

**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 6382

BILL NUMBER: HB 1073

NOTE PREPARED: Dec 22, 2008

BILL AMENDED:

SUBJECT: Funeral and Cemetery Matters.

FIRST AUTHOR: Rep. Cheatham

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: GENERAL
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: The bill requires a trustee of a funeral trust or an escrow agent to provide an annual accounting to the settlor or the purchaser of the preneed contract. The bill provides that a person who knowingly or intentionally uses or disburses funds in certain trust or escrow accounts for purposes other than the accounts' lawful purposes commits a Class C felony. It provides that the violation, a similar violation involving cemetery perpetual care funds, and violations of similar provisions in the funeral trust laws are acts of racketeering activity. It also provides that property involved with the violations may be seized under the civil forfeiture law.

The bill specifies that the statute of limitations period for the criminal offenses of misusing funeral trust or preneed escrow accounts is five years after the date of the death of the settlor or purchaser. It also specifies that the statute of limitations period for the criminal offense of misusing a cemetery perpetual care fund is five years after the earlier of: (1) the date the state discovers evidence of the offense; or (2) the date the state could have discovered evidence of the offense through due diligence. The bill also makes a technical correction.

Effective Date: Upon passage; July 1, 2009.

Explanation of State Expenditures: *Offenses Relating to Funeral Trusts & Cemetery Funds:* The bill establishes a Class C felony and makes several offenses racketeering activities, which is a Class C felony.

(1) The bill establishes a Class C felony for a person who knowingly or intentionally uses or disburses funds in a trust or escrow account for prepaid funeral or burial services for purposes other than those allowed under statute.

(2) The bill adds the offense described in (1) above and other offenses in current statute relating to knowing or intentional misuse of funeral trust funds and cemetery perpetual care funds to the list of crimes that constitute racketeering activity and which may lead to a conviction for corrupt business influence, a Class C felony.

The bill also generally specifies a five-year statute of limitations period for criminal offenses of misusing funeral trust accounts, preneed escrow accounts, or cemetery perpetual care funds.

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 \$20,287 in FY 2008. (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 average length of stay in Department of Correction (DOC) facilities for all Class C felony offenders is approximately two years.

Property Seizures: The bill would add to the type of property that may be seized: (1) property used or intended to be used to commit, facilitate, or promote the knowing or intentional misuse of funds in a funeral trust, a trust or escrow account for prepaid funeral or burial services, or a cemetery perpetual care fund; or (2) property constituting, derived from, or traceable to the gross proceeds that a person obtains directly or indirectly from knowing or intentional misuse of funds in a funeral trust, a trust or escrow account for prepaid funeral or burial services, or a cemetery perpetual care fund. To the extent that the court would notify the Bureau of Motor Vehicles (BMV) and the BMV produces a clear title for a seized vehicle, costs for the BMV could increase minimally.

Explanation of State Revenues: *Offenses Relating to Funeral Trusts & Cemetery 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 (\$18), public defense administration fee (\$3), court administration fee (\$5), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

Property Seizures: The proceeds from the sale of seized property are distributed first to the county sheriff to cover sale costs; then to any person holding a valid lien or having an interest in the property; and then to the Common School Fund as ordered by the court.

Explanation of Local Expenditures: *Offenses Relating to Funeral Trusts & Cemetery 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.

Property Seizures: The prosecuting attorney for the county in which the seizure occurred may cause an action for reimbursement of law enforcement costs and forfeiture to be brought by filing a complaint in the circuit, superior, or county court of the jurisdiction and may retain an attorney to bring the action who is not a deputy prosecuting attorney.

Explanation of Local Revenues: *Offenses Relating to Funeral Trusts & Cemetery 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.

Property Seizures: A county sheriff may retain proceeds from the sale of a seized property to offset costs associated with its sale.

State Agencies Affected: DOC; BMV.

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

Information Sources: Indiana Sheriffs' Association, DOC.

Fiscal Analyst: Jim Landers, 317-232-9869.