

SENATE BILL 775

J2, C2

4r0416
CF 4r3016

By: **Senators Montgomery, Benson, Feldman, Jones–Rodwell, and Madaleno**

Introduced and read first time: January 31, 2014

Assigned to: Education, Health, and Environmental Affairs and Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Funeral Establishments and Crematories – Pre–Need Contracts and**
3 **Unclaimed Cremains – Reporting and Audit Requirements**

4 FOR the purpose of authorizing a certain buyer or beneficiary of a pre–need contract
5 to contact the Maryland State Board of Morticians and Funeral Directors and
6 request the Board to conduct an audit of certain licensees; requiring the Board
7 to conduct a certain audit within a certain number of days after a certain
8 request; requiring the Board to require certain funeral establishments or
9 holders of permits for the business of operating a crematory to submit certain
10 reports; requiring a certain disclosure statement for a pre–need contract to state
11 that the buyer or beneficiary of the pre–need contract is authorized to contact
12 the Board and request a certain audit; requiring certain funeral establishments
13 and permit holders to submit certain reports on certain pre–need contracts and
14 certain unclaimed cremains to the Board on or after a certain date; requiring
15 certain holders of permits to engage in the operation of a crematory to submit
16 certain reports on certain unclaimed cremains to the Office of Cemetery
17 Oversight on or after a certain date; providing that certain reports are not
18 public records and may only be made available to certain persons; establishing
19 requirements for certain reports on certain pre–need contracts and certain
20 unclaimed cremains; requiring the Board and the Office to work collaboratively
21 with the State Board of Anatomy to establish certain processes for delivering
22 certain unclaimed cremains to the State Board of Anatomy for proper
23 disposition; and generally relating to the reporting requirements for
24 pre–need contracts and unclaimed cremains.

25 BY repealing and reenacting, without amendments,
26 Article – Health Occupations
27 Section 7–101(a), (d), (e), (h), (i), (k), (p), and (v) and 7–405(a)
28 Annotated Code of Maryland
29 (2009 Replacement Volume and 2013 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, with amendments,
2 Article – Health Occupations
3 Section 7–205(b), 7–405(b) and (c), and 7–406
4 Annotated Code of Maryland
5 (2009 Replacement Volume and 2013 Supplement)

6 BY adding to
7 Article – Health Occupations
8 Section 7–205(d) and 7–405(i)
9 Annotated Code of Maryland
10 (2009 Replacement Volume and 2013 Supplement)

11 BY repealing and reenacting, without amendments,
12 Article – Business Regulation
13 Section 5–101(a), (e), (f), (h), (i), (m), and (n)
14 Annotated Code of Maryland
15 (2010 Replacement Volume and 2013 Supplement)

16 BY adding to
17 Article – Business Regulation
18 Section 5–803
19 Annotated Code of Maryland
20 (2010 Replacement Volume and 2013 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
22 MARYLAND, That the Laws of Maryland read as follows:

23 **Article – Health Occupations**

24 7–101.

25 (a) In this title the following words have the meanings indicated.

26 (d) “Board” means the Maryland State Board of Morticians and Funeral
27 Directors.

28 (e) (1) “Business of operating a crematory” means controlling or
29 managing a crematory.

30 (2) “Business of operating a crematory” does not include:

31 (i) The practice of funeral direction or the practice of mortuary
32 science; or

33 (ii) 1. Assistance in making decisions and filling out forms
34 that are not directly related to cremation;

1 2. Obtaining vital statistics, signatures, and other
2 information necessary to complete a death certificate;

3 3. Transportation of a body to the place of disposition; or

4 4. Any other services regarding the disposition of a body
5 that are not directly related to cremation.

6 (h) “Cremation” means the process of reducing human remains to bone
7 fragments through intense heat and evaporation, including any mechanical or thermal
8 process.

9 (i) “Crematory” means a building, portion of a building, or structure that
10 houses the necessary appliances and facilities for cremation.

11 (k) “Funeral establishment” means any building, structure, or premises from
12 which the business of practicing mortuary science is conducted.

13 (p) “Licensed funeral establishment” means, unless the context requires
14 otherwise, a funeral establishment that is licensed by the Board.

15 (v) “Pre-need contract” means an agreement between a consumer and a
16 licensed funeral director, licensed mortician, or surviving spouse to provide any goods
17 and services purchased prior to the time of death. Goods and services shall include:

18 (1) A service, including any form of preservation and disposition or
19 cremation, that a mortician normally provides in the ordinary course of business; or

20 (2) Merchandise, including a casket, vault, or clothing, that a
21 mortician normally provides in the ordinary course of business.

22 7-205.

23 (b) **(1)** The Board may conduct an audit of a licensee that:

24 **[(1)] (I)** Receives pre-need funds;

25 **[(2)] (II)** Places pre-need funds in a trust; or

26 **[(3)] (III)** Enters into a pre-need contract.

27 **(2) (I) A BUYER OR BENEFICIARY OF A PRE-NEED CONTRACT**
28 **MAY CONTACT THE BOARD AND REQUEST THE BOARD TO CONDUCT AN AUDIT**
29 **OF A LICENSEE THAT:**

- 1 **1. RECEIVED PRE-NEED FUNDS FOR THE PRE-NEED**
2 **CONTRACT;**
- 3 **2. PLACED PRE-NEED FUNDS IN A TRUST FOR THE**
4 **PRE-NEED CONTRACT; OR**
- 5 **3. ENTERED INTO THE PRE-NEED CONTRACT.**

6 **(II) WITHIN 30 DAYS AFTER A REQUEST IS MADE IN**
7 **ACCORDANCE WITH SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE BOARD**
8 **SHALL CONDUCT THE AUDIT.**

9 **(D) (1) THE BOARD SHALL REQUIRE A LICENSED FUNERAL**
10 **ESTABLISHMENT OR HOLDER OF A PERMIT FOR THE BUSINESS OF OPERATING A**
11 **CREMATORY TO SUBMIT REPORTS IN ACCORDANCE WITH §§ 7-405(I) AND**
12 **7-406(B) OF THIS TITLE.**

13 **(2) A REPORT SUBMITTED IN ACCORDANCE WITH §§ 7-405(I) AND**
14 **7-406(B) OF THIS TITLE IS NOT A PUBLIC RECORD AND MAY BE MADE**
15 **AVAILABLE ONLY TO:**

16 **(I) PARTIES TO THE CONTRACT FOR PRE-NEED OR**
17 **CREMATION SERVICES;**

18 **(II) HEIRS OF THE DECEASED;**

19 **(III) EXECUTORS OR ADMINISTRATORS OF THE ESTATE OF**
20 **THE DECEASED; AND**

21 **(IV) COURTS OF COMPETENT JURISDICTION.**

22 7-405.

23 (a) (1) In this section the following words have the meanings indicated.

24 (2) “Beneficiary” means a person for whose benefit a pre-need contract
25 is purchased and who will receive the merchandise or services offered under the
26 contract.

27 (3) “Buyer” means a person that purchases a pre-need contract.

28 (4) “Seller” means a person who agrees to provide services or
29 merchandise, directly or indirectly, under a pre-need contract.

1 (5) “Trustee” means a person that has responsibility for making pre-
2 need arrangements in a manner that entitles the beneficiary to be eligible for benefits
3 that restrict assets.

4 (b) (1) Only a licensed mortician, a licensed funeral director, or a holder of
5 a surviving spouse license may offer or agree, directly or indirectly, to provide services
6 or merchandise under a pre-need contract.

7 (2) Notwithstanding the provisions of paragraph (1) of this subsection,
8 a licensed mortician or a licensed funeral director who is employed by a funeral
9 establishment may execute pre-need contracts on behalf of the funeral establishment
10 with which the mortician or funeral director is employed.

11 (3) Any funeral establishment [on whose behalf] **FOR WHICH A**
12 pre-need [contracts are] **CONTRACT IS** executed under this subsection must comply
13 with the requirements of this section.

14 (c) (1) A pre-need contract shall contain:

15 (i) The name of each party to the contract and, if the
16 beneficiary is an individual other than the buyer, the name of the beneficiary of the
17 contract;

18 (ii) A description of any service or merchandise to be provided
19 under the pre-need contract;

20 (iii) A disclosure statement that clearly:

21 1. States that all funeral costs may not be covered under
22 the pre-need contract; [and]

23 2. Lists all funeral goods and services that are
24 reasonably expected to be required at the time of need, but are not included in the
25 contract; **AND**

26 **3. STATES THAT THE BUYER OR BENEFICIARY OF**
27 **THE PRE-NEED CONTRACT MAY CONTACT THE BOARD AND REQUEST AN AUDIT**
28 **IN ACCORDANCE WITH § 7-205(B)(2) OF THIS TITLE;**

29 (iv) The total price of the services and merchandise agreed on;
30 and

31 (v) The method of payment.

32 (2) A pre-need contract shall be executed in duplicate and be signed
33 by each party.

1 (3) The seller shall give one of the duplicate originals of the pre-need
2 contract to the buyer.

3 **(I) A LICENSED FUNERAL ESTABLISHMENT FOR WHICH A PRE-NEED**
4 **CONTRACT IS EXECUTED ON OR AFTER OCTOBER 1, 2014, IN ACCORDANCE WITH**
5 **SUBSECTION (B) OF THIS SECTION SHALL SUBMIT ELECTRONICALLY THE**
6 **FOLLOWING QUARTERLY REPORTS TO THE BOARD IN THE FORMAT AND**
7 **MANNER SPECIFIED BY THE BOARD:**

8 **(1) FOR EACH QUARTER IN WHICH A PRE-NEED CONTRACT WAS**
9 **EXECUTED THAT IS NOT AN INSTALLMENT CONTRACT, A REPORT THAT**
10 **INCLUDES:**

11 **(I) THE FUNERAL ESTABLISHMENT'S NAME AND LICENSE**
12 **NUMBER; AND**

13 **(II) FOR EACH PRE-NEED CONTRACT EXECUTED DURING**
14 **THE PREVIOUS QUARTER:**

15 **1. THE DATE OF THE PRE-NEED CONTRACT, THE**
16 **NAME AND ADDRESS OF THE BUYERS OF THE CONTRACT, AND THE ENTIRE**
17 **AMOUNT OF THE CONTRACT;**

18 **2. THE NAME AND ADDRESS OF THE BANKING**
19 **INSTITUTION OR INSURANCE COMPANY IN WHICH 100% OF THE MONEY**
20 **RECEIVED ON THE CONTRACT HAS BEEN DEPOSITED; AND**

21 **3. THE ACCOUNT NUMBER, ACCOUNT REGISTRATION**
22 **TITLE, NAME OF THE PERSON FOR WHOM THE ACCOUNT IS ESTABLISHED, AND**
23 **THE DATE THE ACCOUNT WAS ESTABLISHED AT THE BANKING INSTITUTION OR**
24 **INSURANCE COMPANY;**

25 **(2) FOR EACH QUARTER IN WHICH A PRE-NEED CONTRACT WAS**
26 **EXECUTED THAT IS AN INSTALLMENT CONTRACT OR IN WHICH A FUNERAL**
27 **ESTABLISHMENT RECEIVED MONEY FOR AN INSTALLMENT CONTRACT, A**
28 **REPORT THAT INCLUDES:**

29 **(I) THE INFORMATION REQUIRED UNDER ITEM (1) OF THIS**
30 **SUBSECTION;**

31 **(II) WHETHER THE ENTIRE AMOUNT OF EACH CONTRACT**
32 **HAS BEEN PAID; AND**

1 **(III) THE TOTAL AMOUNT OF MONEY RECEIVED BY THE**
2 **FUNERAL ESTABLISHMENT AND DEPOSITED IN ESCROW OR IN TRUST FOR EACH**
3 **CONTRACT; AND**

4 **(3) FOR EACH QUARTER IN WHICH A PRE-NEED CONTRACT**
5 **EXECUTED ON OR AFTER OCTOBER 1, 2014, IS FULFILLED, A REPORT THAT**
6 **INCLUDES:**

7 **(I) THE FUNERAL ESTABLISHMENT'S NAME AND LICENSE**
8 **NUMBER;**

9 **(II) THE NAME OF THE DECEASED;**

10 **(III) THE TOTAL AMOUNT OF FUNERAL GOODS AND**
11 **SERVICES PROVIDED, AND THE AMOUNT REFUNDED, IF ANY, TO THE CONTRACT**
12 **PURCHASERS;**

13 **(IV) THE DATE OF THE DEATH;**

14 **(V) THE ACCOUNT NUMBER; AND**

15 **(VI) THE NAME OF THE BANKING INSTITUTION OR**
16 **INSURANCE COMPANY WHERE THE FUNDS HAD BEEN KEPT.**

17 7-406.

18 **(A) A licensee shall maintain a complete file of a cremation that includes the**
19 **signature of the next of kin, person identifying the body, or person responsible for**
20 **disposition, time of death, and the date and time of cremation.**

21 **(B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
22 **SUBSECTION, IF A LICENSED FUNERAL ESTABLISHMENT OR A CREMATORY HAS**
23 **POSSESSION OF CREMAINS THAT HAVE BEEN UNCLAIMED FOR 60 DAYS OR**
24 **MORE, THE LICENSED FUNERAL ESTABLISHMENT OR HOLDER OF THE PERMIT**
25 **FOR THE BUSINESS OF OPERATING THE CREMATORY SHALL ELECTRONICALLY**
26 **SUBMIT A QUARTERLY REPORT TO THE BOARD IN THE FORMAT AND MANNER**
27 **SPECIFIED BY THE BOARD THAT INCLUDES:**

28 **(I) THE NAME ON THE LICENSE OR PERMIT AND THE**
29 **LICENSE OR PERMIT NUMBER;**

30 **(II) THE NAME OF THE DECEASED;**

1 (III) THE DATE OF BIRTH AND DATE OF DEATH OF THE
2 DECEASED; AND

3 (IV) THE CONTACT INFORMATION FOR THE NEXT OF KIN OF
4 THE DECEASED.

5 (2) A REPORT MAY NOT INCLUDE CREMAINS BEING HELD BY A
6 FUNERAL ESTABLISHMENT OR CREMATORY FOR A PERIOD OF LESS THAN 270
7 DAYS FROM THE DATE OF CREMATION AT THE WRITTEN DIRECTION OF THE
8 PERSON AUTHORIZED TO ARRANGE FOR THE FINAL DISPOSITION OF THE BODY.

9 (C) THE BOARD SHALL WORK COLLABORATIVELY WITH THE STATE
10 BOARD OF ANATOMY TO ESTABLISH A PROCESS FOR THE DELIVERY OF
11 UNCLAIMED CREMAINS TO THE STATE BOARD OF ANATOMY FOR PROPER
12 DISPOSITION.

13 Article – Business Regulation

14 5–101.

15 (a) In this title the following words have the meanings indicated.

16 (e) “Cremation” means the process of reducing human remains to bone
17 fragments through intense heat and evaporation, including any mechanical or thermal
18 process.

19 (f) “Crematory” means a building, portion of a building, or structure that
20 houses the necessary appliances and facilities for cremation.

21 (h) “Engage in the operation of a cemetery” means owning, controlling, or
22 managing a cemetery, including performing activities necessary for:

23 (1) the establishment, improvement, care, preservation, or
24 embellishment of a cemetery;

25 (2) interment; and

26 (3) the providing of burial space or burial goods.

27 (i) (1) “Engage in the operation of a crematory” means controlling or
28 managing a crematory.

29 (2) “Engage in the operation of a crematory” does not include:

30 (i) the practice of funeral direction or the practice of mortuary
31 science; or

- 1 (ii) 1. assistance in making decisions and filling out forms
2 that are not directly related to cremation;
- 3 2. obtaining vital statistics, signatures, and other
4 information necessary to complete a death certificate;
- 5 3. transportation of a body to the place of disposition; or
- 6 4. any other services regarding the disposition of a body
7 that are not directly related to cremation.

8 (m) "Office" means the Office of Cemetery Oversight.

9 (n) "Permit" means a permit issued by the Director to allow a partnership,
10 limited liability company, or corporation to operate a business through which a
11 registrant may:

- 12 (1) engage in the operation of a cemetery or crematory; or
- 13 (2) provide burial goods.

14 **5-803.**

15 **(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, IF A**
16 **CREMATORY HAS POSSESSION OF CREMAINS THAT HAVE BEEN UNCLAIMED FOR**
17 **60 DAYS OR MORE, THE HOLDER OF THE PERMIT TO ENGAGE IN THE OPERATION**
18 **OF THE CREMATORY SHALL ELECTRONICALLY SUBMIT A QUARTERLY REPORT**
19 **TO THE OFFICE IN THE FORMAT AND MANNER SPECIFIED BY THE OFFICE THAT**
20 **INCLUDES:**

- 21 **(1) THE NAME ON THE PERMIT AND THE PERMIT NUMBER;**
- 22 **(2) THE NAME OF THE DECEASED;**
- 23 **(3) THE DATE OF BIRTH AND DATE OF DEATH OF THE DECEASED;**
24 **AND**
- 25 **(4) THE CONTACT INFORMATION FOR THE NEXT OF KIN OF THE**
26 **DECEASED.**

27 **(B) A REPORT MAY NOT INCLUDE CREMAINS BEING HELD BY A**
28 **CREMATORY FOR A PERIOD OF LESS THAN 270 DAYS FROM THE DATE OF**
29 **CREMATION AT THE WRITTEN DIRECTION OF THE PERSON AUTHORIZED TO**
30 **ARRANGE FOR THE FINAL DISPOSITION OF THE BODY.**

1 **(C) A REPORT SUBMITTED IN ACCORDANCE WITH SUBSECTION (A) OF**
2 **THIS SECTION IS NOT A PUBLIC RECORD AND MAY BE MADE AVAILABLE ONLY**
3 **TO:**

4 **(1) PARTIES TO THE CONTRACT FOR THE CREMATION SERVICES;**

5 **(2) HEIRS OF THE DECEASED;**

6 **(3) EXECUTORS OR ADMINISTRATORS OF THE ESTATE OF THE**
7 **DECEASED; AND**

8 **(4) COURTS OF COMPETENT JURISDICTION.**

9 **(D) THE OFFICE SHALL WORK COLLABORATIVELY WITH THE STATE**
10 **BOARD OF ANATOMY TO ESTABLISH A PROCESS FOR THE DELIVERY OF**
11 **UNCLAIMED CREMAINS TO THE STATE BOARD OF ANATOMY FOR PROPER**
12 **DISPOSITION.**

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 October 1, 2014.