

Department of Legislative Services
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FISCAL AND POLICY NOTE
First Reader

Senate Bill 642 (Senator Bates)
Education, Health, and Environmental Affairs

**State Board of Morticians and Funeral Directors - Investigations and Subpoenas
- Revisions**

This bill repeals a provision of law relating to inspection (by the State Board of Morticians and Funeral Directors or the Office of Cemetery Oversight) of out-of-state establishments and establishes a new procedure for granting permission for the body of a decedent to be transported out of Maryland. The board must develop and utilize specified inspection checklists, post the checklist templates online, and give the completed checklist to a specified individual within 24 hours of an inspection. When issuing a subpoena, the board must include information about the grounds for or nature of the investigation, hearing, or proceeding and give a recipient at least seven business days to comply with the subpoena. The bill also makes procedural changes and codifies several existing board practices.

Fiscal Summary

State Effect: Although the bill has a significant operational impact on the board's authority to issue subpoenas, the bill generally codifies existing board practices and makes procedural changes. Likewise, because the Office of Cemetery Oversight only oversees two crematories, any impact on the office is negligible. Thus, the bill does not materially affect governmental finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary:

Funeral Establishment Licensing Requirements

The bill clarifies that the board must issue a funeral establishment license to an establishment that has complied with State and local laws regulating the practice of funeral direction, the practice of mortuary science, or the business of operating a crematory, as applicable to the practice or business of the funeral establishment.

Out-of-state Inspections

Under current law, while the body of a decedent is in the custody of a funeral establishment or crematory in Maryland, the body cannot be transferred for preparation or storage to a facility that is not within the jurisdiction of the State, licensed by the board, or permitted by the Office of Cemetery Oversight unless *the facility has entered into a written agreement with the board (or the Office of Cemetery Oversight) to allow the board (or the office, as appropriate) to make unannounced inspections of the facility* and other specified conditions regarding permission are met.

The bill broadens the exemption by repealing the requirement for the out-of-state facility to enter into a written agreement and allow unannounced inspections. Thus, the body of a decedent may be transported, for preparation or storage, to a facility that is outside the board's jurisdiction if (1) the person authorized to arrange for final disposition of the body has given written permission or specified oral permission for the body to be transported to the facility and (2) the written or specified oral permission is given to the Maryland funeral home or crematory that has custody of the body before being transported.

Inspections and Inspection Checklists

The board must develop a checklist that lists the items to be inspected during a funeral establishment inspection and cites the statutory or regulatory authority that establishes each inspection standard. The checklist must have a check-off box for compliant, noncompliant, and not applicable or not reviewed. The board must develop a separate checklist for items to be inspected during a crematory inspection. The templates for the funeral establishment and crematory checklists must be posted on the board's website.

The bill codifies the requirement, currently in regulation, that the board inspect a funeral establishment every two years and on the sale or change in ownership of the establishment. Additionally, the bill specifies that the board must inspect a funeral establishment (1) in response to valid information provided to the board resulting in a complaint being opened

by the board concerning the practice of funeral direction or mortuary science or the business of operating a crematory and (2) on receipt of a written and signed complaint, including a referral from the Commissioner of Labor and Industry, to determine compliance with the U.S. Centers for Disease Control and Prevention's guidelines on universal precautions.

The board must use the required checklist for biennial funeral establishment inspections and for inspections upon the sale or change in ownership of a funeral establishment. Further, during these specified inspections, the board may not cite a deficiency for an item that is not on the checklist. The board must provide a completed checklist to a specified representative of the funeral establishment within 24 hours after the inspection. The bill does not establish a similar requirement to utilize the checklist during any crematory inspection or to give a completed inspection checklist to a crematory representative.

The bill repeals "unannounced" from the provision of law related to when an inspection may include advance notice, under specified circumstances.

Subpoena Contents and Response Time

Any subpoena issued by the board must include either (1) the citation of the Maryland statute or regulation that establishes the grounds for the investigation, hearing, or proceeding or (2) if the citation is unknown, the nature of the investigation, hearing, or proceeding. The board must give a subpoena recipient at least seven business days after being served to comply with the subpoena.

Current Law/Background:

Final Disposition and Transferring the Body of a Decedent Out of Maryland

Generally, the body of a decedent may not be embalmed or artificially preserved without the express permission of the person authorized to arrange for the final disposition of the body or a court order. A funeral establishment or crematory must store the body of a decedent until final disposition at (1) a licensed funeral establishment; (2) a licensed or permitted crematory; or (3) another facility that has passed inspection by the State Board of Morticians and Funeral Directors or the Office of Cemetery Oversight within the previous two years.

Chapters 500 and 501 of 2012, the Handling Human Remains with Dignity Act, established that, while in the custody of a funeral establishment or crematory, a body may not be transferred for preparation or storage to a facility that is not within the jurisdiction of the State, licensed by the board, or permitted by the office unless the facility has (1) entered into a written agreement with the board or the office allowing the State to make

unannounced inspections and (2) the person authorized to arrange for the final disposition of the body has given specified permission for the body to be transported to the facility.

Inspections of Funeral Establishments and Crematories

The board is required to inspect funeral establishments and crematories on a biennial basis and upon change or sale of ownership of an establishment or crematory. Additionally, as a condition of licensure and permitting, funeral establishments and crematories must be in compliance with all applicable federal, State, and local laws. Thus, the board conducts opening inspections of both funeral establishments and crematories to ensure compliance. Although not required under statute or regulation, the board also conducts closing inspections for funeral establishments and crematories as a “best practice” in response to several complaints of leftover remains and cremains.

Inspections of all funeral establishments must be unannounced and may take place at any time without notice from the board. However, an unannounced inspection may include advance notice that an inspector may be in the region of the funeral establishment for the purpose of conducting an inspection under specified conditions.

Although not required by statute or regulation, the board has standardized funeral and crematory inspection report forms. The current inspection report forms have a space for the inspector to mark each of the items subject to inspection as 1 – compliant, 2 – noncompliant, or 3 – N/A. The board is in the process of updating its inspection report forms to include direct citations to applicable State law and regulation or to the relevant U.S. Department of Labor’s Occupational Safety and Health Administration (OSHA) standard.

The board advises that the funeral establishment inspection report form has three items subject to inspection under the health and safety and instrument and equipment/water supply portion of the checklist that are OSHA versus State standards. These items are (1) an accessible eyewash station in the preparation room; (2) a separate hand washing sink; and (3) whether chemicals are plainly marked, have warning labels, and are in a locked cabinet. Finally, one item under the preneed section is related to documentation that must be furnished to the inspector (an adequate disclaimer form) that is a Federal Trade Commission standard.

Subpoena Authority and Requirements

The board has the authority, over the signature of an officer or the administrator of the board, to issue subpoenas and administer oaths in connection with any audit or investigation under the Maryland Morticians and Funeral Directors Act and any hearings or proceedings before it. This language is standard for virtually all health occupations

boards. There is no requirement under statute or regulation for any of the health occupations boards to include citations or information related to the grounds of an investigation, hearing, or proceeding.

The board advises that, for most health occupations boards, a person has 10 days to comply with a subpoena. However, all health occupations boards have the authority to request an immediate response to a subpoena when necessary. In some cases, due to the nature of a complaint or a specific case, giving a person additional time to respond to a subpoena may jeopardize the investigation. Generally, all health occupations boards work closely with board counsel to develop the terms and language of a subpoena.

2016 Sunset Evaluation

The Department of Legislative Services (DLS) conducted a full evaluation of the board in 2016, [*Sunset Review: State Board of Morticians and Funeral Directors*](#). DLS found that the board functions well despite its resource limitations and fulfills its licensing, inspection, complaint, disciplinary, and other regulatory duties. DLS primarily recommended extending the board's termination date by 10 years until July 1, 2028.

DLS made six additional recommendations. One recommendation was to repeal the provision of the Handling Human Remains with Dignity Act that authorizes a body of a decedent to be transported for preparation or storage to an out-of-state facility only under the condition that the facility has entered into a written agreement with the board or the Office of Cemetery Oversight to allow the State to make unannounced inspections of the facility. DLS made this recommendation primarily due to confusion and industry concern surrounding implementation of this portion of the law and the fact that the board has not implemented or enforced this provision since November 2012.

Though DLS did not find evidence to indicate board impropriety, in order to maintain and improve the validity of the inspection and complaint process, DLS recommended that the board take several concrete steps to improve transparency and communication. To that end, DLS suggested revising inspection forms and reports to include citations of the statutory or regulatory authority for each requirement. As mentioned, the board has already begun implementing this recommendation.

DLS also suggested that the board examine and, if necessary, clarify subpoena procedures to ensure licensees, permit holders, and registrants understand whether they are the subject of an investigation or merely a witness. However, DLS recognized that it is not always possible to provide notice to a licensee, permit holder, or registrant as to why the individual is being subpoenaed. Because information gleaned under subpoena may lead to an investigation, it may not be possible or appropriate for the board to classify the individual as a witness when the subpoena is issued. Additionally, since subpoenas can be issued to

an individual or entity other than the person under investigation, including specific information related to the case may create privacy concerns for the person under investigation.

Additional Information

Prior Introductions: None.

Cross File: HB 693 (Delegate Krebs, *et al.*) - Health and Government Operations.

Information Source(s): Department of Health and Mental Hygiene; Department of Labor, Licensing, and Regulation; Department of Legislative Services

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md/jc

Analysis by: Kathleen P. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510