

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

House Bill 349 (Chair, Economic Matters Committee, *et al.*) (By Request
- Departmental - Labor, Licensing and Regulation)

Health and Government Operations

Finance

Business Regulation - Cemeteries - Prohibited Acts and Penalties

This departmental bill establishes tiered systems of penalties for violations of perpetual care requirements, preneed sales requirements, and other prohibited acts in the cemetery and burial goods industry regulated by the Office of Cemetery Oversight.

The bill takes effect July 1, 2013.

Fiscal Summary

State Effect: The Department of Labor, Licensing, and Regulation (DLLR) can implement the bill with existing budgeted resources. Minimal decrease in general fund revenues and increase in expenditures beginning in FY 2014 due to the bill's enhanced penalty provisions.

Local Effect: Minimal increase in revenues and potential minimal decrease in expenditures beginning in FY 2014 due to the bill's enhanced penalty provisions.

Small Business Effect: DLLR has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: A person who violates the Maryland Cemetery Act is guilty of a misdemeanor and, on conviction, is subject to:

- for a first violation, a fine of up to \$5,000 or imprisonment for up to one year, or both;
- for a second violation, a fine of up to \$10,000 or imprisonment for up to two years, or both; and
- for a third or subsequent violation, a fine of up to \$15,000 or imprisonment for up to three years, or both.

Perpetual Care and Preneed Burial Contracts

Unless otherwise exempt, a sole proprietor, registered cemeterian, permit holder, or any other person subject to the perpetual care permit or registration requirements of the Maryland Cemetery Act may not establish, operate, or allow a cemetery to be operated in violation of the perpetual care requirements of the Act.

A person who violates the perpetual care provisions of the Act is guilty of a misdemeanor and, on conviction, is subject to:

- for a first violation, a fine of up to \$5,000 or imprisonment for up to one year, or both;
- for a second violation, a fine of up to \$10,000 or imprisonment for up to two years, or both; and
- for a third or subsequent violation, a fine of up to \$20,000 or imprisonment for up to three years, or both.

A person who violates the preneed burial contract provisions of the Act is guilty of a misdemeanor and, on conviction, is subject to:

- for a first violation, a fine of up to \$10,000 or imprisonment for up to one year, or both;
- for a second violation, a fine of up to \$15,000 or imprisonment for up to two years, or both; and
- for a third or subsequent violation, a fine of up to \$20,000 or imprisonment for up to three years, or both.

If a corporation violates the specified perpetual care or preneed burial contract provisions, each officer responsible for the violation is guilty of a misdemeanor, and on conviction, is subject to the applicable penalties as described above for individuals.

Further, a person who willfully misappropriates or intentionally and fraudulently converts perpetual care or preneed trust funds in excess of \$100 to that person's own use is guilty of a *felony* and, on conviction, is subject to a fine of up to \$25,000 or imprisonment for up to 10 years, or both.

Current Law: In general, a person who violates the Maryland Cemetery Act is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$3,000 or imprisonment for up to one year, or both. No enhanced penalties are authorized for subsequent violations. Additional penalties, as specified below, apply to violations of perpetual care and preneed trust requirements.

Perpetual Care

All cemeteries created in the State after October 1, 2001, and not otherwise exempt must establish a perpetual care trust fund. Cemeteries owned and operated by a county, municipal corporation, church, synagogue, specified religious or nonprofit groups, a State veterans' agency, or a family that does not conduct public sales are excluded from perpetual care trust requirements. A cemetery subject to perpetual care trust requirements must initially deposit \$10,000, \$25,000, or \$50,000 into a perpetual care trust, depending on the size of the cemetery and whether or not it sells burial goods. In addition, the cemetery must deposit at least 10% of the actual selling price of each right of interment or, if the burial space is sold at a discount or at no cost, at least 10% of the imputed cost of the fair retail value and additional specified funds over time.

Persons subject to trust requirements must submit an annual report to the Director of Cemetery Oversight detailing the balances in each perpetual care trust fund and preneed trust fund at specified dates and the amount of money received, deposited, and spent during the reporting year. Each report must be certified by a certified public accountant retained by the cemetery.

A person may not establish or operate a public or private cemetery or allow a public or private cemetery to be operated in violation of the perpetual care provisions of the Act. A person or business entity who violates the perpetual care or perpetual care trust provisions of the Act is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 or imprisonment for up to one year, or both. No enhanced penalties are authorized for subsequent violations.

Preneed Burial Contracts

Preneed burial contract provisions apply to all cemeteries in Maryland. However, they do not apply to (1) the sale of burial space or (2) a preneed contract made by an individual in connection with practicing mortuary science. Likewise, cemeteries that have less than one acre for burial space are excluded. A person who violates preneed burial contract provisions is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$5,000 or imprisonment for up to one year, or both. Identical penalty

provisions apply to officers of a corporation that violates preneed burial contract provisions. No enhanced penalties are authorized for subsequent violations.

Background: The Office of Cemetery Oversight was established by Chapter 675 of 1997 (HB 559). It registers and regulates the cemetery and burial goods industry in the State under the leadership of a director. The Advisory Council on Cemetery Operations serves as a source of expertise for the director of the office and provides insight into the needs of the business community and the consumers served by the industry. The office has a dual role as a regulatory body and as the entity responsible for investigating and mediating consumer complaints.

DLLR advises that it recently has discovered repeated violations of the Maryland Cemetery Act, primarily related to a single cemetery, but current law does not authorize enhanced penalties for repeated violations.

State Fiscal Effect: General fund revenues decrease minimally beginning in fiscal 2014 as a result of the bill's monetary penalty provisions from fewer cases heard in the District Court.

The enhanced penalties for the misdemeanor crimes and the addition of a felony crime means that (1) such cases are much more likely to be filed in the circuit courts rather than the District Court and (2) some persons may eventually serve longer incarcerations due to enhanced penalty provisions, applicable to some offenses for prior felony convictions. Accordingly, it is assumed that this bill shifts an unknown number of cases from the District Court to the circuit courts. It is not known whether such a prospective shift may spur more plea bargains and affect actual sentencing practices for this offense.

General fund expenditures increase minimally beginning in fiscal 2014 as a result of the bill's incarceration penalties due to more people being committed to State correctional facilities for longer periods of time. The number of people convicted under the bill is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,900 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new State inmate (including variable medical care and variable operating costs) is about \$370 per month. Excluding all medical care, the average variable costs total \$180 per month.

Local Revenues: Revenues increase minimally beginning in fiscal 2014 as a result of the bill's monetary penalty provisions from more cases heard in the circuit courts.

Local Expenditures: Expenditures may decrease minimally beginning in fiscal 2014 as a result of the bill's enhanced incarceration penalties and the likelihood of more people being committed directly to State correctional facilities.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Labor, Licensing, and Regulation; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Department of State Police; Office of the Attorney General; Office of the Public Defender; Department of Public Safety and Correctional Services; Department of Legislative Services

Fiscal Note History: First Reader - February 13, 2013
mm/mcr Revised - House Third Reader - March 20, 2013

Analysis by: Stephen M. Ross

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Office of Cemetery Oversight – Penalties for Violations of Provisions of Title 5, Business Regulation Article, Annotated Code of Maryland

BILL NUMBER: HB 349

PREPARED BY: Department of Labor, Licensing and Regulation

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.