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Revised Fiscal Note

(replaces fiscal note dated February 22, 2022)

Drafting Number: LLS 22-0324 Date: March 21, 2022
Prime Sponsors: Rep. Roberts; Bockenfeld Sen. Coram Bill Status: Senate Judiciary
Fiscal Analyst: Annie Scott | 303-866-5851 Annie.Scott@state.co.us

Bill Topic: SUNSET CONTINUE REGULATE PRENEED FUNERAL CONTRACTS

Summary of Fiscal Impact: [X] State Revenue [X] TABOR Refund
[X] State Expenditure [] Local Government
[] State Transfer [] Statutory Public Entity

Sunset Bill. This bill continues the regulation of preneed funeral contracts in the Department of Regulatory Agencies, which is scheduled to repeal on September 1, 2022. State fiscal impacts include an increase in revenue and expenditures from changes to the program under the bill, and the continuation of the program's current revenue and expenditures. The program is continued through September 1, 2029.

Appropriation Summary: For FY 2022-23, the bill requires an appropriation of \$81,958 to the Department of Regulatory Agencies.

Fiscal Note Status: The revised fiscal note reflects the reengrossed bill.

Table 1 State Fiscal Impacts Under HB 22-1228^1

Table with 4 columns: Category, Sub-category, Budget Year FY 2022-23, and Out Year FY 2023-24. Rows include New Impacts (Revenue, Expenditures, Total Expenditures, Total FTE), Other Budget Impacts (TABOR Refund), and Continuing Impacts (Revenue, Expenditures, Continuing FTE).

^1 Table 1 shows the new impacts resulting from changes to the program under the bill and the continuing impacts from extending the program beyond its current repeal date. The continuing program impacts will end if the bill is not passed and the program is allowed to repeal.

Summary of Legislation

The regulation of preneed funeral contracts by the Division of Insurance (DOI) in the Department of Regulatory Agencies (DORA) is scheduled to repeal on September 1, 2022. This bill continues the regulation until September 1, 2029, and implements recommendations in the [2021 Sunset Review](#). The bill makes several changes to the program, including:

- directing the Commissioner of Insurance (commissioner) to set net worth and bond requirements in rule;
- allowing the commissioner to investigate records of the seller;
- requiring that fees be set by the commissioner based on the cost of regulating the industry;
- requiring that unclaimed funds be transferred to the Unclaimed Property Trust Fund; and
- requiring that funeral establishments attest as to whether they sell preneed contracts.

Background

Preneed funeral contracts are agreements where individuals prepay for funeral goods and services. The contracts can be backed by a trust or a life insurance policy. Contracts are sold by funeral homes, brokers, or life insurance agents (sellers). Applicants for licensure to sell preneed funeral contracts pay a \$500 licensing fee, show proof of their net worth or post a surety bond, and complete a fingerprint-based criminal history background check. Renewal fees range from \$100 to \$2,000 based on the aggregate preneed contract price outstanding. As of December 31, 2020, there were 68 licensees representing a total amount of outstanding preneed contracts of \$246,535,326.

To review the 2021 Sunset Review, see:

<https://drive.google.com/file/d/1t55Rc1eUWafHC-d1VLcW6sxXC-PaxvW/view>

Continuing Program Impacts

Based on the 2021 Sunset Review of Preneed Funeral Contracts, DORA is expected to have annual revenue of \$52,200 and expenditures of \$20,051 to administer the preneed funeral contracts program. If this bill is enacted, current revenue and expenditures will continue for the program starting in FY 2023-24. This continuing revenue is subject to the state TABOR limits. If this bill is not enacted, the program will end on September 1, 2023, following a wind-down period, and state revenue and expenditures will decrease starting in FY 2023-24 by the amounts shown in Table 1. The impact from the changes to the program are discussed in the State Revenue and Expenditures sections below.

Assumptions

This fiscal note assumes that the bill will generate approximately 193 new applications from sellers with multiple locations. Though sellers are currently allowed to file applications that include multiple locations, under the bill each seller will be required to file an application for each location beginning in FY 2022-23 to enable increased monitoring. It is also assumed that proactive monitoring is allowed under the bill, a change from current law, under which monitoring is performed only at the time of a complaint or other indication of noncompliance

State Revenue

Fee impact on pre-need funeral contract sellers. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. These fee amounts are estimates only, actual fees will be set administratively by DORA based on cash fund balance, estimated program costs, and the estimated number of licenses subject to the fee. Current fees are based on a tiered system and only apply to the 67 licensees that exist under current law. It is assumed that the current fee structure will remain in place for current licensees and will apply to new licensees under the bill until rulemaking takes place to set a new fee structure that will reflect the updated costs to regulate the industry. It is assumed that an average fee of \$406 in FY 2022-23 and \$410 in FY 2023-24 will be required, equating to annual revenue of \$105,560 in FY 2022-23 and \$106,600 in FY 2023-24.

In addition, the bill may increase funds sent to the Unclaimed Property Trust Fund.

State Expenditures

The bill increases cash fund expenditures in DORA by \$105,450 in FY 2022-23 and \$106,567 in FY 2023-24 from the Division of Insurance Cash Fund. Expenditures are shown in Table 2 and detailed below.

**Table 2
 Expenditures Under HB 22-1228**

Cost Components	FY 2022-23	FY 2023-24
Department of Regulatory Agencies		
Personal Services	\$74,543	\$80,246
Operating Expenses	\$1,215	\$1,350
Capital Outlay Costs	\$6,200	-
Centrally Appropriated Costs ¹	\$23,492	\$24,971
Total	\$105,450	\$106,567
Total FTE	0.9 FTE	1.0 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation.

Department of Regulatory Agencies. Beginning in 2022-23, the DOI will require 0.1 FTE to complete the rulemaking necessary the bill. In addition, 0.5 FTE will be required to review applications for compliance, and to communicate with applicants regarding discrepancies. Proactive monitoring and oversight of sellers will require 0.5 FTE. Costs are adjusted to a September 1, 2022, start date.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are shown in Table 2.

Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed.

State Appropriations

In FY 2022-23, the bill requires an appropriation of \$81,858 from the Division of Insurance Cash Fund the Department of Regulatory Agencies, and 0.9 FTE.

State and Local Government Contacts

Information Technology

Regulatory Agencies

Treasury