

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0404-04
Bill No.: SCS for SB 1
Subject: Banks and Financial Institutions; Funerals and Funeral Directors; Insurance - Life; Licenses - Professional
Type: Original
Date: February 6, 2009

Bill Summary: Establishes licensing and contract requirements for preneed funeral contract sellers, providers, and seller agents.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
General Revenue	(Unknown less than \$100,000)	(Unknown less than \$100,000)	(Unknown less than \$100,000)
Total Estimated Net Effect on General Revenue Fund	(Unknown less than \$100,000)	(Unknown less than \$100,000)	(Unknown less than \$100,000)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
Board of Embalmers and Funeral Directors'	\$91,481	\$59,799	\$41,970
Other PR	\$24,172	\$25,396	\$26,681
Total Estimated Net Effect on Other State Funds	\$115,653	\$85,195	\$68,651

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 10 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
Board of Embalmers and Funeral Directors'	5	5	5
Total Estimated Net Effect on FTE	5	5	5

- Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).
- Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2010	FY 2011	FY 2012
Local Government	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of State Courts Administrator** assume the proposal will not fiscally impact their organization.

Officials from the **Office of Administration - Administrative Hearing Commission (AHC)** anticipate this legislation will not significantly alter its caseload. However, if other similar proposals also pass, there are more cases, or the cases are more complex, there could be a fiscal impact.

Officials from the **Department of Corrections (DOC)** state the DOC cannot predict the number of new commitments which may result from the creation of the offense(s) outlined in this proposal. An increase in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court. If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase in direct offender costs either through incarceration (FY 08 average annual cost of \$5,709 per inmate) or through supervision provided by the Board of Probation and Parole (FY 08 average annual cost of \$902 per offender).

Supervision by the DOC through probation or incarceration would result in additional unknown costs to the department. Eighteen (18) persons would have to be incarcerated per fiscal year for costs to exceed \$100,000 annually. Due to the narrow scope of this new crime, the DOC assumes the impact would be less than \$100,000 per year for the DOC.

Officials from the **Office of Attorney General (AGO)** state they would require 1 Assistant Attorney General (AAG) II to assist with rulemaking duties and potential new litigation. If there is a significant increase in claims over time, the AGO may seek appropriations to adequately represent the Board. The AGO estimates total costs to the General Revenue Fund of \$65,617 in FY 10; \$79,449 in FY 11; and \$81,830 in FY 12.

Oversight assumes the Department of Insurance, Financial Institutions and Professional Registration will reimburse the AGO for any costs incurred.

Officials from the **Department of Insurance, Financial Institutions and Professional Registration (DIFP)** estimate that there will be approximately 115 new preneed seller, preneed provider, and preneed agent applications in FY 10 generating fee revenue of \$11,200. It is anticipated there will be approximately 1,003 license renewals among these categories

ASSUMPTION (continued)

generating fee revenue of \$132,300. In addition, the DIFP estimates that approximately 17,000 contracts sold annually (\$40 fee per contract) will generate an additional \$680,000 in revenue for FY 10. Therefore, the DIFP estimates FY 10 total fee revenue of \$823,500 (\$11,200 new applications + \$132,300 renewals + \$680,000 contract reporting fees). FY 11 and FY 12 estimates for all categories of new applications, renewals, and contracts sold is \$568,500 annually.

The legislation allows the Board to establish fees to cover the expenses of administering Chapters 333 and 436 and conduct investigations, examinations of books and records and audits. Due to recent issues in the preneed industry and the state of the national economy, Missouri may see a significant decrease in the number of preneed contracts that will be sold. Therefore, to cover the expenses necessary to administer this chapter, the Board anticipates additional fees may be needed to cover these additional expenses.

Additionally, the Board anticipates incurring additional expenses during the first year of implementation due to the continued use of contract auditing services and six (6) months of FTE expenses. The Board is concerned with the uncertainty of the number of contracts that will be sold during the first year of implementation or the number of complaint driven audits that will be necessary. Therefore, reserve funding is included in this fiscal note. However, should the expenses of the first year be less than anticipated, the Board expects that reporting fees could be lowered during the second year of implementation.

DIFP officials state the Board anticipates contract services will continue to be utilized for the first year to allow the Board to promulgate any necessary rules, hire staff and provide staff with ample training to assume the responsibilities of their positions. The Board anticipates hiring the following personnel: 1 FTE Accounting Specialist II (\$38,700 annually) to oversee Chapter 436 investigations, examine books and records and audits, be the point of contact with the auditor to provide an analysis of audit findings and compliance, and monitor Chapter 436 throughout the review/referral process; 2 FTE Insurance Financial Analysts II (\$35,952 each annually) to conduct examination of books, records, and audits, review and analyze operational and financial data, assess compliance with statutory and regulatory requirements, recommend audit priorities, and respond to inquiries related to licensure laws, rules, and regulations; 1 FTE Licensure Technician II (\$25,380 annually) to provide technical support, process applications for licensure, and respond to inquiries related to licensure law and/or rules and regulations; and 1 FTE Investigator II (\$35,952 annually) to conduct Chapter 436 investigations.

ASSUMPTION (continued)

ENFORCEMENT ACTIVITIES:

Based on actual numbers from FY 06-FY 08, the Board estimates an average of 34 investigations, 4 examinations of books and records, and 73 audits will be conducted annually.

TRAINING:

The Board anticipates the Accounting Specialist II and the Financial Analysts will require in-depth training on an annual basis related to FDIC, General Accounting Practices (GAP), Investment Standards and other areas deemed relevant by the Board. The Board anticipates each employee will attend three (3) courses per year with each course costing \$500.

BOARD MEETINGS:

The Board estimates additional board meetings may be needed during the first year of implementation of the bill. Therefore, for the purposes of this fiscal note, expenses for an additional four (4) meetings of the board are being calculated. Members of the board receive a per diem of \$50 per day and \$209 for travel expenses which includes mileage, hotel, and meal reimbursement.

LEGAL EXPENSES:

The Board anticipates approximately \$86,254 in costs associated with the AGO's office for review of investigations, review of audit cases, and litigation. The Board also anticipates \$24,172 in Division of Professional Registration legal services, \$70,000 for Administrative Hearing expenses, and \$12,000 in expert witness fees (6 cases X \$2,000 per case).

Officials from the **Office of Secretary of State (SOS) - Division of Business Services** and **Administrative Rules Division** did not respond to our request for a statement of fiscal impact. However, in response to the previous version of this proposal, the SOS - Division of Business Services assumed the proposal would have no fiscal impact and officials from the SOS - Administrative Rules Division stated the fiscal impact for this proposal is less than \$2,500. The SOS realizes this is a small amount and does not expect that additional funding would be required to meet these costs. The SOS recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of that the office can sustain within its core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

ASSUMPTION (continued)

Officials from the **Office of Prosecution Services** did not respond to our request for a statement of fiscal impact. However, based on experience with legislation containing similar provisions, **Oversight** assumes any increase in the number of cases referred for criminal prosecution will have a fiscal impact on County Prosecutors. However, it is not possible to estimate the number of additional cases that may be referred to County Prosecutors. Therefore, **Oversight** assumes an unknown fiscal impact to County Prosecutors.

This proposal will result in an increase in total state revenue.

<u>FISCAL IMPACT - State Government</u>	FY 2010 (10 Mo.)	FY 2011	FY 2012
GENERAL REVENUE FUND			
<u>Costs - Department of Corrections</u>			
Increase in commitment costs	<u>(Unknown less than \$100,000)</u>	<u>(Unknown less than \$100,000)</u>	<u>(Unknown less than \$100,000)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(Unknown less than \$100,000)</u>	<u>(Unknown less than \$100,000)</u>	<u>(Unknown less than \$100,000)</u>

<u>FISCAL IMPACT - State Government</u>	FY 2010 (10 Mo.)	FY 2011	FY 2012
BOARD OF EMBALMERS AND FUNERAL DIRECTORS' FUND			
<u>Income - DIFP</u>			
License and renewal fees	\$823,500	\$568,500	\$568,500
<u>Expenses - DIFP</u>			
Personal service costs (5.0 FTE)	(\$88,117)	(\$180,640)	(\$185,156)
Fringe benefits	(\$42,851)	(\$87,845)	(\$90,041)
Equipment and expense	(\$420,085)	(\$50,656)	(\$52,176)
AGO, AHC, and DIFP legal costs	<u>(\$180,966)</u>	<u>(\$189,560)</u>	<u>(\$199,157)</u>
Total <u>Expenses - DIFP</u>	<u>(\$732,019)</u>	<u>(\$508,701)</u>	<u>(\$526,530)</u>
FTE Change - DIFP	5.0 FTE	5.0 FTE	5.0 FTE
ESTIMATED NET EFFECT ON BOARD OF EMBALMERS AND FUNERAL DIRECTORS' FUND			
	<u>\$91,481</u>	<u>\$59,799</u>	<u>\$41,970</u>
Estimated Net FTE Change for Board of Embalmers and Funeral Directors' Fund	5.0 FTE	5.0 FTE	5.0 FTE
OTHER PR FUNDS			
<u>Savings - DIFP</u>			
Reduction in legal fees allocated to other Professional Registration boards	<u>\$24,172</u>	<u>\$25,396</u>	<u>\$26,681</u>
ESTIMATED NET EFFECT ON OTHER PR FUNDS			
	<u>\$24,172</u>	<u>\$25,396</u>	<u>\$26,681</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2010 (10 Mo.)	FY 2011	FY 2012
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**LOCAL GOVERNMENTS - COUNTY
PROSECUTORS**

Costs - County Prosecutors

Increase in criminal prosecutions	<u>\$0 to</u> <u>(Unknown)</u>	<u>\$0 to</u> <u>(Unknown)</u>	<u>\$0 to</u> <u>(Unknown)</u>
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**ESTIMATED NET EFFECT ON
LOCAL GOVERNMENTS - COUNTY
PROSECUTORS**

	<u>\$0 to</u> <u>(Unknown)</u>	<u>\$0 to</u> <u>(Unknown)</u>	<u>\$0 to</u> <u>(Unknown)</u>
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FISCAL IMPACT - Small Business

This proposal will impact preneed providers and sellers with increased reporting fees and could potentially increase their administrative costs.

FISCAL DESCRIPTION

This proposal establishes licensing requirements for preneed funeral contract sellers, providers, and seller agents and establishes requirements for all preneed contracts. All preneed providers and sellers shall be registered to conduct business in Missouri. Sellers shall also establish a trust in order to sell trust funded preneed contracts. Preneed agents selling contracts on behalf of a seller shall have successfully passed a Missouri law examination. Persons shall not be designated as a preneed provider unless they have a written contractual agreement with the seller stating as such.

The proposal enumerates provisions required to be included in all preneed contracts. (Section 436.425)

Sellers, providers, and preneed agents shall not receive or collect from the purchaser of an insurance funded preneed contract, any amount in excess of what is required to pay the premiums on the insurance policy as assessed or required by the insurer as premium payments for the insurance policy. Sellers shall not collect any fees from the purchaser of an insurance funded preneed contract, other than those fees assessed by the insurer. Term life insurance policies shall not be used to fund a preneed contract and providers, sellers, and agents shall not procure or accept a loan against an insurance contract used to fund a preneed contract. (Section 436.450)

FISCAL DESCRIPTION (continued)

Sellers and purchasers may agree to use a joint account to fund the contract. A separate joint account shall be established for each preneed contract. Purchasers may cancel a revocable contract any time without cause. Sellers may cancel the contract if the purchaser is in default for 60 days. Purchasers may select a different provider and shall not be assessed any fee for doing so.

Sellers shall file annual reports with the board that includes various information relating to the types of contracts they are holding and the details relating to the trusts and joint accounts holding assets for the contracts and the insurance contracts used to fund the contracts. (Section 436.460)

The board shall have the authority to conduct random inspections, investigations, and audits of preneed providers, sellers and agents, and trust and joint accounts holding assets to fund preneed contracts. Financial examinations shall be conducted at least once every five years. The Attorney General shall have concurrent jurisdiction in conducting inspections, investigations, and audits. (Section 436.470)

Those who knowingly and willfully violate any of the aforementioned provisions is guilty of a Class C felony. (Section 436.485)

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

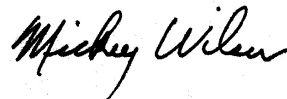
SOURCES OF INFORMATION

HW-C:LR:OD

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Office of Attorney General
Office of Administration -
 Administrative Hearing Commission
Office of State Courts Administrator
Department of Insurance, Financial Institutions and Professional Registration
Department of Corrections

**NOT RESPONDING: Office of Prosecution Services, Office of Secretary of State (SOS) -
Division of Business Services, and SOS - Administrative Rules Division**



Mickey Wilson, CPA
Director
February 6, 2009