

NORTH CAROLINA GENERAL ASSEMBLY
1969 SESSION

CHAPTER 187
HOUSE BILL 190

1 AN ACT RELATING TO FUNERAL AND BURIAL TRUST FUNDS.

2
3 The General Assembly of North Carolina do enact:
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5 **Section 1.** As used in this Act, unless the context requires otherwise:

- 6 (1) "Department" means the State Banking Department;
7 (2) "Financial Institution" means a bank, trust company or savings and loan
8 association authorized by law to do business in this State;
9 (3) "Pre-Need Burial Contract" means a contract, which has for a purpose the
10 furnishing or performance of funeral services, or the furnishing or delivery
11 of personal property, merchandise, or services of any nature in connection
12 with the final disposition of a dead human body, to be furnished or delivered
13 at a time determinable by the death of the person whose body is to be
14 disposed of, but does not mean the furnishing of a cemetery lot, crypt, niche,
15 mausoleum, grave marker or monument.

16 **Sec. 2.** (1) All payments of money made to any person, partnership, association or
17 corporation upon any agreement or contract, or any series or combination of agreements or
18 contracts, but not including the furnishing of cemetery lots, crypts, niches, mausoleums, grave
19 markers or monuments, which has for a purpose the furnishing or performance of funeral
20 services, or the furnishing or delivery of personal property merchandise, or services of any
21 nature in connection with the final disposition of a dead human body, to be furnished or
22 delivered at a time determinable by the death of the person whose body is to be disposed of, are
23 held to be trust funds. The person, partnership, association or corporation receiving the
24 payments is declared to be a trustee thereof, and shall deposit all payments in a Financial
25 Institution. All of the interest, dividends, increases or accretions of whatever nature earned by
26 the funds deposited in a trust account shall remain with the principal of such account and
27 become a part thereof, subject to all of the regulations concerning the principal of said fund
28 herein contained. The trust fund itself shall be solely liable for all taxes on said fund and its
29 interest, dividends, increases and accretions.

30 (2) All payments made under the agreement, contract or plan are and shall remain
31 trust funds with the Financial Institution until the death of the person for whose service the
32 funds were paid and until the delivery of all merchandise and full performance of all services
33 called for by the agreement, contract or plan, except where payment is made pursuant to
34 Section 3 of this Act.

35 (3) The funds shall not be paid by the Financial Institution until a certified statement
36 is furnished to the Financial Institution setting forth that all of the terms and conditions of the
37 agreement have been fully performed by the person, association, partnership, firm or
38 corporation. Unless otherwise specified in the agreement, contract or plan, the said person,
39 partnership, association or corporation shall have no obligation to deliver any merchandise or
40 perform any services for which payment in full has not been deposited in the Financial
41 Institution, and any amounts deposited which do not constitute payment in full shall be
42 refunded to the estate of the deceased beneficiary of the plan or credited against the cost of
43 merchandise or services contracted for by representatives of the deceased. Any balance

1 remaining in the fund after payment for the merchandise and services as set forth in the
2 agreement, contract or plan shall be paid to the estate of the beneficiary of the agreement,
3 contract or plan.

4 (4) Subsection (1) of this section does not apply to contracts for funeral service or
5 merchandise sold as burial insurance policies which are regulated by Article 24 of Chapter 58
6 of the General Statutes.

7 (5) "The Department shall approve forms for pre-need burial contracts. All such
8 contracts must be in writing, and no contract form shall be used without prior approval of the
9 Department. Any use or attempted use of an oral pre-need burial contract or any written pre-
10 need burial contract in a form not approved by the Department shall be deemed to be a
11 violation of this Article by the person selling services or merchandise thereunder."

12 **Sec. 3.** Within 30 days of receipt of a written demand for refund by any person,
13 partnership or corporation who has paid funds for a pre-need funeral service, the Financial
14 Institution with which such funds have been deposited shall refund to such person, partnership
15 or corporation the entire amount paid together with all interest, dividends, increases or
16 accretions earned on such fund.

17 After making refund to the person, partnership or corporation pursuant to the
18 provisions of the preceding paragraph and giving notice to the Trustee of such payment, the
19 Financial Institution shall be relieved from further liability to the Trustee.

20 **Sec. 4.** All trust funds mentioned in this Act shall be deposited in the name of the
21 Trustee, as Trustee, within thirty (30) days after receipt thereof, with a Financial Institution and
22 shall be held together with the interest, dividends, or accretions thereon, in trust, subject to the
23 provisions of this Act. The Trustee at the time of making deposit shall furnish to the Financial
24 Institution the name of each payor, and the amount of payment on each account for which the
25 deposit is being made.

26 **Sec. 5.** No person, firm, partnership, association or corporation may, without first
27 securing from the department a license, accept and/or hold payments made on Pre-Need Burial
28 contracts, except Financial Institutions as defined in Section 1 (2) hereof. Application for a
29 license shall be in writing, signed by the applicant and duly verified on forms furnished by the
30 Department. Each application shall contain at least the following:

31 The full names and address (both residence and place of business) of the applicant,
32 and every member, officer and director thereof if the applicant is a firm, partnership,
33 association or corporation. Any license issued pursuant to the application shall be
34 valid only at the address stated in the application for the applicant or at a new
35 address approved by the Department.

36 Upon receipt of the application and payment of a license fee of twenty-five dollars
37 (\$25.00), the Department shall issue a license unless it determines that the applicant has made
38 false statements or representations in the application, or is insolvent, or has conducted, or is
39 about to conduct, his business in a fraudulent manner, or is not duly authorized to transact
40 business in this State.

41 Any person selling a pre-need funeral service contract shall collect from each
42 purchaser a service charge of \$2.00, and all of which fees so collected shall be remitted by the
43 person collecting same to the State Banking Department at least once each month, and such
44 funds shall be used by the Department in administering this Act.

45 **Sec. 6.** The licensee shall keep accurate accounts, books, and records in this State
46 of all transactions, copies of all agreements, dates and amounts of payments made and accepted
47 thereon, the names and addresses of the contracting parties, the persons for whose benefit funds
48 are accepted, and the names of the depositories of the funds. The licensee shall make all books
49 and records pertaining to the trust funds available to the Department for examination. The
50 Department may at any time investigate the books, records, and accounts of the licensee with

1 respect to its trust funds and for that purpose may require the attendance of and examine under
2 oath all persons whose testimony it may require.

3 **Sec. 7.** The Department shall enforce the provisions of this Act and has the power
4 to make investigations, subpoena witnesses, require audits and reports and conduct hearings as
5 to violations of any provisions, and to establish such rules and regulations as are necessary to
6 carry out the provisions of this Act.

7 **Sec. 8.** Any person wilfully violating the provisions of this Act shall be fined not
8 less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000.00), or
9 shall be imprisoned for not less than ten (10) days nor more than six (6) months, or both.

10 **Sec. 9.** The provisions of this Act shall be separable, and in case any provision or
11 part thereof shall be held to be unconstitutional or invalid for any reason, the same shall not be
12 held to affect any other paragraph, provision, or part of this Act.

13 **Sec. 10.** All laws and clauses of laws in conflict with this Act are hereby repealed.

14 **Sec. 11.** This Act shall become effective July 1, 1969.

15 In the General Assembly read three times and ratified, this the 7th day of April,
16 1969.