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Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205

Agency/Board/Commission:	Department of Commerce and Insurance
Division:	Regulatory Boards
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Revision Type (check all that apply):

- Amendment
- New
- Repeal

Rule(s) Revised (for additional chapters, copy and paste table)

Chapter Number	Chapter Title
0780-05-10	Pre-need Funeral Service Contracts
Rule Number	Rule Title
0780-05-10-.14	Registration of pre-need sellers and pre-need sales agents. Fees.

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Rulemaking Hearing Rule

Chapter 0780-05-10
Pre-need Funeral Service Contracts

Amendment

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 pre-need sellers and pre-need sales agents; Fees.

- (1) No individual may offer or sell pre-need funeral contracts as defined in T.C.A. Title 62, Chapter 5, Part 4 without first registering with the commissioner as a pre-need sales agent.
- (2) No funeral establishment or other individual, firm, partnership, company, corporation, or association may offer or sell pre-need funeral contracts without first registering with the commissioner as a pre-need seller.
- (3) An application for registration as a pre-need seller or pre-need sales agent shall be submitted on a form prescribed by the commissioner and shall be accompanied by a nonrefundable fee as follows:
 - (a) One thousand dollars (\$1,000.00) for a pre-need seller;
 - (b) Two hundred fifty dollars (\$250.00) for a pre-need sales agent.
- (4) All registrations shall be valid for two (2) years and thereafter become invalid unless renewed. Failure to timely renew will require a new registration and payment of fees under subsection (3).
- (5) The commissioner may renew a certificate of registration provided that an application for renewal, accompanied by the following nonrefundable fee, is received by the commissioner no later than the date of expiration:
 - (a) Seven hundred fifty dollars (\$750.00) for a pre-need seller;
 - (b) One hundred fifty dollars (\$150.00) for a pre-need sales agent.
- (6) Any individual, funeral establishment, or other individual, firm, partnership, company, corporation or association that sells or offers to sell a pre-need funeral contract without a valid registration is subject to disciplinary action pursuant to Chapter 0780-05-10 of these rules and Tenn. Code Ann. Title 62, Chapter 5, Part 4.

Authority: T.C.A. §§ 62-5-404, 62-5-405 and 62-5-413(b) through (e), effective January 1, 2008.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

I certify that this is an accurate and complete copy of the rulemaking hearing rule, lawfully promulgated and adopted by the Commissioner of Commerce and Insurance on the 22nd day of October, 2008, and is in compliance with the provisions of Tenn. Code Ann. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 06/10/08

Notice published in the Tennessee Administrative Register on: 07/15/08

Rulemaking Hearing(s) Conducted on: (add more dates. 08/15/08

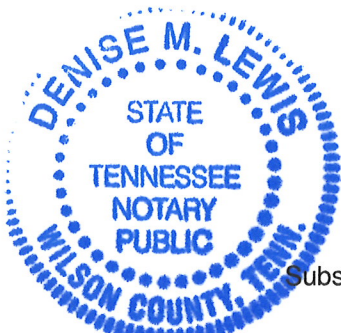
Date: 10/22/08

Signature: Leslie A Newman

Name of Officer: Leslie A. Newman

Commissioner

Title of Officer: Department of Commerce and Insurance



Subscribed and sworn to before me on: 10/22/08

Notary Public Signature: Denise M Lewis

My commission expires on: 3/5/12

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

RE Cooper

Robert E. Cooper, Jr.
Attorney General

11-25-08

Date

Department of State Use Only

Filed with the Department of State on: 11/26/08

Effective on: 2/9/09

Riley C Darnell

Riley C. Darnell
Secretary of State

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. §4-5-222. Agencies shall include only their responses to public hearing comments, which shall be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

The following persons appeared at the rulemaking hearing on August 15, 2008 and signed their name to the list indicating that they wished to comment. Each person's comment, as well as the Department's response, is provided in this document and presented for filing pursuant to Tenn. Code Ann. § 4-5-222(a)(2). There were no written comments:

1. Chuck Crawford requested information about changes to Tenn. Code Ann. Title 62, Chapters 1 and 2 that took place pursuant to Chapter 297 of the Public Acts of 2007 dealing with establishments, funeral directors, embalmers and apprentices. He did not comment on this rule.

Response: No action is necessary because the comment is outside the purview of the rulemaking hearing.

2. Bob McCornack asked whether insurance companies are included as "pre-need sellers" and expressed concern that the language describing pre-need sellers needed further clarification.

Response: No change recommended. The language describing pre-need sellers and pre-need sales agents is taken directly from the public chapter and needs no further clarification.

3. The following comments are grouped together because they are similar in that they all address the reinstatement fees:

Don Lucas commented that the reinstatement fees of two thousand five hundred dollars (\$2,500.00) for pre-need sellers and five hundred dollars (\$500.00) for pre-need sales agents are excessive. Mr. Lucas commented that this would be a hardship on someone who, for example, left the business for a period of time after birth of a child, and would then be required to pay a reinstatement fee.

William Gregory commented that the reinstatement fee for pre-need sellers is, in effect, increasing from one thousand dollars (\$1,000.00) to two thousand five hundred dollars and that this increase is excessive, especially on smaller operations. Mr. Gregory suggests that consideration be given to a "one time exemption" that could be used in situations where a pre-need sales agent inadvertently overlooks renewal.

Robert Batson appeared on behalf of the Tennessee Funeral Directors Association and stated that the reinstatement fees are excessive and that the rule needs to provide for exceptions. Mr. Batson suggests that consideration be given to creating an "inactive status" that could be used, for example, when a person is deployed for active duty in the military.

Dennis Hamilton commented that the reinstatement fees are stringent, but that the fees are necessary to protect the public and ensure that pre-need sellers comply with the law.

Response: The former rule provided for a pre-need seller registration fee of \$300 per year. A registration could be renewed up to two (2) months after expiration by paying an additional fee of \$200 per month. Thereafter, a reinstatement fee of \$1,000 was required. Under the rule proposed at the rulemaking hearing, the pre-need seller registration fee would be \$750 for two years with an additional late fee of \$500 per month, and a reinstatement fee of \$2,500 for registrations expired more than two (2) months. Both the former rule and the rule proposed at the rulemaking hearing calculated the reinstatement fee by multiplying the registration fee by 3.3. Because the statute changed the registration period from one (1) to two (2) years, the annual cost for pre-need seller registration under the rule proposed at the rulemaking hearing represented a yearly increase of only \$75.

The rule proposed at the rulemaking hearing also set the fee for registration of the newly created pre-need sales agent at \$150 for two years. This fee represents the costs that the Department expects to incur in providing applications, review of applications, processing payments, maintaining an up-to-date database, sending notices of renewal and verification of information where necessary.

In response to comments received at the rulemaking hearing, the commissioner has made changes to the rule that was proposed at the rulemaking hearing. The new proposed rule sets the initial registration fee at \$1,000 for a pre-need seller and \$250 for a pre-need sales agent. However, a registration may be renewed for a fee of \$750 or \$150, respectively, provided that the application and fee are received by the commissioner prior to the date of expiration. A pre-need seller or pre-need sales agent who fails to renew within this period must reapply and pay the higher initial registration fee. Therefore, an individual who leaves the profession for a period of time, and then returns, will be treated the same as any other new applicant. However, in the event that a registrant fails to renew on or before the expiration date, but continues to offer or sell pre-need contracts, the rule reminds the registrant that each instance will subject the registrant to disciplinary action, which may include a civil penalty of up to \$1,000 per violation. The commissioner believes these changes adequately address the concerns raised at the rulemaking hearing and comply with the provisions of the new statute.

Consideration was also given to the proposed rule's impact on smaller businesses. Because the proposed rule, all things considered, only provides a slight increase in pre-need seller registration fees, any significant reduction of the pre-need seller registration fees for smaller businesses would result in a loss to the Department. However, because a smaller business will typically have fewer pre-need sales agents, the total registration fees are expected to be significantly lower for smaller businesses. Also, the costs of annual examinations, which are paid by the pre-need seller, will typically be less for a smaller business than those for a large business requiring longer examinations.

4. William Herron asked for clarification of the propose rule under consideration, but offered no comments regarding the subject of this rulemaking hearing.

Response: No action is necessary because the comment is outside the purview of the rulemaking hearing.

-----END OF DOCUMENT-----

Regulatory Flexibility Addendum

Pursuant to Public Chapter 464 of the 105th General Assembly, prior to initiating the rule making process as described in § 4-5-202(a)(3) and § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

Economic Impact Statement:

1. Types of small businesses directly affected:

This amendment will affect all businesses that choose to sell pre-need funeral contracts.

2. Projected reporting, recordkeeping and other administrative costs.

There are no new projected administrative costs as a result of this amendment.

3. Probable effect on small businesses:

This amendment will increase the pre-need seller registration fee for all businesses who choose to sell pre-need contracts. However, considering that the current fee was established in 2003, the actual increase is very slight. This amendment will also require each pre-need sales agent to pay a registration renewal fee equivalent to seventy-five dollars (\$75) per year, which may or may not be paid by the business.

4. Less burdensome, intrusive or costly alternative methods:

There are no alternative means available to accomplish these objectives as required by Chapter 592 of the Public Acts of 2007.

5. Comparison with federal and state counterparts:

There are no Federal counterparts. Practices in other states varies widely.

6. Effect of possible exemption of small businesses:

There is no expected exemption of small businesses as a result of this amendment or the effect thereof.

Additional Information Required

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

0780-5-10-.14 Registration of pre-need sellers and pre-need sales agents; Fees. The Tennessee Prepaid Funeral Benefits Act, effective January 1, 2008, requires "pre-need sales agents" to register with the Commissioner. Former law already required the registration of "pre-need sellers", and former Rule 0780-5-10-.14 required an annual registration fee of \$300. This amended rule raises the registration fee for pre-need sellers from \$300 *annually* to \$1,000 for an initial two-year registration or \$750 for a two-year renewal. The amended rule sets the initial registration fee for the newly created pre-need sales agents at \$250, or \$150 for renewal registrations. Unlike the former rule, the amended rule does not require a late fee or a reinstatement fee.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

The proposed amendment by the Commissioner is made pursuant to Tenn. Code Ann. §§ 62-5-403, 62-5-405 and 62-5-413, (effective January 1, 2008).

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

These rules will affect all establishments, firms, or other companies that offer pre-need funeral contracts for sale (pre-need sellers) and all individuals that offer pre-need funeral contracts for sale (pre-need sales agents). The following persons appeared at the rulemaking hearing and made oral comments. No written comments were presented for consideration at the hearing:

Oral Comments:

1. Mr. Chuck Crawford asked about changes to the law that took place pursuant to Chapter 297 of the Public Acts of 2007 dealing with establishments, funeral directors, embalmers and apprentices. Mr. Crawford was informed that this rulemaking hearing did not relate to those provisions.
2. Mr. Bob McCornack asked whether insurance companies are included as "pre-need sellers". Mr. McCornack was informed that the language in the first two paragraphs of proposed Rule 0780-5-10-.14 was taken directly from the statute. Mr. McCornack expressed concern that the language describing pre-need sellers needed further clarification.
3. Mr. Don Lucas commented that the reinstatement fees of two thousand five hundred dollars (\$2,500.00) for pre-need sellers and five hundred dollars (\$500.00) for pre-need sales agents are excessive. Mr. Lucas commented that this would be a hardship on someone who, for example, left the business for a period of time after birth of a child, and would then be required to pay a reinstatement fee.
4. Mr. William Gregory commented that the reinstatement fee for pre-need sellers is, in effect, increasing from one thousand dollars (\$1,000.00) to two thousand five hundred dollars and that this increase is excessive, especially on smaller operations. Mr. Gregory suggests that consideration be given to a "one time exemption" that could be used in situations where a pre-need sales agent inadvertently overlooks renewal.
5. Mr. Dennis Hamilton commented that the reinstatement fees are stringent, but that the fees are necessary to protect the public and ensure that pre-need sellers comply with the law.
6. Mr. Robert Batson appeared on behalf of the Tennessee Funeral Directors Association and stated that the rule needs to provide for exceptions. Mr. Batson suggests that consideration be given to creating an "inactive status" that could be used, for example, when a person is deployed for active duty in the military.

7. Mr. William Herron asked for clarification of the propose rule under consideration, but offered no comments.

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

I am aware of no opinions by the Attorney General and Reporter that directly relate to this rule.

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

This rule represents an increase in current fees for pre-need seller registration, renewal, reinstatement, and related matters as well as an additional fee for the newly created pre-need sales agent registration, renewal, reinstatement and related matters. It is anticipated that the rule will have a positive fiscal impact on the Department and that Burial Services will be able to close its fiscal year without additional deficits.

(F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

The following agency representatives possess substantial knowledge and understanding of the rules:

Robert Gribble, Executive Director
Burial Services
500 James Robertson Parkway
Davy Crockett Tower, 2nd Floor
Nashville, Tennessee 37243
615-741-5062

Adrian Chick, Staff Attorney
Office of Legal Counsel
500 James Robertson Parkway
Davy Crockett Tower, 12th Floor
Nashville, Tennessee 37243
615-741-3072

(G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

The following agency representatives will explain the rule at a scheduled meeting of the Government Operation Committees:

Robert Gribble, Executive Director
Burial Services

Adrian Chick, Staff Attorney
Office of Legal Counsel

(H) Office address and telephone number of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Robert Gribble, Executive Director
Burial Services
500 James Robertson Parkway
Davy Crockett Tower, 2nd Floor
Nashville, Tennessee 37243
615-741-5062

Adrian Chick, Staff Attorney
Office of Legal Counsel
500 James Robertson Parkway
Davy Crockett Tower, 12th Floor
Nashville, Tennessee 37243
615-741-3072

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

Please contact Adrian Chick, Staff Attorney, if you should need additional information.