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Stopping funeral fraud

Can lawmakers prevent pre-need contract abuses?



Photo illustration by Jason Tyler/Tribune

By [Terry Ganey](#)

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JEFFERSON CITY — Jerry Howard, a former state senator from Dexter, was working with a chain saw on his property recently, cutting down limbs and trees damaged by an ice storm that had ravaged southeast Missouri.

Howard, 73, stopped long enough to conduct a brief telephone interview on his cellular telephone with a reporter who asked why Howard had never been able to pass legislation regulating pre-need funeral contracts.

For five years in the 1990s, Howard had attempted to stiffen state authority over a system in which people paid an insurance company, a funeral home or some third party an advance payment to cover their funeral expenses.

The system has delivered recurring scandals in Missouri since the 1970s, with some of those in charge of the money sometimes disappearing with it.

“The problem is there is a bunch of damn crooks in there in that outfit,” Howard said. “It’s part of the moral decay of the corporate structure in this country.”

Howard’s experience with pre-need funeral contracts and the legislative process is pertinent today because lawmakers in Jefferson City are once again attempting to regulate the pre-need funeral business.

This latest try is a response to last year’s collapse of St. Louis-based National Prearranged Services, a prepaid funeral business that once had 56,261 funeral contracts in force in Missouri worth \$198 million. Missouri’s insurance guaranty association is paying on many of the claims left over from the NPS insolvency while federal authorities are trying to find out where the money went.

As the FBI launched an investigation into the business dealings of NPS last year, lawmakers, consumer advocates and funeral home directors formed special committees and a task force to draw up legislation to guard against future insolvencies of pre-need providers. Their product became two separate bills in the House and Senate now moving through the legislative process.

A House committee voted last week to advance a revised version of one of those bills, sponsored by Sen. Delbert Scott, R-Lowry City. Scott wants to focus on getting a bill passed without pointing fingers about why it has taken so long to address the problem. If that was Scott’s hope, he was out of luck during a recent meeting of the committee considering his bill.

Several lawmakers questioned members of the Missouri Board of Embalmers and Funeral Directors, wondering why more had not been done sooner to protect consumers and funeral homes.

“It just seems like somebody was not watching the store,” said Rep. Curt Dougherty, D-Independence.

LOBBYISTS’ INFLUENCE

Like perennials, many issues constantly recur in the General Assembly. If anything gives an observer a sense of déjà vu, it’s the pre-need funeral situation.

In 1995, for the fifth year in a row, Howard sponsored a pre-need regulation bill “to make sure money is there when it is needed for consumers.” His bill would have given the state board the power to examine the books of those selling pre-need contracts. It also would have prohibited the contract seller from taking the consumers’ money and putting it in some other business.

Had Howard’s bill been approved in the 1990s, the recent troubles that cropped up with NPS might have been avoided. Two years ago and last year, state Rep. Tim Meadows, D-Imperial, sponsored bills that went nowhere to close what he said were loopholes in the law.

Now legislation sponsored by Scott and Rep. Jay Wasson, R-Nixa, would attempt to make many of the same changes Howard and Meadows had tried.

“You have lobbyists who kept this from being changed,” said Todd Mahn, a board member and the owner of funeral homes in De Soto and Festus. “It’s been a thorn in my side since the 1990s.”

One of the names that came up was that of Kent Gaines, who for 22 years was the NPS lobbyist in Jefferson City.

Mahn said he had made no secret of his concerns about NPS practices and that Gaines had attempted to keep him off the board by blocking his confirmation in the state Senate.

Gaines, who terminated his lobbying relationship with NPS just as it collapsed in April, said he did not recall whether he had opposed Mahn’s nomination. Gaines said he had worked in NPS’ behalf with regard to issues in the legislature and had no knowledge of its corporate operations.

“I worked for the client,” Gaines said. “Did I now what the client was doing? Absolutely not. I tracked bills. That’s what a lobbyist does. I did a good job.”

Gaines said he is not working on the bills sponsored by Wasson and Scott, which would give the board the power to take action against companies that have solvency problems and inspect the finances of pre-need contract sellers.

BACKDOOR MONSTER

Pre-need funeral contracts work this way: Customers cover their funeral in advance, paying \$5,000, for example, for services that might cost more years later when they die. Current law allows funeral homes or third-party sellers of these contracts to take 20 percent of the money up front for commissions and expenses. They also keep the interest as well.

“I see it as a flawed business model,” Wasson said. “It’s kind of like having the monster at the back door that is being fed with money at the front door. If you can’t bring in money in the front door, the whole thing collapses.”

The Associated Press reported in the fall that the Internal Revenue Service, the U.S. Postal Inspection Service and the FBI were looking into “allegations of corporate misconduct” by National Prearranged Services and its affiliated insurance companies, Lincoln Memorial Life Insurance Co. and Memorial Services Life Insurance Co.

Last year, Texas authorities said NPS had liabilities of more than \$1 billion and a negative net worth of \$949 million. The company sold prepaid plans to more than 200,000 people nationwide.

Authorities took control of NPS and the two insurance companies after they were found to be in a hazardous financial condition. NPS sold prepaid funeral contracts backed up by life insurance policies underwritten by the two companies.

“For years, numerous Missouri funeral directors alerted the various state offices that had the ability to put a stop to NPS’ actions,” said George Cline, a funeral director and manager of prearranged funeral services for the Kutis Funeral Home in St. Louis. “There were some officials who were well aware of NPS’ questionable operations. Had some of those persons done their jobs, we would not be in this mess today.”

But Kimberly Grinston, a lawyer who formerly represented the state funeral directors board, said the

board lacked the tools to quickly respond to problems. She said the board could not act without a complaint and that once a complaint was received, it could take five years for it to progress through review procedures involving several state agencies.

Grinston said under the current law, the board had no authority to make rules in the pre-need contracts area or to discipline those who cause problems.

As much as \$300 million might be missing from funds that are supposed to pay for future funerals, Grinston said. But under the current law, if a pre-need bad actor sought a license to sell pre-need contracts, the board would have to grant it, she said.

“If someone said ‘I stole \$300 million in pre-need,’ we would still have to license them,” Grinston said.

A bill approved by Wasson’s committee last week attempts to fix these problems while requiring that 85 percent of the money paid for pre-need services is put in trust. Fifteen percent could be available to the contract seller under certain circumstances.

“We don’t let them touch the interest,” Wasson said.

The bill is expected to come to the House floor in the next few weeks. Wasson hopes it works.

“I don’t want to come back here five years from now and do this again because, I’ll tell you the truth, I’m damn tired of it,” Wasson said.

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