

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 775 (Senator Montgomery, *et al.*)

Education, Health, and Environmental Affairs
and Finance

**Funeral Establishments and Crematories - Pre-Need Contracts and Unclaimed
Cremains - Reporting and Audit Requirements**

This bill requires a licensed funeral establishment for which a pre-need contract is executed on or after October 1, 2014, to submit specified quarterly reports electronically to the State Board of Morticians and Funeral Directors. A buyer or beneficiary of a pre-need contract may request that the board conduct an audit of specified licensees. The board must conduct the audit within 30 days of the request. A pre-need contract must clearly state that the buyer or beneficiary of the pre-need contract may contact the board and request an audit of a licensee. The bill also requires crematories in possession of unclaimed cremains to submit specified quarterly reports electronically to either the board or the Office of Cemetery Oversight (OCO).

Fiscal Summary

State Effect: Any additional workload can be handled by the State Board of Morticians and Funeral Directors or the Office of Cemetery Oversight with existing budgeted resources.

Local Effect: None.

Small Business Effect: Minimal. Licensees and permit holders must submit quarterly reports as specified under the bill.

Analysis

Bill Summary: All reports required under the bill are not a public record and may be made available only to parties to the contract for pre-need or cremation services, heirs of the deceased, executors or administrators of the estate of the deceased, and courts of competent jurisdiction.

Pre-need Contracts

A licensed funeral establishment for which a pre-need contract is executed on or after October 1, 2014, must electronically submit quarterly reports to the board.

For each quarter in which a pre-need contract was executed that is not an installment contract, a report must include the funeral establishment's name and license number and the following information for each pre-need contract executed during the previous quarter: (1) the date of the pre-need contract; (2) the name and address of the buyers; (3) the entire amount of the contract; (4) the name and address of the banking institution or insurance company in which 100% of the money received on the contract has been deposited; (5) the account number; (6) the account registration title; (7) the name of the person for whom the account is established; and (8) the date the account was established.

For each quarter in which a pre-need contract was executed that is an installment contract or in which a funeral establishment received money for an installment contract, a report must include the information required above as well as indicate whether the entire amount of each contract has been paid and the total amount of money received by the funeral establishment and deposited in escrow or in trust for each contract.

For each quarter in which a pre-need contract executed on or after October 1, 2014, is fulfilled, the report must include (1) the funeral establishment's name and license number; (2) the name of the deceased; (3) the total amount of funeral goods and services provided and the amount refunded, if any, to the contract purchasers; (4) the date of the death; (5) the account number; and (6) the name of the banking institution or insurance company where the funds had been kept.

Unclaimed Cremains

If a licensed funeral establishment or a crematory has possession of cremains that have been unclaimed for 60 days or more, the licensed funeral establishment or holder of the permit for the business of operating the crematory must electronically submit a quarterly report to either the board or OCO that includes (1) the name on the license/permit and the license/permit number; (2) the name of the deceased; (3) the date of birth and date of death of the deceased; and (4) the contact information for the next of kin. A report may

not include cremains being held by a funeral establishment or crematory for a period of less than 270 days from the date of cremation at the written direction of the person authorized to arrange for the final disposition of the body.

The board and OCO must work collaboratively with the State Board of Anatomy to establish a process for the delivery of unclaimed cremains to the State Board of Anatomy for proper disposition.

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

Pre-need contracts must contain certain information, including (1) the name of each party and any beneficiary; (2) a description of any service or merchandise to be provided; (3) the total price of the services and merchandise agreed on; and (4) the method of payment. Pre-need contracts also must include a disclosure statement that clearly states that all funeral costs may not be covered under the contract and lists all funeral goods and services that are reasonably expected to be required at the time of need but are not included in the contract.

Within 10 days after receipt of payment, the seller of a pre-need contract must deposit payment into a specified account. A seller is prohibited from withdrawing funds from the account unless the services and merchandise have been provided as agreed in the contract. Unlawful withdrawal of funds from a pre-need account is an unfair or deceptive trade practice. A buyer may demand in writing a refund of all payments under specified circumstances. The buyer of a pre-need contract has the option, at any time, to establish an irrevocable trust to all or any portion of the payment made under the pre-need contract.

A pre-need contract is ended and a seller must return all payments and interest if (1) the buyer or legal representative demands a refund in writing; (2) the business of the seller is discontinued or sold; (3) the seller is unable to perform under the terms of the contract; or (4) the buyer fails to pay the entire contract price before the death of the beneficiary and the seller considers the contract void.

The board may conduct an audit of a licensee that receives pre-need funds, places pre-need funds in a trust, or enters into a pre-need contract.

A licensee must maintain a complete file of a cremation that includes the signature of the next of kin, person identifying the body or person responsible for disposition, time of death, and the date and time of cremation.

Background: Maryland crematories are regulated jointly by the board and OCO. OCO, which registers and regulates the cemetery and burial goods industry in the State, regulates independent (or freestanding) crematories, while the board regulates crematories associated with licensed funeral establishments. Due to a multitude of factors, including the relatively low cost of cremations and the current economic climate, cremations in the State are increasing at a rate of 1% or 2% every year. Approximately 44,000 deaths occurred in Maryland in 2009 and 33% of these deaths were disposed of by cremation.

Additional Information

Prior Introductions: None.

Cross File: HB 1239 (Delegate Cullison, *et al.*) - Health and Government Operations.

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

Fiscal Note History: First Reader - March 3, 2014
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