

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 1303 (Delegate Davis)
Health and Government Operations

Health Occupations - Pre-Need Contracts - Trust Accounts

This bill authorizes a trustee to invest money of a trust account for a pre-need contract in any security that is a lawful investment for a fiduciary, including a time deposit or certificate of deposit. To ensure that money in the trust account is adequate, the income of the trust account must (1) remain in the account; (2) be reinvested and compounded; and (3) be disbursed only for payment of appropriate trustee's fees, commissions, and other costs of the trust account.

Fiscal Summary

State Effect: Any additional workload on the State Board of Morticians and Funeral Directors can be handled using existing resources. Revenues are not affected. To the extent that investment of pre-need trust account funds results in a seller being unable to provide pre-need contract services or refund pre-need contract payments, special fund expenditures from the Family Security Trust Fund may increase.

Local Effect: None.

Small Business Effect: Potential meaningful. Funeral establishments with pre-need trust accounts may earn higher interest rates on such accounts; if the bill results in more reimbursements to consumers through the Family Security Trust Fund, annual assessments against all funeral establishments may be required for a longer period.

Analysis

Current Law: “Trustee” means a person that has responsibility for making pre-need arrangements in a manner that entitles the beneficiary to be eligible for benefits that restrict assets.

Only a licensed mortician, funeral director, or holder of a surviving spouse license may offer or agree to provide services or merchandise under a pre-need contract. A licensed mortician or funeral director who is employed by a funeral establishment may execute pre-need contracts on behalf of the funeral establishment with which the mortician or funeral director is employed.

Within 10 days after receipt of payment, the seller of a pre-need contract must deposit payment into an interest-bearing, escrow, or trust account. The interest-bearing, escrow, or trust account must be with an insured banking institution or savings and loan. A seller need not have a separate escrow or trust account for each pre-need contract. Any interest or dividends earned by the escrow or trust account prior to service being rendered belong to the buyer. Upon performance of the contract, any interest or dividends belong to the seller.

A seller is prohibited from withdrawing funds from the account unless the services and merchandise have been provided as agreed in the contract. Unlawful withdrawal of funds from a pre-need account is an unfair or deceptive trade practice. A buyer may demand in writing a refund of all payments under specified circumstances. The buyer of a pre-need contract has the option, at any time, to establish an irrevocable trust to all or any portion of the payment made under the pre-need contract.

A pre-need contract is ended and a seller must return all payments and interest if (1) the buyer or legal representative demands a refund in writing; (2) the business of the seller is discontinued or sold; (3) the seller is unable to perform under the terms of the contract; or (4) the buyer fails to pay the entire contract price before the death of the beneficiary and the seller considers the contract void.

Chapter 532 of 2008 created the Family Security Trust Fund within the State Board of Morticians and Funeral Directors to reimburse consumers for losses that occur on or after January 1, 2010, related to the provision of pre-need contract services. To capitalize the fund, the board is required to charge an annual fee of \$375 to all funeral establishments; this fee is a condition of licensure and licensure renewal for these establishments. The Family Security Trust Fund is intended to provide some recourse to consumers who find that a funeral establishment has mishandled their funds and does not provide the refund with interest as required by law.

The Family Security Trust Fund is a special, nonlapsing fund and not liable to any other expenses or obligations of the board. Over a reasonable period of time, the fund must be built to at least \$1.0 million and then maintained at or above that level. Once the fund has a \$1.0 million balance, the annual assessment against funeral establishment licensees is discontinued. However, if the fund a balance falls below \$1.0 million, the board must assess each funeral establishment a fee in the appropriate amount to return the fund to the \$1.0 million level over a reasonable time period. As of December 2013, the balance of the fund was approximately \$781,000.

Additional Information

Prior Introductions: None.

Cross File: SB 751 (Senator Pugh) - Education, Health, and Environmental Affairs.

Information Source(s): Department of Health and Mental Hygiene, Department of Legislative Services

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