

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 1042 (Delegate Anderson, *et al.*)
Health and Government Operations

**State Board of Morticians and Funeral Directors - Funeral Establishments Owned
by a Single Owner - Pre-Need Trustee Licenses and Public Notification of Death**

This bill establishes procedures to be followed by funeral establishments owned by a single owner in the event of the owner's death, including public notification of the death, options for pre-need contract holders, and disposition of unclaimed cremains. A pre-need trustee license is established to ensure management of pre-need accounts held by a funeral establishment until its closing or sale. The required qualifications, term, and application procedures for an executor license are altered.

Fiscal Summary

State Effect: Since it is assumed that this bill will apply in a limited number of cases, the finances and operations of the State Board of Morticians and Funeral Directors are not materially affected.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Single-owner Funeral Establishments: Within 24 hours after the death of the single owner of a funeral establishment, a sign must be prominently posted by the supervising mortician on all public entrances to the funeral establishment notifying the public of the death of the owner. Within seven days after the death, the supervising mortician must (1) place an obituary for the deceased in the death notices section of a newspaper with

general circulation in the area of the funeral establishment; (2) record a message on the answering machine notifying the public of the death; and (3) place a notice to the public of the death on any website maintained by the funeral establishment.

Within 30 days after the death, the establishment's pre-need trustee must send a letter to all pre-need contract holders who have funds in trust with or an insurance product assigned to the funeral establishment stating the options available to the beneficiary. This letter must be returned within five days after receipt and include the full signature of the pre-need contract holder next to the option chosen. For any letter not returned within 30 days after the day the letter is dated, the pre-need funds of the beneficiary must be considered unclaimed property and the pre-need trustee must send the funds to unclaimed property in the Office of the Comptroller.

Within 45 days after the death, the pre-need trustee must send the board a list of (1) the names of all funded pre-need contract holders; (2) the amount of the funds entrusted to the funeral establishment through a bank account or insurance product; and (3) the location where the funds currently are maintained.

Within 60 days after the death, the pre-need trustee must send the board a list of all unclaimed cremains, including (1) the birth and death date of each cremated decedent; (2) the crematory certificate for each cremains; and (3) the contact information for the next of kin for each cremated decedent. The board must work collaboratively with the State Anatomy Board to ensure proper disposition of the cremains.

A pre-need trustee must submit to the board a digital image on removable media or on cloud-based storage that includes all signed pre-need contracts and any associated paperwork dating from the signing of the pre-need contract.

Pre-need Trustee License: To qualify for a pre-need trustee license, an applicant must (1) have been actively licensed in good standing by the board for at least five years while working in a facility that has accepted pre-need contracts; (2) provide proof to the board that such services have been provided by the applicant; and (3) have been appointed as a pre-need trustee by the holder of an executor license.

A pre-need license authorizes the license holder to manage pre-need accounts held by a funeral establishment until the closing or sale of the funeral establishment. A license is valid from the date of issuance until the date of expiration of the license of the executor who appointed the pre-need trustee. The supervising mortician in a funeral establishment may serve as a pre-need trustee licensee.

Executor License: A personal representative of a surviving spouse's estate (in addition to the current law provisions relating to a personal representative of a mortician's or funeral

director's estate) is eligible to apply for an executor license. All executor license application materials must be submitted to the board within 14 days (rather than 30 days) of the death of the licensee. All applicants for an executor license must submit the name of a licensed funeral director or mortician who has agreed to apply for a pre-need trust license. The term of an executor license is extended from six months to nine months and may be renewed for one additional three-month period if (1) a buyer for the funeral establishment has been identified but the sale not been completed or (2) a pre-need account audit has not been completed due to circumstances beyond the establishment's control.

Current Law: A Maryland funeral establishment must be owned and operated by a licensed mortician or funeral director or the holder of a surviving spouse license, corporation license, or executor license.

If a licensed mortician or funeral director dies, the surviving spouse may apply for a surviving spouse license, which allows the spouse to continue to operate the business and assist with the planning and conducting of funeral services for that business. A surviving spouse license may be renewed. Alternately, the legally appointed personal representative of a deceased mortician's or funeral director's estate may obtain an executor license to allow for continuation of the business until it is sold or the personal representative attains other licensure under the board. An executor license is valid for six months and cannot be renewed.

Only a licensed mortician, funeral director, or holder of a surviving spouse license may enter into pre-need contracts. A pre-need contract is ended and a seller must return all payments and interest if (1) the buyer or legal representative demands a refund in writing; (2) the business of the seller is discontinued or sold; (3) the seller is unable to perform under the terms of the contract; or (4) the buyer fails to pay the entire contract price before the death of the beneficiary and the seller considers the contract void. If a buyer elects to establish an irrevocable trust for a pre-need contract, the trust document must provide for the disposition of the trust funds if the business of the seller is discontinued or sold, the seller is unable to perform under the terms and conditions of the pre-need contract, and the buyer fails to pay the entire contract price before the death of the beneficiary and the seller considers the pre-need contract void. If a contract is voided, the buyer, a relative of the buyer, or a legal representative of the buyer must retain the right to appoint, as trustee of the irrevocable trust, a trustee other than the one originally designated in the contract. Although the contents of pre-need contracts are specified under current law, there is no requirement that sellers report how many contracts they have entered into, how much money they have accepted, or where that money is deposited.

Background: According to the board, at least one-third and as many as one-half of Maryland funeral establishments are owned by a single owner. Furthermore, the funeral industry has an aging licensee base; 27% of licensees are age 60 or older. Approximately five owners of funeral establishments die annually. In the event that an establishment is owned by a single owner, following the death of the owner consumers who have purchased pre-need contracts are often unable to receive a refund or even locate the money they have paid for the contract.

State Fiscal Effect: Special fund revenues for the State Board of Morticians increase from fees from the issuance of pre-need trustee licenses. According to the board, a fee of \$50 is proposed; however, the fee would only be applicable in a limited number of cases (the death of a single-owner funeral establishment); thus, board finances are not materially affected. Any additional workload to issue licenses or enforce the bill can be handled with existing board resources.

Additional Information

Prior Introductions: None.

Cross File: SB 648 (Senator Conway) - Education, Health, and Environmental Affairs.

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

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