

Public Necessity Rules
of the
Department of Commerce and Insurance
Division of Regulatory Boards

Statement of Necessity Requiring Readoption of Public Necessity Rule

Public Chapter 592 of the Public Acts of 2007 enacts the "Tennessee Prepaid Funeral Benefits Act" which governs the qualifications and procedures for registration and general regulatory requirements for the sale of preneed funeral benefits in this state. The Act requires registration as a "preneed seller" or "preneed sales agent" prior to selling or offering preneed funeral benefit contracts. The General Assembly mandated that the Commissioner begin registration of preneed sellers and preneed sales agents on January 1, 2008 and that the Commissioner set the fees for registration and renewal. This mandate precluded utilization of other rulemaking procedures under Tenn. Code Ann. Title 4, Chapter 5. Therefore, Rule 0780-05-10-.14, which sets registration and renewal fees for preneed sellers and preneed sales agents, was promulgated in accordance with the public necessity provisions of Tenn. Code Ann. § 4-5-209. The rule became effective December 13, 2007 and will remain effective through May 26, 2008. This public necessity rule amended Rule 0780-05-10-.14 by setting registration and renewal fees for preneed sellers and preneed sales agents and by increasing the effective period of registrations from one (1) to two (2) years. A Notice of Rulemaking Hearing was properly filed with the Secretary of State on February 27, 2008 and published in the March, 2008 issue of the Tennessee Administrative Register in accordance with the provisions of Tenn. Code Ann. § 4-5-203. Although the agency expected a significant attendance, no individuals were present on the date and time set for the rulemaking hearing. Finding this unusual, the agency contacted representatives of the industry and concluded that some interested persons may have confused the rulemaking hearing with another hearing before the Commissioner that was originally set several days earlier, but which had been postponed by agreement of the parties. As a result, the agency cancelled the rulemaking hearing so that it could take additional steps to convey effective notice to all interested individuals.

The Commissioner has authorized the filing of this public necessity rule to continue the effectiveness of the public necessity rule already in place. The agency, when filing the original rulemaking hearing rule, was aware that the current public necessity rule would expire approximately six (6) weeks prior to the effectiveness of the proposed rulemaking hearing rule and was prepared to deal with this relatively short lapse. However, in order to comply with the provisions of Tenn. Code Ann. § 4-5-203 (Notice of hearing) and Tenn. Code Ann. § 4-5-207 (Effective date of rules), the period of lapse will now be approximately five (5) months. The level of interest in this proposed rulemaking which resulted in this extended period of time could not have been reasonably foreseen by the agency, and the agency is unable to deal with such an extended period of lapse in a manner that will both protect the health, safety and welfare of the public and comply with the Legislature's mandate for registering preneed sellers and preneed sales agents. Without this public necessity rule in effect, there will be no mechanism during this extended period of lapse by which the Commissioner will be able to register, discipline, or regulate preneed sellers or preneed sales agents. The public health, safety and welfare would be impaired because preneed sellers and preneed sales agents would not be required to adhere to the regulatory provisions of the Tennessee Prepaid Funeral Benefits Act that are designed to ensure that those who sell preneed contracts will be able to perform the promised services and provide the promised merchandise at the time of need.

For complete copies of the text of the notice, please contact Robert Gribble, Executive Director, Burial Services, 500 James Robertson Parkway, Davy Crockett Tower, 2nd Floor, Nashville, Tennessee 37243, (615) 741-5062.

Leslie A. Newman, Commissioner

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Chapter 0780-05-10
Preneed Funeral Service Contracts

Amendments

Rule 0780-05-10-.14 Registration of Contract Sellers; Fees is amended by deleting the rule in its entirety and substituting the following rule so that, as amended, the rule shall read:

0780-05-10-.14 Registration of preneed sellers and preneed sales agents; Fees.

- (1) No individual may offer or sell preneed funeral contracts as defined in Tenn. Code. Ann. Title 62 Section 5 without first registering with the commissioner as a preneed sales agent.
- (2) No funeral establishment or other individual, firm, partnership, company, corporation, or association may offer or sell preneed funeral contracts without first registering with the commissioner as a preneed seller.
- (3) An application for registration or renewal as a preneed seller or preneed sales agent shall be submitted on a form prescribed by the commissioner and shall be accompanied by a nonrefundable fee as follows:
 - (a) Seven hundred fifty dollars (\$750.00) for a preneed seller;
 - (b) One hundred fifty dollars (\$150.00) for a preneed sales agent.
- (4) All registrations shall be effective for two (2) years.
- (5) The certificates of registration for preneed sellers and preneed sales agents may be renewed at any time during the two (2) months preceding the date of expiration.
- (6) Certificates of registration not renewed by the expiration date are invalid and shall be subject to a penalty fee of two hundred dollars (\$200.00) for each month or portion thereof for which the renewal is late, for a maximum of two (2) months. The penalty fee is in addition to the renewal fee.
- (7) Certificates of registration shall not be renewed later than two (2) months after the expiration date of such certificate. Such certificates may be reinstated upon the submission of the proper form accompanied by a reinstatement fee of one thousand dollars (\$1,000.00).

Authority: T.C.A. § 62-5-405(a), (b) and (d) and Chapter 592 of the Public Acts of 2007, §§ 4, 5, 6, and 14 (T.C.A. §§ 62-5-403, -404, -405, and -413, effective January 1, 2008).

The public necessity rules set out herein were properly filed in the Department of State on the 4th day of June, 2008 and will be effective from the date of filing for a period of 165 days. These public necessity rules will remain in effect through the 16th day of November, 2008. (FS 06-04-08; DBID 2893)