

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6180

BILL NUMBER: HB 1026

NOTE PREPARED: Nov 13, 2007

BILL AMENDED:

SUBJECT: Funeral Trust Funds.

FIRST AUTHOR: Rep. Cheatham

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: GENERAL
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: *Disbursement of Funds:* The bill provides that a person who knowingly or intentionally disburses funds in a funeral trust for purposes other than the intended purposes of the trust commits a Class C felony.

Class A Infractions: It provides that a trustee that disburses funds in a funeral trust without verifying the death of the person for whose funeral or burial the funds were paid commits a Class A infraction.

Deceptive Acts: It also provides that the seller of a funeral trust established after June 30, 2008, may not be an affiliate, a parent, or a subsidiary organization of the trustee of the funeral trust.

Effective Date: July 1, 2008.

Explanation of State Expenditures: *Disbursement of Funds:* The bill adds the disbursement of funeral trust funds to an existing Class C felony, thereby adding funeral trust trustees to the potential violators of this section. There are no data available to indicate how many trustees may be convicted of this offense. Between 2001 and 2005, there were no offenders convicted of this offense.

A Class C felony is punishable by a prison term ranging from 2 to 8 years, depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$19,185 in FY 2007. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$63,138. The average length of stay in Department of Correction (DOC) facilities for all Class C felony

offenders is approximately two years.

Deceptive Acts: Costs for the Office of the Attorney General could increase to bring actions for deceptive and incurable deceptive acts. The Attorney General may bring actions to enjoin a deceptive act and, for an incurable deceptive act, may bring an action with a civil penalty of not more than \$500 per violation. The funds and resources required could be supplied through a variety of sources, including collecting from an offender the costs of investigation and bringing an action.

Explanation of State Revenues: *Disbursement of Funds:* If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class C felony is \$10,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 criminal costs fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$17), public defense administration fee (\$3), court administration fee (\$3), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

Class A Infractions: The bill establishes three Class A infractions; one for each funeral trust or funeral escrow account in statute. The Class A infractions provide for a judgment against trustees who disburse funds without verifying the death of the person for whom funds are held or who disburse funds without verifying that the services or merchandise were provided. If additional court cases occur and infraction judgments and court fees are collected, revenue to the state General Fund may increase. The maximum judgment for a Class A infraction is \$10,000, which is deposited in the state General Fund.

If court actions are filed and a judgment is entered, a court fee of \$70 would be assessed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$17), the public defense administration fee (\$3), the court administration fee (\$3), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund.

Deceptive Acts: A seller who violates the prohibition on the relationship between a seller and a trustee or escrow agent commits an uncured deceptive act. The Attorney General may bring an action on behalf of the state for an incurable deceptive act carrying a civil penalty not more than \$500 per violation. Civil penalties are deposited in the state General Fund. In addition to the Attorney General bringing an action, a consumer harmed by the act may bring an action. Also, although the Attorney General does not have to pay court costs, a defendant found guilty could be ordered to pay court fees.

Explanation of Local Expenditures: *Disbursement of Funds:* If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

Explanation of Local Revenues: *Class A Infractions and Deceptive Acts:* If additional court actions are filed and a judgment is entered, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$70 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee

would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

Disbursement of Funds: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$120 criminal costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of the criminal costs fee. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

State Agencies Affected: Department of Correction; Office of the Attorney General.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Indiana Sheriffs' Association, Department of Correction.

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