

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 403

(Chair, Economic Matters Committee)(By Request -
Departmental - Labor, Licensing and Regulation)

Economic Matters

Finance

Office of Cemetery Oversight - Preneed Trust Account - Underfunding

This departmental bill gives the Director of the Office of Cemetery Oversight the statutory authority to require sellers of preneed goods and services to correct any underfunding, including interest, due to a preneed trust fund.

Fiscal Summary

State Effect: None. Any change in State activities does not materially affect State finances.

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

Current Law: The Office of Cemetery Oversight, which is housed within DLLR, was established by Chapter 675 of 1997. The office regulates cemeteries and associated burial goods sales under the Maryland Cemetery Act.

The sale of preneed goods and services is a common practice in the death care industry. "Preneed goods" are burial goods, including a casket, grave liner, memorial, monument, scroll, urn, vase, and vault, that are sold before a buyer's death. "Preneed services" are burial services, including the opening and closing of a grave, that are also sold before the

buyer's death. Preneed contracts allow individuals to pre-purchase these items and services before their death or the death of a loved one.

In addition to complying with the registration and permit requirements of the office, a registrant, permit holder, or other person that sells preneed goods or services is required to keep detailed records of all preneed burial contracts and all money received. Buyers may agree to pay for preneed contracts either in full or in installments. Under State law, once a buyer has paid half of the preneed contract price, the seller must put in trust the buyer's remaining payments (the second 50% of the total preneed contract price) as the seller receives the payments. Within 30 days of receiving the buyer's last payment, the seller must ensure that the trust is funded at 55% of the total contract price. DLLR advises that this level of funding ensures that "at-need" liquidity is available upon the death of the buyer or the buyer's loved one.

The director may deny, suspend, or revoke the registration or permit of an individual or business entity for violations of the Maryland Cemetery Act and regulations, or for other specified reasons.

If the director finds that a seller has violated the State law related to preneed contracts, the director may refer the matter to the State's Attorney for criminal prosecution or to the Attorney General for civil enforcement. The Attorney General may sue for, and a court may grant, injunctive relief, a civil penalty of up to \$5,000, or both. A person who establishes or operates a cemetery in violation of the Maryland Cemetery Act is guilty of a misdemeanor and is subject to a fine of up to \$1,000, imprisonment for up to one year, or both.

Background: Currently, if a seller fails to make the appropriate deposits, the director has no direct statutory authority to compel the seller to correct any underfunding, including interest, in the preneed trust account. Conversely, the director does have the authority to require the correction in cases where perpetual care trusts are underfunded. DLLR advises that the ability to compel the correction of underfunding for preneed accounts may limit the need for other available remedies, as mentioned above; thus, expenses related to court costs and the workload of the Attorney General or State's Attorney may be reduced. DLLR further advises that the Office of Cemetery Oversight encounters underfunding of preneed trust funds rarely – typically in less than five cases per year. The effect on State finances or operations is expected to be negligible.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene; Department of Labor, Licensing, and Regulation; Secretary of State; Department of Legislative Services

Fiscal Note History: First Reader - February 9, 2010
a/mcr

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Office of Cemetery Oversight – Preneed Trust Account -
Underfunding

BILL NUMBER: HB 403

PREPARED BY: Department of Labor, License and Regulation

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL
BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL
BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.