

Department of Legislative Services
 Maryland General Assembly
 2004 Session

FISCAL AND POLICY NOTE

House Bill 138 (Delegates Boutin and Owings)
 Health and Government Operations

State Board of Morticians - Family Security Trust Fund

This bill creates the Family Security Trust Fund within the Maryland State Board of Morticians to reimburse consumers for losses related to pre-need contracts caused by the defalcation (embezzlement or failure to meet a promise or expectation) of a licensed funeral establishment or a licensed corporation. It requires the board to impose a maximum annual fee of \$100 for up to two years to support the fund and to specify the penalties for failing to pay the fee, which may include a reprimand, license suspension, or license revocation. The Legislative Auditor must audit the fund’s accounts and transactions.

Fiscal Summary

State Effect: Special fund revenues of \$33,700 would accrue to the Family Security Trust Fund in FY 2005 and FY 2006, assuming a stable number of licensees. Revenues beyond FY 2005 would depend upon the entry of new eligible licensees and the impact of private fund raising, which cannot be precisely estimated but is expected to be minimal. The Office of Legislative Audits reports auditing the fund could be absorbed within existing resources.

(in dollars)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
SF Revenue	\$33,700	\$33,700	-	-	-
Expenditure	\$0	\$0	\$0	\$0	\$0
Net Effect	\$33,700	\$33,700	\$0	\$0	\$0

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

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: The board must adopt regulations to implement the trust fund, provide for appointing fund trustees, and provide for the fund's operation. Trustees must receive fund contributions and manage the fund's assets.

The fund must reimburse a consumer for a loss caused by defalcation if the fund's trustees consider reimbursement proper and reasonable, the licensee caused the loss while under a contractual obligation to provide services to the consumer, and the consumer cannot recover the money under a bond. The trustees may enforce a restitution claim. Any unspent trust fund money may not be transferred or revert to the general fund but must remain in the trust fund.

Current Law: The board does not require any of its licensees to pay into a trust fund that is intended to reimburse consumer losses caused by the mishandling of consumer funds by a licensee.

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

Within 10 days after receiving a payment under a pre-need contract, the seller must deposit into an interest-bearing escrow or trust account: (1) 100% of the payment under the contract for services; and (2) an amount equal to 80% of the selling price of a casket or casket vault under the contract and 100% of the payment for all other goods under the contract.

A pre-need contract seller may not withdraw any money from the account unless services and merchandise have been provided. A pre-need contract is ended and a seller must refund the buyer all payments and interest if: (1) the buyer or his or her legal representative demands a refund in writing; (2) the seller's business is discontinued or sold; (3) the seller is unable to perform under the contract's terms and conditions; or (4) the buyer fails to pay the entire contract price before the beneficiary's death and the seller considers the contract void.

Background: Consumers often purchase what are called "pre-need" burial contracts well in advance of ill health or death to ease funeral preparations when the time comes for burial. This bill 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 required by law.

State Revenues: Special fund revenues of \$33,700 would accrue to the Family Security Trust Fund in fiscal 2005 and fiscal 2006. This reflects a \$100 fee charged to 337 licensees: 278 funeral homes and 59 corporate licensees. Future year revenues could increase to the extent that the number of licensees affected by this bill changes, interest accumulates, and any voluntary contributions are collected.

State Expenditures: Payouts from the Family Security Trust Fund cannot be reliably estimated at this time.

Additional Information

Prior Introductions: A similar bill, HB 756 of 2002, received an unfavorable report by the House Environmental Matters Committee.

Cross File: None.

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

Fiscal Note History: First Reader - February 2, 2004
mh/ljm

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