

BULK RATE
U.S. Postage
PAID
Permit No. 5
Jasper, Mo.

Address Correction Requested
Forwarding and
Return Postage Guaranteed

MISSOURI FUNERAL DIRECTORS ASSOCIATION

Bulletin

MAY - JUNE 1982

ISSUE THREE



From Our

Legal Counsel

May 11, 1982

After seven years of trying, the Missouri Funeral Directors Association has been successful in its efforts to obtain passage of a bill revising state law regulating prearranged or preneed contracts. This article will be devoted to a review of the provisions of Senate Bill 644 as it finally passed the Missouri General Assembly. A special thanks goes to Senator Richard Webster, Carthage, Missouri, the Senate sponsor and Representative Carole Roper Park who handled the Bill on the floor of the House. Many other legislators were helpful in obtaining its passage. As of the date of the writing of this article, Governor Bond has not signed this Bill, although we are confident that he will.

As general background, Senate Bill 644 continues the two types of prearranged burial plans, that being the commingled trust account and the joint account arrangement. Otherwise, the Bill is different in almost every other respect from the current law.

Section 1 of the Bill sets up a definition section. The current law does not have a definition section and this has created much confusion. The existing concepts of funeral merchandise are retained in such definitions as "provider", the person obligated to provide the disposition of the body and funeral merchandise; the "purchaser", the person who is obligated to make payments under the contract; "the seller", the person who sells the preneed contract; and, the "trustee", the trustee of a preneed trust are new definitions and will aid in the interpretation of the Act.

Under Section 2, for the first time the law requires that every preneed contract is void and unenforceable unless it is in writing, it is signed by a registered seller and a purchaser, it identifies the beneficiary of the contract and sets out in detail the final disposition of the dead body and funeral services facilities and merchandise to be provided, it identifies the preneed trust into which the money is to be paid, including the name and address of the trustee, and it contains the name and address of the seller and the provider of funeral merchandise. If the preneed contract is not in compliance with the Act, then a private cause of action exist whereby the aggrieved party may obtain the amounts paid, ten percent interest, cost of collection and reasonable attorney's fees. Under Section 2, it specifically provides that preneed contracts which came into existence prior to the effective date of Senate Bill 644 will be governed by the then-existing law.

Part of Section 2 is the requirement that a seller must have a contractual relationship with a provider, that is the funeral home, in order to be able to sell a preneed contract. However, if a provider knowingly permits a seller to sell contracts for him, he may be obligated to honor those contracts even if he does not have a specific written agreement between himself and the seller. Therefore, if a funeral home finds out that someone is selling

contracts in its name, it is in its financial best interest immediately to notify the seller to stop selling and to notify the Board of the unauthorized conduct.

In order for a preneed contract to become effective, it must be signed by the purchaser and the purchaser must receive a copy of the contract signed by the seller. The seller and the provider under a preneed contract can be the same person.

Under Section 3 of the Bill, providers must be licensed by the State Board of Embalmers and Funeral Directors, except for cemeteries. A person agreeing to provide merchandise and services under a preneed contract must not only be licensed by the Board, but must file a consent with the Board authorizing the Board to examine its books or records containing information regarding preneed contracts. The provider is required to furnish the State Board of Embalmers and Funeral Directors the name and address of all persons who are selling preneed contracts for it. In addition, the provider must file with the State Board an annual report which contains the name and address of the provider and all the addresses from which it engages in business, the name and address of each seller with whom it has entered into a written agreement, and the name and address of the person who is the custodian of its books and records. At least thirty days prior to a provider selling its business assets or its stock or ceasing to do business it must notify the State Board and all sellers with whom it has one or more preneed contracts in existence. The State Board has up to thirty days to approve this sale, although it may approve it in a shorter time period. The purpose of this section is to make sure that funeral directors do not go out of business or sell their business without making arrangements for the servicing of existing preneed contracts. If a funeral director who is involved in providing services under preneed contracts sells in violation of that provision, he can lose his license and he may

be subject to criminal penalties under Section 15 of the Act. In fact, any violation of Senate Bill 644 is cause for suspension or revocation of a funeral director or an embalmer's license.

In Section 4 of the Act, the seller is required to register with the Board and to be otherwise authorized to do business in Missouri, maintain accurate records, notify the State Board in writing of the name of each provider with whom it is under

contract, file annual reports with the State Board which contain the name and address of each provider with whom it is under contract, the total number of preneed contracts it has sold in Missouri, the total face value of all its preneed contracts sold in Missouri since the last report was filed, the name and address of the financial institution in Missouri in which maintains its trust account

or accounts and a consent authorizing the State Board to audit its trust account. The seller also must file a consent with the State Board to permit the State Board to audit its books and records relating to preneed contracts. It should be noted that with respect to the auditing function of the State Board for both providers and sellers, that the Board is required to use professional staff from the Division of Professional Registration

and not its own staff and the Board is not permitted to see the results of these audits unless an enforcement action is warranted. A seller, prior to disposing of its assets, stock or going out of business, must give the State Board sixty days notice to permit the State Board to determine that the seller has made proper plans to assure that the trust assets will be used for the purpose for which they were set aside.

In Section 5, the present eighty

Continued On Page 10

first twenty percent of the face value of the contract. This was the main point of contention in the Bill as it wound its way through the General Assembly. Although the Board of Directors of the State Association originally endorsed the provision requiring all money to be placed in trust, it was quickly evident that the votes were not there in either the Senate or the House to hold that position and the Board of the Association compromised on that in favor of stronger enforcement and regulatory provisions to protect the funeral directors from fly-by-night sellers.

In Section 6 of the Act, a provision is made for the trustee to be a state or federally chartered financial institution

authorized to exercise trust powers in Missouri. The special provision is made for large trusts whereby once \$250,000 has aggregated, the grantor of the trust may have an independent qualified investment advisor make investment decisions. However, the assets of the trust will remain in the possession and control of the trustee so that although the investment decisions may not be made by the trustee on the amount of funds in excess of \$250,000, their control remains within the purview of the trustee. The trustee is required to maintain certain books and records and assist the seller in preparing the annual reports previously described which must be filed with the State Board of Embalmers and Funeral Directors.

In Section 7, a provision is made for cancellation of the contract upon fifteen days' notice with a requirement that upon cancellation all the amount in trust for that contract be paid over to the purchaser. A provision is added so that persons on public assistance under the Missouri Welfare Law, Chapter 208, can irrevocably waive their right to cancel the contract thereby permitting them to become eligible for S.S.I. without the amount of the preneed contract counting toward their assets. Nevertheless, every purchaser has thirty days from the date of the receipt of the fully executed contract, that is, signed contract, to cancel for any reason. The disclosure of that thirty day right must be on the face of the contract.

outside the general area of the provider, then the seller either must obtain comparable funeral merchandise or pay over to the purchaser all amounts paid in cash into the preneed contract together with interest.

Under Section 9, if the purchaser is three months in arrears on payments, the seller may cancel the contract and pay over the amounts placed into trust.

In Section 10, a provision is made for the provider to obtain payment from the trust by the provider and a witness certifying in writing to the seller that the provider has provided the final disposition of the dead body and funeral services, facilities or merchandise described in the contract or has provided the alternative benefits selected by a person on behalf of the beneficiary. Upon receipt of that certification, the seller shall pay over whatever sum is agreed upon and the contract between the provider and the seller.

Under Section 11, if the seller does not make timely payment to the provider or the provider does not make timely payment to the purchaser, either the provider or purchaser can make demand upon the trustee of the preneed trust account in order to obtain that distribution in an amount equal to deposits made into trust for that contract.

Under Section 12 of the Act, if the purchaser dies or is legally incapacitated, whatever rights that he had would be enforceable by his legal representative.

Under Section 13, the existing joint account method of setting up a preneed trust is preserved. A provision is added to permit persons to set up those accounts irrevocably if they are on public assistance. This procedure is identical to the method provided for in the commingled trust account sections. A similar provision is contained for the death of the beneficiary under the contract in a distant area.

Under Section 14 of the Act, the Board has the authority to investigate activities by persons operating under this Act and violations are referred to the Missouri Attorney General for actions.

Continued On Page 19

Under Section 15 of the Act a violation of the Act also constitutes a violation of the Missouri Consumer Protection Law, thereby entitling the Attorney General to obtain injunctive relief and revocation or suspension of the registered agent of the defendant seller.

Under Section 17 of the Act, if the Board determines that a seller or a provider is violating or about to violate the Act, it can request the Attorney General to apply for suspension or revocation of the applicable license or registration by filing a complaint with the Administrative Hearing Commission. This remedy is in addition to the remedy permitted the Attorney General to obtain revocation or suspension of a license in connection with an injunction suit.

Under Section 18 of the Act, a provision is made for the use of credit life insurance in the sale of preneed contracts. That insurance may be only what is in essence decreasing term insurance.

In Section 19 of the Act, a provision is made for material provided the Board to be confidential in compliance with the provisions of Senate Bill 644. The documented material provided cannot be used in a criminal proceeding.

Finally, in Section 20 of the Act, the Board is given authority to charge a registration fee which it sets in its discretion.

Although the above outline is just that, an outline, it should be apparent to anyone in the preneed business that it is advisable to consult with an attorney and accountant to continue in the preneed business under the new law. I do not mean to imply that it is substantially more complicated to operate under the new law than it was under the old law, but the penalties are far more severe for noncompliance. Also, the requirement of written agreements between the provider and the seller requires a prudent funeral director who wishes to provide merchandise in the future to have that agreement reviewed by his attorney. Although the reports required under the Act are not burdensome or cumbersome, and the person who is a seller as well as a provider, or seller alone must receive assistance from trustee, it would be a good idea before setting up a preneed trust of this type to make sure that the trust agreement, itself, is reviewed by an attorney and accountant to make sure that all tax benefits are achieved and no unintended tax liabilities accrue.

preneed business need to plan to cut off sales as of that date under the old statute and restructure their preneed plans to accord with the current law. As soon as Senate Bill 644 is signed by the Governor, we will have reprints available for general distribution to the membership. They may be obtained from Bob Knell by sending a self-addressed stamped envelope to him large enough for a 6 x 9 inch document. Postage is 37c.

As a final note on Senate Bill 644, special thanks goes to Scott Lindley and his Legislative Committee and especially Pat Sheil from Kansas City and Herman Kriegshauser from St. Louis. The last week of the Session, Scott and Pat almost lived in Jefferson City helping Sam Overfelt and Bob Dallmeyer get the Bill through the General Assembly. Needless to say, the Association lobbyists, Sam Overfelt and Bob Dallmeyer did a brilliant job. It is almost unheard of for a lobbyist to take a Bill for the first time and get it passed through the Missouri General Assembly, especially a Bill as complicated and controversial as Senate Bill 644. The passage of this Bill certainly justifies the decision to retain Sam and Bob as Association lobbyists. Last, but not least, a thank you goes to all those funeral directors who personally lobbied their state Senator or state Representative to support Senate Bill 644. In the final analysis, it was that effort that contributed to the success of this measure.