

Sec. 20. EFFECTIVE DATES.

Section 1 is effective the day following final enactment. Sections 2, 3, 18 and 19 are effective August 1, 2000. Sections 4 to 16 and 17 are effective August 1, 2000, and apply to crimes committed on or after that date.

Presented to the governor April 20, 2000

Signed by the governor April 24, 2000, 1:45 p.m.

CHAPTER 438—S.F.No. 2686

An act relating to health; establishing requirements for the sale of funeral goods and services and preneed funeral arrangements; modifying the enforcement authority of the commissioner of health; prohibiting certain solicitations of sales by funeral providers; requiring certain disclosures by funeral providers; prohibiting certain deceptive acts and practices for funeral providers; establishing requirements for preneed funeral agreements; amending Minnesota Statutes 1998, sections 149A.02, subdivision 22, and by adding subdivisions; 149A.08, subdivisions 1, 3, 4, and by adding a subdivision; 149A.70, by adding subdivisions; 149A.71, subdivisions 1, 2, 3, and 4; 149A.72, subdivisions 5, 6, 7, 9, 10, 11, 12, and 13; 149A.73, subdivisions 1, 3, 4, and by adding a subdivision; 149A.75; and 149A.97, subdivisions 1, 2, 3, 6, 9, and by adding subdivisions; proposing coding for new law in Minnesota Statutes, chapter 149A.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1998, section 149A.02, is amended by adding a subdivision to read:

Subd. 3a. BURIAL SITE GOODS. “Burial site goods” means any goods sold or offered for sale or rental directly to the public for use in connection with the final disposition of a dead human body.

Sec. 2. Minnesota Statutes 1998, section 149A.02, is amended by adding a subdivision to read:

Subd. 3b. BURIAL SITE SERVICES. “Burial site services” means any services sold or offered for sale directly to the public for use in connection with the final disposition of a dead human body.

Sec. 3. Minnesota Statutes 1998, section 149A.02, subdivision 22, is amended to read:

Subd. 22. FUNERAL PROVIDER. “Funeral provider” means any person that sells or offers to sell funeral goods or, funeral services, burial site goods, or burial site services to the public. “Funeral provider” does not include monument builders who sell and install markers and headstones, with or without foundations, at retail to the public, but do not sell any other funeral good, funeral service, burial good, or burial site service.

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Sec. 4. Minnesota Statutes 1998, section 149A.02, is amended by adding a subdivision to read:

Subd. 33a. PRENEED CONSUMER. "Preneed consumer" means an individual who arranges for funeral goods, funeral services, burial site goods, or burial site services prior to the death of that individual or another individual, and who funds those goods or services through prepayment to a funeral provider or through purchase of an insurance policy.

Sec. 5. Minnesota Statutes 1998, section 149A.08, subdivision 1, is amended to read:

Subdivision 1. **AUTHORIZATION.** In addition to any other remedy provided by law, the commissioner may issue a cease and desist order to:

(1) stop a person from violating or threatening to violate any law, rule, order, stipulation agreement, settlement, compliance agreement, license, or permit which the commissioner is empowered to regulate, enforce, or issue; or

(2) prohibit a funeral provider from engaging in the sale of preneed funeral goods, funeral services, burial site goods, or burial site services if the funeral provider has been found in violation of any provision of this chapter.

Sec. 6. Minnesota Statutes 1998, section 149A.08, is amended by adding a subdivision to read:

Subd. 2a. SALE OF PRENEED GOODS OR SERVICES; CONTENTS OF ORDER, HEARING, WHEN EFFECTIVE. (a) This subdivision applies to cease and desist orders issued pursuant to subdivision 1, clause (2).

(b) In addition to the requirements of subdivision 2, a cease and desist order must also specify that the hearing to which the funeral provider has a right occurs, if requested, before the order goes into effect and that a timely request for a hearing automatically stays the cease and desist order.

(c) A request for a hearing must be in writing, must be delivered to the commissioner by certified mail within 20 calendar days after the funeral provider receives the order, and must specifically state the reasons for seeking review of the order. If the funeral provider fails to request a hearing in writing within 20 calendar days of receipt of the order, the cease and desist order becomes the final order of the commissioner. If a funeral provider makes a timely request for a hearing, the cease and desist order is automatically stayed pending the outcome of the hearing. The commissioner must initiate a hearing within 30 calendar days from the date of receiving the written request for hearing. The hearing shall be conducted pursuant to sections 14.57 to 14.62. No earlier than ten calendar days but within 30 calendar days of receiving the presiding administrative law judge's report, the commissioner shall issue a final order modifying, vacating, or making permanent the cease and desist order as the facts require.

Sec. 7. Minnesota Statutes 1998, section 149A.08, subdivision 3, is amended to read:

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Subd. 3. REQUEST FOR HEARING; HEARING; AND FINAL ORDER. This subdivision applies to cease and desist orders issued pursuant to subdivision 1, clause (1). A request for hearing must be in writing, delivered to the commissioner by certified mail within 20 calendar days after the receipt of the cease and desist order, and specifically state the reasons for seeking review of the order. The commissioner must initiate a hearing within 30 calendar days from the date of receipt of the written request for hearing. The hearing shall be conducted pursuant to sections 14.57 to 14.62. No earlier than ten calendar days but within 30 calendar days of receipt of the presiding administrative law judge's report, the commissioner shall issue a final order modifying, vacating, or making permanent the cease and desist order as the facts require. If, within 20 calendar days of receipt of the cease and desist order, the subject of the order fails to request a hearing in writing, the cease and desist order becomes the final order of the commissioner.

Sec. 8. Minnesota Statutes 1998, section 149A.08, subdivision 4, is amended to read:

Subd. 4. REQUEST FOR STAY. This subdivision applies to cease and desist orders issued pursuant to subdivision 1, clause (1). When a request for a stay accompanies a timely hearing request, the commissioner may, in the commissioner's discretion, grant the stay. If the commissioner does not grant a requested stay, the commissioner shall refer the request to the office of administrative hearings within three working days from the receipt of the request. Within ten calendar days after receiving the request from the commissioner, an administrative law judge shall issue a recommendation to grant or deny the stay. The commissioner shall grant or deny the stay within five calendar days of receiving the administrative law judge's recommendation.

Sec. 9. Minnesota Statutes 1998, section 149A.70, is amended by adding a subdivision to read:

Subd. 5a. SOLICITATIONS PROHIBITED IN CERTAIN SITUATIONS. No funeral provider may directly or indirectly:

(1) call upon an individual at a grave site, in a hospital, nursing home, hospice, or similar institution or facility, or at a visitation, wake, or reviewal for the purpose of soliciting the sale of funeral goods, funeral services, burial site goods, or burial site services or for the purpose of making arrangements for a funeral or the final disposition of a dead human body, without a specific request for solicitation from that individual;

(2) solicit the sale of funeral goods, funeral services, burial site goods, or burial site services from an individual whose impending death is readily apparent, without a specific request for solicitation from that individual; or

(3) engage in telephone solicitation of an individual who has the right to control the final disposition of a dead human body within ten days after the death of the individual whose body is being disposed, without a specific request for solicitation from that individual.

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This subdivision does not apply to communications between an individual and a funeral provider who is related to the individual by blood, adoption, or marriage.

Sec. 10. Minnesota Statutes 1998, section 149A.70, is amended by adding a subdivision to read:

Subd. 8. DISCLOSURE OF OWNERSHIP. All funeral establishments and funeral providers must clearly state by whom they are owned in all business literature, correspondence, and contracts.

Sec. 11. Minnesota Statutes 1998, section 149A.70, is amended by adding a subdivision to read:

Subd. 9. DISCLOSURE OF CHANGE OF OWNERSHIP. (a) Within 15 days of a change in ownership of a funeral establishment or funeral provider, the funeral establishment or funeral provider shall notify all preneed consumers by first class mail of the change in ownership. The notification shall advise the preneed consumers of their right to transfer all preneed trust funds to a new funeral provider and shall advise all preneed consumers who have revocable preneed trusts of their right to terminate the trust and receive a refund of all principal paid into the trust, plus interest accrued.

(b) For purposes of this subdivision:

(1) "change in ownership" means:

(i) the sale or transfer of all or substantially all of the assets of a funeral establishment or funeral provider;

(ii) the sale or transfer of a controlling interest of a funeral establishment or funeral provider; or

(iii) the termination of the business of a funeral establishment or funeral provider where there is no transfer of assets or stock; and

(2) "controlling interest" means:

(i) an interest in a partnership of greater than 50 percent; or

(ii) greater than 50 percent of the issued and outstanding shares of a stock of a corporation.

Sec. 12. Minnesota Statutes 1998, section 149A.71, subdivision 1, is amended to read:

Subdivision 1. **UNFAIR OR DECEPTIVE ACTS OR PRACTICES.** In selling or offering to sell funeral goods or, funeral services, burial site goods, or burial site services to the public, it is an unfair or deceptive act or practice for a funeral provider to fail to furnish accurate price information disclosing the cost to the purchaser for each of the specific funeral goods and, funeral services, burial site goods, or burial site services used in connection with the disposition of dead human bodies to persons inquiring about the purchase of funerals. Any funeral provider who complies with the preventive requirements in subdivision 2 is not engaged in the unfair or deceptive acts or practices defined in this section.

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Sec. 13. Minnesota Statutes 1998, section 149A.71, subdivision 2, is amended to read:

Subd. 2. **PREVENTIVE REQUIREMENTS.** (a) To prevent unfair or deceptive acts or practices, the requirements of this subdivision must be met.

(b) Funeral providers must tell persons who ask by telephone about the funeral provider's offerings or prices any accurate information from the price lists described in paragraphs (c) to (e) and any other readily available information that reasonably answers the questions asked.

(c) Funeral providers must make available for viewing to people who inquire in person about the offerings or prices of funeral goods or burial site goods, separate printed or typewritten price lists. Each funeral provider must have a separate price list for each of the following types of goods that are sold or offered for sale:

- (1) caskets;
- (2) alternative containers;
- (3) outer burial containers; and
- (4) cremation containers and cremated remains containers;
- (5) markers; and
- (6) headstones.

(d) Each separate price list must contain the name of the funeral provider's place of business and a caption describing the list as a price list for one of the types of funeral goods or burial site goods described in paragraph (c), clauses (1) to (4) (6). The funeral provider must offer the list upon beginning discussion of, but in any event before showing, the specific funeral goods or burial site goods and must provide a photocopy of the price list, for retention, if so asked by the consumer. The list must contain, at least, the retail prices of all the specific funeral goods and burial site goods offered which do not require special ordering, enough information to identify each, and the effective date for the price list. In lieu of a written price list, other formats, such as notebooks, brochures, or charts may be used if they contain the same information as would the printed or typewritten list, and display it in a clear and conspicuous manner. However, funeral providers are not required to make a specific price list available if the funeral providers place the information required by this paragraph on the general price list described in paragraph (e).

(e) Funeral providers must give a printed or typewritten price list, for retention, to persons who inquire in person about the funeral goods ~~or~~, funeral services, burial site goods, or burial site services or prices offered by the funeral provider. The funeral provider must give the list upon beginning discussion of either the prices of or the overall type of funeral service or disposition or specific funeral goods ~~or~~, funeral services, burial site goods, or burial site services offered by the provider. This requirement applies whether the discussion takes place in the funeral establishment or elsewhere. However, when the deceased is removed for transportation to the funeral

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establishment, an in-person request for authorization to embalm does not, by itself, trigger the requirement to offer the general price list. If the provider, in making an in-person request for authorization to embalm, discloses that embalming is not required by law except in certain special cases, the provider is not required to offer the general price list. Any other discussion during that time about prices or the selection of funeral goods ~~or~~, funeral services, burial site goods, or burial site services triggers the requirement to give the consumer a general price list. The general price list must contain the following information:

(1) the name, address, and telephone number of the funeral provider's place of business;

(2) a caption describing the list as a "general price list";

(3) the effective date for the price list;

(4) the retail prices, in any order, expressed either as a flat fee or as the prices per hour, mile, or other unit of computation, and other information described as follows:

(i) forwarding of remains to another funeral establishment, together with a list of the services provided for any quoted price;

(ii) receiving remains from another funeral establishment, together with a list of the services provided for any quoted price;

(iii) separate prices for each cremation offered by the funeral provider, with the price including an alternative or cremation container, any crematory charges, and a description of the services and container included in the price, where applicable, and the price of cremation where the purchaser provides the container;

(iv) separate prices for each immediate burial offered by the funeral provider, including a casket or alternative container, and a description of the services and container included in that price, and the price of immediate burial where the purchaser provides the casket or alternative container;

(v) transfer of remains to the funeral establishment;

(vi) embalming;

(vii) other preparation of the body;

(viii) use of facilities, equipment, or staff for viewing;

(ix) use of facilities, equipment, or staff for funeral ceremony;

(x) use of facilities, equipment, or staff for memorial service;

(xi) use of equipment or staff for graveside service;

(xii) hearse or funeral coach; ~~and~~

(xiii) limousine; and

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(xiv) separate prices for all cemetery-specific goods and services, including all goods and services associated with interment and burial site goods and services and excluding markers and headstones;

(5) the price range for the caskets offered by the funeral provider, together with the statement "A complete price list will be provided at the funeral establishment or casket sale location." or the prices of individual caskets, as disclosed in the manner described in paragraphs (c) and (d);

(6) the price range for the alternative containers offered by the funeral provider, together with the statement "A complete price list will be provided at the funeral establishment or alternative container sale location." or the prices of individual alternative containers, as disclosed in the manner described in paragraphs (c) and (d);

(7) the price range for the outer burial containers offered by the funeral provider, together with the statement "A complete price list will be provided at the funeral establishment or outer burial container sale location." or the prices of individual outer burial containers, as disclosed in the manner described in paragraphs (c) and (d);

(8) the price range for the cremation containers and cremated remains containers offered by the funeral provider, together with the statement "A complete price list will be provided at the funeral establishment or cremation container sale location." or the prices of individual cremation containers and cremated remains containers, as disclosed in the manner described in paragraphs (c) and (d);

(9) the price for the basic services of funeral ~~director~~ provider and staff, together with a list of the principal basic services provided for any quoted price and, if the charge cannot be declined by the purchaser, the statement "This fee for our basic services will be added to the total cost of the funeral arrangements you select. (This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.)" If the charge cannot be declined by the purchaser, the quoted price shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase "and overhead" after the word "services." This services fee is the only funeral provider fee for services, facilities, or unallocated overhead permitted by this subdivision to be nondeclinable, unless otherwise required by law;

(10) if the price for basic services, as described in clause (9), is not applicable, the statement "Please note that a fee for the use of our basic services is included in the price of our caskets. Our services include (specify services provided)." The fee shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase "and overhead" after the word "services." The statement must be placed on the general price list, together with the casket price range or the prices of individual caskets. This services fee is the only funeral provider fee for services, facilities, or unallocated overhead permitted by this subdivision to be nondeclinable, unless otherwise required by law;

and

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(11) the price range for the markers and headstones offered by the funeral provider, together with the statement "A complete price list will be provided at the funeral establishment or marker or headstone sale location." or the prices of individual markers and headstones, as disclosed in the manner described in paragraphs (c) and (d).

(f) Funeral providers must give an itemized written statement, for retention, to each consumer who arranges a funeral or other disposition of human remains at the conclusion of the discussion of the arrangements. The itemized written statement must be signed by the consumer selecting the goods and services and. If the statement is provided at a funeral establishment, the statement must be signed by the licensed funeral director or mortician planning the arrangements. If the statement is provided by any other funeral provider, the statement must be signed by an authorized agent of the funeral provider. The statement must list the funeral goods and, funeral services, burial site goods, or burial site services selected by that consumer and the prices to be paid for each item, specifically itemized cash advance items (these prices must be given to the extent then known or reasonably ascertainable if the prices are not known or reasonably ascertainable, a good faith estimate shall be given and a written statement of the actual charges shall be provided before the final bill is paid), and the total cost of goods and services selected. The information required by this paragraph may be included on any contract, statement, or other document which the funeral provider would otherwise provide at the conclusion of discussion of arrangements.

(g) Funeral providers must give any other price information, in any other format, in addition to that required by paragraphs (c) to (e) so long as the written statement required by paragraph (f) is given when required.

(h) Upon receiving actual notice of the death of an individual with whom a funeral provider has entered a preneed funeral agreement, the funeral provider must provide a copy of all preneed funeral agreement documents to the person who controls final disposition of the human remains or to the designee of the person controlling disposition. The person controlling disposition shall be provided with these documents at the time of the person's first contact with the funeral provider, if the first contact occurs in person at a funeral establishment, crematory, or other place of business of the funeral provider. If the contact occurs by other means or at another location, the documents must be provided within 24 hours of the first contact.

Sec. 14. Minnesota Statutes 1998, section 149A.71, subdivision 3, is amended to read:

Subd. 3. **PRICES DISPLAYED.** Any funeral provider who sells or offers to sell funeral goods or burial site goods to the public shall, at all times, display the retail price of all displayed funeral goods or burial site goods in a conspicuous place on the goods. "Conspicuous place" means a place where any consumer viewing the funeral goods or burial site goods would be able to see and read the price and reasonably understand that the price seen is the price of the funeral goods or burial site goods viewed. Displayed funeral goods or burial site goods are those goods that the funeral provider regularly maintains in inventory and makes available for viewing and purchase by the consumer.

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Sec. 15. Minnesota Statutes 1998, section 149A.71, subdivision 4, is amended to read:

Subd. 4. **CASKET, ALTERNATE CONTAINER, AND CREMATION CONTAINER SALES; RECORDS; REQUIRED DISCLOSURES.** Any funeral provider who sells or offers to sell a casket, alternate container, or cremation container to the public must maintain a record of each sale that includes the name of the purchaser, the purchaser's mailing address, the name of the decedent, the date of the decedent's death, and the place of death. These records shall be open to inspection by the commissioner and reported to the commissioner. Any funeral provider selling a casket, alternate container, or cremation container to the public, and not having charge of the final disposition of the dead human body, shall enclose within the casket, alternate container, or cremation container information provided by the commissioner that includes a blank certificate of death, and a copy of the statutes and rules controlling the removal, preparation, transportation, arrangements for disposition, and final disposition of a dead human body. This section subdivision does not apply to morticians, funeral directors, funeral establishments, crematories, or wholesale distributors of caskets, alternate containers; or cremation containers.

Sec. 16. Minnesota Statutes 1998, section 149A.72, subdivision 5, is amended to read:

Subd. 5. **RENTAL CASKETS; DECEPTIVE ACTS OR PRACTICES.** In selling or offering to sell funeral goods ~~or~~, funeral services, burial site goods, or burial site services to the public, it is a deceptive act or practice for a funeral provider to fail to disclose that a casket has been used in a previous funeral ceremony when that is the case.

Sec. 17. Minnesota Statutes 1998, section 149A.72, subdivision 6, is amended to read:

Subd. 6. **RENTAL CASKETS; PREVENTIVE MEASURES.** To prevent deceptive acts or practices, funeral providers must place the following disclosure in immediate conjunction with the prices shown for funeral goods or funeral services where a casket may be rented rather than purchased: "If you choose a funeral service where a rental casket is provided, the casket used for the funeral service may have been used in a previous funeral service. If the casket has been used in a previous funeral service, the interior lining has either been replaced or thoroughly cleaned."

Sec. 18. Minnesota Statutes 1998, section 149A.72, subdivision 7, is amended to read:

Subd. 7. **OUTER BURIAL CONTAINER PROVISIONS; DECEPTIVE ACTS OR PRACTICES.** In selling or offering to sell funeral goods ~~or~~, funeral services, burial site goods, or burial site services to the public, it is a deceptive act or practice for a funeral provider to represent that state or local laws or regulations, or particular cemeteries, require outer burial containers when that is not the case or to fail to disclose to consumers arranging funerals that state law or local law does not require the purchase of an outer burial container.

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Sec. 19. Minnesota Statutes 1998, section 149A.72, subdivision 9, is amended to read:

Subd. 9. **GENERAL PROVISIONS ON LEGAL AND CEMETERY REQUIREMENTS; DECEPTIVE ACTS OR PRACTICES.** In selling or offering to sell funeral goods ~~or~~, funeral services, burial site goods, or burial site services to the public, it is a deceptive act or practice for a funeral provider to represent that federal, state, or local laws, or particular cemeteries or crematories, require the purchase of any funeral goods ~~or~~, funeral services, burial site goods, or burial site services when that is not the case.

Sec. 20. Minnesota Statutes 1998, section 149A.72, subdivision 10, is amended to read:

Subd. 10. **GENERAL PROVISIONS ON LEGAL AND CEMETERY REQUIREMENTS; PREVENTIVE REQUIREMENTS.** To prevent deceptive acts or practices, funeral providers must identify and briefly describe in writing on the statement of funeral goods and, funeral services, burial site goods, and burial site services selected, as described in section 149A.71, subdivision 2, paragraph (f), any legal, cemetery, or crematory requirement which the funeral provider represents to consumers as compelling the purchase of funeral goods ~~or~~, funeral services, burial site goods, or burial site services for the funeral which that consumer is arranging.

Sec. 21. Minnesota Statutes 1998, section 149A.72, subdivision 11, is amended to read:

Subd. 11. **PROVISIONS ON PRESERVATIVE AND PROTECTIVE VALUE CLAIMS; DECEPTIVE ACTS OR PRACTICES.** In selling or offering to sell funeral goods ~~or~~, funeral services, burial site goods, or burial site services to the public, it is a deceptive act or practice for a funeral provider to represent that funeral goods ~~or~~, funeral services, burial site goods, or burial site services will delay the natural decomposition of human remains for a long term or indefinite time or to represent that funeral goods or burial site goods have protective features, beyond a lid sealing casket, or will protect the body from grave site substances, when that is not the case.

Sec. 22. Minnesota Statutes 1998, section 149A.72, subdivision 12, is amended to read:

Subd. 12. **CASH ADVANCE PROVISIONS; DECEPTIVE ACTS OR PRACTICES.** In selling or offering to sell funeral goods ~~or~~, funeral services, burial site goods, or burial site services to the public, it is a deceptive act or practice for a funeral provider to represent that the price charged for a cash advance item is the same as the cost to the funeral provider for the item when that is not the case or to fail to disclose to the consumer arranging the funeral that the price charged for a cash advance item is not the same as the cost to the funeral provider when that is not the case.

Sec. 23. Minnesota Statutes 1998, section 149A.72, subdivision 13, is amended to read:

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Subd. 13. **CASH ADVANCE PROVISIONS; PREVENTIVE REQUIREMENTS.** To prevent deceptive acts or practices, funeral providers must place the following sentence in the itemized statement of funeral goods ~~and~~, funeral services, burial site goods, and burial site services selected, in immediate conjunction with the list of itemized cash advance items required by section 149A.71, subdivision 2, paragraph (f): "We charge you for our services in obtaining (specify cash advance items provided).", if the funeral provider makes a charge upon, or receives and retains a rebate, commission, or trade or volume discount upon a cash advance item.

Sec. 24. Minnesota Statutes 1998, section 149A.73, subdivision 1, is amended to read:

Subdivision 1. **CASKET FOR CREMATION PROVISIONS; DECEPTIVE ACTS OR PRACTICES.** In selling or offering to sell funeral goods ~~or~~, funeral services, burial site goods, or burial site services to the public, it is a deceptive act or practice for a funeral provider to require that a casket be purchased for cremation.

Sec. 25. Minnesota Statutes 1998, section 149A.73, subdivision 3, is amended to read:

Subd. 3. **OTHER REQUIRED PURCHASES OF FUNERAL GOODS ~~OR~~, FUNERAL SERVICES, BURIAL SITE GOODS, OR BURIAL SITE SERVICES; DECEPTIVE ACTS OR PRACTICES.** (a) In selling or offering to sell funeral goods ~~or~~, funeral services, burial site goods, or burial site services to the public, it is a deceptive act or practice for a funeral provider to condition the furnishing of any funeral good ~~or~~, funeral service, burial site good, or burial site service to a consumer arranging a funeral upon the purchase of any other funeral good ~~or~~, funeral service, burial site good, or burial site service, except as may be otherwise required by law or to charge any fee as a condition to furnishing any funeral goods ~~or~~, funeral services, burial site goods, or burial site services to a consumer arranging a funeral, other than the fees for services of funeral director and staff, other funeral services ~~and~~, funeral goods, burial site goods, and burial site services selected by the purchaser, and other funeral goods ~~or~~, funeral services, burial site goods, or burial site services required to be purchased, as explained on the itemized statement in accordance with section 149A.72, subdivision 10.

(b) In selling or offering to sell funeral goods, funeral services, burial site goods, or burial site services to the public, it is a deceptive act or practice for a funeral provider to charge an increased price for the handling, placing, or setting of a funeral good or burial site good based upon the fact that the good was not purchased from that funeral provider.

Sec. 26. Minnesota Statutes 1998, section 149A.73, subdivision 4, is amended to read:

Subd. 4. **OTHER REQUIRED PURCHASES OF FUNERAL GOODS ~~OR~~, FUNERAL SERVICES, BURIAL SITE GOODS, OR BURIAL SITE SERVICES; PREVENTIVE REQUIREMENTS.** To prevent unfair or deceptive acts or practices, funeral providers must place the following disclosure in the general price list,

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immediately above the prices required by section 149A.71, subdivision 2, paragraph (e), clauses (4) to (10): "The goods and services shown below are those we can provide to our customers. You may choose only the items you desire. If legal or other requirements mean that you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and, funeral services, burial site goods, and burial site services you selected." However, if the charge for "services of funeral director and staff" cannot be declined by the purchaser, the statement shall include the sentence "However, any funeral arrangements you select will include a charge for our basic services." between the second and third sentences of the sentences specified in this subdivision. The statement may include the phrase "and overhead" after the word "services" if the fee includes a charge for the recovery of unallocated funeral overhead. If the funeral provider does not include this disclosure statement, then the following disclosure statement must be placed in the statement of funeral goods and, funeral services, burial site goods, and burial site services selected, as described in section 149A.71, subdivision 2, paragraph (f): "Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reasons in writing below." A funeral provider is not in violation of this subdivision by failing to comply with a request for a combination of goods or services which would be impossible, impractical, or excessively burdensome to provide.

Sec. 27. Minnesota Statutes 1998, section 149A.73, is amended by adding a subdivision to read:

Subd. 5. RENTAL OF FUNERAL GOODS. It is a deceptive act or practice for a funeral provider to require as a condition of providing any funeral good or burial site good that the funeral good or burial site good be purchased by a consumer when rental of the good is practicable.

Sec. 28. [149A.745] FUNERAL INDUSTRY PRACTICES; PROHIBITION ON PREINTERMENT OF OUTER BURIAL CONTAINERS.

A funeral provider is prohibited from interring a lined and sealed outer burial container until the death of the beneficiary.

Sec. 29. Minnesota Statutes 1998, section 149A.75, is amended to read:

149A.75 FUNERAL INDUSTRY PRACTICES; RETENTION OF DOCUMENTS.

Funeral providers must retain and make available for inspection true and accurate copies of the applicable price lists specified in section 149A.71, subdivision 2, paragraphs (c) to (e), for a minimum of one calendar year after the date of their last distribution to customers. In addition, funeral providers must retain a copy of each statement of funeral goods and, funeral services, burial site goods, and burial site services selected, as described in section 149A.71, subdivision 2, paragraph (f), for a minimum of three calendar years from the date of the arrangement conference. Following this period and subject to any other laws requiring retention of records, the funeral provider may then place the records in storage or reduce them to microfilm,

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microfiche, laser disc, or any other method that can produce an accurate reproduction of the original record, for retention for a period of ten calendar years from the date of the arrangement conference. At the end of this period and subject to any other laws requiring retention of records, the funeral provider may destroy the records by shredding, incineration, or any other manner that protects the privacy of the individuals identified in the records.

Sec. 30. Minnesota Statutes 1998, section 149A.97, subdivision 1, is amended to read:

Subdivision 1. **PURPOSE AND INTENT.** It is the intent of the legislature that this section be construed as a limitation upon the manner in which a funeral provider is permitted to accept funds in prepayment of funeral services or burial site services to be performed in the future or in prepayment of funeral or burial goods to be used in connection with the final disposition of human remains. It is further intended to allow members of the public to arrange and pay for ~~funerals, funeral services, funeral or burial goods, or final dispositions~~ funeral goods, funeral services, burial site goods, or burial site services for themselves and their families in advance of need while at the same time providing all possible safeguards so that the prepaid funds cannot be dissipated, whether intentionally or not, so as to be available for the payment of the services and goods selected.

Sec. 31. Minnesota Statutes 1998, section 149A.97, subdivision 2, is amended to read:

Subd. 2. **SCOPE AND REQUIREMENTS.** This section shall not apply to any funeral goods or burial site goods purchased and delivered, either at purchase or within a commercially reasonable amount of time thereafter. When prior to the death of any person, that person or another, on behalf of that person, enters into any transaction, makes a contract, or any series or combination of transactions or contracts with a funeral provider lawfully doing business in Minnesota, other than an insurance company licensed to do business in Minnesota selling approved insurance or annuity products, by the terms of which, goods or services related to the final disposition of that person will be furnished at-need, then the total of all money paid by the terms of the transaction, contract, or series or combination of transactions or contracts shall be held in trust for the purpose for which it has been paid. The person for whose benefit the money was paid shall be known as the beneficiary, the person or persons who paid the money shall be known as the purchaser, and the funeral provider shall be known as the depositor.

Sec. 32. Minnesota Statutes 1998, section 149A.97, subdivision 3, is amended to read:

Subd. 3. **NATURE OF TRUST.** Except as provided in this section, nothing in this section shall abate the rights, duties, and powers granted under chapters 501B and 520. A trust created for the holding of preneed arrangement funds shall be revocable, in its entirety, unless specifically limited by the person purchasing the preneed funeral goods ~~and or services,~~ funeral services, burial site goods, or burial site services. If the purchaser chooses to limit the revocability of the trust funds, the limitation must be

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declared in the trust instrument and must be limited to an amount equivalent to the allowable supplemental security income asset exclusion used for determining eligibility for public assistance at the time the trust is created.

Sec. 33. Minnesota Statutes 1998, section 149A.97, is amended by adding a subdivision to read:

Subd. 3a. REQUIREMENTS FOR PRENEED FUNERAL AGREEMENTS.
It is unlawful for any person residing or doing business in this state to enter a preneed funeral agreement unless the agreement:

(1) is written in clear, understandable language and printed in a type that is easy to read in size and style;

(2) contains a complete, itemized description of the funeral goods, funeral services, burial site goods, or burial site services selected or purchased, including, when appropriate, manufacturer's name, model numbers, style numbers, and description of the type of material used in construction;

(3) discloses clearly and conspicuously whether the prices of the goods and services selected are guaranteed;

(4) discloses that funding options for a preneed funeral agreement consist of either prepayment to the funeral provider or the purchase of an insurance policy;

(5) discloses whether the funds received from the purchaser are required to be placed in a trust and, if the funds are required to be placed in a trust, provides the following information:

(i) lists the location of the trust account, including the name, address, and telephone number of the institution where the money will be held and any identifying account numbers, the amount of money to be trusted, and the names of the trustees; and

(ii) advises the purchaser as to the disposition of the interest from the trust and as to responsibility for taxes owed on the interest;

(6) contains the names, addresses, and telephone numbers of the Minnesota department of health as the regulatory agency for preneed trust accounts and the Minnesota attorney general's office as the regulatory agency that handles consumer complaints;

(7) discloses clearly and conspicuously that any person who makes payment under a preneed funeral agreement may cancel the agreement subject to the procedures for cancellation specified in subdivision 6a;

(8) contains the following statement, in bold-faced type and a minimum size of ten points:

"Within 15 calendar days after receipt of any money required to be held in trust, all such money must be deposited in a banking institution, savings association, or credit union, organized under state or federal laws, the accounts of which are insured by an instrumentality of the federal government. The person for whose benefit the

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money was paid according to this agreement shall be known as the beneficiary; the person or persons who paid the money shall be known as the purchaser; and the funeral provider shall be known as the depositor. The money must be carried in a separate account with the names of the depositor and the purchaser as trustees for the beneficiary.

The preneed arrangement trust shall be considered an asset of the purchaser until the death of the beneficiary. At the death of the beneficiary, the money in the trust shall be considered an asset of the beneficiary's estate, to the extent that the value of the trust exceeds the actual value for the goods and services provided at-need. This does not alter any asset exclusion requirements that exist under federal law. The depositor as trustee must disclose in writing the location of the trust account, including the name and address of the institution where the money is being held and any identifying account numbers, to the beneficiary when the money is deposited and when there are any subsequent changes to the location of the trust account.”;

(9) for agreements with revocable trusts, contains the following statement, in bold-faced type and a minimum size of ten points:

“REVOCABLE TRUST:

The preneed arrangement trust being created by the purchaser is revocable. These trust funds, including all principal and accrued interest, are the purchaser's assets. The purchaser may withdraw the principal and accrued interest at any time prior to the death of the beneficiary. At the death of the beneficiary, the funds shall be distributed in their entirety, principal plus accrued interest, with no fees retained by the trustees as administrative fees. The funds shall be distributed for the payment of the at-need funeral goods, funeral services, burial site goods, or burial site services selected, with any excess funds distributed to the beneficiary's estate. At any time before or at the time of the beneficiary's death, the purchaser may transfer the preneed arrangements and related trust funds for use in the payment of funeral goods, funeral services, burial site goods, or burial site services. The purchaser may not be charged any fee in connection with the transfer of a preneed arrangement and trust funds.”;

(10) for agreements with irrevocable trusts, contains the following statement, in bold-faced type and a minimum size of ten points:

“IRREVOCABLE TRUST:

A trust created to hold preneed arrangement funds is revocable in its entirety unless specifically limited by the purchaser. The purchaser has chosen to create an irrevocable trust in the amount of \$ (insert the dollar amount of the purchaser's irrevocable trust). The revocable portion of this trust fund is limited to that amount that exceeds the allowable supplemental security income asset exclusion used for determining eligibility for public assistance at the time the trust is created. The principal and accrued interest may not be withdrawn from the trust prior to the beneficiary's death, except to the extent that the trust funds exceed the irrevocable trust limitation. At the time of the beneficiary's death, the funds shall be distributed in their entirety, principal plus accrued interest, with no fees retained by the trustees as administrative fees. The

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funds shall be distributed for the payment of the at-need funeral goods, funeral services, burial site goods, or burial site services selected, with any excess funds distributed to the beneficiary's estate. At any time prior to or at the time of the beneficiary's death, the purchaser may transfer the preneed arrangements and trust funds for use in the payment of funeral goods, funeral services, burial site goods, or burial site services. The purchaser may not be charged any fee in connection with the transfer of a preneed arrangement and trust funds.”;

(11) provides that if the particular funeral goods, funeral services, burial site goods, or burial site services specified in the agreement are unavailable at the time of delivery, the funeral provider must furnish goods and services similar in style and at least equal in quality to the material and workmanship of the goods or services specified and that the representative of the beneficiary has the right to choose the goods or services to be substituted; and

(12) contains an itemization of the sale of grave lots, spaces, lawn crypts, niches, or mausoleum crypts separate from all other goods and services selected.

Sec. 34. Minnesota Statutes 1998, section 149A.97, is amended by adding a subdivision to read:

Subd. 4a. FINANCE CHARGES ON PRENEED ARRANGEMENTS PROHIBITED. Funeral providers are prohibited from assessing finance charges on preneed arrangements.

Sec. 35. Minnesota Statutes 1998, section 149A.97, subdivision 6, is amended to read:

Subd. 6. DISBURSEMENT OF TRUST FUNDS. The funds held in trust, including principal and accrued interest, may be distributed prior to the death of the beneficiary upon demand by the purchaser as specified in subdivision 6a, to the extent that the trust is designated revocable. At the death of the beneficiary and with satisfactory proof of death provided to the institution holding the trust funds, the funds, including principal and accrued interest, may be distributed by either the depositor as trustee or the purchaser as trustee, subject to section 149A.80. The funds shall be distributed in their entirety, with no fees to be retained by the trustees as administrative fees. The funds shall be distributed for the payment of the actual at-need value of the funeral goods and/or, funeral services, burial site goods, or burial site services selected with any excess funds distributed to the estate of the decedent.

Sec. 36. Minnesota Statutes 1998, section 149A.97, is amended by adding a subdivision to read:

Subd. 6a. CANCELLATION OF AGREEMENT FOR PRENEED ARRANGEMENTS. (a) If a purchaser cancels an agreement for an irrevocable trust for preneed arrangements at any time before midnight of the third business day after the date of the agreement, the purchaser shall receive a refund of all consideration paid according to the agreement. The refund must be distributed to the purchaser within 15 business days following receipt by the funeral provider of the cancellation notice from the purchaser.

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(b) If the purchaser cancels an agreement for a revocable trust for preneed arrangements at any time after the date of the agreement, all funds held in a revocable trust, including all principal and accrued interest, must be distributed to the purchaser within 15 business days following receipt by the funeral provider of the cancellation notice.

(c) Cancellation is evidenced by the purchaser giving written notice of cancellation to the funeral provider at the address provided in the agreement. Notice of cancellation, if given by mail, is effective upon deposit in a mailbox, properly addressed to the funeral provider and postage prepaid. Notice of cancellation need not take any specific form and is sufficient if it indicates, by any form of written expression, the intention of the purchaser not to be bound by the agreement.

Sec. 37. Minnesota Statutes 1998, section 149A.97, subdivision 9, is amended to read:

Subd. 9. **REQUIRED RECORDS.** Every funeral provider lawfully doing business in Minnesota that accepts funds under subdivision 2 must create and maintain on its premises or other business location in Minnesota an accurate record of every trust fund established with the funeral provider as trustee. The record must contain the following information:

- (1) the names of the purchaser, beneficiary, and depositor;
- (2) the date, location, identifying account numbers, and amount of the funds originally deposited;
- (3) any subsequent changes to the location of the account, identifying account number, or trustee designation;
- (4) the date, amount, and payee of any distributions from the account; and
- (5) all supporting documentation, including a copy of the original trust agreement, copies of any contracts for the purchase of preneed funeral goods and services, and any other appropriate documentation.

Sec. 38. **RECOMMENDATIONS.**

The commissioner of health shall make recommendations by January 15, 2001, to the chairs of the senate health and family security budget division and the house health and human services finance division on whether there is a need for additional funding for ongoing implementation of the regulatory provisions of Minnesota Statutes, chapter 149A, and if so, proposals for an alternative funding source other than the general fund.

Sec. 39. **EFFECTIVE DATE.**

Section 10 is effective January 1, 2001.

Presented to the governor April 20, 2000

Signed by the governor April 24, 2000, 1:36 p.m.

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