

HCS SS SCS SB 1 -- PRENEED FUNERAL CONTRACTS

SPONSOR: Scott (Wasson)

COMMITTEE ACTION: Voted "do pass" by the Special Committee on Professional Registration and Licensing by a vote of 14 to 0.

This substitute 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 substitute:

- (1) Authorizes the State Board of Embalmers and Funeral Directors within the Department of Insurance, Financial Institutions and Professional Registration to employ legal counsel;
- (2) Exempts endowed care cemetery operators from licensure requirements;
- (3) Requires applicants for a preneed provider license to make application with the board; pay a licensing fee; be registered to conduct business in this state with the Secretary of State; identify 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;
- (4) Requires applicants for a preneed seller license to make application with the board; pay a licensing fee; be a Missouri resident who is 18 years of age or older or registered to conduct business in this state with the Secretary of State; identify the custodian of records and all providers which have authorized the seller to designate the person as a provider under the contract; identify the financial institutions where any preneed trusts or joint accounts are held; and give authorization to the board to inspect, examine, investigate, or audit all records;
- (5) Requires applicants for a preneed agent registration to make application with the board; pay a registration fee; be 18 years of age or older; and identify each seller for whom they are authorized to sell preneed contracts;
- (6) Authorizes the board to refuse to issue, suspend, and revoke certificates of registration or licenses and cause complaints to be filed with the Administrative Hearing Commission for the activities specified in the substitute; and

(7) 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 substitute:

(1) Specifies that the provisions of the act will apply only to preneed contracts made after the effective date of the substitute;

(2) Requires the provider listed in the contract to provide final disposition as specified in the contract;

(3) 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 substitute;

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

(5) Specifies that preneed contracts must be in writing; 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 final disposition; identify the funding mechanism of the contract; include notice that the cancellation 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 at a designated time; include notice that the purchaser may transfer the provider designation; 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; identify if the contract is guaranteed or nonguaranteed; and include any required consumer disclosures;

(6) Designates preneed contracts as irrevocable only if the purchaser is eligible to receive public assistance;

(7) Allows purchasers to cancel or rescind revocable contracts with or without cause;

(8) Requires sellers of trust-funded contracts to deposit 100% of the payments into a trust within 60 days of the receipt of the

money. Trustees will be state or federally chartered financial institutions authorized to exercise trust powers in this state;

(9) Allows for the commingling of two or more contracts within one trust;

(10) Allows all expenses and taxes incurred by the trust to be paid from income generated by the trust;

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

(12) Requires the provider and the authorized person on behalf of the beneficiary to sign the certificate of performance when requesting payment from the seller;

(13) Requires trustees to be held to the prudent investor standard and to diversify the investments in the trust, unless the trustee determines it would be better served without diversification;

(14) 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;

(15) Prohibits the use of a term life insurance policy to fund a contract;

(16) Allows sellers and purchasers to use joint accounts to fund contracts;

(17) 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;

(18) Gives a seller the right to cancel a contract which is in default for 60 days. Purchasers may remit delinquent payments if the seller chooses not to cancel the contract. Upon cancellation by the seller, 80% of the contract payments will be refunded to the purchaser;

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

(20) Requires sellers to file annual reports with the board containing the name, address, and contract number of each contract sold in the last year; amount of each contract sold; name, address, and license number of each preneed agent authorized to sell on the seller's behalf; number of contracts fulfilled in that year; name and address of each provider with whom they have contractual arrangements; name and address of each custodial record keeper; written consent to examine accounts and records; and certification that the report is accurate and complete;

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

(22) Authorizes the board to conduct random inspections, investigations, and audits 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;

(23) Gives the board subpoena power for the production of records;

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

(25) Requires providers and sellers who cease doing business in this state to notify the board at least 60 days prior to the liquidation of assets or stock;

(26) Allows contracts to offer credit life insurance; and

(27) Requires the board to maintain as a closed and confidential record all personal information about any preneed purchaser or beneficiary.

Anyone violating the provisions of the substitute will be guilty of a class C felony.

FISCAL NOTE: Estimated Cost on General Revenue Fund of Unknown less than \$100,000 in FY 2010, FY 2011, and FY 2012. Estimated Income on Other State Funds of \$115,653 in FY 2010, \$85,195 in FY 2011, and \$68,651 in FY 2012.

PROPOSERS: Supporters say that the board began receiving information in 2008 that National Prearranged Services (NPS) may

have illegal shortages in its preneed trust accounts. There were also reports that the trusts in question were comprised of term life insurance policies instead of cash and these term policies were allowed to lapse and having no cash value, the money disappeared. Proponents believe that this was brought about due to the lack of authority given to the board in Chapter 436, RSMo. The board has no authority to go after bad actors in the preneed industry unless formal complaints are filed when it can audit the trust accounts to determine whether the funds are being handled in a prudent manner. All agree that there are many problems, and adopting the recommendations of the Chapter 436 worker group will greatly improve the industry for market participants and consumers. There is a need for a system of random and regular audits and for addressing portability, cancellations, and reporting. These revisions are vital for consumer protection. If a situation like the NPS debacle were to occur again, it would create a crisis which could destroy the funeral industry in Missouri.

Testifying for the bill were Senator Scott; Representatives Wasson and Meadows; Division of Professional Registration, Department of Insurance, Financial Institutions and Professional Registration; Office of the Attorney General; State Board of Embalmers and Funeral Directors; Missouri Funeral Directors and Embalmers Association; Bill Trimm, Silver Haired Legislature; Kim Woodard; Lindley Funeral Home; Brad Speaks; Lisa Ballows; Bruce Dockens; and Jerry Griffin.

OPPONENTS: Those who oppose the bill say that the issue regarding the amount of funds placed into trust is vital to many preneed providers in order to stay in business. The authorized percentage administrative fee is necessary to cover the costs of doing business. There is a need to audit the insurance companies which are funding preneed accounts and to remove the good moral character clause regarding licensees.

Testifying against the bill were John Britton, Missouri Preneed Coalition; and George Cline.

OTHERS: Others testifying on the bill say that preneed funeral contracts should be done away with. Others ask how can funds be guaranteed by funeral homes if they are not a party to the transactions and should they be obligated to pay.

Testifying on the bill were Marvin Myers; Jamey Dockens; and John Moore.