Fiscal Note & Local Impact Statement

127 th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL: **Sub. S.B. 196** DATE: **December 18, 2008**

STATUS: **As Passed by the House** SPONSOR: **Sen. Schaffer**

LOCAL IMPACT STATEMENT REQUIRED: **No — Minimal cost**

CONTENTS: **Revises the Preneed Funeral Contract Law**

State Fiscal Highlights

STATE FUND	FY 2009 – FUTURE YEARS
Occupational Licensing and Regulatory Fund (Fund 4K90) – Board of Embalmers and Funeral Directors	
Revenues	Potential gain from court settlements
Expenditures	Potential increase in contract oversight costs

Note: The state fiscal year is July 1 through June 30. For example, FY 2009 is July 1, 2008 – June 30, 2009.

- The bill gives the Board of Embalmers and Funeral Directors the right to file a complaint with the court of common pleas if the Board has evidence that a funeral home or director is unable to complete its contractual obligation under any preneed funeral contract. If the court finds with the Board, the Board and its appointed receiver has the right to compensation via the assets of the funeral home.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2008 – FUTURE YEARS
Counties – Court of Common Pleas	
Revenues	Potential minimal gain in court costs and fines
Expenditures	Potential increase in criminal justice expenses

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- The penalty for a violation of the bill's provisions remains the same as for a violation of current law, a fourth-degree felony. However, due to the additional disclosures and regulations, it may be that there are more violations. If more violations are prosecuted, county criminal justice expenditures for prosecution, adjudication, and incarceration may increase. However, additional court costs and fine revenue collected as a result would offset to some degree any new expenses incurred.

Detailed Fiscal Analysis

Overview

The bill revises the Preneed Funeral Contract Law. Preneed funeral contracts are written agreements or contracts selling any funeral services, funeral goods, or any combination thereof to be used in connection with the funeral or final disposition of a dead human body, where payment for the goods or services is made either outright or on an installment basis, prior to the death of the person purchasing them or for whom they are purchased. Preneed funeral contracts may only be sold by a licensed funeral director. The Ohio Funeral Directors Association estimates that 30,000 new preneed contracts are entered into each year.

The Board of Embalmers and Funeral Directors receives and processes 2,400 preneed reports annually. These reports account for money that is trusted for funeral expenses but is not considered insurance. While the Board collects these reports, it has little authority to enforce regulations concerning the contracts. Typical issues the Board deals with are complaints from consumers that have misconceptions about preneed contracts, or instances in which funeral directors have deposited preneed funds into their business accounts instead of trust accounts as required by law.

In addition to the Board of Embalmers and Funeral Directors, which regulates funeral directors who sell the contracts, the preneed funeral contract business is regulated by two other state agencies and the Office of the Attorney General. The Department of Commerce's Division of Financial Institutions regulates state-chartered financial institutions where funeral directors place any trusted moneys received pursuant to contracts.[1] The Department of Insurance has a role in overseeing the issuance of limited preneed insurance licenses to insurance brokers. Finally, the Elder Protection Section of the Attorney General's Office assists local law enforcement agencies in preventing and prosecuting crimes against the elderly, including violations dealing with preneed funeral contracts. Under this arrangement, preneed funeral contracts can be difficult to regulate.

Changes made by the bill

To address this situation, the bill moves many existing provisions in section 1111.19 of the Revised Code to section 4717.31 of the Revised Code, under which the Board of Embalmers and Funeral Directors operates. The bill requires additional disclosures to the purchaser, a right to rescission within seven days, and includes regulations of preneed contracts that are funded by the purchase of an insurance policy (which is not referenced in current law). Full details of the changes are in the LSC bill analysis.

[1] The trustee may be either a financial institution or a natural person not required to be licensed to do trust business. In the latter case, the person must be bonded by a corporate surety bond in an amount not less than 100% of the funds in all of the preneed funeral contract trusts the person serves as trustee.

State fiscal effects – Board of Embalmers and Funeral Directors

All preneed funeral contracts (whether funded by a trust or through life insurance) will be under the supervision of the Board. However, the Ohio Department of Insurance will have jurisdiction over enforcing any preneed funeral contract law violations committed by insurance companies or insurance agents. The Board is also responsible for reviewing and recording reports on preneed funeral contracts provided to it by the various entities involved. These increased oversight responsibilities will likely generate some administrative costs for the Board.

If the Board has suspended the license of a funeral home or a funeral home director, and either are unable to complete their obligations under a preneed funeral contract, the Board may file a complaint with the court of common pleas in the county where the funeral home is located. If the court finds with the Board, the Board may appoint a receiver to liquidate the assets of the funeral home. It is assumed that all or a portion of those assets will be distributed to those individuals who had entered into a preneed funeral contract, upon which the funeral home defaulted. The Board is able to collect from these assets any costs that it might occur associated with the liquidation.

Local fiscal effects

Criminal penalty – potential for more violations

The penalty for a violation of the bill's provisions remains the same as for a violation of current law, a fourth-degree felony. However, due to the additional disclosures and regulations, it may be that there are more violations. If more violations are prosecuted, county criminal justice expenditures for prosecution, adjudication, and incarceration may increase. Any new costs, however, would likely be offset to some degree by court costs applied and fine revenue gained in these cases.

Healthcare review exemption

The bill exempts the requirement, enacted in S.B. 186 of the 127th General Assembly, that health insurers cover routine patient care administered during a cancer clinical trial from the Department of Insurance's health benefit review mandated in section 3901.71 of the Ohio Revised Code. This provision could result in some negligible savings for the Department, as the Department would no longer be responsible for the costs of administering this review.

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