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FISCAL IMPACT REPORT

SPONSOR: Irwin DATE TYPED: 3/16/03 HB 431/a HBIC/aHJC

SHORT TITLE: Amend Thanatopractice Act SB _____

ANALYST: Maloy

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY03	FY04			
	See Narrative		Recurring	OSF

SOURCES OF INFORMATION

Responses Received From

The Regulation and Licensing Department
The Department of Corrections

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment adds back the previously removed reference to “the Prearranged Funeral Plan and Regulatory Law or any regulations ordered by the superintendent of insurance” as grounds for disciplinary action under the Uniform Licensing Act.

Synopsis of HBIC Amendment

The House Business and Industry Committee made two minor amendments to HB 431. The amendment strikes reference to *New Mexico-specific* licensed funeral homes, disposition establishments and schools of medicine.

This amendment allows a New Mexico crematory to work as an agent for any licensed funeral home, disposition establishment and school of medicine throughout the country, not just in New Mexico.

Synopsis of Original Bill

House Bill 431 modifies the Thanatopractice Act in order to provide greater clarity and civil penalties for the unlicensed practice of Thanatopractice.

Specific, the following modifications are made to the laws governing the handling of deceased individuals:

- The Thanatopractice Board has jurisdiction over *unlicensed* persons. The Board has authority to impose a fine not to exceed \$5,000 for each violation when it is found that a person acted without a license.
- Language clarifies that records are to be maintained at the licensed establishment or crematory.
- The Board has the authority to issue temporary licenses to applicants for licensure.
- The Board has the authority to place limits on licensure based on experience (in addition to education).
- Language is added for the purposes of achieving consistency in terminology.
- Language clarifies the scope of practice for crematories, which is limited to providing cremation services to New Mexico licensed funeral, commercial or direct disposition establishments and New Mexico schools of medicine.
- The requirement is changed that all individuals not disposed of *within twenty-four hours after death* shall be embalmed or stored under refrigeration, to state that all individuals not disposed *within twenty-four hours after death or release or receipt by the establishment or crematory.*

Significant Issues

- Unlicensed, untrained handling of the deceased can have serious health consequences.

Currently, the Board has jurisdiction over *licensees*. Those who engage in unlicensed thanatopractice activities are referred to the District Attorney's Offices for prosecution and sentencing under 31-19-1 NMSA 1978. This is a time-intensive process. The consequences are not always readily apparent to the unlicensed practitioner. The ability of the board to act quickly to impose a monetary penalty is expected to promote greater diligence in compliance with licensing laws.
- During the last amendments to the Thanatopractice Act, the temporary licensure provision was inadvertently omitted in Section 61-32-9. HB 431 simply reinstates this provision.
- Licensure limitations based on education are already in place in the law. The quality of services to be provided will be improved if licensure may be limited on the basis of credentials / education too.
- The addition of language requiring an office in which business is to be conducted is being added to the requirements for Commercial Establishments and Direct Disposition Establishments will help put clients at ease when making final arrangements.

The same is true for language requiring Direct Disposition Establishments to meet the same requirements as Funeral Establishments with regard to having a “display room” for caskets and other funeral merchandise.

- Given the serious public health and safety issues that can arise out of thanatopractice activities, empowering the board to act with flexibility in adopting rules that promote the interests of public health, safety and welfare is critical.
- Clear, consistent regulation of thanatopractice activities involving cremation is critical. Licensees are trained professionals who have a well-established collaborative relationship with such offices as the Office of the Medical Investigator (OMI). Licensure helps ensure that all authorizations to cremate are in place prior to cremation.
- It is not uncommon for a thanatopractice establishment to receive a deceased individual’s body well beyond twenty-four hours after death. This includes bodies being sent to the Office of the Medical Investigator for an autopsy. The time of receipt after death is often beyond the control of the establishment and the establishment should not be held responsible for not acting to embalm or refrigerate within 24-hours of death.
- Violations of the “Prearranged Funeral Plan Regulatory Law” are removed from the Uniform Licensing Act if it is determined that a violation of that Act has occurred. Since the Public Regulation Commission administers the Act, any action for violations should be taken by the PRC.

FISCAL IMPLICATIONS

The Thanatopractice Board is funded through OSF, not general funds. Monies remaining in the Board’s fund at the end of the fiscal year do not revert to the general fund.

The Board anticipates a slight increase in revenues collected as a result of the ability to impose civil penalties for unlicensed activities.

SJM/lr:yr