

Fiscal Note & Local Impact Statement

127th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL: **S.B. 196** DATE: **May 13, 2008**
STATUS: **As Introduced** SPONSOR: **Sen. Schaffer**
LOCAL IMPACT STATEMENT REQUIRED: **No — Minimal cost**
CONTENTS: **Revises the Preneed Funeral Contract Law**

State Fiscal Highlights

STATE FUND	FY 2009	FY 2010	FUTURE YEARS
Occupational Licensing and Regulatory Fund (Fund 4K9) – Board of Embalmers and Funeral Directors			
Revenues	Potential gain of approximately \$150,000 in preneed contract fees	Potential gain of approximately \$150,000 in preneed contract fees	Potential gain of approximately \$150,000 in preneed contract fees annually
Expenditures	Potential increase in contract oversight costs	Potential increase in contract oversight costs	Potential increase in contract oversight costs
Preneed Recovery Fund (New Fund) – Board of Embalmers and Funeral Directors			
Revenues	Potential gain of approximately \$150,000 in preneed contract fees	Potential gain of approximately \$150,000 in preneed contract fees	Potential gain of \$150,000 from preneed contract fees annually
Expenditures	Potential increase for reimbursements to injured consumers	Potential increase for reimbursements to injured consumers	Potential increase for reimbursements to injured consumers

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

- The bill creates the Preneed Recovery Fund (New Fund), which is to be used to reimburse any purchaser of a preneed funeral contract who has incurred financial losses as a result of malfeasance, misfeasance, default, failure, or insolvency of any seller of a preneed funeral contract. The source of revenue for the new fund is a \$10 fee paid by the consumer when buying a preneed funeral contract. There are 30,000 such contracts purchased annually.
- Half of the fee (\$5) is to be deposited in the Preneed Recovery Fund to cover the cost of reimbursements to injured consumers, generating approximately \$150,000 annually. The other \$5 is to be used to administer the Preneed Recovery Fund and to monitor the preneed annual reports filed by sellers of preneed funeral contracts, generating another \$150,000 annually for the Occupational Licensing and Regulatory Fund (Fund 4K9), the Board of Embalmers and Funeral Directors' operating fund.
- If the balance in the Preneed Recovery Fund exceeds \$2 million at the end of the fiscal year, the bill reduces the fee to \$5 and requires that it be used exclusively for the administrative duties noted above.



Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2008	FY 2009	FUTURE YEARS
Counties			
Revenues	Potential minimal gain in court costs and fines	Potential minimal gain in court costs and fines	Potential minimal gain in court costs and fines
Expenditures	Potential increase in criminal justice expenses	Potential increase in criminal justice expenses	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

Preneed Recovery Fund – fee revenue

The bill creates the Preneed Recovery Fund, which is to be used to reimburse any purchaser of a preneed funeral contract who has incurred financial losses as a result of malfeasance, misfeasance, default, failure, or insolvency of any seller of a preneed funeral contract. Sellers would be required to collect a fee of \$10 from contract buyers, of which \$5 would be directed to the Preneed Recovery Fund to cover the cost of reimbursements to injured consumers. The other \$5 would be used by the Board to administer the Preneed Recovery Fund and to monitor annual reports filed by sellers of preneed funeral contracts.

If, as noted earlier, there are 30,000 contracts purchased annually statewide, then the Preneed Recovery Fund would collect \$150,000 annually (30,000 X \$5). The amounts collected for preneed contract oversight would also be \$150,000 annually, but would be deposited in the Occupational Licensing and Regulatory Fund (Fund 4K9), the Board's operating fund. Should the balance in the fund exceed \$2 million at the end of the fiscal year, the bill requires that the fee be reduced to \$5 and requires that it be used exclusively for the administrative duties noted above.

Increased payroll expenses

The Board of Embalmers and Funeral Directors reported that it would likely need to hire up to four additional staff members to collect and monitor the quarterly preneed reports submitted and administer the Recovery Fund. These employees would likely be an Administrative Assistant 3, an Investigator, a Secretary, and an Account Clerk 2. Estimates provided by the Board indicate that personnel costs for such employees would be approximately \$215,000 if the new employees were to start at the first step in pay range with fringe benefits calculated at 40% of wages. This suggests that, assuming \$150,000 in new annual preneed funeral contract fee revenue, the Board would only be able to fund three new employees from this source.

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.

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