

HOUSE BILL 1239

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CF SB 775

By: **Delegates Cullison, Beidle, Bobo, Carr, Dwyer, Frank, Frush, Gutierrez, Hubbard, Hucker, A. Kelly, Lee, Luedtke, Niemann, Oaks, Pena-Melnyk, and Waldstreicher**

Introduced and read first time: February 7, 2014

Assigned to: Health and Government Operations

A BILL ENTITLED

AN ACT concerning

Funeral Establishments and Crematories – Pre-Need Contracts and Unclaimed Cremains – Reporting and Audit Requirements

FOR the purpose of authorizing a certain buyer or beneficiary of a pre-need contract to contact the Maryland State Board of Morticians and Funeral Directors and request the Board to conduct an audit of certain licensees; requiring the Board to conduct a certain audit within a certain number of days after a certain request; requiring the Board to require certain funeral establishments or holders of permits for the business of operating a crematory to submit certain reports; requiring a certain disclosure statement for a pre-need contract to state that the buyer or beneficiary of the pre-need contract is authorized to contact the Board and request a certain audit; requiring certain funeral establishments and permit holders to submit certain reports on certain pre-need contracts and certain unclaimed cremains to the Board on or after a certain date; requiring certain holders of permits to engage in the operation of a crematory to submit certain reports on certain unclaimed cremains to the Office of Cemetery Oversight on or after a certain date; providing that certain reports are not public records and may only be made available to certain persons; establishing requirements for certain reports on certain pre-need contracts and certain unclaimed cremains; requiring the Board and the Office to work collaboratively with the State Board of Anatomy to establish certain processes for delivering certain unclaimed cremains to the State Board of Anatomy for proper disposition; and generally relating to the reporting requirements for pre-need contracts and unclaimed cremains.

BY repealing and reenacting, without amendments,

Article – Health Occupations

Section 7-101(a), (d), (e), (h), (i), (k), (p), and (v) and 7-405(a)

Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2009 Replacement Volume and 2013 Supplement)

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

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

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

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

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

Article – Health Occupations

7–101.

- (a) In this title the following words have the meanings indicated.
- (d) “Board” means the Maryland State Board of Morticians and Funeral Directors.
- (e) (1) “Business of operating a crematory” means controlling or managing a crematory.
- (2) “Business of operating a crematory” does not include:
 - (i) The practice of funeral direction or the practice of mortuary science; or

- (ii) 1. Assistance in making decisions and filling out forms that are not directly related to cremation;
2. Obtaining vital statistics, signatures, and other information necessary to complete a death certificate;
3. Transportation of a body to the place of disposition; or
4. Any other services regarding the disposition of a body that are not directly related to cremation.

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

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

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

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

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

- (1) A service, including any form of preservation and disposition or cremation, that a mortician normally provides in the ordinary course of business; or
- (2) Merchandise, including a casket, vault, or clothing, that a mortician normally provides in the ordinary course of business.

7-205.

- (b) **(1)** The Board may conduct an audit of a licensee that:
- [(1)] (I)** Receives pre-need funds;
- [(2)] (II)** Places pre-need funds in a trust; or
- [(3)] (III)** Enters into a pre-need contract.

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

1. RECEIVED PRE-NEED FUNDS FOR THE PRE-NEED CONTRACT;

2. PLACED PRE-NEED FUNDS IN A TRUST FOR THE PRE-NEED CONTRACT; OR

3. ENTERED INTO THE PRE-NEED CONTRACT.

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

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

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

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

(II) HEIRS OF THE DECEASED;

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

(IV) COURTS OF COMPETENT JURISDICTION.

7-405.

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

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

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

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

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

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

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

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

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

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

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

(iii) A disclosure statement that clearly:

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

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

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

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

(v) The method of payment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(II) THE NAME OF THE DECEASED;

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

(IV) THE DATE OF THE DEATH;

(V) THE ACCOUNT NUMBER; AND

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

7-406.

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

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

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

(II) THE NAME OF THE DECEASED;

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

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

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

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

Article – Business Regulation

5–101.

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

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

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

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

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

(2) interment; and

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

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

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

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

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

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

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

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

(m) “Office” means the Office of Cemetery Oversight.

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

(1) engage in the operation of a cemetery or crematory; or

(2) provide burial goods.

5-803.

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

(1) THE NAME ON THE PERMIT AND THE PERMIT NUMBER;

(2) THE NAME OF THE DECEASED;

(3) THE DATE OF BIRTH AND DATE OF DEATH OF THE DECEASED;

AND

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

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

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

- (1) PARTIES TO THE CONTRACT FOR THE CREMATION SERVICES;**
- (2) HEIRS OF THE DECEASED;**
- (3) EXECUTORS OR ADMINISTRATORS OF THE ESTATE OF THE DECEASED; AND**
- (4) COURTS OF COMPETENT JURISDICTION.**

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

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