

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 14*
Committee Substitute Favorable 4/22/99

Short Title: Cemetery Consumer Protection.

(Public)

Sponsors:

Referred to:

February 1, 1999

A BILL TO BE ENTITLED
AN ACT TO MAKE CERTAIN CHANGES TO REGULATIONS REGARDING
CEMETERIES TO PROVIDE FOR CONSUMER PROTECTION, AS
RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S
STUDY COMMITTEE ON CEMETERY ISSUES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 65-66(d) reads as rewritten:

"(d) Any contract for the sale of personal property ~~and/or or services~~ services,
whether preneed or at-need, shall state-disclose separate costs the following:

(1) A specific description of each item of personal property purchased and
the cost for each item of personal property, property and for each act of
installation or other service required by the contract, and for each other
item of services included in the contract including any costs for the right of
interment, entombment, or inurnment;

(2) Specification of whether opening and closing of a grave space,
mausoleum space, or columbarium space is included in the contract,
and, if not, the current prices for opening and closing and a statement in
bold lettering that these prices are subject to change;

- 1 (3) Any requirements or costs relating to memorial markers, including any
2 obligations of the grave space, mausoleum space, or columbarium space
3 owner if the owner desires to have an outside provider provide the
4 marker and any costs relating to having an outside provider provide and
5 place a marker;
- 6 (4) A statement describing, in language that is readable and understandable
7 by a person of average intelligence, experience, and education, the
8 nature of the property right in the grave space, mausoleum space, or
9 columbarium space;
- 10 (5) A statement that a preneed purchaser has, pursuant to G.S. 65-66(m), 30
11 days following the execution of a contract to cancel the contract by
12 giving written notice to the seller and that the seller may cancel the
13 contract, upon default by the purchaser, by giving written notice to the
14 purchaser. The statement shall include (i) whether or not the purchaser
15 may transfer the purchaser's rights in the property to another person or
16 organization and (ii) whether or not the seller will refund all or part of
17 the purchase price and the conditions under which a refund will be
18 made, after the 30-day period, including the purchaser moving from one
19 locale to another;
- 20 (6) If the seller knows that the grave space, mausoleum space, or
21 columbarium space has been previously sold by the cemetery company
22 to a purchaser and the space was used in the final disposition interment,
23 entombment, or inurnment of human remains and has since returned to
24 the inventory of available spaces, a statement that the space has been
25 used for a prior interment, entombment, or inurnment;
- 26 (7) A statement identifying the person or legal entity which owns the
27 cemetery or provides the property or services, including whether the
28 entity is wholly or partially owned by another corporation; and
- 29 (8) A statement of whether the purchaser may obtain property and services
30 from an outside provider and if the purchaser elects to do so, a statement
31 disclosing any costs to the purchaser, or fees or assessments charged to
32 the outside provider for such property or services, and notice that these
33 costs, assessments, or fees are subject to change. The statement shall
34 also include the current prices for such property and services, and state
35 in bold lettering that the prices are subject to change."

36 Section 2. G.S. 65-53 is amended by adding a new subdivision to read:

- 37 "(9) The Commission shall keep records of the complaints received and the
38 action taken by the Commission on each complaint. These records shall
39 be kept for at least five years after receipt of the complaint."

40 Section 3. G.S. 65-53 reads as rewritten:

41 "**§ 65-53. Powers.**

42 In addition to other powers conferred by this Article, the Cemetery Commission shall
43 have the following powers and duties:

- 1 (1) The administrator shall be appointed by the Governor upon
2 recommendation of the Cemetery Commission. The compensation of
3 the administrator and such other personnel as is necessary to operate the
4 Commission is subject to the provisions of Chapter 126 of the General
5 Statutes of North Carolina. The Commission is authorized and
6 empowered to employ such staff, including legal counsel, as may be
7 necessary.
- 8 (2) To examine a cemetery company's records when a person applies for a
9 change of control of the company.
- 10 (3) Investigate, upon its own initiative or upon a verified complaint in
11 writing, the actions of any person engaged in the business or acting in
12 the capacity of a licensee under this Article. The license of a licensee
13 may be revoked or suspended for a period not exceeding two years, or
14 until compliance with a lawful order imposed in the final order of
15 suspension, or both, where the licensee in performing or attempting to
16 perform any of the acts specified in this Article has been guilty of:
- 17 a. Failing to pay the fees required herein;
18 b. Failing to make any reports required by this Article;
19 c. Failing to remit to the care and maintenance trust fund,
20 merchandise trust fund, or preconstruction trust fund the required
21 amounts;
22 d. Making any substantial misrepresentation;
23 e. Making any false statement of a character likely to influence or
24 persuade;
25 f. A continued and flagrant course of misrepresentation or making
26 of false promises through cemetery agents or salesmen;
27 g. Violating any provision of this Article or rule promulgated by the
28 Commission; ~~or~~
- 29 h. Violating the disclosure requirements in
30 G.S. 65-66(d); or
- 31 i. Any other conduct, whether of the same or a different character
32 than specified in this section, which constitutes fraud or
33 dishonest dealing.
- 34 (3a) Investigate, upon its own initiative or upon a verified complaint in
35 writing, whether a particular contract for the sale of personal property or
36 services, whether preneed or at-need, contains the disclosures required
37 pursuant to G.S. 65-66(d) and to adopt temporary rules pursuant to
38 Chapter 150B of the General Statutes, if necessary, to implement this
39 subdivision until such time as permanent rules are adopted.
- 40 (4) In all proceedings under this Article for the revocation or suspension of
41 licenses, the provisions of Chapter 150B of the General Statutes shall be
42 applicable.

- 1 (5) At such time as the Commission finds it necessary it may bring an
2 action in the name of the State in the court of the county in which the
3 place of business is located against such person to enjoin such person
4 from engaging in or continuing such violation or doing any act or acts in
5 furtherance thereof. In any such action, an order or judgment may be
6 entered awarding such temporary or permanent injunction as may be
7 deemed proper; provided, that before any such action is brought the
8 Commission shall give the cemetery at least 20 days' notice in writing,
9 stating the alleged violation and giving the cemetery an opportunity
10 within the 20-day period to cure the violation. In addition to all other
11 means provided by law for the enforcement of a temporary restraining
12 order, temporary injunction, or permanent injunction, the court shall
13 have the power and jurisdiction to impound and to appoint a receiver for
14 the property and business of the defendant, including books, papers,
15 documents, and records appertaining thereto or so much thereof as the
16 court may deem reasonably necessary to prevent further violation of this
17 Article through or by means of the use of said property and business.
18 The Commission may institute proceedings against the cemetery or its
19 officers, whereafter an examination, pursuant to this Article, a shortage
20 in the care and maintenance trust fund, merchandise trust fund or
21 mausoleum and belowground crypts preconstruction trust fund is
22 discovered, to recover said shortage.
- 23 (6) Whenever any special additional audit or examination of a licensee's
24 premises, facilities, books or records is necessary because of the failure
25 of the licensee to comply with the requirements imposed in this Article
26 or by the rules and regulations of the Commission, to charge a fee based
27 on the cost of the special examination or audit, taking into consideration
28 the salary of any employees involved in the special audit or examination
29 and any expenses incurred.
- 30 (7) Promulgate rules and regulations requiring licensees to file with the
31 Commission plans and specifications for the minimum quality of any
32 product sold. The sale of any product for which plans and specifications
33 required by the rules and regulations have not been filed or sale of any
34 product of a lesser quality than the plans and specifications filed with
35 the Commission is a violation of this Article.
- 36 (8) When the Commission finds that failure by a licensee to maintain a
37 cemetery properly has caused that cemetery to be a public nuisance or a
38 health or safety hazard, the Commission may bring an action for
39 injunctive relief, against the responsible licensee, in the superior court
40 of the county in which the cemetery or any part thereof is located."

41 Section 4. The Department of Justice through the Office of the Attorney
42 General, Consumer Protection Division, shall ensure that private, for-profit cemetery
43 companies operate within Article 1 of Chapter 75 of the General Statutes, titled

1 "Monopolies, Trusts, and Consumer Protection", the antitrust and unfair trade practices
2 laws.

3 Section 5. This act becomes effective January 1, 2000, and is applicable to
4 contracts entered into on or after that date.