

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 199 - SB 621

February 2, 2016

SUMMARY OF ORIGINAL BILL: Defines “funeral merchandise” relative to the *Tennessee Prepaid Funeral Benefits Act* as merchandise sold by a funeral establishment, cemetery, or any other individual, partnership, company, corporation, or association, intended for use in the final disposition of a dead human body. The definition includes caskets and containers designed to be used in the grave around the casket, commonly known as outer burial containers, burial vaults, grave boxes, and grave liners. Funeral merchandise does not include lawn crypts.

FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

IMPACT TO COMMERCE OF ORIGINAL BILL:

NOT SIGNIFICANT

SUMMARY OF AMENDMENT (011744): Deletes all language after the enacting clause. Makes various changes the *Tennessee Prepaid Funeral Benefits Act* and Title 46 of Tenn. Code Ann. relative to the financial management of cemeteries, consequently authorizing cemeteries to offer pre-need sales contracts that offer funeral merchandise in addition to cemetery merchandise. Defines “funeral merchandise” relative to the *Tennessee Prepaid Funeral Benefits Act* as merchandise sold by a funeral establishment, cemetery, or any other individual, partnership, company, corporation, or association, intended for use in the final disposition of a dead human body. The definition includes caskets and containers designed to be used in the grave around the casket, commonly known as urns, urn vaults, outer burial containers, burial vaults, grave boxes, and grave liners.

Authorizes a cemetery upon approval by the Commissioner of the Department of Commerce and Insurance to sell a pre-need funeral contract for procurement of both funeral merchandise and cemetery merchandise. Such authorization is granted if the Commissioner issues the contract for general use or does not provide disapproval of the contract within 60 days from the time such approval request was submitted. The Commissioner holds authority to disapprove a previously approved contract.

All moneys received by a cemetery through the sale of a contract offering cemetery merchandise, funeral merchandise, or a combination of both, must be deposited into a pre-need merchandise and services trust account or a pre-need trust account, in accordance with the *Tennessee Prepaid Funeral Benefits Act*. In addition, the cemetery is required to submit a price list to the Commissioner for the funeral merchandise. Establishes that any pre-need sales contract

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offering both cemetery and funeral merchandise requires only one \$20 consumer protection fee. Currently, pursuant to Tenn. Code Ann. § 62-5-414(h)-(j), every pre-need funeral sales contract sold must be accompanied by a \$20 deposit into the pre-need funeral consumer protection fund or “pre-need funeral account.” Pursuant to Tenn. Code Ann. § 46-1-105 (c), every pre-need sales contract entered into by a cemetery company must be accompanied by a \$20 deposit into the cemetery consumer protection fund. Such deposits are held by the Commissioner of the Department of Commerce and Insurance and are invested by the State Treasurer.

Reduces the period of time from 60 days of receipt to the twentieth day of the month following the month of receipt by which a cemetery must deposit moneys received from the sale of a pre-need sales contract into a special General Fund pre-need trust account in a state or national bank. Such deposit amount must be equal to the procurement costs of the merchandise and services offered in the contract. Deletes requirement that such deposit be equal to the procurement costs of the merchandise and services plus 20 percent of such procurement costs. Establishes that a pre-need seller offering a pre-need funeral contract, in which the buyer purchases such contract through trust, must deposit all funds with the trustee of a pre-need funeral trust fund by the twentieth day of the month following the month of receipt. Authorizes the Commissioner of the Department of Commerce and Insurance, upon finding that a pre-need seller has failed to appropriately and timely deposit into any trust, to require that deposits be made within a shorter time frame for a period not more than 2 years after finding the violation.

Abolishes current funeral contract trust guidelines requiring a trustee of a pre-need funeral contract to invest at least 50 percent of moneys received from the sale of a pre-need funeral contract in demand deposits, savings accounts, certificates of deposits, or other accounts issued by financial institutions. Authorizes the trustee to invest such funds as the trustee deems fit.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

**Decrease State Revenue - \$1,300/Burial Services Division/FY16-17
\$1,300/Pre-Need Funeral Account/FY16-17**

**\$2,600/Burial Services Division/FY17-18 and Subsequent Years
\$2,600/Pre-Need Funeral Account/FY17-18 and Subsequent Years**

Assumptions for the bill as amended:

- Effective date of January 1, 2017.
- Currently, a cemetery offering a pre-need sales contract cannot offer funeral merchandise and cemetery merchandise in the same pre-need contract.
- According to the Department of Commerce and Insurance (TDCI), authorizing cemeteries to sell pre-need contracts for both funeral and cemetery merchandise will require that auditors in the Burial Services Division receive additional training to adequately examine contracts offering combinations of funeral and cemetery merchandise.

- Burial Service auditors can be trained during regular work hours to adequately examine the financial reports of cemeteries offering contracts for both funeral and cemetery contracts.
- A consumer protection fee received in conjunction with the sale of a pre-need sales contract offering both funeral and cemetery merchandise will be deposited into the cemetery consumer protection fund. In the absence of this bill, a pre-need funeral contract would also require a separate \$20 consumer protection fee be deposited into the pre-need funeral account.
- There will be a decrease in state revenue from a loss in consumer protections fees allocated to the pre-need funeral account.
- According to TDCI, the Department reviewed pre-need sales contracts for funeral merchandise and cemetery merchandise for the past two fiscal years to identify the number of persons who purchased both a pre-need funeral contract and a pre-need cemetery contract. TDCI determined an average of \$5,200 annually submitted to both consumer protection funds.
- Public Chapter 427 of 2015 authorized the Commissioner of Finance and Administration to make transfers from the pre-need funeral account to the Burial Service Program in the Division of Regulatory Boards [Section 8, Item 36 (f)].
- According to TDCI, there has been a 50 percent transfer of fee revenue from the pre-need funeral account to the Burial Services Program; therefore, any decrease in consumer protection fees to the pre-need funeral account will result in a subsequent decrease in revenue transferred to the Burial Service Program.
- A recurring decrease in state revenue to the pre-need funeral account of \$2,600 (\$5,200 x 50%) and the Burial Services Program of \$2,600 (\$5,200 x 50%).
- This act will take effect January 1, 2017; therefore, the impact to the pre-need funeral account and the Burial Services Division in FY16-17 will be 50 percent of the estimated recurring impact. Therefore, the decreases in revenue to each will be \$1,300 in FY16-17.
- Rulemaking required by this legislation can be performed by existing Burial Services Division staff and will not result in a significant increase in state expenditures.
- Pursuant to Tenn. Code Ann. § 4-29-121, all regulatory boards are required to be self-supporting over any two- year period. The Burial Services Division experienced a surplus of \$265,367 in FY13-14, a surplus of \$279,862 in FY14-15, and a cumulative reserve balance of \$641,626 on June 30, 2015.

IMPACT TO COMMERCE WITH PROPOSED AMENDMENT:

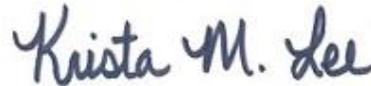
**Decrease Business Expenses - \$2,600/FY16-17
\$5,200/FY17-18 and Subsequent Years**

Assumptions for the bill as amended:

- Cemeteries in this state will experience a decrease in expenses equal to the decrease in consumer protection fees paid to the pre-need funeral account.
- A recurring decrease in business expenses of \$5,200 beginning in FY17-18; and a decrease in business expenses for FY16-17 is estimated to be \$2,600.
- Any increase in business expenses for pre-need sellers and trustees to file an annual report with the Commissioner, including a summary of information contained in the accounts, books, and records, and any other information required by the Commissioner, is estimated to be not significant.

CERTIFICATION:

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



Krista M. Lee, Executive Director

/jdb