



March 5, 2015

**SUMMARY OF ORIGINAL BILL:** Makes various changes to statute regulating cemeteries. Redefines “lawn crypts.” Removes a cemetery company’s obligation to pay the \$20 consumer protection fee on any contract that was subsequently cancelled prior to the renewal request. Deletes the option of a surety bond as a qualifying form of deposit in satisfying depository requirements with regards to an improvement care trust fund (ICTF). Requires any business which offers land for internment to meet all requirements regarding ICTFs. Authorizes a cemetery company to utilize any excess funds previously deposited into an ICTF from a now-cancelled contract to decrease a future liability as long as the credit to such liability is applied within 12 months from the contract’s cancellation date. Adds new required language to be included in a written trust agreement in association with an ICTF.

Increases, from \$0.50 to \$2.00, the amount that a cemetery company must deposit into its trust fund per square foot of land sold and exempts such deposits in cases where land was donated without charge for the purpose of interring the remains of a deceased person who was under 18 years of age at the time of death.

Authorizes the Commissioner of the Department of Commerce and Insurance (TDCI) to reduce or waive any penalties, fines, fees, or citations assessed against a cemetery company or its agents, owners, or operators. Reduces, from 12 consecutive months to 90 consecutive days, the period of time a purchaser may default in making payments for merchandise or services procured contractually with a cemetery company, before a cemetery company may cancel the contract and withdraw funds from the respective ICTF, crediting such withdrawal to the defaulting purchaser’s account as liquidated damages. Requires the Commissioner of TDCI or the Commissioner’s designee, in the audit of a cemetery company’s trust fund account, to provide a nonbinding, written report detailing initial findings of the audit no less than 14 days after the conclusion of such audit and also provide an examination letter detailing the official findings of the audit no less than 60 days after the conclusion of the audit.

**FISCAL IMPACT OF ORIGINAL BILL:**

Other Fiscal Impact – There will be a loss of citation or penalty revenue for any fees the Commissioner of TDCI chooses to waive; however, the determination to waive the fee will be on a case per case basis and the amount of decreased revenue cannot be quantified. TDCI does not maintain records of cancelled contracts; therefore, the loss of revenue to the Cemetery Consumer Protection Fund account for the decrease in consumer protection fee revenue cannot be quantified.

## IMPACT TO COMMERCE OF ORIGINAL BILL:

Other Impact - Cemetery companies may experience a reduction in expenses related to penalties, fines, fees, or citations that are no longer applicable or have been dismissed. These companies may also experience an increase in expenses related to required transactional deposits made into respective ICTFs. Due to numerous unknown factors, the net impact to cemetery companies is indeterminable.

**SUMMARY OF AMENDMENT (003620):** Deletes all language after the enacting clause. Makes various changes to statute regulating cemeteries. Redefines “lawn crypts.” Removes a cemetery company’s obligation to pay the \$20 consumer protection fee on any contract that was subsequently cancelled prior to the renewal request. Deletes the option of a surety bond as a qualifying form of deposit in satisfying depository requirements with regards to an improvement care trust fund (ICTF). Requires any entity or individual which offers land for internment to meet all requirements regarding ICTFs, regardless of whether the individual or entity is not organized, owning, and controlling cemetery lands or property nor conducting the business of a cemetery. Authorizes a cemetery company to utilize any excess funds previously deposited into an ICTF from a now-cancelled contract to decrease a future liability as long as the credit to such liability is applied within 12 months from the contract’s cancellation date. Adds new required language to be included in a written trust agreement in association with an ICTF.

Increases, from \$0.50 to \$1.00, the amount that a cemetery company must deposit into its trust fund per square foot of land sold and exempts such deposits in cases where land was donated without charge for the purpose of interring the remains of a deceased person who was under 18 years of age at the time of death.

Reduces, from 12 consecutive months to 90 consecutive days, the period of time a purchaser may default in making payments for merchandise or services procured contractually with a cemetery company, before a cemetery company may cancel the contract and withdraw funds from the respective ICTF, crediting such withdrawal to the defaulting purchaser’s account as liquidated damages. Requires the Commissioner of TDCI or the Commissioner’s designee, in the audit of a cemetery company’s trust fund account, pre-need merchandise and services trust account, or an audit pursuant to a violation, to provide a nonbinding, written report detailing initial findings of the audit no less than 14 days after the conclusion of such audit and also provide an examination letter detailing the official findings of the audit no less than 60 days after the conclusion of the audit.

## **FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:**

**Other Fiscal Impact –TDCI does not maintain records of cancelled cemetery contracts; therefore, the loss of revenue to the Cemetery Consumer Protection Fund resulting from allowing cemetery companies recapture fees previously paid into the fund, if a contract is subsequently cancelled, cannot be quantified**

**at the present time. By surveying the cemetery companies in Tennessee about this matter, TDCI may be able to provide a reasonable estimate of this impact in the future.**

Assumptions for the bill as amended:

- Pursuant to Tenn. Code Ann. § 46-1-105, the state general fund includes a cemetery consumer protection account. Each cemetery renewal registration is required to include a consumer protection fee of \$20 for every pre-need sales contract entered into during the preceding renewal period. Removing this obligation for contracts cancelled in the prior renewal period will result in a loss of revenue to the Cemetery Consumer Protection Account. Half of all revenues received into this account are used to fund the cemetery registration program and the other half is used to fund any receivership action initiated by the commissioner against a cemetery due to a deficiency in the cemetery's improvement care or pre-need merchandise and services trust fund.
- Based on information provided by TDCI, the potential decrease in the amount collected into the Cemetery Protection Account is unknown because the Department does not maintain records for cancelled contracts.
- Pursuant to Tenn. Code Ann. § 46-1-204, any cemetery company licensed in this state must establish and forever maintain an ICTF for each separate cemetery and for each geographical location of each cemetery owned and operated by the company, to provide for the improvement care and maintenance of the cemetery or the separate geographical location.
- Deposits into an ICTF are required to include a trust agreement which applies a specific rate or percentage to each deposit, respectively for transactions involving land, lawn crypts, mausoleums, crypts, niche, family mausoleums, memorials, land markers, monuments, or certain commodities.
- The funding mechanism as applied to land, not including lawn crypts, is currently \$0.50 per square foot of the land sold or 20 percent of the total sales price, whichever is greater. Increasing the average rate per square foot, from \$0.50 to \$1.00, will increase the amount a cemetery company will be required to deposit into its respective ICTF, assuming the total square footage of land sold multiplied by two dollars is greater than 20 percent of the total sales price of the land. This will have no impact on state government.
- With regards to a pre-need sales contract entered into by a cemetery company, in which the cemetery company is the seller, reduces the period of time, from 12 consecutive months to 90 consecutive days, in which the purchaser may default on payments due before the cemetery company may withdraw the entire balance of the credit from the respective pre-need merchandise and services trust fund. This will have no impact on state government.
- Based on information provided by TDCI, with regards to audits of trust fund accounts, TDCI can provide a nonbinding, written report of initial audit findings and a final written report of the official findings in the appropriate time periods, as outlined in this legislation without additional cost.

**IMPACT TO COMMERCE WITH PROPOSED AMENDMENT:**

**Other Impact - Cemetery companies may experience a reduction in expenses related to consumer protection fees that are no longer applicable due to cancelled contracts. These companies may also experience an increase in expenses related to required transactional deposits made into respective ICTFs. Due to numerous unknown factors, the net impact to cemetery companies is indeterminable.**

Assumptions for the bill as amended:

- Removing the consumer protection fee currently applicable to cemetery companies on cancelled contracts will result in a decrease in business expenses equal to the number of cancelled contracts in the prior renewal period multiplied by \$20. TDCI does not maintain records of cancelled contracts; therefore, this reduction in business expenses is unquantifiable.
- Cemetery companies may experience a reduction in business expenses equal to the funds deposited into its ICTF with regards to a pre-need sales contract that was subsequently cancelled; however, due to no records listing cancelled contracts, this amount is unquantifiable.
- Increasing the per square foot deposit rate on land sold by a cemetery company will result in an increase in business expenses and an increase in the fund balance of the respective ICTF. Pursuant to Tenn. Code Ann. § 46-1-204(e)(2), the net earnings of an ICTF may be used in improvement care to the cemetery or respective geographical location. Any amount of increase in an ICTF is assumed to be offset by the reduction in capital maintenance costs the cemetery company would have otherwise incurred.

## **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Jeffrey L. Spalding, Executive Director

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