

Department of Legislative Services
 Maryland General Assembly
 2007 Session

FISCAL AND POLICY NOTE

House Bill 1410 (Delegate Harrison)
 Health and Government Operations

State Board of Morticians - Family Security Trust Fund and Pre-Need Contract Funds

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, licensed corporation, or other licensed entity under specified conditions. The board must impose a maximum annual fee of \$100 for up to two years on establishments to capitalize the fund. The board also has to specify the penalties for failing to pay the fee, which may include a reprimand, license suspension, or license revocation.

The bill takes effect October 1, 2007 and applies prospectively.

Fiscal Summary

State Effect: Special fund revenues could increase by \$34,000 to capitalize the Family Security Trust Fund in FY 2008 and 2009, assuming a stable number of licensees and assessment of the maximum fee. Revenues beyond FY 2009 would depend upon the entry of new eligible licensees and interest earned on fund deposits. The Office of Legislative Audits could audit the fund using existing resources.

(in dollars)	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
SF Revenue	\$34,000	\$34,000	-	-	-
Expenditure	\$0	\$0	\$0	\$0	\$0
Net Effect	\$34,000	\$34,000	\$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. Any unspent trust funds may not revert to the general fund. The Legislative Auditor must audit the fund's accounts and transactions.

The bill specifies the documentation a banking institution or savings and loan association must receive before releasing any funds related to a pre-need contract. It also repeals the board's authority to audit a licensee that receives pre-need funds, places pre-need funds in a trust, or enters into a pre-need contract.

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: • 100% of the payment under the contract for services; and • 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: • the buyer or his or her legal representative demands a refund in writing; • the seller's business is discontinued or sold; • the seller is unable to perform under the contract's terms and conditions; or • the buyer fails to pay the entire contract price before the beneficiary's death and the seller considers the contract void.

The State Board of Morticians is one of approximately 70 entities currently subject to evaluation under the Maryland Program Evaluation Act (sunset law). The board is scheduled to terminate July 1, 2008.

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. The 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 as required by law.

Currently, the board does not conduct audits of a licensee that receives pre-need funds, places pre-need funds in a trust, or enters into a pre-need contract. Instead, the board reviews a certified public accountant’s report of pre-need accounts that it receives from the licensee to ensure that the accounts are in order. However, the board anticipates that in the future it may need to hire a consultant to conduct pre-need audits because of the increasing interest in pre-need contracts.

State Revenues: Although the bill does not specify which “establishments” would be required to pay the fee, this analysis assumes that the fee would be imposed upon the funeral establishments and corporations licensed by the board. Special fund revenues could increase by \$34,000 in fiscal 2008 and 2009. This reflects a \$100 fee charged to 340 licensees: 282 funeral establishments and 58 corporate licensees. Future year revenues could increase to the extent that the number of licensees affected by this bill changes and interest accumulates.

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

As the board currently does not contract with a consultant to audit the pre-need accounts, repealing its authority to do so would not affect the board’s finances.

Additional Information

Prior Introductions: A similar bill, HB 138 of 2004, had a hearing in the House Health and Government Operations Committee and was withdrawn. Another similar bill, HB 756 of 2002, received an unfavorable report from the House Environmental Matters Committee.

Cross File: None.

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

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