

SENATE BILL 2310

By Kyle

AN ACT to amend Tennessee Code Annotated, Sections 62-5-403, 62-5-409, 62-6-307, 62-20-102, 62-20-108, 62-39-102, and 62-39-105, relative to the regulation of professions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 62-5-403(8), is amended by deleting the existing language of subdivision (A) and substituting instead the following:

(8)

(A) "Pre-need funeral contract" means any agreement, contract or plan requiring the payment of money in advance, whether in a lump sum or installments, and whether funded by a pre-need funeral trust or prearrangement insurance policy or combination thereof, which is made or entered into with any person, association, partnership, firm or corporation for the final disposition of a dead human body, or for funeral or burial services, or for the furnishing of personal property or funeral or burial merchandise, wherein the use of the personal property or the funeral or burial merchandise or the furnishing of professional services by a funeral director or embalmer is not immediately required.

SECTION 2. Tennessee Code Annotated Section 62-5-403(12), is amended by deleting the existing language of the subsection and substituting instead the following:

(12) "Pre-need sales agent" means an individual who has applied for and has been granted, or who engages in conduct requiring, registration to sell pre-need funeral contracts on behalf of a pre-need seller pursuant to this part;

SECTION 3. Tennessee Code Annotated Section 62-5-403(13), is amended by deleting the existing language of the subsection and substituting instead the following:

(13) "Pre-need seller" means a funeral establishment or other individual, firm, partnership, company, corporation, or association that has applied for and has been granted, or that engages in conduct requiring, registration to sell pre-need funeral contracts pursuant to this part;

SECTION 4. Tennessee Code Annotated Section 62-5-409, is amended by deleting the language in the section in its entirety and substituting instead the following language:

(a) If the pre-need funeral contract purchaser chooses to fund the contract by a prearrangement insurance policy, the enrollment or application form for the prearrangement insurance policy or certificate shall be submitted to the insurance company by the pre-need sales agent within fifteen (15) calendar days of receipt.

(b) It is unlawful for any life insurance company, fraternal benefit society or other similar company, association or society issuing prearrangement insurance policies, by whatever name they may be called, upon the lives of citizens of this state, to:

(1) Designate, in the policy or otherwise, the person, firm or corporation to conduct the funeral of the insured, or to organize, promote or operate any enterprise or plan, or to enter into any contract with the insured or with any other person, which plan or contract tends to limit or restrict the freedom of choice in the open market of the person or persons having the legal right of the choice regarding contracts, purchases and arrangements with reference to any part of a funeral service for the insured;

(2) Provide in the policy or otherwise that the face amount of the policy, or any loss or indemnity, that may accrue under the policy, shall be payable in anything other than legal tender of the United States and of this state to the

beneficiary named in the policy or the legal representative of the insured, and any provision to the contrary shall be null and void;

(3) Enter into any contract with any funeral director, providing that the funeral director shall conduct the funeral of persons insured by the insurance company, fraternal benefit society, or similar company. This subsection shall not be construed to prohibit any beneficiary under a policy from assigning the policy to a funeral establishment of the beneficiary's choice after death of the insured has occurred and liability has accrued; or

(4) Enter into any contract with any citizens of this state, contracting and agreeing to furnish funeral merchandise or services upon the death of any person insured.

(c) It is unlawful for any person, firm or corporation to enter into any contract, conditioned to take effect on the death of any person, wherein the person, or the personal representative, heirs or next of kin of the person, is promised any rebate, discount or reduction in price for or on account of funeral merchandise, expenses or services by virtue of the person being issued the policy or certificate, or being designated as beneficiary in the policy, or by virtue of the person entering into the contract or being designated in the policy as the recipient of any such rebate, discount or reduction in price.

(d) Notwithstanding any other provision of this part, if the insurance company issuing the policy does not offer a funeral trust, or only offers a funeral trust for an additional charge, then the beneficiary may irrevocably assign the policy or policy benefits to a funeral establishment; provided, however, that the assignment shall not limit, or be construed as limiting, the ability of the pre-need funeral contract beneficiary or such beneficiary's lawful representative from selecting a different funeral

establishment to provide merchandise and services. If a subsequent establishment is designated, then the establishment to which the policy or policy benefits are currently assigned shall, upon written notification, promptly execute any documents necessary to transfer the assignment.

(e) Nothing in this section shall be construed to prohibit the irrevocable assignment of policy benefits to a trust set up to allow for the distribution of the benefits to the funeral home of the policyholder's choosing.

(f) No assignment of the rights or benefits under a prearrangement insurance policy shall be valid unless it is done on a form approved by the commissioner.

SECTION 5. Tennessee Code Annotated, Section 62-6-307, is amended by adding the following as a new subsection (f):

(f)

(1) A licensee may request that his license be placed in an inactive status by making application to the commissioner and paying the applicable fee. A licensee whose license is inactive may not directly or indirectly, engage in or conduct, or advertise or claim to be engaging in or conducting the business, or acting in the capacity of a home inspector as defined in T.C.A. § 62-6-302 governing home inspectors in the state of Tennessee. No continuing education shall be required for renewal of an inactive license. Licensees holding an inactive license are not required to maintain general liability or errors and omissions insurance. Inactive licenses shall be renewed biannually.

(2) A license that is inactive may be reactivated upon application to the commissioner.

(A) The licensee shall submit an application for reinstatement on a form as prescribed by the commissioner, accompanied by:

(i) a fee as prescribed by the commissioner

(ii) a certificate of insurance in an amount required by the commissioner for general liability and errors and omissions, to cover all activities contemplated under this part

(iii) evidence satisfactory to the commissioner that the applicant has not violated the provisions of this part or any rules or regulations promulgated pursuant to this part during the period the license was inactive.

(B) If more than two years have passed since the license was placed in an inactive status, the applicant shall, in addition to the requirements set forth in section (2)(A), above, also furnish evidence satisfactory to the commissioner that the applicant has completed thirty-two (32) hours of commissioner-approved continuing education during the twenty-four (24) months immediately preceding the date of application for reinstatement.

SECTION 6. Tennessee Code Annotated, Section 62-20-102, is amended by deleting the language in subsection (3) and substituting the following:

(3) "Collection service" means any person who engages in, or attempts to engage in, the collection of delinquent accounts, bills or other forms of indebtedness irrespective of whether the person engaging in or attempting to engage in collection activity has received the indebtedness by assignment or whether the indebtedness was purchased by the person engaging in, or attempting to engage in, the collection activity. "Collection service" includes, but is not limited to:

(A) Any deputy sheriff, constable or other individual who, in the course of that person's duties, accepts any compensation other than that fixed by statute in connection with the collection of an account;

(B) Any person who, in the process of collecting that person's own accounts, uses or causes to be used any fictitious name which would indicate to a debtor that a third party is handling the accounts;

(C) Any person who offers for sale, gives away or uses any letter or form designed for use in the collection of accounts that deceives the receiver into believing that an account is in the hands of a third party, even though the letter or form may instruct the debtor to pay directly to the debtor's creditor.

(D) Any person who engages in the solicitation of claims or judgments for the purpose of collecting or attempting to collect such claims or judgments or who solicits the purchase of claims or judgments for the purpose of collecting or attempting to collect such claims or judgments by engaging in or attempting to engage in collection activity relative to such claims or judgments.

SECTION 7. Tennessee Code Annotated, Section 62-20-108, is amended by deleting the language in subsection (d) and substituting instead the following:

(d)

(1) A location manager license issued pursuant to this section shall be revoked, if, within a two-year period prior to the date of such revocation, the licensee:

(A) Did not act as a location manager;

(B) Did not work on a full-time basis in a licensed collection service; or

(C) Was not employed by an attorney-at-law in a position directly related to the collection of debts and the solicitation of accounts receivable.

(2) Nothing in this subsection shall be construed to deprive the licensee of the privilege of placing their license in “temporary retirement” status for up to the maximum time allowed for retirement, as provided in §62-20-121(a).

SECTION 8. Tennessee Code Annotated, Section 62-39-102(6), is amended by deleting the existing language in its entirety and substituting instead the following:

(6) “Appraisal Report” means any communication, written or oral of an opinion of value of identified real estate. For the purposes of this chapter, an appraiser who testifies as to the value of an identified real property is deemed to have provided an oral appraisal report.

SECTION 9. Tennessee Code Annotated, Section 62-39-105(b)(2), is amended by deleting the existing language in its entirety and substituting instead the following:

(b)

(2) If an appraisal report is prepared and signed by a state certified real estate appraiser and such appraisal report is certified as such by the state certified real estate appraiser, a holder of a real estate appraiser license or a certificate of registration as a real estate appraiser trainee who assisted in the preparation of such appraisal report is authorized to co-sign such appraisal report.

SECTION 10. This bill shall take effect upon becoming a law for the purpose of rulemaking, pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, and shall take effect on July 1, 2009 for all other purposes, the public welfare requiring it.