipt of the funds, for a period not more than two (2) years after the finding of a violation".

SECTION 9. Tennessee Code Annotated, Section 46-1-105(c), is amended by adding the following language to the end of the subsection:

If the pre-need sales contract covers both cemetery merchandise and funeral merchandise as defined in § 62-5-403, then the cemetery company shall pay only one

(1) consumer protection fee for the contract, which shall be credited to the cemetery consumer protection account.

SECTION 10. Tennessee Code Annotated, Section 62-5-414(j), is amended by adding the following language to the end of the subsection:

If the pre-need funeral sales contract covers both funeral merchandise and cemetery merchandise as defined in § 46-1-102, then a pre-need seller, other than a cemetery company paying a consumer protection fee for such a contract pursuant to § 46-1-105, shall pay only one (1) consumer protection fee for the contract, which shall be credited to the pre-need funeral account.

SECTION 11. Tennessee Code Annotated, Section 46-1-214(a), is amended by adding the following as a new subdivision:

(3) An additional report shall not be required based on the establishment of trusts pursuant to this title and the Tennessee Prepaid Funeral Benefits Act, compiled in title 62, chapter 5, part 4. In such instance, only one (1) report shall be required.

SECTION 12. Tennessee Code Annotated, Section 46-1-214(b), is amended by adding the following language after the language "pursuant to this part.":

However, an additional report shall not be required based on the establishment of trusts pursuant to this title and the Tennessee Prepaid Funeral Benefits Act, compiled in title 62, chapter 5, part 4. In such instance, only one (1) report shall be required.

SECTION 13. Tennessee Code Annotated, Section 62-5-405, is amended by adding the following language as a new subsection:

(f) No later than seventy-five (75) days after the end of the pre-need seller's fiscal year, pre-need sellers and trustees shall file an annual report with the commissioner on forms prescribed by the commissioner. The report shall include a summary of the information contained in the accounts, books, and records required to be kept pursuant to rules promulgated by the commissioner, and other information as the

commissioner may reasonably require. An additional report shall not be required based on the establishment of trusts pursuant to this title and title 46. In such instance, only one (1) report shall be required.

SECTION 14. Tennessee Code Annotated, Section 62-5-408(d), is amended by deleting the subsection and substituting instead the following:

(d) The trustee shall invest the moneys paid and placed in a pre-need funeral contract trust, by exercising the judgment and care under the circumstances then prevailing, that 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.

SECTION 15. Tennessee Code Annotated, Section 46-1-102, is amended by deleting subdivision (19) and adding the following subdivision:

() "Cemetery merchandise" means personal property sold by a cemetery company, such as foundations, markers, memorials, memorial bases, monuments, urns, vases, and lawn and mausoleum crypts;

SECTION 16. Tennessee Code Annotated, Sections 46-1-102(21), 46-1-102(22), 46-1-102(23), 46-1-206(a), 46-1-206(b)(2), 46-1-207(a), 46-1-207(e), 46-1-207(h), 46-1-207(b)(1)(B), 46-1-208(a), 46-1-208(b), 46-1-209, 46-1-210, 46-1-214, 46-1-307(a), 46-1-312(a)(1)(E), are amended by deleting the word "merchandise" wherever it may appear and substituting instead the words "cemetery merchandise".

SECTION 17. Tennessee Code Annotated, Section 46-1-201, is amended by deleting the language "pre-need sale of merchandise" and substituting instead the language "pre-need sale of cemetery merchandise".

SECTION 18. Tennessee Code Annotated, Section 46-1-206(b)(1), is amended by deleting the language "merchandise or services" wherever it appears and substituting instead the language "cemetery merchandise or services".

SECTION 19. For the purpose of promulgating rules, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2017, the public welfare requiring it.