

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 0602S.01I  
 Bill No.: SB 32  
 Subject: Boards, Commissions, Committees, and Councils; Civil Penalties; Department of Commerce and Insurance; Contracts and Contractors; Consumer Protection; Elderly; Funerals and Funeral Directors  
 Type: Original  
 Date: February 17, 2023

Bill Summary: This proposal authorizes the Department of Commerce and Insurance to conduct financial examinations regarding preneed funeral contracts under certain circumstances.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
<b>Total Estimated Net Effect on General Revenue</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2024	FY 2025	FY 2026
Board of Embalmers and Funeral Directors	(\$400,000)	(\$400,000)	(\$400,000)
Preneed Audit Fund	Could exceed \$200,000	Could exceed \$200,000	Could exceed \$200,000
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>Less than (\$200,000)</b>	<b>Less than (\$200,000)</b>	<b>Less than (\$200,000)</b>

Numbers within parentheses: () indicate costs or losses.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
<b>FUND AFFECTED</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>
Board of Embalmers and Funeral Directors Fund	2 FTE	2 FTE	2 FTE
<b>Total Estimated Net Effect on FTE</b>	<b>2 FTE</b>	<b>2 FTE</b>	<b>2 FTE</b>

- Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.
- Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>
<b>Local Government</b>	<b>\$0 to Unknown</b>	<b>\$0 to Unknown</b>	<b>\$0 to Unknown</b>

## FISCAL ANALYSIS

### ASSUMPTION

#### Sections 333.320 – 436.470 – Preneed Contract Provisions

Officials from the **Department of Commerce and Insurance (DCI)** state the bill adds additional authority and regulatory responsibilities to the department. The bill would require the State Board of Embalmers and Funeral Directors to forward to the department each seller's preliminary financial examination report where an exception notes either the seller or any agent has failed to deposit in the aggregate \$25,000 or more in consumer funds to a preneed trust, insurance, or joint bank accounts, or where a preneed trustee has made distributions in the aggregate of \$25,000 or more that may not be authorized by Chapter 436. In addition, the bill would require the board to provide to the department monthly updates of the progress made by the seller to address the examination exceptions and correct the preneed funding deficiencies.

Under new 436.470.5, on request of the Board or in the department's own discretion, the department would be authorized to designate one of its offices or agencies to assume authority over the seller's financial examination and begin a more extensive audit of the seller's compliance with chapter 436. It is assumed that "offices or agencies" includes a division of the department. It is also assumed that when the Board or the department, in its own discretion, designates one of its offices or agencies to assume authority over the seller's examination that individuals assigned with the responsibility of conducting work on the financial examination will possess the qualifications to conduct a forensic audit.

The bill would also create the Preneed Audit Fund. Use of the fund would include use by the department division designee conducting an audit, investigation, or financial examination under section 436.470 to pay for related expenses. However, no additional funding is included in this bill to address the cost of the additional personnel service expense involved in the oversight required by the department. The estimated revenue from the annual preneed renewal varies as it is based on the number of preneed contracts written annually by preneed sellers but is anticipated to be \$400,000 annually. The full extent of the legislation's cost would depend upon the number and complexity of audits required, therefore the exact cost is unknown, but the department would estimate the cost to the board and the department would be over \$200,000 annually. If the Preneed Audit Fund could not sustain audit or other costs, an increase in license fees or general revenue would need to be requested by the department.

DCI states Preneed Seller renewal occurs annually. There are approximately 300 preneed sellers in Missouri. Each seller pays a \$150 renewal fee plus \$25 for every contract written in the annual reporting period.

The number of preneed contracts written annually range from 1 – 3,000. It would be anticipated the larger preneed sellers would more likely reach the threshold of \$25,000 in exceptions. In addition, a financial examination covers a five year period. The following is a breakdown of the preneed sellers and the number of contracts involved in a financial examination:

Average # contracts involved in financial audit:  
Preneed sellers range from 5 to 500 contract: 272  
Preneed sellers range from 500 to 1500 contracts: 16  
Preneed sellers range from 1500 to 2500 contracts: 5  
Preneed sellers range from 2500 to 5,000 contracts: 6  
Preneed seller ranges from 10,000 to 15,000 contracts: 1

Presently, every single contract is reviewed during a financial examination. A financial examination can be very time intensive for large preneed sellers. A forensic audit of a large provider would be time intensive as well.

When litigation occurs for a preneed seller, legal expenses are very involved due to the requirement to have detailed financial records for board review when discipline or litigation may be involved. These expenses can vary. If litigation occurs for a financial examination in which the department has assumed authority, the department is unsure if the legislation would require the matter be referred to the board's legal counsel or the department's legal counsel to process for discipline with the board/litigation in the courts, if required. The department is also unsure if any legal expense would be paid from the Preneed Audit Fund.

**Oversight** assumes the associated risk and litigation is a current cost DCI incurs, and therefore will not reflect an estimated unknown cost.

In summary, DCI assumes, fees collected (preneed license and renewal) average around \$400,000 annually. DCI also assumes an estimated cost of \$200,000 to provide for the implementation of the changes in this proposal.

For fiscal note purposes, **Oversight** will reflect a \$400,000 loss of revenue (reporting fees) to the Board of Embalmers and Funeral Directors Fund (as it is not being deposited into the new Preneed Audit Fund). Oversight will also reflect a \$400,000 income (reporting fees) as well as a \$200,000 cost to the new Preneed Audit Fund.

**Oversight** also assumes all reporting fees will be deposited into the newly created fund (Preneed Audit Fund) which gives authority to the board for specific work such as to pay for expenses of conducting preneed audits, examinations and inspections.

**Oversight** notes subsection 333.330.3 adds a new fine of “not to exceed \$10,000” after a finding that disciplinary action is warranted. Since it is unknown how many fines will be warranted, Oversight will reflect a revenue range of \$0 to Unknown to local school districts.

Officials from the **Office of the State Courts Administrator** assume the proposal will have no fiscal impact on their organization. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for OSCA.

#### Rule Promulgation

Officials from the **Joint Committee on Administrative Rules** assume this proposal is not anticipated to cause a fiscal impact beyond its current appropriation.

Officials from the **Office of the Secretary of State (SOS)** note many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$5,000. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also 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 what the office can sustain with 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.

Officials from the **Attorney General's Office** and the **Office of the State Treasurer** did not respond to **Oversight's** request for fiscal impact for this proposal.

<u>FISCAL IMPACT – State Government</u>	FY 2024 (10 Mo.)	FY 2025	FY 2026
<b>BOARD OF EMBLAMERS AND FUNERAL DIRECTORS FUND</b>			
<u>Loss – DCI Reporting Fees</u>	<u>(\$400,000)</u>	<u>(\$400,000)</u>	<u>(\$400,000)</u>
<b>ESTIMATED NET EFFECT ON THE BOARD OF EMBLAMERS AND FUNERAL DIRECTORS FUND</b>	<b><u>(\$400,000)</u></b>	<b><u>(\$400,000)</u></b>	<b><u>(\$400,000)</u></b>
<b>PRENEED AUDIT FUND</b>			
<u>Revenue – DCI Reporting Fees</u>	\$400,000	\$400,000	\$400,000
<u>Revenue – DCI – potential judgement by the AHC that the person pay any portion of the expenses of the audit, examination or inspection (§436.460.5(2))</u>	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown
<u>Cost – DCI Audits</u>	<u>\$200,000</u>	<u>\$200,000</u>	<u>\$200,000</u>
<b>ESTIMATED NET EFFECT TO THE PRENEED AUDIT FUND</b>	<b><u>Could exceed \$200,000</u></b>	<b><u>Could exceed \$200,000</u></b>	<b><u>Could exceed \$200,000</u></b>

<u>FISCAL IMPACT – Local Government</u>	FY 2024 (10 Mo.)	FY 2025	FY 2026
<b>LOCAL SCHOOL DISTRICTS</b>			
<u>Revenue – Local School Districts – fine not to exceed \$10,000 §333.330.3</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>
<b>ESTIMATED NET EFFECT TO LOCAL SCHOOL DISTRICTS</b>	<b><u>\$0 to Unknown</u></b>	<b><u>\$0 to Unknown</u></b>	<b><u>\$0 to Unknown</u></b>

FISCAL IMPACT – Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

Currently, the State Board of Embalmers and Funeral Directors ("the Board") is authorized to conduct financial examinations of providers, sellers, and agents of preneed contracts. This act authorizes the Department of Commerce and Insurance to perform financial examinations in instances concerning financial discrepancies of \$25,000 or more.

The act requires applicants for a preneed provider license (section 333.315.2(5)) or a preneed seller license (section 333.320.2(9)) to consent to investigations, examinations, or audits of the licensee's books by the Department of Commerce and Insurance, in addition to the existing authority of the Board.

The act requires applicants for a preneed seller license to maintain documents showing the applicant is the grantor of a preneed trust as required by law, rather than directly requiring that they have established the trust. (Section 333.320.2(7)).

When grounds for discipline of a person licensed by the Board include mishandling of preneed funds of \$25,000 or more as specified in the act, the act allows the Board to impose a fine of up to \$10,000. The Board may also, as part of any settlement agreement or disciplinary order, require the person to pay back the missing funds. (Section 333.330.3).

This act establishes the "Preneed Audit Fund", into which certain reporting fees required by law shall be deposited. The fund shall be used solely by the Board or designee of the Department of Commerce and Insurance to pay for the expenses of conducting preneed audits, examinations, and inspections. When a disciplinary order or settlement includes a finding of mishandling consumer preneed funds of \$25,000 or more, the Board or Administrative Hearing Commission may require the person disciplined to pay any expenses of the audit, examination, or inspection, and such payment shall be deposited into the fund. (Section 436.460.5(2)).

Under the act, the Board's financial examination guidelines shall include processes and procedures for determining adequacy of sellers' preneed obligations, compliance of sellers' handling of consumer funds as provided by law, and compliance of trustees' administration of preneed trusts as provided by law. The act specifies certain information sellers must provide for each financial examination. (Section 436.470.3).

The Board shall forward to the Department of Commerce and Insurance each preliminary financial examination report where an exception notes a failure to deposit an aggregate of

\$25,000 or more in consumer funds as required by law, or where unauthorized distributions in an aggregate of \$25,000 or more may have been made.

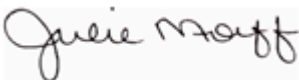
The Board shall provide the Department of Commerce and Insurance with monthly updates of progress made by the preneed contract seller to address the examination exceptions and correct funding deficiencies. On the Board's request or in its own discretion, the Department of Commerce and Insurance may designate one of its offices or agencies to assume authority over the financial examination and begin a more extensive audit of the seller. (Section 436.470.5).

The act repeals a provision requiring subpoenas under the complaint procedures for preneed contracts to be served in the same manner as those in criminal cases, and specifies that the subpoenas may extend to any financial institution holding preneed funds in a preneed trust, preneed joint account, or any other account holding funds paid for a preneed contract. (Section 436.470.10). Lastly, the act provides that the Office of the Attorney General may initiate judicial proceedings as provided by law if an inspection, investigation, or audit reveals a "potential" violation of the Missouri Preneed Funeral Contract Act. (Section 436.470.14).

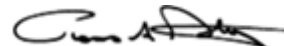
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

#### SOURCES OF INFORMATION

Department of Commerce and Insurance  
Office of the Secretary of State  
Joint Committee on Administrative Rules  
Office of the State Courts Administrator



Julie Morff  
Director  
February 17, 2023



Ross Strobe  
Assistant Director  
February 17, 2023