

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6180

BILL NUMBER: HB 1026

NOTE PREPARED: Feb 6, 2008

BILL AMENDED: Feb 5, 2008

SUBJECT: Funerals and Cemeteries.

FIRST AUTHOR: Rep. Cheatham

FIRST SPONSOR: Sen. Merritt

BILL STATUS: CR Adopted - 2nd House

FUNDS AFFECTED: GENERAL
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) The bill does the following.

Vaults: It provides that a person who:

- (1) sells or otherwise furnishes a vault that will be used to encase the remains of a deceased individual and that is not airtight and watertight to another person; and
- (2) does not inform the other person in writing that the vault is not airtight and watertight before the person sells or otherwise furnishes the vault to the other person;

commits a Class B infraction.

Disbursement of Funds: It 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: The bill 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.

State Board of Funeral and Cemetery Service: The bill requires the State Board of Funeral and Cemetery Service to adopt rules specifying the types of documentation that may be used to verify certain events have occurred before funds may be disbursed from certain funeral trusts and escrow accounts.

Deceptive Acts: This bill 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.

Benevolent Public Purpose: It specifies that a trust for a benevolent public purpose includes a perpetual care

fund or endowment care fund established, a prepaid funeral plan or funeral trust, and a trust or an escrow account created from payments of funeral, burial services, or merchandise in advance of need.

Attorney General: The bill specifies the actions the Attorney General may take against a trustee of a benevolent trust, a prepaid funeral trust or escrow account, a cemetery owner, a funeral home, and certain other persons for committing a breach of trust, violating the mandate of a charitable trust, or failing to comply with a requirement or prohibition set forth in certain laws concerning cemeteries and trusts.

Probate Code Study Commission: It requires the Probate Code Study Commission to study and make findings and recommendations concerning certain issues related to cemetery perpetual care trusts and preneed funeral trusts.

Effective Date: Upon passage; July 1, 2008; January 1, 2009.

Explanation of State Expenditures: (Revised) *Summary-* The bill may increase incarceration costs by establishing a new felony offense. However, the bill could also increase revenue to the state General Fund with the creation of several Class A infractions and a Class B infraction. The bill may also increase court fees as the trustee of a perpetual or endowment care fund, a prepaid funeral fund, a funeral trust, or a trust or escrow account created from payments of funeral, burial, burial services or merchandise in advance of need is subject to the prudent investor rule for violation of which the remedy may be sought in a civil action. The bill assigns a study to the Probate Code Study Commission, and it provides additional remedies that involve action by the Attorney General. These provisions are not expected to add costs because the responsibilities are already within the scope of work of the entity or the court may order cost recovery. The State Board of Funeral and Cemetery Service adopting rules concerning documentation of expenses is expected to have minimal increased one-time costs.

Background and Additional Details-

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 And Attorney General: 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.

Additionally, the bill expands the potential pool of people who may be subject to an action by the Attorney General for breach of a trust, or violating the mandate of a charitable trust or a duty under the trust code, and it adds failing to comply with provisions concerning funeral, burial, and cemetery trusts.

Probate Code Study Commission: The Probate Code Study Commission is a permanent, 16-member commission established in statute that operates under the rules of the Legislative Council. The Commission will report its findings to the Legislative Council not later than November 1, 2008. Assignment of topics for the Commission to review should not result in additional costs. Legislative Services Agency provides staff support for the Commission, and it is funded from the state General Fund.

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.

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 judgement against trustees who disburse funds without verifying the death of the settler of the contract and that funeral or burial services were provided, 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.

There are no data available to indicate how many offender may be convicted of a Class B infraction for violations concerning airtight and watertight vaults. 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 B infraction is \$1,000, 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 and Attorney General: 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.

For a breach, violation, or failure concerning a trust, the Attorney General may bring an action. The bill

inserts remedies that the court may impose including a temporary restraining order, an order for restitution, an order to reimburse the state for the Attorney General's investigation and prosecution, imposing civil penalties, or providing for the appointment of a receiver.

(Revised) *Prudent Investor*: Under the prudent investor rule, the trustee must invest and manage the assets of the trust as a prudent investor would. For a violation of this rule, the trustee is liable to the beneficiary who may bring a civil action. Court fees for a civil action are \$70.

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: (Revised) *Class A Infractions, Vaults, Prudent Investor, 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.

Fiscal Analyst: Karen Firestone, 317-234-2106.