

**Department of Fiscal Services**  
Maryland General Assembly

**FISCAL NOTE**

Senate Bill 471 (Senator Della)  
Finance

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**Morticians and Cemeteries - Preneed Contracts - Trust and Escrow Requirements**

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This bill changes the trust and escrow requirements of preneed contracts for funeral and cemetery goods and services. The bill also provides that (1) the buyer of a preneed burial contract may receive a refund at any time; (2) interest will be divided between the buyer and the seller in a certain manner; (3) sellers are required to disclose specific information and price lists to buyers; (4) sellers are required to meet specified reporting requirements; and (5) the title for preneed goods will be transferred to the buyer if goods are to be delivered prior to death. The bill specifies that it only applies prospectively and does not affect any preneed contract entered into before October 1, 1997.

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**Fiscal Summary**

**State Effect:** The impact of altering funeral and cemetery reporting requirements, at least initially, could be handled with existing resources, as discussed below. Revenues would not be affected.

**Local Effect:** None.

**Small Business Effect:** Meaningful impact on small business as discussed below.

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**Fiscal Analysis**

**Bill Summary:** The bill broadens the definition of a seller of preneed contracts to include a person not affiliated with a cemetery, but does not include a licensed mortician. It also expands the definition of preneed goods to include caskets. The bill specifies that both morticians and cemeterians must undertake the following activities:

- ° 100% trusting of preneed services and 80% trusting of preneed goods must be

provided. Under current law, cemeteries are required to trust 50% of the preneed contract price until the contract is paid in full at which time cemeteries are required to trust 55% of the contract price. Funeral homes are currently required to trust 100% of all preneed contracts.

- A trust account, which is defined as an interest bearing escrow or trust account with a federally insured bank or savings and loan, must be used.
- A buyer must be allowed to cancel a preneed burial contract at any time and refund the buyer 100% of the money paid for the contract.
- A seller may keep any interest earned on the account if the contract is not paid in full.
- Any interest earned on a contract paid in full must be divided between the buyer and the seller.
- A seller must disclose to the buyer if at-need prices for goods and services differ from preneed prices and provide a side-by-side comparison on the general price list.
- A seller must disclose to the buyer all goods and services required at the time of need that are not included in the preneed contract and the buyer's cancellation and refund rights

The bill also requires cemeterians to do the following:

- Include in the report required by the Secretary of State an unqualified audit by a certified public accountant and information on the transfer of any goods to be delivered before death, including where the goods are stored.
- Disclose to the buyer the person responsible for installation of the goods sold and any applicable warranties.
- Disclose to the buyer the fact that goods or services provided before death are the only goods and services on which interest or finance charges may be levied.
- Disclose to the buyer the manner of delivery of goods, including where they are stored.
- Disclose to the buyer the buyer's remedy if delivered goods are damaged or destroyed.

The bill requires morticians to provide the results of a review by a certified public accountant to the State Board of Morticians in addition to any other information the board deems necessary.

**State Expenditures:** The State Board of Morticians advises that their expenditures would

increase \$44,200 in fiscal 1998 and approximately \$47,400 each year thereafter based on hiring one contractual Typist/Clerk III and one Health Occupations Investigator II to meet the bill's requirement that funeral homes submit a review by a certified public accountant annually.

The Department of Fiscal Services notes that the board already undertakes the basic functions and serves the population addressed in this bill. The additional reporting requirement for funeral homes should not significantly impact the board's workload. It is noted that the board's fiscal 1998 budget allowance includes funds for two Typist/Clerks and that the board currently has one vacant Inspector's position. It is possible, however, that the additional staff indicated above might be needed in the out-years depending upon how onerous processing the additional reporting requirements is during the first year.

The bill requires cemeteries to provide an unqualified audit by a certified public accountant and information on the delivery and title transfer of preneed goods to the Secretary of State. The Secretary of State in its oversight role for the preneed and perpetual care activities of cemeteries, would experience some additional workload, but could handle the requirements of the bill within existing budgeted resources.

**Small Business Effect:** There are approximately 1,400 cemeteries in the State, although most do not offer preneed contracts and would not be affected by this bill. There are approximately 60 that offer preneed contracts and the majority of these cemeteries are small businesses. Altering the trusting requirements for these cemeteries will have a meaningful impact. Cemeteries are currently required to trust or escrow 50% of the preneed contract price within ten days of establishing the contract and a total of 55% within the first 30 days. Trusting or escrowing is required to ensure that the actual merchandise cost is held in trust so that goods may be delivered at the time of need.

The nontrusted funds are used by the ceterian to pay commissions to counselors that sell and market preneed services to the public. If trusting requirements are raised to 80% for preneed goods and 100% for preneed services it may be more difficult for cemeteries to continue to market and offer preneed contracts to their customers. Small cemeteries may be unable to continue to offer preneed services. This is meaningful because preneed contracts represent a significant source of cemetery income. Many small cemeteries perform between 200 and 400 burials each year, not enough at current prices to generate adequate profits to stay in business based on time-of-need sales only.

The bill also requires the cemeteries that offer preneed contracts to submit an unqualified audit report prepared by a certified public accountant with their annual report to the Secretary of State. Depending upon the number of families served by a cemetery, the performance of the audit required may cost from approximately \$500 to \$5,000. This cost would be incurred each year.

There are also 250 funeral homes in the State, the majority of which are small businesses. These businesses would be meaningfully, positively affected. Funeral homes are currently required to trust 100% of preneed goods and services. This bill reduces the trusting requirement to 80% providing these businesses with access to additional operating funds and allowing funeral homes to more easily sell preneed goods. Funeral homes would also benefit as a result of the change in how interest earned on trust accounts is distributed. The bill allows funeral homes to keep all the interest earned on an account that has not been paid in full at the time of cancellation and to keep half of the interest earned if the account has been paid in full. Under current law the buyer is entitled to all the interest earned on the trust unless the contract has been performed.

Funeral homes would also be required to include a financial review prepared by a certified public accountant in the annual report filed with the State Board of Morticians. The cost associated with the required review is estimated to range from \$150 to \$1,000.

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**Information Source(s):** Department of Health and Mental Hygiene (Board of Morticians); Office of the Secretary of State; Maryland Free State Cemetery Association; Department of Fiscal Services

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Analysis by: Shelley Finlayson  
Reviewed by: John Rixey

Direct Inquiries to:  
John Rixey, Coordinating Analyst  
(410) 841-3710  
(301) 858-3710