

HCS SS SCS SB 1 -- PRENEED FUNERAL CONTRACTS

This bill establishes licensing requirements for sellers, seller agents, and providers of preneed funeral contracts and establishes the Missouri Preneed Funeral Contract Act.

LICENSURE OF PRENEED PROVIDERS, SELLERS, AND AGENTS

The bill:

(1) Increases the membership of the State Board of Embalmers and Funeral Directors within the Department of Insurance, Financial Institutions and Professional Registration from six to 10 with not more than five members from the same political party. The non-public members will be appointed by the Governor with the advice and consent of the Senate, consisting of one from each of the state's Congressional districts. Those appointed to the board are required to submit an audited financial statement of their funeral establishments by an independent auditor for the previous five years including all of their at-need and preneed business;

(2) Authorizes the board to employ legal counsel if necessary;

(3) Exempts certain endowed care cemetery operators from the licensure requirements;

(4) Requires applicants for a preneed provider license to make application with the board; pay an application fee; be registered to conduct business in this state with the Secretary of State; identify the name and address of the custodian of records and all sellers authorized by the provider to sell preneed contracts; and give authorization to the board to inspect, examine, investigate, or audit all records regarding preneed contracts sold;

(5) Requires applicants for a preneed seller license to make application with the board; pay an application fee; be a Missouri resident who is 18 years of age or older or a business entity registered to conduct business in this state with the Secretary of State; identify the name and address of the custodian of records and all providers which have authorized the seller to designate the person as a provider under the contract; identify, if applicable, the financial institution where any preneed trust or joint accounts will be maintained; and give authorization to the board to inspect, examine, investigate, or audit all records regarding preneed contracts sold;

(6) Requires applicants for a preneed agent registration to make application with the board; pay an application fee; be 18 years of age or older; have successfully passed the Missouri law

examination as designated by the board; and identify the name and address of each seller for whom they are authorized to sell, negotiate, or solicit the sale of preneed contracts for, or on behalf of;

(7) Authorizes the board to refuse to issue, suspend, and revoke certificates of registration or authority, permits, or licenses; seek an injunction, restraining order, or other order from the Cole County circuit court; and cause complaints to be filed with the Administrative Hearing Commission as specified in the bill; and

(8) Authorizes the board to adopt and enforce rules for the transaction of its business and for the standards of service and practice to be followed in the professions of embalming, funeral directing, and selling preneed funeral contracts.

MISSOURI PRENEED FUNERAL CONTRACT ACT

The bill establishes the Missouri Preneed Funeral Contract Act which will apply only to preneed contracts made on or after August 28, 2009, and not to certain contracts sold by a cemetery operator for which payments are to be placed in an endowed care fund or a segregated account. In its main provisions, the bill;

(1) Requires the provider designated in the preneed contract to provide final disposition, funeral or burial services and facilities, and funeral merchandise as specified in the contract;

(2) Requires the seller to collect and properly deposit and disburse all payments made by a purchaser to ensure a contract is managed in compliance with the provisions of the bill;

(3) Requires written contractual agreements between providers and sellers. Providers must notify the board of the contractual relationships;

(4) Specifies that preneed contracts must be in writing and include the name, address, and phone number of the purchaser and beneficiary; include the name, address, phone number, and license number of the provider and seller; provide details of the disposition, funeral and burial services and facilities, and merchandise requested; identify the funding mechanism of the contract; include notice that the cancellation of the contract will not affect any life insurance used for funding of the contract; include notice that the purchaser will receive the cash surrender value of any insurance funding the contract if canceled after a designated time; include notice that the purchaser may transfer the provider designation to another provider; prominently identify whether the contract is revocable or

irrevocable; establish the terms for a cancellation; identify the trust or joint account where the money will be deposited; include the name, address, and phone number of any insurance company issuing a policy to fund the contract; prominently identify whether the contract is guaranteed or nonguaranteed; and include any applicable consumer disclosures required by the board by rule and on all guaranteed installment payment contracts regarding what will be owed if the beneficiary dies before all installments have been paid;

(5) Allows a beneficiary who seeks to become eligible to receive public assistance to waive his or her right to any refund or money used to fund his or her preneed contract;

(6) Gives all purchasers the right to cancel or rescind a revocable contract with or without cause;

(7) Requires sellers of trust-funded contracts to deposit 100% of the payments into the designated trust within 60 days of the receipt of the money. The trustee must be a state or federally chartered financial institution authorized to exercise trust powers in this state. The seller is entitled to 15% of the total contract amount, 5% as an origination fee and 10% which may be collected as soon as the funds have been deposited into the trust;

(8) Allows for the commingling of two or more contracts within one trust under certain specified criteria;

(9) Allows all expenses of establishing and administering a trust to be paid from income generated by the trust;

(10) Entitles the seller and provider to income generated by the trust as stipulated in the contract;

(11) Requires the provider to request payment by submitting a certificate of performance to the seller certifying that he or she has rendered services under the contract or as requested. This certificate must be signed by the provider and the person authorized to make arrangements on behalf of the beneficiary;

(12) Requires a trustee to be held to the prudent investor standard and to diversify the investments in the trust unless the trustee reasonably determines that it would be better served without diversification because of special circumstances;

(13) Prohibits providers, sellers, and preneed agents from collecting from the purchaser of an insurance-funded contract any amount in excess of what is required to pay the premiums on the insurance policy. Sellers cannot collect any fees from the

purchaser of an insurance-funded contract, other than those fees assessed by the insurer;

(14) Prohibits the use of a loan against any insurance contract to fund a preneed contract;

(15) Allows sellers and purchasers to use joint accounts to fund contracts under specified requirements;

(16) Requires financial institutions to disburse funds from canceled joint account contracts to the purchaser within 15 days of cancellation. In cases of a canceled trust-funded contract, the trustee must return all of the trust property, less interest, to the purchaser;

(17) Gives a seller the right to cancel a trust-funded or joint-account funded preneed contract which is in default for over 60 days. Purchasers may remit delinquent payments if the seller chooses not to cancel the contract. Upon cancellation by the seller, 85% of the contract payments will be refunded to the purchaser;

(18) Allows a purchaser to choose an alternate provider under the original contract at no charge. When this occurs, the seller has the option of canceling the contract by paying the new provider all of the trust property, including the principal and interest;

(19) Requires sellers to file annual reports with the State Board of Embalmers and Funeral Directors within the Department of Insurance, Financial Institutions and Professional Registration containing the contract number of each contract sold in the last year and whether it is funded by a trust, insurance, or joint account; total number and total face value of contracts sold; amount of each contract sold; name, address, and license number of each preneed agent authorized to sell on the seller's behalf; list of all contracts fulfilled, canceled, or transferred during the preceding year; name and address of each provider with whom they have contractual arrangements; name and address of each custodial record keeper; written consent to investigate, examine, or audit accounts and records; and certification that the report is accurate and complete;

(20) Authorizes the board to establish an annual reporting fee for each preneed contract sold in the year since the date of the last report;

(21) Authorizes the board to conduct inspections, investigations, and financial examinations of providers, sellers, and agents and any trust and joint account holding assets to fund

contracts. Subject to funding availability, the financial examinations of sellers of contracts must be conducted at least once every five years;

(22) Authorizes the board to issue subpoenas to compel the production of records and papers of any licensee, trustee, or registrant;

(23) Allows the board; Division of Finance; Department of Insurance, Financial Institutions and Professional Registration; and the Office of the Attorney General to share information regarding any inspection, investigation, examination, or audit;

(24) Requires a provider or seller who intends to cease doing business in this state to notify the board at least 60 days prior to the liquidation of all or a majority of its assets or stock;

(25) Allows contracts to offer the purchaser the option to acquire and maintain credit life insurance; and

(26) Requires the board to maintain as a closed and confidential record all personal information about any preneed purchaser or beneficiary except in certain specified situations.

Anyone violating the provisions of the Missouri Preneed Funeral Contract Act will be guilty of a class C felony.