AGENDA ITEM D (1)

Proposed Rule Changes for Discussion – Preneed Contract Fees Paid to Regulatory Trust Fund

FLORIDA ADMINISTRATIVE CODE

69K-5.0024 Remittances to the Regulatory Trust Fund.

The amounts required to be remitted by a preneed licensee to the Regulatory Trust Fund, pursuant to the provisions of section 497.453(9), F.S., shall be determined in accordance with the following criteria:

(1) A preneed contract or arrangement shall be deemed to be written within the meaning of section 497.453, F.S., when a preneed contract or arrangement is executed by both the purchaser and the preneed licensee or its agent. A remittance for a preneed contract or arrangement dated within a specific quarter shall be submitted in the report for such quarter.

(2) Beginning with contracts written July 1, ~~2009~~ 2025, each preneed licensee shall remit to the Regulatory Trust Fund of the Department of Financial Services a fee of ~~$6.00~~ $10.00 for each preneed contract written; regardless of any payments made by the purchaser.

(3) Assessments required to be remitted pursuant to section 497.453, F.S., shall not be payable from funds subject to the trust provisions of sections 497.458 and 497.464, F.S. Refund of a regulatory trust fund fee by a licensee to its customer shall not relieve the licensee of its obligation to remit regarding that contract under section 497.453(6), F.S.

(4) Contracts canceled within thirty days of execution as provided by section 497.453, F.S., shall not be counted as a contract sold for purposes of determining the amount to be remitted to the Regulatory Trust Fund.

(5) If a contract is canceled after thirty days of execution, the preneed licensee shall not be entitled to credit the remittance for that contract against future remittances.

(6) Quarterly preneed remittances must be made by preneed licensees in the following manner:

(a) Servicing agents must follow the procedures in Form DFS-PNS-1, User Manual for Servicing Agents for the Preneed Remittance System (PNRS) (Eff. 04/22), which is hereby incorporated by reference and available at https://www.flrules.org/Gateway/reference.asp?No=Ref-14144 or on the Department's website: https://www.myfloridacfo.com/Division/funeralcemetery/Licensing.

(b) Appointing agents and third-party users must follow the procedures in Form DFS-PNS-2, User Manual for Appointing Entity Users for the Preneed Remittance System (PNRS) (Eff. 04/22), which is hereby incorporated by reference and available at https://www.flrules.org/Gateway/reference.asp?No=Ref-14145 or on the Department's website: https://www.myfloridacfo.com/Division/funeralcemetery/Licensing.

(7) No preneed licensee is entitled to a refund of its contribution to the Regulatory Trust Fund. A preneed licensee who overpays the amount due to the Regulatory Trust Fund may make the necessary adjustments in future reports, provided the adjustment is adequately disclosed and includes a reasonable explanation therefor.

(8) It is the responsibility of the preneed licensee to ensure the correct report and remittance is made.

Rulemaking Authority 497.103, 497.161, 497.453 FS. Law Implemented 497.103, 497.152, 497.161, 497.453 FS. History–New 5-13-97, Amended 12-12-00, Formerly 3F-5.0024, Amended 6-22-09, 6-7-10, 5-29-22.

497.453 Application for preneed license, procedures and criteria; renewal; reports.—

(1) PRENEED LICENSE APPLICATION PROCEDURES.—

(a) A person seeking a license to enter into preneed contracts shall apply for such licensure using forms prescribed by rule.

(b) The application shall require the name, business address, residence address, date and place of birth or incorporation, and business phone number of the applicant and all principals of the applicant. The application shall require the applicant's social security number, or, if the applicant is an entity, its federal tax identification number.

(c) The application may require information as to the applicant's financial resources.

(d) The application may require information as to the educational and employment history of an individual applicant; and as to applicants that are not natural persons, the business and employment history of the applicant and principals of the applicant.

(e) The applicant shall be required to make disclosure of the applicant's criminal records, if any, as required by s. 497.142.

(f) The application shall require the applicant to disclose whether the applicant or any of the applicant's principals have ever had a license or the authority to practice a profession or occupation refused, suspended, fined, denied, or otherwise acted against or disciplined by the licensing authority of any jurisdiction. A licensing authority's acceptance of a relinquishment of licensure, stipulation, consent order, or other settlement, offered in response to or in anticipation of the filing of charges against the license, shall be construed as action against the license.

(g) The applicant shall submit fingerprints in accordance with s. 497.142.

(h) The application shall state the name and license number of the funeral establishment, cemetery company, direct disposal establishment, or monument establishment, under whose license the preneed application is made.

(i) The application shall state the types of preneed contracts proposed to be written.

(j) The application shall disclose the existence of all preneed contracts for service or merchandise entered into by the applicant, or by any other entity under common control with the applicant, without or prior to authorization under this section or predecessors to this section. As to each such contract, the applicant shall disclose the name and address of the contract purchaser, the status of the contract, and what steps or measures the applicant has taken to ensure performance of unfulfilled contracts, setting forth the treatment and status of funds received from the customer in regard to the contract, and stating the name and address of any institution where such funds are deposited and the number used by the institution to identify the account. With respect to contracts entered into before January 1, 1983, an application to issue or renew a preneed license may not be denied solely on the basis of such disclosure.

The purchaser of any such contract may not be required to liquidate the account if such account was established before July 1, 1965. Information disclosed may be used by the licensing authority to notify the contract purchaser and the institution in which such funds are deposited should the holder of a preneed license be unable to fulfill the requirements of the contract.

(k) The application shall require the applicant to demonstrate that the applicant complies and will comply with all requirements for preneed contract licensure under this chapter.

(l) The application may require any other information considered necessary by the department or board to meet its responsibilities under this chapter.

(m) The application shall be sworn to and signed in accordance with s. 497.141(12).

(n) The application shall be accompanied by a nonrefundable fee as determined by licensing authority rule but not to exceed $500. A member of the United States Armed Forces, such member's spouse, and a veteran of the United States Armed Forces who separated from service within the 2 years preceding application for licensure are exempt from the application fee when applying as an individual. To qualify for the application fee exemption, an applicant must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran was honorably discharged.

(2) ACTION CONCERNING APPLICATIONS.—A duly completed application for licensure under this section, accompanied by the required fees, shall be approved and a license issued, if the licensing authority determines that the following conditions are met:

(a) The application is made by a funeral establishment, cemetery company, direct disposal establishment, or monument establishment, or on behalf of one of the preceding licensees by its agent in the case of a corporate entity, licensed and in good standing under this chapter.

(b) The applicant meets net worth requirements specified by rule of the licensing authority.

1. The net worth required by rule to obtain or renew a preneed license and write and carry up to $100,000 in total retail value of outstanding preneed contracts shall not exceed $20,000. The board may specify higher net worth requirements by increments, for total retail value of outstanding preneed contracts carried in excess of $100,000, as the board determines necessary for the protection of the public.

2. An applicant to obtain or renew a preneed license who cannot demonstrate the required initial minimum net worth may voluntarily submit to the licensing authority, and request acceptance of, alternative evidence of financial stability and resources or agree to additional oversight in lieu of the required net worth. Such additional evidence or oversight may include, as appropriate, one or more of the following:

a. An agreement to submit monthly financial statements of the entity.

b. An agreement to submit quarterly financial statements of the entity.

c. An appraisal of the entity's property or broker's opinion of the entity's assets.

d. A credit report of the entity or its principals.

e. A subordination-of-debt agreement from the entity's principals.

f. An indemnification or subrogation agreement binding the entity and its principals.

g. A guarantee agreement for the entity from its principals.

h. A written explanation of past financial activity.

i. Submission of a 12-month projected business plan that includes:

(I) A statement of cash flows.

(II) Pro forma income statements, with sources of revenues identified.

(III) Marketing initiatives.

j. Submission of previous department examination reports.

k. An agreement of 100 percent voluntary trust by the entity.

3. The licensing authority may accept such alternative evidence or arrangements in lieu of the required net worth only if the licensing authority determines such alternative evidence or arrangements are an adequate substitute for required net worth and that acceptance would not substantially increase the risk to existing or future customers of nonperformance by the applicant or licensee on its retail sales agreements.

(c) The applicant has and will have the ability to discharge her or his liabilities as they become due in the normal course of business, and has and will have sufficient funds available during the calendar year to perform her or his obligations under her or his contracts.

(d) If the applicant or any entity under common control with the applicant has entered into preneed contracts prior to being authorized to do so under the laws of this state:

1. The licensing authority determines that adequate provision has been made to ensure the performance of such contracts.

2. The licensing authority determines that the improper sale of such preneed contracts prior to authorization under this chapter does not indicate, under the facts of the particular application in issue, that the applicant has a disregard of the laws of this state such as would expose the public to unreasonable risk if the applicant were issued a preneed license.

3. Nothing in this section shall imply any authorization to enter into preneed contracts without authorization under this chapter.

(e) Neither the applicant nor the applicant's principals have a demonstrated history of conducting their business affairs to the detriment of the public.

(f) The applicant and the applicant's principals are of good character and have no demonstrated history of lack of trustworthiness or integrity in business or professional matters.

(g) The applicant does and will comply with all other requirements of this chapter relating to preneed licensure.

(3) ISSUANCE OF LICENSES ON PROBATIONARY STATUS.—It is the policy of this state to encourage competition for the public benefit in the preneed contract business by, among other means, the entry of new licensees into that business. To facilitate issuance of licenses concerning applications judged by the licensing authority to be borderline as to qualification for licensure, the licensing authority may issue a new license under this section on a probationary basis, subject to conditions specified by the licensing authority on a case-by-case basis, which conditions may impose special monitoring, reporting, and restrictions on operations for up to the first 12 months of licensure, to ensure the licensee's responsibleness, competency, financial stability, and compliance with this chapter. Provided, no such probationary license shall be issued unless the licensing authority determines that issuance would not pose an unreasonable risk to the public, and the licensing authority shall within 12 months after issuance of the license either remove the probationary status or determine that the licensee is not qualified for licensure under this chapter and institute proceedings for revocation of licensure.

(4) CHANGE IN CONTROL SUBSEQUENT TO LICENSURE.—

(a) Each licensee under this section shall provide notice as required by rule prior to any change in control of the licensee. Any such change is subject to disapproval or to reasonable conditions imposed by the licensing authority, for the protection of the public to ensure compliance with this chapter, based upon criteria established by rule, which criteria shall promote the purposes of this part in protecting the consumer.

(b) The licensing authority may authorize the transfer of a preneed license and establish by rule a fee for the transfer in an amount not to exceed $500. Upon receipt of an application for transfer, the executive director may grant a temporary preneed license to the proposed transferee, based upon criteria established by the licensing authority by rule, which criteria shall promote the purposes of this chapter in protecting the consumer. Such a temporary preneed license shall expire at the conclusion of the next regular meeting of the board unless renewed by the board. The licensing authority may by rule establish forms and procedures for the implementation of this paragraph.

(5) RENEWAL OF LICENSES.—

(a) A preneed license shall expire annually on June 1, unless renewed, or at such other time or times as may be provided by rule. The application for renewal of the license shall be on forms prescribed by rule and shall be accompanied by a renewal fee as specified in paragraph (c).

(b) Within 3 months after the end of its fiscal period, or within an extension of time therefor, as the department for good cause may grant, the licensee shall file with the department a full and true statement of her or his financial condition, transactions, and affairs, prepared on a basis as adopted by rule, as of the end of the preceding fiscal period or at such other time or times as may be required by rule, together with such other information and data that may be required by rule. To facilitate uniformity in financial statements and to facilitate department analysis, there may be adopted by rule a form for financial

statements. The rules regarding net worth, authorized by paragraph (2)(b), shall be applicable to the renewal of preneed licenses.

(c)1. Each annual application for renewal of a preneed license that is not held by a monument establishment shall be accompanied by the appropriate fee as follows:

a. For a preneed licensee with no preneed contract sales during the immediately preceding year. . . . . $300.

b. For a preneed licensee with at least 1 but fewer than 50 preneed contract sales during the immediately preceding year. . . . . $400.

c. For a preneed licensee with at least 50 but fewer than 250 preneed contract sales during the immediately preceding year. . . . . $500.

d. For a preneed licensee with at least 250 but fewer than 1,000 preneed contract sales during the immediately preceding year. . . . . $850.

e. For a preneed licensee with at least 1,000 but fewer than 2,500 preneed contract sales during the immediately preceding year. . . . . $1,500.

f. For a preneed licensee with at least 2,500 but fewer than 5,000 preneed contract sales during the immediately preceding year. . . . . $2,500.

g. For a preneed licensee with at least 5,000 but fewer than 15,000 preneed contract sales during the immediately preceding year. . . . . $6,000.

h. For a preneed licensee with at least 15,000 but fewer than 30,000 preneed contract sales during the immediately preceding year. . . . . $12,500.

i. For a preneed licensee with 30,000 preneed contract sales or more during the immediately preceding year. . . . . $18,500.

2. Each annual application for renewal of a preneed license that is held by a monument establishment shall be accompanied by the appropriate fee determined by its total gross aggregate at-need and preneed retail sales for the 12-month period ending 2 full calendar months prior to the month in which the renewal is required, as follows:

a. Total sales of $1 to $50,000: $1,000 renewal fee.

b. Total sales of $50,001 to $250,000: $1,500 renewal fee.

c. Total sales of $250,001 to $500,000: $2,000 renewal fee.

d. Total sales over $500,000: $2,500 renewal fee.

(d) An application for renewal shall disclose the existence of all preneed contracts for service or merchandise funded by any method other than a method permitted by this chapter, which contracts are known to the applicant and were entered into by the applicant, or any other entity under common control with the applicant, during the annual license period then ending. Such disclosure shall include the name and address of the contract purchaser, the name and address of the institution where such funds are deposited, and the number used by the institution to identify the account.

(e) In addition to any other penalty that may be provided for under this chapter, there may be levied a late fee as determined by licensing authority rule but not to exceed $50 a day for each day the preneed licensee fails to file its annual statement, and there may be levied a late fee as determined by licensing authority rule but not to exceed $50 a day for each day the preneed licensee fails to file the statement of activities of the trust. Upon notice to the preneed licensee by the department that the preneed licensee has failed to file the annual statement or the statement of activities of the trust, the preneed licensee's authority to sell preneed contracts shall cease while such default continues.

(6) QUARTERLY PAYMENTS.—In addition to other amounts required to be paid by this section, each preneed licensee shall pay to the Regulatory Trust Fund an amount established by rule not to exceed $10 for each preneed contract entered into. This amount shall be paid within 60 days after the end of each quarter. These funds shall be used to defray the cost of administering the provisions of this chapter.

(7) BRANCH OPERATIONS AND LICENSURE.—

(a) Any person or entity that is part of a common business enterprise that has a preneed license issued pursuant to this section and desires to operate under a name other than that of the common business enterprise may submit an application on a form adopted by rule to become a branch licensee. The application shall be accompanied by an application fee as determined by licensing authority rule but not to exceed $300.

(b) Upon a determination that such branch applicant qualifies to sell preneed contracts under this part except for the requirements of paragraph (2)(c), and if the sponsoring preneed licensee under whose preneed license the branch applicant seeks branch status meets the requirements of such paragraph and is in compliance with all requirements of this part regarding its preneed license and operations thereunder, a branch license shall be issued.

(c) Branch licenses shall be renewed annually by payment of a renewal fee set by licensing authority rule and not to exceed $500. Branch licenses may be renewed only so long as the preneed license of the sponsoring preneed licensee remains in good standing.

(d) Preneed sales of the branch shall be deemed to be sales of the sponsoring licensee for purposes of renewal fees and trust requirements under this chapter.

(e) The sponsoring preneed licensee shall be responsible for performance of preneed contracts entered into by its branch if the branch does not timely fulfill any such contract.

(8) ANNUAL TRUST REPORTS.—

(a) On or before April 1 of each year, the preneed licensee shall file in the form prescribed by rule a full and true statement as to the activities of any trust established by it pursuant to this part for the preceding calendar year.

(b) Any preneed licensee or group of preneed licensees under common control that in aggregate sold in this state 15,000 or more preneed contracts in the preceding year shall additionally comply with this paragraph.

1. As to each year, which is referred to in this paragraph as "Year 1," in which any preneed licensee or group of preneed licensees under common control in aggregate sell in this state 15,000 or more preneed contracts, the licensee or licensees shall, during the following year, which is referred to in this paragraph as "Year 2":

a. Prepare in regard to each such licensee a report of preneed operations in this state in Year 1, on a form prescribed by department rule;

b. Cause and pay for the report to be audited by an independent certified public accounting firm concerning the accuracy and fairness of the presentation of the data provided in the report; and

c. By December 31 of Year 2, provide the report to the division, along with a written and signed opinion of the certified public accounting firm concerning the accuracy and fairness of the presentation of the data reported in the report.

2. The report required under subparagraph 1. shall be prepared and submitted using forms and procedures specified by department rule. The department may adopt rules specifying the format of, and procedures for, the report and the information to be included in the report.

(9) DEPOSIT OF FUNDS.—All sums collected under this section shall be deposited to the credit of the Regulatory Trust Fund.

History.—s. 5, ch. 28211, 1953; ss. 6, 7, ch. 65-393; ss. 13, 35, ch. 69-106; s. 4, ch. 77-438; s. 169, ch. 79-164; s. 246, ch. 79-400; s. 2, ch. 81-318; ss. 4, 31, 32, ch. 83-316; s. 2, ch. 85-89; s. 4, ch. 88-139; ss. 93, 122, ch. 93-399; s. 20, ch. 96-400; s. 1147, ch. 97-103; s. 27, ch. 99-155; s. 10, ch. 2000-195; s. 102, ch. 2004-301; s. 97, ch. 2005-2; s. 35, ch. 2005-155; s. 27, ch. 2018-7; s. 9, ch. 2019-140.

Note.—Former s. 639.10; s. 497.407.