

South Carolina General Assembly
119th Session, 2011-2012

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A261, R305, H4763

STATUS INFORMATION

General Bill

Sponsors: Reps. Sandifer, King, Butler Garrick and Parks

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Introduced in the House on February 9, 2012

Introduced in the Senate on March 27, 2012

Last Amended on June 6, 2012

Passed by the General Assembly on June 6, 2012

Governor's Action: June 18, 2012, Signed

Summary: Preneed funeral contract licenses

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
2/9/2012	House	Introduced and read first time (House Journal-page 16)
2/9/2012	House	Referred to Committee on Labor, Commerce and Industry (House Journal-page 16)
3/8/2012	House	Committee report: Favorable with amendment Labor, Commerce and Industry (House Journal-page 4)
3/20/2012	House	Debate adjourned until Wed., 03-21-12 (House Journal-page 70)
3/21/2012	House	Amended (House Journal-page 22)
3/21/2012	House	Read second time (House Journal-page 22)
3/21/2012	House	Roll call Yeas-99 Nays-5 (House Journal-page 22)
3/22/2012	House	Read third time and sent to Senate (House Journal-page 25)
3/27/2012	Senate	Introduced and read first time (Senate Journal-page 11)
3/27/2012	Senate	Referred to Committee on Judiciary (Senate Journal-page 11)
4/2/2012	Senate	Referred to Subcommittee: Campbell (ch), Cleary, Williams, Nicholson, Gregory
5/9/2012	Senate	Committee report: Favorable with amendment Judiciary (Senate Journal-page 10)
5/11/2012		Scrivener's error corrected
5/16/2012	Senate	Committee Amendment Amended and Adopted (Senate Journal-page 78)
5/16/2012	Senate	Amended (Senate Journal-page 78)
5/22/2012	Senate	Read second time (Senate Journal-page 15)
5/22/2012	Senate	Roll call Ayes-32 Nays-5 (Senate Journal-page 15)
5/23/2012	Senate	Read third time and returned to House with amendments (Senate Journal-page 12)

5/29/2012	House	Non-concurrence in Senate amendment (<u>House Journal-page 37</u>)
5/29/2012	House	Roll call Yeas-1 Nays-105 (<u>House Journal-page 38</u>)
5/30/2012	Senate	Senate insists upon amendment and conference committee appointed Campbell, Williams, and Gregory (<u>Senate Journal-page 19</u>)
5/30/2012	House	Conference committee appointed Sandifer. Toole, Parks (<u>House Journal-page 50</u>)
6/6/2012	House	Conference report received and adopted (<u>House Journal-page 26</u>)
6/6/2012	House	Roll call Yeas-91 Nays-0 (<u>House Journal-page 32</u>)
6/6/2012	Senate	Conference report adopted (<u>Senate Journal-page 75</u>)
6/6/2012	Senate	Roll call Ayes-38 Nays-4 (<u>Senate Journal-page 75</u>)
6/6/2012	House	Ordered enrolled for ratification (<u>House Journal-page 190</u>)
6/12/2012		Ratified R 305
6/18/2012		Signed By Governor
6/25/2012		Effective date 06/18/12
6/27/2012		Act No. 261

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VERSIONS OF THIS BILL

2/9/2012
3/8/2012
3/21/2012
5/9/2012
5/11/2012
5/16/2012
5/17/2012
6/6/2012

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

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(A261, R305, H4763)

AN ACT TO AMEND SECTION 32-7-10, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS IN REGARD TO PRENEED FUNERAL CONTRACTS, SO AS TO ADD CERTAIN DEFINITIONS AND REVISE OTHER DEFINITIONS; TO AMEND SECTION 32-7-35, RELATING TO THE TRANSFER OF PRENEED FUNERAL CONTRACTS, SO AS TO FURTHER PROVIDE FOR THE REQUIREMENTS FOR THE TRANSFER OF CONTRACTS "AT PRENEED" AND "AT NEED"; TO AMEND SECTION 32-7-50, AS AMENDED, RELATING TO PRENEED FUNERAL CONTRACT LICENSES, SO AS TO FURTHER PROVIDE FOR THE AMOUNT OF APPLICATION AND APPLICATION RENEWAL LICENSE FEES, FOR THE TERM OF THE LICENSE AND FOR THE USE OF LICENSE RENEWAL FEES; TO AMEND SECTION 32-7-60, AS AMENDED, RELATING TO THE PRENEED FUNERAL LOSS REIMBURSEMENT FUND, SO AS TO DELETE THE

LIMITATION ON THE MAXIMUM AMOUNT OF THE FUND; 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, AND TO PROVIDE FOR OTHER AUTHORIZED ACTIONS FOR VIOLATIONS OF THIS CHAPTER.

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

Definitions added and revised

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.
- (3) 'Beneficiary' means the person who is to be the subject of the disposition, services, facilities, or merchandise described in a preneed funeral contract.
- (4) 'Common trust fund' means a trust in which the proceeds of more than one funeral contract may be held by the trustee.
- (5) 'Department' means the South Carolina Department of Consumer Affairs.
- (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; or
 - (c) engaging in the practice or performing any functions of funeral directing or embalming as presently recognized by persons engaged in these functions.
- (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.
- (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.

- (10) 'Purchaser' means the person who is obligated to make payments under a preneed funeral contract.
- (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."

Transfer of contracts

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."

Application and renewal fees and their use; license period

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. 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."

Maximum limitation deleted

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."

Penalties and punishments revised

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 imprisoned for not more than thirty days, or both;

(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.

(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."

Savings clause

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.

Time effective

SECTION 7. This act takes effect upon approval by the Governor.

Ratified the 12th day of June, 2012.

Approved the 18th day of June, 2012.

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