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CHAPTER 7.

 PRENEED FUNERAL CONTRACTS

**SECTION 32‑7‑10.** Definitions.

 As used in this chapter, unless the context requires otherwise:

 (1) "Administrator" means the administrator of the South Carolina Department of Consumer Affairs.

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

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

 (4) "Department" means the South Carolina Department of Consumer Affairs.

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

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

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

HISTORY: 1962 Code Section 11‑171; 1973 (58) 339; 1989 Act No. 89, Section 1; 1992 Act No. 284, Section 1; 2009 Act No. 70, Section 1, eff July 1, 2009.

**SECTION 32‑7‑20.** Preneed funeral contracts; management of funds; contents of contract; substitutions for merchandise selected.

 (A)(1) All payments of money made to a person upon an agreement or contract or a series or combination of agreements or contracts, but not including the furnishing of cemetery lots, crypts, niches, mausoleums, grave markers, or monuments, which has for a 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, are held to be trust funds.

 (2) When a vault is sold preneed by a seller in accordance with this chapter, one hundred percent of funds received by the seller at the time of payment must be held as trust funds and deposited in a financial institution.

 (3) The provider receiving the payments is declared to be a trustee of the payments, and shall deposit the payments in a financial institution. All of the interest, dividends, increases, or accretions of whatever nature earned by the funds deposited in a trust account must remain with the principal of the account and become a part of it, subject to all of the regulations concerning the principal of the fund contained in this section. After the death of the beneficiary, the principal and all accrued earnings must be applied to the cost in effect at the time of death of the services and merchandise specified in the contract. A shortfall in the funds must be paid by the next of kin or the estate of the beneficiary and any excess must be refunded to the estate of the beneficiary. All taxes on the fund must be paid in accordance with the Internal Revenue Code and applicable rules and regulations.

 (B) The provider may enter into a contract and guarantee to provide services and merchandise in accordance with a preneed funeral contract in the future at no additional cost to the purchaser when the full contract price amount is paid to the provider. After the death of the beneficiary of a guaranteed‑price contract, the principal and all accrued earnings must be paid to the provider to cover the costs in effect at the time of death of the services and merchandise specified in the contract.

 (C) All payments made under the agreement, contract, or plan remain trust funds with the financial institution until the death of the beneficiary and until the delivery of all merchandise and full performance of all services called for by the agreement, contract, or plan, unless payment is made pursuant to Section 32‑7‑30.

 (D) The funds must not be paid by the financial institution until a certified death certificate and a certified statement that all of the terms and conditions of the agreements have been fully performed are furnished by the provider to the financial institution. The provider has no obligation to deliver merchandise or perform a service unless payment in full has been deposited in the financial institution. An amount deposited which is not payment in full may be credited against the cost of merchandise or services contracted for by representatives of the deceased. A balance remaining in the fund after the payment for the merchandise and services as provided in the agreement, contract, or plan must be paid to the estate of the beneficiary of the agreement, contract, or plan pursuant to subsection (A) or paid to the provider of a contract pursuant to subsection (B).

 (E) Subsections (A), (B), (C), and (D) do not apply to contracts for funeral services or merchandise funded by insurance policies that are otherwise regulated by law; however, Section 38‑55‑330 governs the conduct of a licensed funeral director employed by a licensed funeral home in South Carolina, who also is licensed as an agent for a life insurer doing business in this State, except a licensed funeral director employed by a licensed funeral home owned by a company not chartered in the United States.

 (F) The department shall approve forms for preneed funeral contracts. All contracts must be in writing, and a contract form must not be used without prior approval of the department. The use or attempted use of an oral preneed funeral contract or a written preneed funeral contract in a form not approved by the department is a violation of this chapter by the person selling services or merchandise under its provisions; except that minor modifications to a contract form furnished or approved by the department do not invalidate the contract.

 (G) All contracts must contain the name and Funeral Service License Number of the provider and seller.

 (H) All funds received by the provider pursuant to the provisions of a contract governed by this chapter must be placed in trust in a federally insured account. The trustee may establish an individual trust for each contract or a common trust fund may be established with a financial institution that would maintain accounting for each individual deposit and furnish a quarterly report to the provider. The trust accounts must be carried in the name of the provider but accounting records must be maintained showing the amounts deposited and invested, and interest, dividends, increases, and accretions earned on them, with respect to each purchaser's contract. The trustee has the authority to transfer trust funds from one financial institution to another, except that the trustee must notify the purchaser, or the beneficiary of a deceased purchaser, within thirty days after the transfer.

 (I) All earnings accrue to the trust except that the provider may withdraw ten percent of the annual earnings of the trust to cover trust administration.

 (J) Preneed trust funds or earnings must not be used as collateral, pledged, or in any way encumbered or placed at risk.

 (K) If the purchaser fails to make payments as provided in the contract, the contract is voidable at the option of the provider and he may retain ten percent of the amount paid on the contract as a fee and return the remaining funds to the purchaser.

 (L) If the merchandise selected is not available at the time of need, the provider shall make available merchandise of equal or greater value to the purchaser or his representative. The purchaser or his representative is entitled to approve a substitution.

HISTORY: 1962 Code Section 11‑172; 1973 (58) 339; 1989 Act No. 89, Section 1; 1992 Act No. 284, Section 2; 1995 Act No. 67, Section 2; 2009 Act No. 70, Section 1, eff July 1, 2009.

**SECTION 32‑7‑25.** Irrevocable contracts.

 The contracts governed by the provisions of this chapter may be made irrevocable at the option of the purchaser. If the purchaser selects an irrevocable contract he must be allowed thirty days to examine the contract. Within that period, the purchaser may revoke his decision to enter this contract and all monies paid by the purchaser must be refunded. An irrevocable trust‑funded preneed funeral contract executed under this chapter must not be converted to an insurance‑funded preneed funeral contract. If a premium is paid on an insurance‑funded preneed irrevocable contract and the contract is revoked within thirty days, the full premium must be refunded.

HISTORY: 1989 Act No. 89, Section 1; 1995 Act No. 67, Section 3; 2009 Act No. 70,Section 1, eff July 1, 2009.

**SECTION 32‑7‑30.** Refunds upon written demand.

 (A) Within thirty days of receipt of a written demand for refund by a purchaser who has paid funds for a preneed funeral contract pursuant to Section 32‑7‑20(A) or (B) the trustee shall refund to the purchaser the entire amount paid together with all interest, dividends, increases, or accretions earned on the fund except that the provider may retain ten percent of the earnings in the portion of the final year before termination.

 (B) After making refund to the trustee pursuant to the provisions of subsection (A), the financial institution is relieved from further liability to any party.

 (C) This section does not apply if the contract is irrevocable.

HISTORY: 1962 Code Section 11‑173; 1973 (58) 339; 1989 Act No. 89, Section 1; 2009 Act No. 70, Section 1, eff July 1, 2009.

**SECTION 32‑7‑35.** Transfer of preneed funeral contracts.

 (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.

HISTORY: 1989 Act No. 89, Section 1; 1995 Act No. 67, Section 4; 2009 Act No. 70,Section 1, eff July 1, 2009.

**SECTION 32‑7‑40.** Deposit of trust funds.

 All trust funds described in this chapter must be deposited in the name of the trustee, as trustee, within thirty days after receipt.

HISTORY: 1962 Code Section 11‑174; 1973 (58) 339; 1989 Act No. 89, Section 1; 2009 Act No. 70, Section 1, eff July 1, 2009.

**SECTION 32‑7‑45.** Transfer of contracts where provider goes out of business; department authorized to accomplish transfer.

 (A) If a provider goes out of business or the provider's license issued by the State Board of Funeral Service is cancelled or the license to sell preneed funeral contracts is cancelled and application for a replacement license is not filed, the provider within thirty days shall submit to the department a complete listing of names and addresses of all active contracts in its possession. The provider also shall notify all contract purchasers in writing that their contracts are to be transferred to another licensed provider of the purchaser's choice. The former licensee then shall transfer the contracts and notify the department of the providers selected within sixty days of the cancellation of the preneed license. All contracts funded by insurance or trust funds together with interest are to be transferred. The selling provider forfeits its right to monies it otherwise would be entitled to. If the provider fails to provide for the transfer of contracts within sixty days, the purchasers may request directly the financial institution to transfer the account balance to another provider selected by the purchaser with payment jointly to the provider and its financial institution. The purchaser also may request that an insurance company assign another provider as beneficiary for the insurance policy.

 (B) The department has jurisdiction over the provider and the insurance policy or trust funds together with interest of all active contracts and has the authority to accomplish the necessary transfer of preneed funeral contracts in all cases in which the purchaser has failed to effectuate the transfer to a licensed provider within six months of the date the provider's license issued by the State Board of Funeral Service is cancelled or the license to sell preneed funeral contracts is cancelled and an application for a replacement license has not been filed.

HISTORY: 1989 Act No. 89, Section 1; 2004 Act No. 188, Section 2; 2009 Act No. 70,Section 1, eff July 1, 2009.

**SECTION 32‑7‑50.** License required; application, issuance, and revocation; service charges and listing of contracts sold to be forwarded to department; penalty.

 (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 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 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.

HISTORY: 1962 Code Section 11‑175; 1973 (58) 339; 1974 (58) 2636; 1989 Act No. 89, Section 1; 2004 Act No. 188, Section 3; 2009 Act No. 70, Section 1, eff July 1, 2009.

**SECTION 32‑7‑60.** Preneed Funeral Loss Reimbursement Fund established; disposition of funds; reimbursement procedures; advertising restrictions in sales of preneed contracts.

 (A) There is established the Preneed Funeral Loss Reimbursement Fund which must be administered by the department. The purpose of the fund is to reimburse the estates of beneficiaries of preneed funeral contacts, or in the absence of an estate filing, the purchaser or applicant with payment jointly to the funeral home providing services or merchandise or both, who have suffered financial loss as a result of the misfeasance, fraud, default, failure, or insolvency of a South Carolina funeral home or South Carolina funeral director.

 (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.

 (C) All sums received by the department pursuant to this section must be held in a separate account maintained by the Office of State Treasurer to be used solely as provided in this section. All interest or other income earned on the fund must be retained by the fund.

 (D) Reimbursements from the fund may not exceed the total payment made for preneed funeral services or merchandise or both. Interest or future graduated insurance benefits must not be reimbursed. Upon the death of the beneficiary and the applicant's compliance with all applicable rules of the department, reimbursement from the fund may be made to the estate of the beneficiary, the purchaser, or applicant with payment jointly to the funeral home providing services or merchandise or both only to the extent to which losses are not bonded or otherwise covered. If the department makes payments from the fund under this section, the department is subrogated in the reimbursed amount and may bring an action against a person, including a preneed licensee. The department may enforce claims it may have for restitution or otherwise and may employ and compensate from the fund consultants, legal counsel, accountants, and other persons it considers appropriate to ensure compliance with this section.

 (E) The department shall investigate all applications made and may reject or allow claims in whole or in part. Payment must be made to the extent that monies become available in the fund. Reimbursements for completed claims must be processed in the order in which they are received subject to availability of monies in the fund. The department has complete discretion to determine the order and manner of payment of approved applications. All payments are a matter of privilege and not a right, and a person does not have a right in the fund as a third party beneficiary or otherwise.

 (F) The department shall furnish a form of application for reimbursement which shall require the following minimum information:

 (1) the name and address of the applicant;

 (2) the name and address of the funeral service or funeral director, or both, who caused the loss;

 (3) the amount of the alleged loss for which application for reimbursement is made;

 (4) a copy of a preneed funeral contract or written agreement which was the basis of the alleged loss;

 (5) a copy of payment receipts or canceled checks, or both;

 (6) a copy of the death certificate;

 (7) a general statement of facts relative to the application;

 (8) supporting documents, including copies of court proceedings and other papers indicating the efforts of the applicant to obtain reimbursement from the provider, insurance companies, or others;

 (9) documentation of receipt of funds in partial payment of the loss;

 (10) name and address of the funeral home that provided services or merchandise or both.

 (G) This fund and all interest earned may be used only as prescribed in this section and may not be used for another purpose. The department may expend monies from the fund to:

 (1) make reimbursements on approved applications;

 (2) purchase insurance to cover losses and department liability as considered appropriate by the department and not inconsistent with the purpose of the fund;

 (3) invest portions of the fund as are not currently needed to reimburse losses and maintain adequate reserves, as are permitted to be made by fiduciaries under state law;

 (4) pay the expenses, other than normal operating expenses, of the department for administering the fund, including employment of legal counsel, accountants, consultants, and other persons the department considers necessary to ensure compliance with this section.

 (H) A person may not make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, poster, or over any radio station or television station, or in any other way any advertisement, announcement, or statement that uses the existence of the fund for the purpose of sales, solicitation, or inducement to purchase any form of preneed contract covered by this chapter.

 (I) The department may establish procedures and promulgate regulations it determines necessary to implement the purposes of the section.

HISTORY: 2004 Act No. 188, Section 1; 2009 Act No. 70, Section 1, eff July 1, 2009.

**SECTION 32‑7‑70.** Accounts and records; investigations.

 (A) The provider must keep accurate accounts, books, and records in this State of all transactions, copies of all agreements, dates, and amounts of payments made and accepted on them, the names and addresses of the contracting parties, the persons for whose benefit funds are accepted, and the names of the depositories of the funds. The provider must make all books and records pertaining to the trust funds available to the department for examination.

 (B) The department may at any reasonable time and shall at least once every two years investigate the books, records, and accounts of each provider with respect to its trust funds and for that purpose may require the attendance of and examine under oath all persons whose testimony the department may require. The department shall investigate a provider's books, records, and accounts if the department has reason to believe or has received a complaint alleging that the provider has violated the provisions of this chapter.

HISTORY: 1962 Code Section 11‑177; 1973 (58) 339; 1989 Act No. 89, Section 1; 2004 Act No. 188, Section 4; 2009 Act No. 70, Section 1, eff July 1, 2009.

**SECTION 32‑7‑90.** Soliciting and advertising.

 (A) A contract seller, provider, agent, employee, or person acting in behalf of one of these persons may not:

 (1) directly or indirectly call upon individuals or persons in hospitals, rest homes, nursing homes, or similar institutions for the purpose of soliciting preneed funeral contracts or making funeral or final disposition arrangements without first having been specifically requested by the person to do so;

 (2) directly or indirectly employ an agent, assistant, employee, independent contracting person, or other person to call upon individuals or persons in hospitals, rest homes, nursing homes, or similar institutions for the purpose of soliciting preneed funeral contracts or making funeral or final disposition arrangements without first having been specifically requested by the person to do so;

 (3) solicit relatives of persons whose death is apparently pending or whose death has recently occurred for the purpose of providing funeral services, final disposition, burial, or funeral goods for the person;

 (4) solicit or accept or pay consideration for recommending or causing a dead human body to be provided funeral services and funeral and burial goods by specific persons, or the services of a specific crematory, mausoleum, or cemetery unless the arrangement is the subject of a preneed funeral contract; or

 (5) solicit by telephone call or by visit to a personal residence unless the solicitation has been previously requested by the person solicited or by a family member residing at the residence.

 (B) This chapter does not restrict the right of a person lawfully to advertise, to use direct mail, or otherwise communicate in a manner not within the above prohibition of solicitation or to solicit the business of anyone responding to the communication or otherwise initiating discussion of the goods or services being offered.

 (C) This chapter does not prohibit general advertising.

 (D) A person making a personal or written solicitation for a preneed funeral contract, as soon as possible, shall divulge the real reason for the contract or solicitation.

 (E) The department may promulgate regulations for the solicitation of preneed contracts by sellers and providers and their agents and employees to protect the public from solicitation practices that utilize undue influence or that take undue advantage of a person's ignorance or emotional vulnerability.

HISTORY: 1962 Code Section 11‑180; 1973 (58) 339; 1989 Act No. 89, Section 1; 2009 Act No. 70, Section 1, eff July 1, 2009.

**SECTION 32‑7‑95.** Advertising and soliciting prohibitions as to preneed funeral contracts apply to funeral director licensed as agent and life insurer.

 The prohibitions of Section 32‑7‑90 as to solicitations and advertising relating to preneed funeral contracts apply equally to a funeral director licensed pursuant to this title as an agent for a life insurer as well as to the life insurer doing business in this State.

HISTORY: 1995 Act No. 67, Section 1; 2009 Act No. 70, Section 1, eff July 1, 2009.

**SECTION 32‑7‑100.** Penalties; revocation of license; request for contested case hearing.

 (A) A person wilfully violating the provisions of this chapter is guilty of a misdemeanor and, upon conviction, 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, 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.

 (B) 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.

HISTORY: 1962 Code Section 11‑181; 1973 (58) 339; 1989 Act No. 89, Section 1; 2009 Act No. 70, Section 1, eff July 1, 2009.

**SECTION 32‑7‑110.** Enforcement; investigation of unlicensed providers.

 (A) The department shall enforce the provisions of this chapter and has the power to make investigations, subpoena witnesses and documents, require audits and reports, and conduct hearings as to violations of any provisions, and to promulgate regulations necessary to carry out the provisions of this chapter.

 (B) Upon its own initiative or upon receipt of a complaint, the department shall investigate a funeral home, funeral director, individual, or business the department has reason to believe is acting as a provider without a license. In order to conduct its investigation, the department shall review the books, records, and accounts of: (1) a funeral home or funeral director licensed by the State Board of Funeral Service even if the funeral home or funeral director is not licensed to sell preneed funeral contracts, or (2) an individual or business the department has reason to believe is acting as a provider without a license. If the department discovers that a violation of this chapter has occurred by a funeral home, funeral director, individual, or business that is not licensed to sell preneed funeral contracts, the department may initiate an action for a violation of this chapter in the Administrative Law Court for a cease and desist order or assess an administrative fine not to exceed ten thousand dollars, or both. A person aggrieved by an order of the department may request a contested case hearing before the Administrative Law Court.

 (C) Whether or not enforcement action is taken by the department, the department shall report a violation it discovers to the State Board of Funeral Service for an action pursuant to Section 40‑19‑110(12) and to the Attorney General, a circuit solicitor, or an appropriate law enforcement agency.

HISTORY: 1962 Code Section 11‑178; 1973 (58) 339; 1989 Act No. 89, Section 1; 2004 Act No. 188, Section 5; 2009 Act No. 70, Section 1, eff July 1, 2009.

**SECTION 32‑7‑120.** Application of chapter.

 This chapter does not modify, abridge, or repeal any provision of Chapter 55, Title 39. This chapter applies only to preneed funeral contracts sold by funeral homes licensed in this State and their licensed directors.

HISTORY: 1989 Act No. 89, Section 1; 2009 Act No. 70, Section 1, eff July 1, 2009.

**SECTION 32‑7‑130.** Sale at need of granite, memorials, or vaults by licensed funeral director.

 Nothing in this chapter or in Chapter 55, Title 39 precludes the sale at need of granite, memorials, or vaults by a licensed funeral director. However, a licensed funeral director may sell only vaults preneed in accordance with this chapter.

HISTORY: 1989 Act No. 89, Section 1; 2009 Act No. 70, Section 1, eff July 1, 2009.