

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 720 (Chairman, Economic Matters Committee)
(By Request – Departmental – Labor, Licensing, and Regulation)

Economic Matters

Finance

Office of Cemetery Oversight - Investigative and Enforcement Power - Entities
Without Registrations or Permits

This departmental bill makes specified requirements of State law governing cemeteries and the sale of burial goods and services applicable to any person subject to the registration and permit requirements of the law. Specified enforcement authority of the director of the Office of Cemetery Oversight is also made applicable to any person subject to registration and permit requirements, or in some cases to any person. The bill requires an applicant for registration to be affiliated with a cemetery or burial goods business operated by a registrant or permit holder.

Fiscal Summary

State Effect: General fund revenues could increase due to extended applicability of civil penalties. Potential increase in special fund administrative expenditures.

Local Effect: None.

Small Business Effect: The Department of Labor, Licensing, and Regulation (DLLR) has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Bill Summary: Requirements that are generally applicable to registered ceterierians and permit holders that sell or offer to sell to the public a burial lot or right, and for which perpetual care of the burial lot or right is stated or implied, are made applicable to any

person subject to registration or permit requirements that has stated or implied that perpetual care will be provided. The applicability of requirements involving disclosures that must be made when entering into a contract with a consumer for the sale of burial goods and services and requirements that a survey of the cemetery plot and a price list be provided to the consumer is extended to apply to any person subject to the provisions of State law governing cemeteries and the sale of burial goods and services.

The director's authority to investigate and resolve complaints or to issue a reprimand is extended to apply to any person subject to registration and permit requirements. When the director has referred a complaint to arbitration, any person subject to registration and permit requirements must comply with the terms of the settlement. The director's authority to seek a restraining order in court to stop the operation of a cemetery or burial goods business, petition a court to appoint a receiver or trustee to take charge of the assets and operations of a cemetery or burial goods business, and to impose civil penalties is extended to apply to any person.

Current Law:

Perpetual Care

A registered cemeterian or permit holder that sells or offers to sell a burial lot or burial right in a cemetery at which perpetual care (not defined, but generally including maintenance, administration, supervision, and embellishment of the cemetery and its grounds, roads, and paths) is stated or implied is required to keep detailed records of all such sales and all money received. A certain percentage of the money received from the sale of rights of interment must be put in trust. The records of a registered cemeterian or permit holder and trustee may be inspected by the director, the Attorney General or an authorized representative of the Attorney General, and the State's Attorney for the county where the cemetery does business or where the cemetery is located. The registered cemeterian or permit holder must submit an annual report to the director regarding the assets, deposits, and expenditures of the trust.

Contracting

A registered cemeterian or permit holder, at the time of entering into a contract for the sale of burial goods and services must disclose to the buyer in writing: (1) the itemized cost for each service under the contract; (2) a list of services incidental to the burial that are not covered by the contract; (3) a statement regarding the cemetery's policy on the use of independent monument companies; and (4) the name, address, and telephone number for the Office of Cemetery Oversight. A buyer or prospective buyer must also be provided with a price list and when a contract includes a burial plot, a copy of the location survey of the plot.

Authority of the Director

The director may investigate and inspect the records and site of a registered cemeterian or permit holder. The director may also deny, suspend, or revoke the registration or permit of an individual or business entity, or issue a reprimand, for violations of the Act and regulations, and other specified reasons. The director may seek a restraining order in circuit court against the operation of any cemetery or burial goods business by a registered cemeterian or permit holder charged with a violation of State law governing cemeteries and the sale of burial goods and services that could result in the suspension or revocation of a registration or permit. The director may also petition a court to appoint a receiver or trustee to take charge of the assets and operations of a cemetery or burial goods business, or take any other action appropriate to protect the public interest. The director may assess up to a \$5,000 civil penalty per violation and \$500 per day for each day a violation continues uncorrected, in addition to issuing a reprimand or suspending or revoking a registration or permit.

The director must review and attempt to resolve complaints made to the office. If the director is unable to negotiate a settlement of the complaint, the director may, at the request of either party, refer the complaint to the Attorney General's Office or the Office of Administrative Hearings for binding arbitration. If neither party requests arbitration, the director may initiate an investigation, and upon finding a reasonable basis to believe there are grounds for disciplinary action, provide the person whom the complaint was filed against with notice and an opportunity for a hearing. The director may also dismiss the complaint upon not finding grounds for disciplinary action. Once a complaint has been referred to arbitration, the registered cemeterian or permit holder must comply with the terms of the settlement.

Registration and Permit Application Requirements

An individual must register with the office and a business entity must obtain a permit, in order to operate a cemetery or provide burial goods in the State. An individual applicant must be 18 years old, of good character and standing, and able to show that the cemetery or burial goods business they are affiliated with is financially stable. A business entity must designate a registered cemeterian or burial goods seller as a responsible party for each cemetery or burial goods business it owns; provide the name and address of each cemetery or burial goods business it owns; provide a list of officers, directors, members, partners, agents, and employees of the entity; and meet financial stability requirements.

Background: The Office of Cemetery Oversight underwent a sunset review in 2005 under the auspices of the Maryland Program Evaluation Act (State Government Art., § 8-400 *et seq.*). The report issued at the end of the review made a number of

recommendations, including that perpetual care requirements and consumer disclosure requirements be made applicable to *anyone* engaged in the sale of burial goods or services (and in the case of perpetual care requirements, where perpetual care was stated or implied in the sale or offer of a burial lot or right), rather than specifically to registered cemeterians and permit holders. The report determined that there were a significant number of cemeteries that were subject to registration and permit requirements, but were not registered or did not hold a permit, and that the numerous sections referencing “registered cemeterians or permit holders” had the unintended effect of exempting those noncompliant cemetery owners and operators from being required to take any action under those sections.

State Revenues: Extending the applicability of the civil penalty provisions could result in an increase in general fund revenues. The extent of any such increase cannot be reliably estimated.

State Expenditures: DLLR advises the bill’s changes will not have a significant fiscal or administrative impact on the office. However, because the bill extends the applicability of the law to nonregistered and nonpermit holding individuals and cemetery owners and extends the authority of the director, it is conceivable the office’s workload may increase, in which case an additional position could be requested through the budget process.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Labor, Licensing, and Regulation; Department of Legislative Services

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