~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 8, 2012

**H. 4763**

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

S. Printed 3/8/12--H.

Read the first time February 9, 2012.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (H. 4763) 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, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by deleting SECTION 1 and SECTION 2 in their entirety and inserting:

/ SECTION 1. Section 32‑7‑50 of the 1976 Code, as last amended by Act 70 of 2009, is further 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 and 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 fund. The department shall consider the factors in subsection (B) before issuing a license.”

SECTION 2. 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.~~” /

Renumber sections to conform.

Amend title to conform.

WILLIAM E. SANDIFER for Committee.

**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.

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

SECTION 1. Section 32‑7‑50 of the 1976 Code, as last amended by Act 70 of 2009, is further amended by adding at the end a new subsection to read:

“(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. Each renewal application must be accompanied by a fee of one hundred dollars for the department to use in administering this chapter. If the Preneed Loss Reimbursement Fund has a balance of one hundred thousand dollars or less, the department shall deposit up to fifty dollars of each renewal fee received into the fund. The department shall consider the factors in subsection (B) prior to issuing a license.”

SECTION 2. Section 32‑7‑100 of the 1976 Code, as last amended by Act 70 of 2009, is further 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 amount of money obtained or sought to be obtained is less than five thousand dollars. ~~and,~~ Upon conviction, the person must be fined not less than one thousand dollars ~~or~~ nor more than five thousand dollars, or imprisoned for not less than ten days ~~or~~ nor more than six months, 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; and

(2) felony if the amount of the money obtained or sought to be obtained is five thousand dollars or more. Upon conviction, the person must be fined not less than five thousand dollars nor more than twenty thousand dollars or imprisoned for not more than ten years, or both, together with the costs of prosecution.

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

(C) 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.”

SECTION 3. 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 4. This act takes effect upon approval by the Governor.

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