

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 14\*  
Committee Substitute Favorable 4/22/99  
Third Edition Engrossed 4/27/99

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

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

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

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

43 **"§ 65-53. Powers.**

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

3 (1) The administrator shall be appointed by the Governor upon  
4 recommendation of the Cemetery Commission. The compensation of  
5 the administrator and such other personnel as is necessary to operate the  
6 Commission is subject to the provisions of Chapter 126 of the General  
7 Statutes of North Carolina. The Commission is authorized and  
8 empowered to employ such staff, including legal counsel, as may be  
9 necessary.

10 (2) To examine a cemetery company's records when a person applies for a  
11 change of control of the company.

12 (3) Investigate, upon its own initiative or upon a verified complaint in  
13 writing, the actions of any person engaged in the business or acting in  
14 the capacity of a licensee under this Article. The license of a licensee  
15 may be revoked or suspended for a period not exceeding two years, or  
16 until compliance with a lawful order imposed in the final order of  
17 suspension, or both, where the licensee in performing or attempting to  
18 perform any of the acts specified in this Article has been guilty of:

- 19 a. Failing to pay the fees required herein;  
20 b. Failing to make any reports required by this Article;  
21 c. Failing to remit to the care and maintenance trust fund,  
22 merchandise trust fund, or preconstruction trust fund the required  
23 amounts;  
24 d. Making any substantial misrepresentation;  
25 e. Making any false statement of a character likely to influence or  
26 persuade;  
27 f. A continued and flagrant course of misrepresentation or making  
28 of false promises through cemetery agents or salesmen;  
29 g. Violating any provision of this Article or rule promulgated by the  
30 Commission; ~~or~~  
31 h. Violating the disclosure requirements in  
32 G.S. 65-66(d); or  
33 i. Any other conduct, whether of the same or a different character  
34 than specified in this section, which constitutes fraud or  
35 dishonest dealing.

36 (3a) Investigate, upon its own initiative or upon a verified complaint in  
37 writing, whether a particular contract for the sale of personal property or  
38 services, whether preneed or at-need, contains the disclosures required  
39 pursuant to G.S. 65-66(d) and to adopt temporary rules pursuant to  
40 Chapter 150B of the General Statutes, if necessary, to implement this  
41 subdivision until such time as permanent rules are adopted.

- 1           (4) In all proceedings under this Article for the revocation or suspension of  
2 licenses, the provisions of Chapter 150B of the General Statutes shall be  
3 applicable.
- 4           (5) At such time as the Commission finds it necessary it may bring an  
5 action in the name of the State in the court of the county in which the  
6 place of business is located against such person to enjoin such person  
7 from engaging in or continuing such violation or doing any act or acts in  
8 furtherance thereof. In any such action, an order or judgment may be  
9 entered awarding such temporary or permanent injunction as may be  
10 deemed proper; provided, that before any such action is brought the  
11 Commission shall give the cemetery at least 20 days' notice in writing,  
12 stating the alleged violation and giving the cemetery an opportunity  
13 within the 20-day period to cure the violation. In addition to all other  
14 means provided by law for the enforcement of a temporary restraining  
15 order, temporary injunction, or permanent injunction, the court shall  
16 have the power and jurisdiction to impound and to appoint a receiver for  
17 the property and business of the defendant, including books, papers,  
18 documents, and records appertaining thereto or so much thereof as the  
19 court may deem reasonably necessary to prevent further violation of this  
20 Article through or by means of the use of said property and business.  
21 The Commission may institute proceedings against the cemetery or its  
22 officers, whereafter an examination, pursuant to this Article, a shortage  
23 in the care and maintenance trust fund, merchandise trust fund or  
24 mausoleum and belowground crypts preconstruction trust fund is  
25 discovered, to recover said shortage.
- 26           (6) Whenever any special additional audit or examination of a licensee's  
27 premises, facilities, books or records is necessary because of the failure  
28 of the licensee to comply with the requirements imposed in this Article  
29 or by the rules and regulations of the Commission, to charge a fee based  
30 on the cost of the special examination or audit, taking into consideration  
31 the salary of any employees involved in the special audit or examination  
32 and any expenses incurred.
- 33           (7) Promulgate rules and regulations requiring licensees to file with the  
34 Commission plans and specifications for the minimum quality of any  
35 product sold. The sale of any product for which plans and specifications  
36 required by the rules and regulations have not been filed or sale of any  
37 product of a lesser quality than the plans and specifications filed with  
38 the Commission is a violation of this Article.
- 39           (8) When the Commission finds that failure by a licensee to maintain a  
40 cemetery properly has caused that cemetery to be a public nuisance or a  
41 health or safety hazard, the Commission may bring an action for  
42 injunctive relief, against the responsible licensee, in the superior court  
43 of the county in which the cemetery or any part thereof is located."

1           Section 4. The Department of Justice through the Office of the Attorney  
2 General, Consumer Protection Division, shall ensure that private, for-profit cemetery  
3 companies operate within Article 1 of Chapter 75 of the General Statutes, titled  
4 "Monopolies, Trusts, and Consumer Protection", the antitrust and unfair trade practices  
5 laws.

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