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***SB2705 by *Southerland. (HB2763 by *Fitzhugh.)**

Funeral Directors and Embalmers - Establishes a restitution fund for purchasers of pre-need funeral contracts and allows sellers of guaranteed irrevocable trusts to charge an administrative fee. - Amends TCA Title 56, Chapter 34 and Title 62, Chapter 5, Part 4.

Fiscal Summary for *SB2705 / HB2763

Increase State Revenue - \$10,900/One-Time/Pre-Need Restitution Account
\$76,300/Recurring/Pre-Need Restitution Account Not Significant/General Fund Increase
State Expenditures - \$10,900/One-Time/Pre-Need Restitution Account
\$76,300/Recurring/Pre-Need Restitution Account Not Significant/General Fund Increase
Local Govt. Revenue - Not Significant Increase Local Govt. Expenditures - Not Significant
Other Fiscal Impact - There will be an increase in state revenue as a result of collecting fees to be deposited in the Pre-Need Restitution Account. Fees will be collected until the account balance equals or exceeds \$2.5 million. The amount of restitution, if any, that will be paid from the account is indeterminable but could not exceed \$2.5 million in any given year.

Bill Summary for *SB2705 / HB2763

Present law requires every person engaged in the business of selling pre-need funeral contracts funded by a trust to establish a pre-need funeral trust fund. This bill requires a pre-need funeral trust fund established for a guaranteed, irrevocable pre-need funeral contract to:

- (1) Be irrevocable and require the pre-need seller to deposit any monies and insurance policies used to fund the contract into the trust;
- (2) Designate the seller as the recipient of the trust funds;
- (3) Be maintained in the name of the seller and serve as a depository for all monies and insurance policies used to fund the irrevocable contract;
- (4) Pay to the seller the amount of the seller's original retail price as set forth in the contract upon delivery of the services or merchandise; and
- (5) Pay to the seller the remaining amount in the trust, except insurance death benefits, at the time of delivery of all services or merchandise if such amount is greater than the seller's total current retail price of all services and merchandise.

This bill creates a consumer restitution fund to be known as the pre-need restitution account. This bill allows any pre-need seller who establishes a pre-need funeral trust fund to charge an administrative fee of no more than 10 percent of the seller's total contract price at least 48 hours after the contract becomes irrevocable. If the seller chooses to charge the fee, then that seller must submit a certain percentage of the fee to the department of commerce and insurance to be deposited in the newly created pre-need restitution account. The commissioner will determine the percentage to be deposited into the account.

The status of the consumer restitution account must be annually reviewed by the commissioner. If during the annual review the account balance is at least \$2.5 million, then the commissioner would suspend payments to the account until the commissioner determines that the account balance is less than \$2.5 million.

Present law allows the Davidson County chancery court to appoint the commissioner as a receiver to take control of and manage a pre-need seller upon certain grounds. Under this bill, money in the pre-need restitution account will be used to provide restitution to any pre-need funeral contract purchaser for monetary loss arising from a pre-need contract which is in receivership by the commissioner. The state may bring an action against the pre-need seller to recover amounts paid out of the account.

Present law prohibits any pre-need funeral contract from providing for the funeral establishment, pre-need seller, or pre-need sales agent to receive any benefits from a prearrangement insurance policy or moneys from a pre-need funeral trust other than the amount of payment for the merchandise and services provided by the funeral establishment. This bill removes this prohibition from present law.

This bill will apply only to pre-need funeral contracts executed after the date that this bill becomes law.