

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: State Board of Embalmers and Funeral Directors

Regulation/Package Title: Preneed Recovery Fund Rules

Rule Number(s): 4717-14, 4717-8-01;

Date: 1/1/2018

Rule Type:

☒ New

☐ Amended

☒ 5-Year Review

☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Attached are Rules impacting the Embalmers and Funeral Directors Board. These Rules impact all actives within the Board and within the Funeral service industry since there are no other “competing” boards or agencies regulating this industry. These Rules address the Preneed Recovery Fund established in the budget bill, House Bill 49.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

ORC 4717

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

Not Applicable

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not Applicable

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

The purpose of the Board is to protect consumers while regulating the funeral service profession by establishing a recovery fund for consumers that purchased funeral prearrangements who suffered a financial loss due to misappropriation or wrongdoing by a licensee. The fund will reimburse a consumer who experienced a financial loss as a result of this conduct.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

While difficult to measure, the fewer preneed contracts that go unfunded from one year to another would be a good and measurable goal. Another measurable goal could be the balance of the fund at the end of the fiscal year compared to the number of reimbursements issued by the Board.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

All licensed funeral directors, embalmers, crematory operators etc...are stakeholders. Additionally, there are three active Associations which represent nearly 100% of the funeral service providers in the state. These Associations are the Ohio Funeral Directors Association (OFDA), Buckeye State Funeral Directors & Embalmers Association (BSFDEA) and the Ohio Embalmers Association (OEA).

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

During the Fall 2016, OFDA held District meetings throughout the state. The state Board was represented at ALL of these meetings (appx 17) by the President or Treasurer and by the Executive Director who attends each meeting. During our portion of the meetings, we explained our role as a Regulatory agency and shared the status of the Rules, what the rules will include, and the changes to existing Rules. Additionally, OFDA was engaged in discussions during the Rule draft discussion prior to our Board taking action to approve the Rules.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

Very little scientific data was utilized for the measurable outcomes. Simply a common sense approach applicable to a changing industry initiated by licensed professionals in the funeral service field were considered during previous Board meetings in 2016 and "Rules Committee" meetings held during September 2017.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

The Board did not consider a regulation alternative as the rules were required to be drafted pursuant to a statutory change from House Bill 49.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

Not Applicable.

- What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

As the only agency regulating the Funeral Service Industry, duplication of Regulatory action is not an issue.

- Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

We plan to post the Business Impact Analysis and all Rules on our website for 7 days and send these Rules electronically to all three (3) active Associations that will forward to their membership.

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Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

All licensed funeral directors, embalmers, funeral home operators, funeral homes, crematories, embalming facilities.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance);

The impact of our Rules range from the payment of fees to fines for non compliance. continuing education hours needed for licensure. The fee will be \$10 for each preneed contract sold until it reaches \$2 million. The fee is then reduced to \$5 for each preneed contract sold until the fund reaches \$3 million. After the fund reaches \$3 million, the fee is suspended. Fines for non compliance will range from \$500 - \$7,500, depending on the public impact, severity and frequency of the offense.

c. Quantify the expected adverse impact from the regulation.

The adverse impact may be the increase in operation expenses for the licensee or the increase in costs to the consumer. House Bill 49 is silent as to who pays the fee to be collected for the recovery fund. It is difficult to quatify who will be impacted more; however, the nominal fee of \$10 or \$5 has a mandatory cap that will only last for a limited amount of time. The impact, if any, will be for a limited amount of time.

- 15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?**

The funeral service profession works with all families at one time or another. Treating families with respect and with a dignified service is an important aspect to their business and their community. It's also an industry whose cash flow and budget are critical to their ongoing efforts to meet the needs of families who have entrusted them to handle very money and sensitive activities during an emotional time in their lives. As the regulatory agency responsible for enabling practitioners to provide these services, it is our role to protect the public's best interests by providing the standards by which the industry must meet and comply with. This fund is in the best interest of the public to restore consumer confidence as well and preserve trust in the industry licensees.

Regulatory Flexibility

- 16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.**

While the Board has exemptions for fees and CE hours for active personnel serving in the armed forces and waivers for those actively practicing for 50 years, this rule does not have an alternative for compliance as the Board was required by statute to create the rules for the fund.

- 17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?**

The Board adheres to ORC 119.14 by keeping an "open door policy" for licensee's to call and discuss their violations with Board staff. Board staff will take circumstances into consideration when waving fines but we must be true to our mission of protecting the public's health, safety and investments in the funeral service industry.

- 18. What resources are available to assist small businesses with compliance of the regulation?**

The Board staff is available M-F, 8:00am-5:00pm. Our goal is to assist licensee's and Apprentices obtain the training and tools necessary to operate within the state of Ohio. Our website contains guidance for all new legislation and will contain a database with an instructional guide to assist with compliance with this regulation. Updates and changes will be communicated through the website and licensee listserv.

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