HB 1090

Department of Legislative Services

Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1090 (Delegates Morhaim and Harrison)
Health and Government Operations Education, Health, and Environmental Affairs

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

This bill creates a Family Security Trust Fund within the Maryland State Board of Morticians and Funeral Directors to reimburse consumers for losses that occur on or after January 1, 2010 related to provision of preneed contract services. To capitalize the fund, the board has to charge an annual fee of $375 to all funeral establishments. The bill also establishes a Family Security Trust Fund Advisory Committee as well a process for reviewing and handling notification of claims, conducting hearings, and making any payments from the trust fund. The bill specifies the documentation a banking institution or savings and loan association has to receive before releasing any funds related to a preneed contract; violation is considered an unfair or deceptive trade practice under the Maryland Consumer Protection Act and subject to civil and criminal penalties under MCPA.

The bill takes effect July 1, 2008 but provisions related to the Family Security Trust Fund, the advisory committee, and preened contracts take effect January 1, 2009.

Fiscal Summary

State Effect: Special fund revenues could increase by $119,600 in FY 2009 and future years to capitalize the Family Security Trust Fund, assuming fee assessment on a stable number of licensees. Any payouts from the fund cannot be reliably estimated at this time. Potential minimal increase in general fund revenues and expenditures due to the bill's criminal and civil penalty provisions.

(in dollars)	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
GF Revenue	-	-	-	-	-
SF Revenue	119,600	119,600	119,600	119,600	119,600
GF Expenditure	-	-	-	-	-
SF Expenditure	-	-	-	-	-
Net Effect	$119,600	$119,600	$119,600	$119,600	$119,600

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

Local Effect: Potential minimal increase in revenues and expenditures due to the bill's criminal and civil penalty provisions.

Small Business Effect: Minimal.

Analysis

Bill Summary: The Family Security Trust Fund is a special, nonlapsing fund and not liable to any other expenses or obligations of the board. Over a reasonable period of time, the fund has to be built to at least $1.0 million and then maintained at or above that level. The $375 annual fee charged by the board to all funeral establishments is a condition of licensure and licensure renewal.

The board has to deposit all money collected to the credit of the fund with the State Treasurer, and the State Treasurer can invest or reinvest money in the fund in the same way as money in the State Retirement and Pension System. Earnings have to be credited to the fund, and all accounting and financial reports related to the fund have to be publicly available in a timely manner. The fund has to be audited by the Legislative Auditor.

The board has to adopt regulations for the administration and claims procedures of the fund. In addition, the board has to provide the advisory committee with all appropriate fund information other than information involving pending claim matters as well as information about the outcome of all closed claims, including actual amounts of individual and total claim payments. The advisory committee has to provide counsel and advice to the board on any fund matters other than penalty individual claims.

Once the fund has a $1 million balance, the annual assessment against funeral establishment licensees is discontinued. However, if, after the fund has accumulated a balance of $1 million, the amount in the fund falls below $1 million, the board has to again assess each funeral establishment the appropriate amount to return the fund to the $1 million level over a reasonable time period.

A funeral establishment has to include in each sales contract it provides a written notice to the buyer that he or she can file a claim with the fund. Claims have to be based on an act or omission • in which the preneed money is obtained from a person by theft, embezzlement, false pretenses, or forgery; or • that constitutes fraud or misrepresentation. The amount recovered for any claim against the fund cannot exceed the actual monetary loss suffered and cannot include noneconomic, consequential, or punitive damages.

The bill repeals the requirement for sellers to annually file a report with the board that includes a certified public account's certification of compliance with existing preneed contract provisions.

If the board determines that a licensee is responsible for the act or omission that gave rise to a claim resulting in a payment from the fund, the board has to suspend the license. In addition, the licensee has to reimburse the fund in the amount paid, plus an annual interest rate of 6%. The board cannot reinstate a license suspended as a result of the bill until the person whose license was suspended repays the amount *and* interest in full and applies to the board for license reinstatement. If a licensee does not reimburse the fund, the board or the State Central Collection Unit can bring an action against the licensee. If the licensee *still* fails to make the required payment, the reimbursement amount and any accrued interest or cost are a lien in favor of the State on any real property of the person. Parameters on how the lien is handled and defined are specified in the bill.

By October 1, 2008, the board has to notify each banking institution and savings and loan association in the State about the documentation it must receive to release any funds related to a preneed 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 preneed contract. A licensed mortician or a licensed funeral director employed by a funeral establishment may execute preneed contracts on behalf of the funeral establishment.

Within 10 days after receiving a payment under a preneed 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 preneed contract seller may not withdraw any money from the account unless services and merchandise have been provided. A preneed 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 and Funeral Directors 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.

A person who violates any provision of the Maryland Morticians Act is guilty of a misdemeanor and on conviction is subject to a fine of up to $500 and/or imprisonment of up to one year.

The Consumer Protection Division within the Office of the Attorney General is responsible for pursuing unfair and deceptive trade practice claims under the Maryland Consumer Protection Act. Upon receiving a complaint, the division must determine whether there are "reasonable grounds" to believe that a violation of MCPA has occurred. Generally, if the division does find reasonable grounds that a violation has occurred, the division must seek to conciliate the complaint. The division may also issue cease and desist orders, or seek action in court, including an injunction or civil damages, to enforce MCPA. Violators of MCPA are subject to • civil penalties of $1,000 for the first violation and $5,000 for subsequent violations; and • criminal sanction as a misdemeanor, with a fine of up to $1,000 and/or imprisonment for up to one year.

Background: Consumers often purchase what are called "preneed" 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.

A 2005 Department of Legislative Services preliminary evaluation indicated that, based on the sharp increases in the number and proportion of complaints related to preneed contracts, detailed statutory provisions governing the execution of preneed contracts may not be fully understood by the sellers of those goods and services. However, such complaints have since dropped dramatically, in part due to enforcement of regulations. In addition, in October 2006, the board's Continuing Education Committee began authorizing licensees to earn preneed continuing education courses offered by approved program sponsors. The board is in the process of approving, internally, regulations for submission to the legislature's Administrative, Executive, and Legislative Review Committee. The proposed regulations would require that one of the 12 continuing education courses for renewal be devoted to preneed education.

DLS made two recommendations in its 2007 full evaluation of the board regarding preneed contracts. First, statute should be amended to require a disclosure statement in each preneed contract that clearly states that all funeral costs may not be covered under the preneed contract. Second, the board should develop a consumer pamphlet that may be used to educate family members upon the death of a loved one who has a preneed contract about the items covered under the contract and those not covered, specifically incidental and other fees that may be charged when the contract is executed.

State Fiscal Effect: Special fund revenues could increase by $119,625 in fiscal 2009 and future years until the fund balance reaches $1 million (approximately eight years). This estimate reflects a $375 fee charged to 319 funeral establishment licensees, and assumes a stable number of licensees in future years. While the number of licensees could increase in future years, a reliable estimate on any increase cannot be made at this time. Future year revenues could increase to the extent that the number of licensees affected by the bill changes and interest accumulates.

Payouts from the Family Security Trust Fund cannot be reliably estimated at this time. In addition, it is unknown how often litigation and liens would occur as a result of the bill.

In addition, the board advises that it could handle the bill's notification requirements to financial institutions with existing resources.

General fund expenditures could increase minimally as a result of the bill's incarceration penalty due to increased payments to counties for reimbursement of inmate costs and more people being committed to Division of Correction facilities. The number of people convicted under the bill is expected to be minimal.

Local Revenues: Revenues could increase minimally as a result of the bill's criminal and civil monetary penalty provisions from cases heard in circuit courts.

Local Expenditures: Expenditures could increase as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from $40 to $129 per inmate in fiscal 2009.

Additional Information

Prior Introductions: Similar bills were considered in the 2007, 2004, and 2002 sessions. HB 1410 of 2007 and HB 138 of 2004 were heard by the House Health and Government Operations Committee but were later withdrawn. HB 756 of 2002 received an unfavorable report from the House Environmental Matters Committee.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of Administrative Hearings, Department of Health and Mental Hygiene, Department of Legislative Services

Fiscal Note History: First Reader - March 5, 2008
mcp/ljm Revised - House Third Reader - March 31, 2008

Analysis by: Sarah K. Harvey

Direct Inquiries to:
(410) 946-5510
(301) 970-5510