
By: Senator Astle

Introduced and read first time: February 2, 1996

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 Morticians - Pre-need Contracts and Final Disposition of Human Remains - Regulation

3 FOR the purpose of authorizing a licensed mortician or licensed funeral director under
4 certain circumstances to execute pre-need contracts; establishing the right of an
5 individual to make certain decisions as to the final disposition of the individual's
6 body by executing a certain document in a certain manner or entering into a
7 pre-need contract; establishing the order of priority for certain other persons to
8 have the right to arrange for the final disposition of the body of a decedent when
9 the decedent has not executed a certain document; requiring a mortician and
10 certain other licensees to affix a certain identification tag to the body of the
11 decedent or a certain container under certain circumstances; altering certain
12 provisions of law related to certain disciplinary actions that may be taken by the
13 State Board of Morticians against certain licensees under certain circumstances;
14 defining certain terms; and generally relating to regulating the execution of
15 pre-need contracts by certain licensees and the final disposition of human remains.

16 BY renumbering

17 Article - Health Occupations
18 Section 7-101(n) through (r), respectively
19 to be Section 7-101(o) through (s), respectively
20 Annotated Code of Maryland
21 (1994 Replacement Volume and 1995 Supplement)

22 BY repealing and reenacting, without amendments,

23 Article - Health Occupations
24 Section 7-101(a)
25 Annotated Code of Maryland
26 (1994 Replacement Volume and 1995 Supplement)

27 BY adding to

28 Article - Health Occupations
29 Section 7-101(n), 7-410, and 7-411
30 Annotated Code of Maryland
31 (1994 Replacement Volume and 1995 Supplement)

1 BY repealing and reenacting, with amendments,
2 Article - Health Occupations
3 Section 7-316(a)(8) and (13) and (b) and 7-405(a), (b), and (f)(2)
4 Annotated Code of Maryland
5 (1994 Replacement Volume and 1995 Supplement)

6 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
7 MARYLAND, That Section(s) 7-101(n) through (r), respectively, of Article - Health
8 Occupations of the Annotated Code of Maryland be renumbered to be Section(s)
9 7-101(o) through (s), respectively.

10 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
11 read as follows:

12 **Article - Health Occupations**

13 7-101.

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

15 (N) "LICENSEE" MEANS AN INDIVIDUAL OR ENTITY LICENSED BY THE BOARD
16 TO PRACTICE MORTUARY SCIENCE TO THE EXTENT DETERMINED BY THE BOARD.

17 7-316.

18 (a) Subject to the hearing provisions of § 7-319 of this subtitle and except as to a
19 funeral establishment license, the Board may deny a license to any applicant, reprimand
20 any licensee, place any licensee on probation, or suspend or revoke any license if the
21 applicant or licensee:

22 (8) Employs, pays, or offers to pay a "capper", "steerer", "solicitor", or any
23 other person to obtain business, either in general or for a [particular mortician]
24 LICENSEE[, funeral director,] or funeral establishment;

25 (13) Fails, after proper demand, to refund promptly any payments received
26 under a pre-need contract WITH INTEREST;

27 (b) (1) Subject to the hearing provisions of § 7-319 of this subtitle and
28 paragraph (2) of this subsection, the Board may REPRIMAND, PLACE ON PROBATION,
29 deny, suspend, or revoke a funeral establishment license for any of the grounds listed in
30 subsection (a) of this section.

31 (2) The Board may not REPRIMAND, PLACE ON PROBATION, deny,
32 suspend, or revoke a funeral establishment license because of a violation of a provision of
33 this title by an employee of the establishment, unless the employee has a proprietary
34 interest in the business that is conducted from the establishment.

35 7-405.

36 (a) (1) In this section THE FOLLOWING WORDS HAVE THE MEANINGS
37 INDICATED.

3

1 (2) "BENEFICIARY" MEANS A PERSON FOR WHOSE BENEFIT A PRE-NEED
2 CONTRACT IS PURCHASED AND WHO WILL RECEIVE THE MERCHANDISE OR
3 SERVICES OFFERED UNDER THE CONTRACT.

4 (3) "BUYER" MEANS A PERSON THAT PURCHASES A PRE-NEED
5 CONTRACT.

6 (4) [, "seller"] "SELLER" means a person who agrees to provide services or
7 merchandise, directly or indirectly, under a pre-need contract.

8 (5) "TRUSTEE" MEANS A PERSON THAT HAS RESPONSIBILITY FOR
9 MAKING PRE-NEED ARRANGEMENTS IN A MANNER THAT ENTITLES THE
10 BENEFICIARY TO BE ELIGIBLE FOR BENEFITS THAT RESTRICT ASSETS.

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

14 (2) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (1) OF THIS
15 SUBSECTION, A LICENSED MORTICIAN OR A LICENSED FUNERAL DIRECTOR WHO IS
16 EMPLOYED BY A FUNERAL ESTABLISHMENT MAY EXECUTE PRE-NEED CONTRACTS
17 ON BEHALF OF THE FUNERAL ESTABLISHMENT WITH WHICH THE MORTICIAN OR
18 FUNERAL DIRECTOR IS EMPLOYED.

19 (3) ANY FUNERAL ESTABLISHMENT ON WHOSE BEHALF PRE-NEED
20 CONTRACTS ARE EXECUTED UNDER THIS SUBSECTION MUST COMPLY WITH THE
21 REQUIREMENTS OF THIS SECTION.

22 (f) (2) The making of a pre-need contract by a licensed mortician, A LICENSED
23 FUNERAL DIRECTOR, OR A HOLDER OF A SURVIVING SPOUSE LICENSE is not the
24 practice of insurance business.

25 7-410.

26 (A) ANY INDIVIDUAL WHO IS 18 YEARS OF AGE OR OLDER MAY DECIDE THE
27 DISPOSITION OF THE INDIVIDUAL'S OWN BODY AFTER THE INDIVIDUAL'S DEATH
28 WITHOUT THE PRE-DEATH OR POST-DEATH CONSENT OF ANOTHER PERSON BY
29 EXECUTING A DOCUMENT THAT EXPRESSES THE INDIVIDUAL'S WISHES OR BY
30 ENTERING INTO A PRE-NEED CONTRACT.

31 (B) IN ORDER TO BE VALID, ANY DOCUMENT EXECUTED UNDER SUBSECTION
32 (A) OF THIS SECTION MUST BE WRITTEN AND SIGNED BY THE INDIVIDUAL IN THE
33 PRESENCE OF A WITNESS, WHO, IN TURN, SHALL SIGN THE DOCUMENT IN THE
34 PRESENCE OF THE INDIVIDUAL.

35 (C) UNLESS A PERSON HAS KNOWLEDGE THAT CONTRARY DIRECTIONS HAVE
36 BEEN GIVEN BY THE DECEDENT, IF A DECEDENT HAS NOT EXECUTED A DOCUMENT
37 UNDER SUBSECTION (A) OF THIS SECTION, THE FOLLOWING PERSONS, IN THE
38 ORDER OF PRIORITY STATED, HAVE THE RIGHT TO ARRANGE FOR THE FINAL
39 DISPOSITION OF THE BODY OF THE DECEDENT UNDER THIS SECTION AND ARE
40 LIABLE FOR THE REASONABLE COSTS OF PREPARATION, CARE, AND DISPOSITION
41 OF THE DECEDENT:

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1 (1) THE SURVIVING SPOUSE OF THE DECEDENT;

2 (2) AN ADULT CHILD OF THE DECEDENT;

3 (3) A PARENT OF THE DECEDENT;

4 (4) AN ADULT BROTHER OR SISTER OF THE DECEDENT;

5 (5) A PERSON ACTING AS A REPRESENTATIVE OF THE DECEDENT
6 UNDER A SIGNED AUTHORIZATION OF THE DECEDENT;

7 (6) THE GUARDIAN OF THE PERSON OF THE DECEDENT AT THE TIME OF
8 THE DECEDENT'S DEATH, IF A GUARDIAN HAS BEEN APPOINTED; OR

9 (7) IN THE ABSENCE OF ANY PERSON UNDER PARAGRAPHS (1)
10 THROUGH (6) OF THIS SUBSECTION, ANY OTHER PERSON WILLING TO ASSUME THE
11 RESPONSIBILITY TO ACT AS THE AUTHORIZING AGENT FOR PURPOSES OF
12 ARRANGING THE FINAL DISPOSITION OF THE DECEDENT'S BODY, INCLUDING THE
13 PERSONAL REPRESENTATIVE OF THE DECEDENT'S ESTATE, AFTER ATTESTING IN
14 WRITING THAT A GOOD FAITH EFFORT HAS BEEN MADE TO NO AVAIL TO CONTACT
15 THE PERSONS DESCRIBED IN PARAGRAPHS (1) THROUGH (6) OF THIS SUBSECTION.

16 (D) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, IF A DECEDENT
17 HAS MORE THAN ONE SURVIVOR UNDER SUBSECTION (C)(1) THROUGH (4) OF THIS
18 SECTION, ANY ADULT CHILD, PARENT, OR ADULT BROTHER OR SISTER OF THE
19 DECEDENT WHO CONFIRMS IN WRITING TO A LICENSEE THAT ALL OF THE OTHER
20 MEMBERS OF THE SAME CLASS HAVE BEEN NOTIFIED MAY SERVE AS THE
21 AUTHORIZING AGENT UNLESS THE LICENSEE RECEIVES A WRITTEN OBJECTION
22 FROM ANOTHER MEMBER OF THAT CLASS.

23 (2) IF A DECEDENT HAS MORE THAN ONE SURVIVOR UNDER
24 SUBSECTION (C)(1) THROUGH (4) OF THIS SECTION, THE MAJORITY OF A CLASS MAY
25 SERVE AS THE AUTHORIZING AGENT.

26 (E) FOR AN INDIVIDUAL WHOSE FINAL DISPOSITION IS THE RESPONSIBILITY
27 OF THE STATE OR ANY OF ITS INSTRUMENTALITIES, A PUBLIC ADMINISTRATOR,
28 MEDICAL EXAMINER, CORONER, STATE-APPOINTED GUARDIAN, OR ANY OTHER
29 PUBLIC OFFICIAL CHARGED WITH ARRANGING THE FINAL DISPOSITION OF THE
30 BODY OF THE INDIVIDUAL MAY SERVE AS THE AUTHORIZING AGENT FOR
31 PURPOSES OF THIS SECTION.

32 (F) FOR AN INDIVIDUAL WHO HAS DONATED THE INDIVIDUAL'S BODY TO
33 MEDICAL SCIENCE OR WHOSE DEATH OCCURRED IN A NURSING HOME OR OTHER
34 PRIVATE INSTITUTION, A REPRESENTATIVE OF THE INSTITUTION TO WHICH THE
35 BODY WAS DONATED OR IN WHICH THE DECEDENT DIED MAY SERVE AS THE
36 AUTHORIZING AGENT OF THE DECEDENT AND THE INSTITUTION IS CHARGED WITH
37 MAKING ARRANGEMENTS FOR THE FINAL DISPOSITION OF THE BODY.

38 7-411.

39 (A) BEFORE BURIAL OR INTERMENT, A MORTICIAN SHALL AFFIX TO THE
40 LONG BONES OF THE DECREASED HUMAN BODY A PLASTIC OR METAL
41 IDENTIFICATION TAG.

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1 (B) AFTER CREMATION, A LICENSEE SHALL ENSURE THAT A METAL
2 IDENTIFICATION TAG IS PLACED IN THE CREMAINS CONTAINER.

3 (C) THE IDENTIFICATION TAG SHALL CONTAIN:

4 (1) THE NAME OF THE DECEDENT;

5 (2) THE SOCIAL SECURITY NUMBER OF THE DECEDENT;

6 (3) THE DECEDENT'S DATE OF BIRTH; AND

7 (4) THE DECEDENT'S DATE OF DEATH.

8 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 October 1, 1996.