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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: Insurance
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Revision Type (check all that apply):

Amendment
 New
 Repeal

| Chapter Number | Chapter Title |
|--------------------|------------------------------------|
| 0780-01-52 | Mortality Tables |
| Rule Number | Rule Title |
| 0780-01-52-.01 | Annuity Mortality Tables |
| 0780-01-52-.02 | Smoker/Non-smoker Mortality Tables |
| 0780-01-52-.03 | Mixed Gender Mortality Tables |
| 0780-01-52-.04 | 2001 CSO Mortality Tables |
| 0780-01-52-.05 | Preneed Mortality Tables |
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| 0780-01-52-.07 | Effective Date |

Chapter 0780-01-52
Mortality Tables

Amendments

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- 0780-01-52-.05 Preneed Mortality Tables
- 0780-01-52-.06 Separability
- 0780-01-52-.07 Effective Date

0780-01-52-.05 Separability is amended by redesignating the current language as Rule 0780-01-52-.06 and substituting the following language so that as amended the rule shall read:

Rule 0780-01-52-.05 Preneed Mortality Tables.

(1) Purpose.

The purpose of this Rule is to establish for preneed insurance products minimum mortality standards for reserves and nonforfeiture values, and to require the use of the 1980 Commissioners Standard Ordinary (CSO) Life Valuation Mortality Table for use in determining the minimum standard of valuation of reserves and the minimum standard nonforfeiture values for preneed insurance products.

(2) Definitions.

- (a) "2001 CSO Mortality Table" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the NAIC in December 2002. The 2001 CSO Mortality Table is included in the *Proceedings of the NAIC (2nd Quarter 2002)*. Unless the context indicates otherwise, the "2001 CSO Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables.
- (b) "Ultimate 1980 CSO" means the Commissioners' 1980 Standard Ordinary Life Valuation Mortality Tables (1980 CSO) without ten-year (10-year) selection factors, incorporated into the 1980 amendments to the NAIC Standard Valuation Law approved in December 1983.
- (c) "Preneed Insurance" shall mean any policy that falls within the definition of a "prearrangement insurance policy", defined in T.C.A. §62-5-403(7) as "a life insurance policy, annuity contract, or other insurance contract, or any series of contracts or agreements in any form or manner, issued by an insurance company, that, whether by assignment or otherwise, funds a pre-need funeral contract, the insured, or annuitant being the person for whose funeral service the funds were paid".

(3) Minimum Valuation Mortality Standards.

For preneed insurance contracts, as defined in Rule 0780-01-52-.05(2)(c), the minimum mortality standard for determining reserve liabilities and non-forfeiture values for both male and female insureds shall be the Ultimate 1980 CSO.

- (4) Minimum Valuation Interest Rate Standards.
 - (a) The interest rates used in determining the minimum standard for valuation of preneed insurance shall be the calendar year statutory valuation interest rates as defined in T.C.A. §56-1-403.
 - (b) The interest rates used in determining the minimum standard for nonforfeiture values for preneed insurance shall be the calendar year statutory nonforfeiture interest rates as defined in T.C.A. §56-7-401.
- (5) Minimum Valuation Method Standards.
 - (a) The method used in determining the standard for the minimum valuation of reserves of preneed insurance shall be the method defined in T.C.A. §56-1-403.
 - (b) The method used in determining the standard for the minimum nonforfeiture values for preneed insurance shall be the method defined in T.C.A. §56-7-401.
- (6) Transitional Rules.
 - (a) For preneed insurance policies issued on or after the effective date of this Rule and before January 1, 2012, the 2001 CSO may be used as the minimum standard for reserves and minimum standard for non-forfeiture benefits for both male and female insurances.
 - (b) If an insurer elects to use the 2001 CSO as a minimum standard any policy issued on or after the effective date of this Rule and before January 1, 2012, the insurer shall provide, as part of the actuarial opinion memorandum submitted in support of the company's asset adequacy testing, an annual written notification to the domiciliary commissioner. The notification shall include:
 - 1. A complete list of all preneed policy forms that use the 2001 CSO as a minimum standard;
 - 2. A certification signed by the appointed actuary stating that the reserve methodology employed by the company in determining reserves for the preneed policies issued after the effective date and using the 2001 CSO as a minimum standard, develops adequate reserves (For the purposes of this certification, the preneed insurance policies using the 2001 CSO as a minimum standard cannot be aggregated with any other policies.); and
 - 3. Supporting information regarding the adequacy of reserves for preneed insurance policies issued after the effective date of this regulation and using the 2001 CSO as a minimum standard for reserves.
 - (c) Preneed insurance policies issued on or after January 1, 2012, must use the Ultimate 1980 CSO in the calculation of minimum nonforfeiture values and minimum reserves.

Authority: T.C.A. §§56-1-403, 56-2-301, 56-7-401, 62-5-403(7) and 62-5-413(b).

Rule 0780-01-52-.06 Effective Date is amended by redesignating the current language as Rule 0780-01-52-.07 and adding the following the language to the end of the Rule:

and provided that preneed insurance policies issued on or after January 1, 2012, must use the Ultimate 1980 CSO in the calculation of minimum nonforfeiture values and minimum reserves.

Authority: T.C.A. §§56-2-301, 56-7-401 and 62-5-413(b).

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Commerce and Insurance on 2/4/09, and is in compliance with the provisions of T.C.A. §4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 07/31/08
Notice published in the Tennessee Administrative Register on: 08/15/08
Rulemaking Hearing(s) Conducted on: (add more dates). 09/17/08



Date: 2/4/09

Signature: Leslie A. Newman

Name of Officer: Leslie A. Newman

Title of Officer: Commissioner

Subscribed and sworn to before me on: 2/4/09

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, T.C.A. Title 4, Chapter 5.

RE Cooper, Jr.

Robert E. Cooper, Jr.
Attorney General and Reporter

2-23-09

Date

Department of State Use Only

Filed with the Department of State on: 4/15/09

Effective On: 6/29/09

Tre Hargett

Tre Hargett
Secretary of State

On September 17, 2008, a rulemaking hearing was held by Amy B. Smith, Assistant General Counsel, by designation of Leslie A. Newman, Commissioner, at the offices of the Department of Commerce and Insurance. This hearing, conducted pursuant to the requirements of the Uniform Administrative Procedures Act, T.C.A. §§4-5-101 *et. seq.*, allowed the Commissioner of Commerce and Insurance and her designees to hear public comments and responses to the proposed amendments. The amendments are being promulgated pursuant to T.C.A. §§ 56-1-403, 56-2-301, 56-7-401, 62-5-403(7) and 62-5-413(b).

The Commissioner solicited comments from the public by causing notice of the hearing to be published in accordance with the requirements of T.C.A. §4-5-203. The Commissioner did not receive any written comments, nor did she receive any oral comments during the rulemaking hearing.

Addendum

Regulatory Flexibility Act Analysis of Impact on Small Businesses

The Department of Commerce and Insurance has considered whether the proposed amendments in this notice of rule making hearing are such that they will have an economic impact on small businesses (businesses with fifty (50) or fewer employees). The proposed amendments are not anticipated to have a significant economic impact affecting small businesses.

The outcome of the analysis set forth in T.C.A. §4-5-403 is as follows:

1. The type or types of small businesses that might be impacted by these proposed rules include insurance companies offering preneed life insurance contracts. This Rule will also impact Tennessee funeral directors. This Rule will ensure that preneed contracts offered by funeral directors will have adequate reserves.
2. There will be no significant impact on filings, projected reporting, recordkeeping or other administrative costs for the Department and there will be no significant change in the Department or State's budgets.
3. This rule will require life insurers to increase reserves on preneed policies they sell; however, it is unlikely that the increased reserves will financially impact insurance agencies selling these policies or consumers purchasing them. The increased insurer reserves for preneed policies will ensure that these policies are honored when claims are brought against them.
4. Alternative means to accomplishing the intent, which is to protect the public by increasing necessary reserves to an appropriate level, ensuring all life insurers are acting responsibly, creating equitable value for consumers by increasing cash values, and promoting the reliability, solvency and financial stability of insurance companies by increasing the reserve requirement on preneed life insurance policies and establishing minimum mortality standards for reserves and nonforfeiture values, do not exist and do not achieve consistency with other states' regulation of preneed policies pursuant to the NAIC model.
5. As this is an NAIC Model Rule, a search has been conducted to see which states have adopted either the model regulations or similar legislation or regulations. The following states have adopted this model or similar regulations: Florida, Illinois, Iowa, Louisiana, Utah and West Virginia (proposed, not yet adopted).
6. The Department must ensure that all insurance companies selling preneed life insurance policies comply with these requirements. If the Department was to exempt insurance companies from this rule, it would raise the risk that consumers' claims against their preneed life insurance would not be paid.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. §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;

The proposed amendments are based on an NAIC Model Regulation, Preneed Life Insurance Minimum Standards for Determining Reserve Liabilities and Nonforfeiture Values, and intend to amend Rule 0780-1-52 Mortality Tables. This rule currently allows life insurers selling preneed contracts to use the 2001 Commissioners Standard Ordinary (CSO) Life Valuation Table mortality table as the mortality basis for nonforfeiture and valuation. The proposed amendments intend to allow life insurers to continue using the 1980 CSO table, a more adequate mortality basis than the 2001 CSO table, for calculating reserves. The amendments set forth policy and procedure for protecting the public by ensuring that their claims on preneed life insurance policies are adequately reserved for and honored by requiring life insurers to increase reserves on the preneed policies they sell to an appropriate level. The amendments also intend to protect the public interest by promoting a responsible competitive environment by ensuring all companies are acting responsibly, creating equitable value for consumers by increasing cash values and promoting the reliability, solvency and financial stability of insurance institutions by increasing their reserve requirement on this kind of policy.

- (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 amendments are authorized by T.C.A. §§56-1-403, 56-2-301, 56-7-401, 62-5-403(7) and 62-5-413(b). T.C.A. §56-2-301 gives the Commissioner authority to promulgate rules to carry out these statutes.

- (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;

The proposed amendments will mostly affect insurance companies offering preneed life insurance contracts and Tennessee funeral directors. The Department did not receive any comments that urged the rejection of the amendments as written.

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

There are no Attorney General opinions or judicial rulings relevant to the subject of the proposed amendments.

- (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;

The proposed amendments should cause no increase or decrease in state revenues or expenditures.

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

Larry C. Knight, Assistant Commissioner for Insurance
Amy B. Smith, Assistant General Counsel for Commerce and Insurance

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

Amy B. Smith, Assistant General Counsel for Commerce and Insurance

- (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

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