

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 321 (Delegate Cullison, *et al.*)
Health and Government Operations

**Funeral Establishments - Pre-Need Contracts - Reporting and Audit
Requirements**

This bill requires a licensed funeral establishment for which a pre-need contract is executed on or after October 1, 2015, 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.

Fiscal Summary

State Effect: Any additional workload can be handled by the State Board of Morticians and Funeral Directors with existing budgeted resources. Revenues are not affected.

Local Effect: None.

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

Analysis

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

A licensed funeral establishment for which a pre-need contract is executed on or after October 1, 2015, 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, 2015, 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.

Current Law/Background: A pre-need contract allows a consumer to purchase funeral goods and services for himself or herself or another beneficiary in advance at then-prevailing market prices. 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.

On March 1, 2013, the Attorney General issued a formal opinion that a money-trusted pre-need account must include the total price of the goods and services agreed upon; thus, the price terms of the contract must be guaranteed. Chapter 497 of 2014 specified the contents of a disclosure statement that must be included in a pre-need contract. The statement must clearly state that "not all charges that may be required to be paid at the time of need are listed in this contract" and inform a buyer whether the contract is a "guaranteed contract," a "guaranteed in part contract," or a "nonguaranteed contract." Additionally, a pre-need contract must include a line totaling the guaranteed amount paid and the amount for nonguaranteed items that are considered to be only a down payment

toward future total cost. Finally, a pre-need escrow or trust account may not be deemed an asset of the individual licensee or the licensed funeral establishment.

A pre-need contract 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; (4) the abovementioned disclosure statement and line totaling the guaranteed amount paid and the amount for nonguaranteed items that are considered to be only a down payment toward future cost; and (5) the method of payment. Depending on the type of pre-need contract, certain additional items must be listed in a format specified in statute.

Within 10 days after receipt of payment, the seller of a pre-need contract must deposit payment into a specified account. A pre-need escrow or trust account with a banking institution or savings and loan association must be established using the name, address, and Social Security number of the buyer and held in trust for the licensed funeral establishment. A buyer for whom a pre-need escrow or trust account is established must receive a statement regarding the escrow or trust account at least annually. This requirement may be satisfied by a statement issued by the banking institution or savings and loan association and sent to the buyer.

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.

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.

Additional Information

Prior Introductions: HB 1239 of 2014, a bill that addressed all of the provisions of this bill, as well as reporting and audit requirements for cremains, was heard by the House Health and Government Operations Committee but later withdrawn. Its cross file, SB 775, received an unfavorable report from the Senate Education, Health, and Environmental Affairs Committee.

Cross File: SB 159 (Senator Montgomery, *et al.*) - Education, Health, and Environmental Affairs.

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

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