

Department of Fiscal Services
Maryland General Assembly

FISCAL NOTE
Revised

Senate Bill 819 (Senator Hafer, *et al.*)

(Task Force to Examine the State’s Cemetery and Funeral Industry)

Finance

Referred to Economic Matters

Death Care Industry Regulation
(Rachel’s Law)

This amended bill creates an Office of Cemetery Oversight to regulate the death care industry in the State through specified registration requirements, related rules, biennial permit fees, and hearing procedures. Religious and nonprofit cemeteries and burial goods providers are exempt from the Office of Cemetery Oversight’s regulation and fees, but may have complaints mediated and resolved by the office. The bill also provides penalties for certain violations. The bill alters the trust and escrow requirements for sellers of preneed contracts for funeral and cemetery goods and services. In addition, the bill requires sellers of preneed contracts to provide specified disclosure to buyers. The bill is effective July 1, 1997, although, duties that relate to proceeding on complaints are not to be implemented until January 1, 1998, and the registration and permit fee provisions are not applicable until July 1, 1998.

Fiscal Summary

State Effect: General fund revenues could decrease by an estimated \$2,800 in FY 1998; general fund expenditures would not be affected. General fund revenues and expenditures could also increase by an indeterminate amount due to the bill’s penalty provisions. Special fund revenues could increase by an estimated \$2,800 in FY 1998. Future year projections reflect the biennial licensing term. Special fund expenditures would increase by an estimated \$133,100. Future year projections reflect adjustments for growth and inflation.

(in dollars)	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002
GF Revenues	(\$2,800)	(\$2,900)	(\$2,900)	(\$3,000)	(\$3,000)
SF Revenues	2,800	285,300	296,700	17,800	317,500
GF Expenditures	0	0	0	0	0
SF Expenditures	133,100	146,600	151,800	157,200	162,700
Net Effect	(\$133,100)	\$135,800	\$144,900	(\$142,400)	\$151,800

Note: () - decrease; GF - general funds; FF - federal funds; SF - special funds

Local Effect: Local revenues and expenditures could increase by an indeterminate amount due to the bill’s penalty provision.

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

Fiscal Analysis

Bill Summary: The major provisions of the bill include:

- The advisory board to the Office of Cemetery Oversight is to be comprised of nine members.
- The Secretary of the Department of Labor, Licensing, and Regulation will appoint a full-time director who may employ a staff.
- The director will adopt a code of ethics, establish rules and regulations, conduct registration and permitting activity, charge fees for the application, issuance, and renewal of registration and permits, and hold hearings. Fees collected by the director will be deposited into the Cemetery Oversight Fund and must support the direct and indirect costs of the office.
- The director has the power to deny a registration or permit to any applicant, reprimand a registrant or permit holder, issue a cease and desist order, and suspend or revoke a registration or permit. The director may seek a restraining order to prevent a registrant or permit holder charged with a violation that could result in a suspension or revocation of the registration or permit from operating any cemetery or burial goods business.
- The director may impose a civil penalty of up to \$5,000 for each violation and a penalty of up to \$500 for each day a violation continues past the time set for its correction.
- The director will mediate all complaints, including those regarding religious or nonprofit entities and, at either party's request, refer complaints to the Attorney General for binding arbitration. If a hearing is conducted by the director and the proposed action by the director is upheld, the challenger must pay the hearing costs.
- Corporations that are required to register with the director must also have a separate registered cemeterian or seller responsible for the operation of the business.
- Those who engage in cemetery operations or sell burial goods without being registered or holding a permit, or represent themselves as a registered or permit holding cemeterian or burial goods seller, except religious or nonprofit entities, are subject to a fine of up to \$3,000 and/or imprisonment for up to one year.

The bill changes the trust requirements of preneed contracts for funeral and cemetery goods and services. The bill also provides that:

- The buyer of a preneed burial contract may receive a refund at any time.
- Interest will be divided between the buyer and the seller in a certain manner.
- Sellers are required to disclose specific information and price lists to buyers.
- Sellers are required to meet specified reporting requirements.
- 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 effect any preneed contract entered into before October 1, 1997. The Office of Cemetery Oversight will sunset on July 1, 2007, subject to the evaluation and reestablishment provisions of the Maryland Program Evaluation Act.

State Revenues: It is estimated that there are approximately 1,400 cemeteries in the State, of which about 1,300 are religious or nonprofit and exempt from the majority of the bill's requirements. The Director of the Office of Cemetery Oversight is required to set registration and permit fees based on (1) the size, volume of business, type of services provided, and percentage of preneed contracts written by each applicant; and (2) the direct and indirect cost of maintaining the office. Because the bill establishes a two-year registration/permit term and may not collect any fees until fiscal 1999, it is estimated that the State will need to collect approximately \$285,300 in revenue in fiscal 1999.

Approximately \$2,800 of this special fund revenue will come from redirected general fund revenues in fiscal 1998 and each year thereafter. Under current law, the Secretary of State collects a \$25 fee for each service from the approximately 60 cemeteries that offer preneed and perpetual care contracts. The bill provides that the director of the Office of Cemetery Oversight will assess and collect all fees. All revenue generated by the office is to be deposited into the Cemetery Oversight Fund.

General fund revenues could also increase under the bill's monetary penalty provisions for those cases heard in District Court, depending upon the number of convictions and fines imposed. The director may also impose civil fines for specified violations and any revenues generated would be deposited into the general fund.

State Expenditures: It is anticipated that the Director of the Office of Cemetery Oversight will earn approximately \$60,000 annually (Administrator VII/grade 22). The director may hire a staff. It is estimated that the director will hire one Typist/Clerk, one part-time Investigator, and one part-time Attorney General. As a result, special fund expenditures will increase by \$133,100 in fiscal 1998. This figure reflects salaries, fringe benefits, one-time start-up costs, ongoing operating expenses, and a 90 day start-up delay. Although the director may not collect registration/permit fees until fiscal 1999, it is assumed that because

the office is to begin hearing complaints on January 1, 1998, the director and staff would be hired by October 1, 1997. Future year expenditures reflect (1) full salaries with 3.5% annual increases and 3% employee turnover; and (2) 2% annual increases in ongoing operating expenses.

The bill alters the provisions of law relating to preneed burial goods and services, which are currently regulated by the Secretary of State. Transferring these responsibilities to the Office of Cemetery Oversight will not substantively impact the activities of the Secretary's office and will not reduce expenditures.

General fund expenditures could also increase as a result of the bill's incarceration penalty depending upon the number of convictions and sentences imposed. However, since the maximum penalty is one year and violators are not usually incarcerated for noncompliance with business regulations, the Department of Fiscal Services (DFS) does not anticipate an increase in inmate costs as a result of this bill.

Local Revenues: Revenues could increase under the bill's penalty provision for those cases heard in circuit court, depending upon the number of convictions and fines imposed.

Local Expenditures: Expenditures could increase as a result of the bill's incarceration penalty depending upon the number of convictions and sentences imposed. However, since the maximum penalty is one year and violators are not usually incarcerated for noncompliance with business regulations, DFS does not anticipate an increase in inmate costs as a result of this bill.

Small Business Effect: There are approximately 100 cemeteries, 250 funeral homes, and 250 third-party burial goods sellers that would be affected by the bill's requirements. The majority of these death care establishments are small businesses.

Although there are 1,400 cemeteries in the State, it is estimated 1,300 are religious or nonprofit and exempt from the majority of the bill's provisions. Thus, the permit and disclosure requirements of the bill would create additional administrative requirements for approximately 100 of the cemeteries operating in the State. Approximately 60 of these are currently registered to offer preneed contracts with the Secretary of State. Altering the trusting requirements for the 60 cemeteries that offer preneed contracts may have a meaningful impact. Cemeteries are currently required to trust or escrow 55% of the preneed contract price to ensure that the actual merchandise cost is covered by the trust so that goods may be delivered at the time of need.

Non-trusted funds are used by the cemeterian to pay commissions to counselors that sell and market preneed services to the public. The amended bill requires that 100% of the price of the casket or casket vault be trusted and the remaining preneed goods be trusted at 55%. One hundred percent of preneed services must be trusted. The increased trusting requirements

may make it more difficult for cemeteries to market and offer preneed contracts. Small cemeteries may be unable to continue to offer preneed services. The impact is potentially meaningful because preneed contracts represent a significant source of cemetery income.

It is estimated that there are approximately 250 third-party sellers of burial goods who would also be affected by the bill. The bill specifies that those who provide burial goods are required to register with the director, pay the applicable fees, and provide a financial statement prepared by a certified public accountant as to the financial stability of the business. Thus, the bill would increase the expenditures and administrative requirements of these businesses. Also, third-party sellers are required to trust an amount equal to 100% of the selling price of caskets and casket vaults. Under current law, third-party sellers are not required to trust the funds from preneed burial goods. This would have a meaningful impact, to the extent that these trusting requirements restrict access to previously accessible operating funds.

There are 250 funeral homes in the State, the majority of which are small businesses, that would be 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 the interest earned on the trust.

The bill also requires cemeteries, funeral homes, and third-party sellers of burial goods that offer preneed contracts to submit a certification prepared by a certified public accountant as to the seller's compliance with the preneed requirements. If the certification requirement is similar to a certified review, the cost of the certificate for each establishment would range from approximately \$150 to \$1,000, depending upon the number of families served by the establishment. The certification requirement could be less stringent than a certified review, in which case, the cost to each establishment would be lower. This cost would be incurred each year. Cemeteries that offer preneed are subject to similar financial certification requirements under current law.

Information Source(s): Department of Labor, Licensing and Regulation; Department of Health and Mental Hygiene (State Board of Morticians unable to provide full response); Maryland Freestate Cemetery Association; Secretary of State; Department of Fiscal Services

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