

Department of Legislative Services
 Maryland General Assembly
 2003 Session

FISCAL AND POLICY NOTE

House Bill 162 (Delegates Boutin and Owings)
 Health and Government Operations

**State Board of Morticians - Creation of a Family Security Trust Fund -
 Elimination of Reporting Requirements**

This bill requires the State Board of Morticians (SBM) to adopt regulations that establish a Family Security Trust Fund (FSTF) as part of SBM.

The bill also repeals a provision requiring sellers of pre-need contracts to file an annual certified report to SBM.

Fiscal Summary

State Effect: Special fund revenues of \$59,200 would accrue to the trust fund in FY 2004 when funeral homes and funeral directors are assessed their license fees. Special fund revenues of \$12,000 would accrue in FY 2005 when corporations are assessed their license fees. Revenues beyond FY 2007 would depend upon interest accumulation to the fund and the entry of new eligible licensees.

(in dollars)	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
SF Revenue	\$59,200	\$12,000	\$0	\$0	\$0
Expenditure	\$0	\$0	\$0	\$0	\$0
Net Effect	\$59,200	\$12,000	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Minimal increase in costs to small businesses due to fees paid into FSTF. Potential meaningful additional costs to individual licensees if they are required to reimburse the fund for a particular claim.

Analysis

Bill Summary: The purpose of FSTF is to reimburse losses to consumers caused by failure of a licensee to return money held in trust for a consumer while the licensee was under a contractual obligation to provide services to the consumer. The bill requires funeral establishments, funeral directors, and corporation licensees to pay into FSTF. A licensee pays an annual fee for up to two years. The maximum annual fee that may be assessed by SBM is \$100. SBM is also required to specify penalties including reprimand, license suspension, and revocation for the failure to pay the FSTF fee.

SBM is responsible for appointing trustees to manage the assets of FSTF. Any unspent portion of FSTF may not be transferred to the State general fund but remains in FSTF. If the trustees consider reimbursement to a consumer proper and reasonable, then the trustees may reimburse a consumer. The trustees may require a licensee to provide restitution for any payments made due to the failure of the licensee to handle consumer funds appropriately. The trustees may only provide reimbursement for a loss caused while a licensee was under a contractual obligation to provide services to the consumer, and the consumer is unable to recover the money through a bond. The Legislative Auditor is required to audit the accounts and transactions of FSTF.

Current Law: Consumers are required to pursue claims against licensees through litigation to recover material loss resulting from negligence on the part of the licensee. SBM does not require any of its licensees to pay into a trust fund that is intended to reimburse consumer losses caused by the mishandling of consumer funds by a licensee.

Licensees of SBM pay licensure fees biannually.

Sellers are required to annually file a report with the board that includes: (1) a certification by a certified public accountant as to the seller's compliance with pre-need contract law and regulations; and (2) any other information the board deems necessary.

Background: Consumers often purchase what are called "pre-need" burial contracts well in advance of ill health or death to ease funeral preparations when the time comes for burial. Consumers contract with funeral establishments and place the funds in an escrow account. Morticians and funeral establishments are required to hold the funds in trust for the consumer until the time comes to execute the burial contract. Before execution of the burial contract, consumers have the right to transfer funds to a new contractor or decide not to do business with a particular establishment. The consumer is entitled to the funds for the pre-need contract and any interest that may have accrued while the account was in escrow. This bill provides some recourse to consumers who

find that a funeral establishment has mishandled their funds and does not provide the refund with interest required by law.

There is a Clients' Security Trust Fund of the Bar of Maryland. Lawyers pay a maximum annual fee of \$20 to maintain the fund. Lawyers that do not pay the fee are subject to disciplinary action. The fund may accept voluntary contributions, and its trustees may raise money on behalf of the fund. Proceeds from the fund may be used to reimburse a consumer if a lawyer has wrongfully converted funds held in trust for the consumer. Trustees may enforce a claim of restitution against lawyers who cause the trustees to make payments to consumers because of their wrongdoing.

State Revenues: This bill applies to funeral director, corporation, and funeral establishment licensees. The estimate assumes each eligible licensee is assessed the maximum fee of \$100 annually, or \$200 in a license cycle. Each licensee is assessed biannually. Funeral homes and funeral directors are assessed in even-numbered fiscal years; corporations are assessed in odd-numbered fiscal years. The number of corporation and funeral director licensees is fixed by statute. There are currently 264 licensed funeral homes, 32 licensed funeral directors, and 60 licensed corporations.

Revenues from funeral director licensees would be \$3,200 annually for two years, totaling \$6,400 when fees are assessed in fiscal 2004. Revenues from funeral home licensees would be \$26,400 annually for two years, totaling \$52,800 when fees are assessed in fiscal 2004. Revenues from the corporation licensees would be \$6,000 annually for two years, totaling \$12,000 when fees are assessed in fiscal 2005. The number of funeral establishment licensees has remained stable for the last several years. Future growth in this category is not expected. Revenues accruing in year one to FSTF would be \$59,200 (\$6,400 + \$52,800). Revenues accruing in year two are expected to be \$12,000. New revenues would vary depending on interest accumulation and restitution to FSTF for claims paid.

Additional Information

Prior Introductions: In 2002, HB 756, a similar bill, received an unfavorable report in the House Environmental Matters committee.

Cross File: None.

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

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