

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 835
Finance

(Senator Young)

Office of Cemetery Oversight - Cemeteries - Exemption From Regulation

This bill exempts a cemetery that was incorporated under Chapter 221 of 1852 and has been in continuous existence and operation for at least 150 years from registration and permitting requirements with the Office of Cemetery Oversight.

The bill takes effect June 1, 2014.

Fiscal Summary

State Effect: The bill does not materially affect State finances or operations.

Local Effect: None.

Small Business Effect: Meaningful for any cemetery exempted from registration and permitting requirements under the bill that is a small business.

Analysis

Current Law: Generally, an individual must register with the Office of Cemetery Oversight in the Department of Labor, Licensing, and Regulation before (1) engaging in the operation of a cemetery or crematory or (2) providing burial goods in the State. A corporation, limited liability company, or partnership must obtain a permit issued by the director of the office prior to engaging in the operation of a cemetery, crematory, or burial goods business in the State. Permit renewal fees are \$200 plus \$15 per sales contract of \$250 or more entered into within the past two fiscal years. Registration and permit fees accrue to the Cemetery Oversight Fund.

The registration and permitting requirements do not apply to:

- a person that owns and operates a bona fide religious nonprofit cemetery;
- a cemetery owned by a not-for-profit organization created before 1900 by an act of the General Assembly;
- a county, city, or municipality that owns and operates a cemetery in the State;
- a veterans' cemetery operated by the State; or
- a private family cemetery that does not conduct public sales.

The Maryland Cemetery Act also does not apply to (1) the operation of a funeral establishment, including the sale of burial goods in the ordinary course of the funeral establishment's business; (2) the operation or ownership of a crematory regulated by the State Board of Morticians and Funeral Directors; (3) the operation or ownership of a crematory or incinerator at a licensed medical facility or educational institution; or (4) a licensed funeral director or mortician acting within the scope of the individual's license.

Subject to specified limited exceptions, each sole proprietor, registered cemeterian, permit holder, or any other person subject to registration or permit requirements who sells or offers to sell to the public a burial lot or burial right in a cemetery as to which perpetual care is stated or implied must have a perpetual care trust fund.

A cemetery subject to perpetual care trust requirements must initially deposit \$10,000, \$25,000, or \$50,000 into a perpetual care trust, depending on the size of the cemetery and whether or not it sells burial goods. In addition, the cemetery must then deposit at least 10% of the actual selling price of each right of interment or, if the burial space is sold at a discount or at no cost, at least 10% of the imputed cost of the fair retail value and additional specified funds over time.

In general, a seller of preneed goods or services must put in trust the second 50% of the total preneed burial contract price as the seller receives payment from the buyer. Within 30 days after receipt of the last payment, the seller must deposit an additional amount to make the balance in the trust 55% of the contract price. For caskets or casket vaults sold under a preneed burial contract, the seller must deposit 80% of the selling price into the preneed trust.

Cemeteries that are not required to be registered by the office are not required to have perpetual care trust or preneed trust accounts.

Background: The Office of Cemetery Oversight was established by Chapter 675 of 1997. The office registers and regulates the cemetery and burial goods industry in the State under the leadership of a director. An advisory council serves as a source of

expertise for the director and provides insight into the needs of the business community and the consumers served by the industry. The Cemetery Oversight Fund was established as a continuing, nonlapsing special fund to cover the documented direct and indirect costs of fulfilling the statutory and regulatory duties of the office.

The Department of Legislative Services advises that the bill likely only applies to one cemetery – Mount Olivet Cemetery in Frederick, Maryland. The cemetery advertises itself as a community-owned, not-for-profit cemetery. The Office of Cemetery Oversight advises that Mount Olivet currently is not exempt from registration, permitting, perpetual care, or preneed trust requirements because it does not fall within the definition of a “bona fide religious nonprofit cemetery.” The office’s position is that a bona fide religious nonprofit cemetery is a cemetery owned by a particular religious corporation that operates the cemetery for the burial of members of a particular religion to the exclusion of the general public.

Exempting the Mount Olivet Cemetery from registration and permitting requirements also exempts the cemetery from the preneed and perpetual care trust requirements to which the cemetery is currently subject.

Chapter 221 of 1852 authorized the incorporation of cemeteries in the State, subject to certain conditions.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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