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COMMITTEE AMENDMENT ADOPTED AND AMENDED

May 16, 2012

**H. 4763**

Introduced by Reps. Sandifer, King, Butler Garrick and Parks

S. Printed 5/16/12--S. [SEC 5/17/12 12:00 PM]

Read the first time March 27, 2012.

**A** **BILL**

TO AMEND SECTION 32‑7‑50, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PRENEED FUNERAL CONTRACT LICENSES, SO AS TO FURTHER PROVIDE FOR THE TERM OF THE LICENSE AND FOR THE USE OF LICENSE RENEWAL FEES; AND TO AMEND SECTION 32‑7‑100, AS AMENDED, RELATING TO UNLAWFUL VIOLATIONS OF LAW PERTAINING TO PRENEED FUNERAL CONTRACTS, SO AS TO FURTHER PROVIDE FOR THE PENALTIES FOR VIOLATIONS BASED ON THE AMOUNT OF MONEY OBTAINED OR SOUGHT TO BE OBTAINED WITH CERTAIN OFFENSES DECLARED TO BE MISDEMEANORS AND CERTAIN OFFENSES DECLARED TO BE FELONIES.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 32‑7‑10 of the 1976 Code is amended to read:

“Section 32‑7‑10. As used in this chapter, unless the context requires otherwise:

(1) ‘Administrator’ means the Administrator of the South Carolina Department of Consumer Affairs.

(2) ‘At need’ means after the beneficiary is deceased, and ‘at preneed’ means before the beneficiary is deceased.

~~(2)~~(3) ‘Beneficiary’ means the person who is to be the subject of the disposition, services, facilities, or merchandise described in a preneed funeral contract.

~~(3)~~(4) ‘Common trust fund’ means a trust in which the proceeds of more than one funeral contract may be held by the trustee.

~~(4)~~(5) ‘Department’ means the South Carolina Department of Consumer Affairs.

~~(5)~~(6) ‘Financial institution’ means a bank, trust company, or savings and loan association authorized by law to do business in this State.

(7) ‘Funeral services’ or ‘funeral arrangements’ means any of the following:

(a) engaging in providing shelter, care, and custody of the human dead;

(b) preparing the human dead by embalming or other methods for burial or other disposition;

(c) making arrangements before the time of death, financial or otherwise, including arrangements for cremation, for providing these services, or the sale of funeral merchandise; or

(d) engaging in the practice or performing any functions of funeral directing or embalming as presently recognized by persons engaged in these functions.

~~(6)~~(8) ‘Preneed funeral contract’ means a contract which has for its purpose the furnishing or performance of funeral services or the furnishing or delivery of personal property, merchandise, or services of any nature in connection with the final disposition of a dead human body to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of, but does not mean the furnishing of a cemetery lot, crypt, niche, mausoleum, grave marker, or monument.

~~(7)~~(9) ‘Provider’ means a funeral home licensed in this State which is the entity providing services and merchandise pursuant to a preneed funeral contract and is designated trustee of all funds.

~~(8)~~(10) ‘Purchaser’ means the person who is obligated to make payments under a preneed funeral contract.

~~(9)~~(11) ‘Seller’ means a licensed funeral director in this State who is directly employed by the provider.

(12) ‘Trust account’ means a federally insured account where the funds shall be paid to a provider only when the provider furnishes the financial institution with a certified certificate of death and a certified statement that the services have been performed and the merchandise has been delivered.”

SECTION 2. Section 32‑7‑35 of the 1976 Code is amended to read:

“Section 32‑7‑35. (A) A preneed funeral contract may be transferred to another provider only upon the prior written request of the purchaser or the beneficiary of a deceased purchaser or pursuant to Section 32‑7‑45. The selling provider must be paid a fee equal to ten percent of the contract face amount. The selling provider also must be paid ten percent of the earnings in that portion of the final year before transfer.

(B) A preneed funeral contract, whether revocable or irrevocable, funded by an insurance policy may be transferred to another provider only upon the prior written request of the purchaser or the beneficiary of a deceased purchaser or pursuant to Section 32‑7‑45. The selling provider may not collect, charge, or receive a fee in connection with this transfer of a preneed funeral contract funded by an insurance policy. An irrevocable preneed funeral contract funded by an insurance policy may be transferred to another provider only upon the prior written request of the purchaser or the beneficiary of a deceased purchaser or pursuant to Section 32‑7‑45.

(C)(1) At preneed, a preneed funeral contract may be transferred only to a funeral home that is licensed to sell preneed funeral contracts. The receiving funeral home is not required to pay an additional service charge unless there are changes to the contract.

(2) At need, a preneed funeral contract may be transferred to any funeral home that is licensed by the Board of Funeral Directors.”

SECTION 3. Section 32‑7‑50 of the 1976 Code is amended to read:

“Section 32‑7‑50. (A) Without first securing a license from the department, no one, except a financial institution, may accept or hold payments made on a preneed funeral contract.

(1) The State Board of Funeral Service must revoke the license of a funeral home or funeral director, or both, if the funeral home or funeral director: (a) accepts funds for a preneed funeral contract or other prepayment of funeral expenses without a license to sell preneed funeral contracts, or (b) is licensed to sell preneed funeral contracts and fails to deposit the funds collected in trust in a federally insured account as required by Section 32‑7‑20(H).

(2) Application for a license must be in writing, signed by the applicant, and verified on forms furnished by the department. ~~Each~~ An application must contain at least the following: the full name and address, both residence and place of business, of the applicant and every member, officer, and director of it if the applicant is a firm, partnership, association, or corporation. A license issued pursuant to the application is valid only at the address stated in the application for the applicant or at a new address approved by the department.

(3) If a licensee cancels the license and later applies for a new license, the department shall investigate the applicant’s books, records, and accounts to determine if the applicant violated the provisions of this chapter during the time he did not have a license.

(B) Upon receipt of the application, a one‑time payment of a two hundred fifty dollar license fee, and the deposit in an amount to be determined by the department of the security or proof of financial responsibility as the department may determine, the department shall issue a license unless it determines that the applicant has made false statements or representations in the application, is insolvent, has conducted his business in a fraudulent manner, is not authorized to transact business in this State, or if, in the judgment of the department, the applicant should be denied a license for some other good and sufficient reason.

(C) A person selling a preneed funeral contract shall collect from each purchaser a service charge and all fees collected must be remitted by the person collecting them to the department at least once each month.

(1) With the fees collected, the person also must provide the department with a listing of each contract sold. If the listing or fees collected are not sent to the department within sixty days of the last day of the month when the contract was sold, the department shall assess a civil penalty of ten dollars for each contract not reported to the department. The monies collected as civil penalties must be deposited in the Preneed Funeral Loss Reimbursement Fund. Upon its own initiative or upon complaint or information received, the department shall investigate a person’s books, records, and accounts if the department has reason to believe that fees are collected and either not remitted or not timely remitted.

(2) The service charge for each contract may not exceed a total of thirty dollars, twenty-five dollars for the department to use in administering the provisions of this chapter and five dollars to be allocated to the Preneed Funeral Loss Reimbursement Fund.

(3) The department shall keep a record of each preneed funeral contract for which it receives a service charge.

(D) A license issued pursuant to this section expires on September thirtieth of each odd-numbered year unless otherwise revoked or canceled. A license must be renewed by filing a renewal application at least thirty days prior to expiration on forms prescribed by the department. A renewal application must be accompanied by a fee of two hundred dollars for the department to use in administering this chapter. The department shall deposit one hundred dollars of each renewal fee received into the Preneed Funeral Loss Reimbursement Fund. The department shall consider the factors in subsection (B) before issuing a license.”

SECTION 4. Section 32‑7‑60(B) of the 1976 Code, as last amended by Act 70 of 2009, is further amended to read:

“(B) From the service charge for each preneed contract as required by Section 32‑7‑50(C), the department shall deposit into the fund that portion of the charge as established by the department. The department may suspend or resume deposits into the fund at any time and for any period to ensure that a sufficient amount is available to meet likely disbursements and to maintain an adequate reserve. The maximum amount of the service charge to be allocated to the Preneed Funeral Loss Reimbursement Fund as required by Section 32‑7‑50(C)(2) may not exceed the amount of five dollars for each preneed contract. ~~The maximum amount of the fund is five hundred thousand dollars with a five percent adjustment compounded annually.~~”

SECTION 5. Section 32‑7‑100 of the 1976 Code is amended to read:

“Section 32-7-100. (A) A person wilfully violating the provisions of this chapter is guilty of a:

(1) misdemeanor, if the value of money obtained or sought to be obtained is two thousand dollars or less and, upon conviction, the person must be fined not less than one thousand dollars ~~or more than five thousand dollars~~, or imprisoned for not ~~less than ten days or more than six months~~ more than thirty days, or both~~.~~; ~~In addition, this person may be prohibited from entering into further preneed funeral contracts if the department, in its discretion, finds that the offense is sufficiently grievous.~~

(2) felony, if the value of money obtained or sought to be obtained is more than two thousand dollars but less than ten thousand dollars, and, upon conviction, the person must be fined in the discretion of the court, or imprisoned for not more than five years, or both;

(3) felony, if the value of money obtained or sought to be obtained is ten thousand dollars or more, and, upon conviction, the person must be fined in the discretion of the court, or imprisoned for not more than ten years, or both.

(4) In addition, a person convicted of a misdemeanor or a felony pursuant to this section may be prohibited from entering into further preneed funeral contracts, if the department, in its discretion, finds that the offense is sufficiently grievous.

(B) The determination of the degree of an offense under subsection (A) must be measured by the total value of all money obtained or sought to be obtained by the unlawful conduct.

~~(B)~~(C)(1) Before the suspension, revocation, or other action by the department involving a license to sell preneed funeral contracts becomes final, a licensee is entitled to request a contested case hearing before the Administrative Law Court, in accordance with the Administrative Procedures Act.

(2) Other action by the department may include a warning notice of deficiency, additional education requirements concerning the provisions of this chapter, a fine, or a cease and desist order for violation of a provision in this chapter.”

SECTION 6. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 7. Chapter 7, Title 32 of the 1976 Code of Laws is amended by adding the following:

“Section 32‑7‑115. (A) In addition to other remedies provided in this chapter, the failure of a funeral home, funeral director, individual, or business engaged in the sale of preneed funeral contracts without a license to comply with the provisions of this chapter gives rise to a civil cause of action in favor of an aggrieved consumer, a preneed funeral contract purchaser, or a preneed funeral contract guarantor. Upon entry of judgment for damages in favor of a plaintiff, a circuit court shall award punitive damages in the amount of three times the actual damages awarded in the judgment.

(B) The prevailing party, after judgment in circuit court and exhaustion of all appeals, if any, shall receive reasonable attorney’s fees and costs from the nonprevailing party.

(C) An attorney for a prevailing party shall submit a sworn affidavit of the time spent on the case and the costs incurred for all motions, hearings, and appeals to the chief administrative judge of the circuit where the initial trial occurred.

(D) The chief administrative judge shall award the prevailing party the sum of reasonable costs incurred in the action, plus a reasonable legal fee for the hours actually spent on the case as sworn to in an affidavit.

(E) An award of attorney’s fees or costs shall become part of the judgment and subject to execution as the law allows.”

SECTION 8. This act takes effect upon approval by the Governor.

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