
By: Senator Astle

Introduced and read first time: February 2, 1996

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 1, 1996

CHAPTER ____

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

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1 (1994 Replacement Volume and 1995 Supplement)

2 BY adding to

3 Article - Health Occupations

4 Section 7-101(n), 7-410, and 7-411

5 Annotated Code of Maryland

6 (1994 Replacement Volume and 1995 Supplement)

7 BY repealing and reenacting, with amendments,

8 Article - Health Occupations

9 Section 7-316(a)(8) and (13) and (b) and 7-405(a), (b), and (f)(2)

10 Annotated Code of Maryland

11 (1994 Replacement Volume and 1995 Supplement)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
13 MARYLAND, That Section(s) 7-101(n) through (r), respectively, of Article - Health
14 Occupations of the Annotated Code of Maryland be renumbered to be Section(s)
15 7-101(o) through (s), respectively.

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

18 **Article - Health Occupations**

19 7-101.

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

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

23 7-316.

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

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

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

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

37 (2) The Board may not REPRIMAND, PLACE ON PROBATION, deny,
38 suspend, or revoke a funeral establishment license because of a violation of a provision of

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1 this title by an employee of the establishment, unless the employee has a proprietary
2 interest in the business that is conducted from the establishment.

3 7-405.

4 (a) (1) In this section THE FOLLOWING WORDS HAVE THE MEANINGS
5 INDICATED.

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

9 (3) "BUYER" MEANS A PERSON THAT PURCHASES A PRE-NEED
10 CONTRACT.

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

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

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

19 (2) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (1) OF THIS
20 SUBSECTION, A LICENSED MORTICIAN OR A LICENSED FUNERAL DIRECTOR WHO IS
21 EMPLOYED BY A FUNERAL ESTABLISHMENT MAY EXECUTE PRE-NEED CONTRACTS
22 ON BEHALF OF THE FUNERAL ESTABLISHMENT WITH WHICH THE MORTICIAN OR
23 FUNERAL DIRECTOR IS EMPLOYED.

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

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

30 7-410.

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

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

1 (C) UNLESS A PERSON HAS KNOWLEDGE THAT CONTRARY DIRECTIONS HAVE
2 BEEN GIVEN BY THE DECEDENT, IF A DECEDENT HAS NOT EXECUTED A DOCUMENT
3 UNDER SUBSECTION (A) OF THIS SECTION, THE FOLLOWING PERSONS, IN THE
4 ORDER OF PRIORITY STATED, HAVE THE RIGHT TO ARRANGE FOR THE FINAL
5 DISPOSITION OF THE BODY OF THE DECEDENT UNDER THIS SECTION AND ARE
6 LIABLE FOR THE REASONABLE COSTS OF PREPARATION, CARE, AND DISPOSITION
7 OF THE DECEDENT:

8 (1) THE SURVIVING SPOUSE OF THE DECEDENT;

9 (2) AN ADULT CHILD OF THE DECEDENT;

10 (3) A PARENT OF THE DECEDENT;

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

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

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

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

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

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

33 (E) FOR AN INDIVIDUAL WHOSE FINAL DISPOSITION IS THE RESPONSIBILITY
34 OF THE STATE OR ANY OF ITS INSTRUMENTALITIES, A PUBLIC ADMINISTRATOR,
35 MEDICAL EXAMINER, CORONER, STATE-APPOINTED GUARDIAN, OR ANY OTHER
36 PUBLIC OFFICIAL CHARGED WITH ARRANGING THE FINAL DISPOSITION OF THE
37 BODY OF THE INDIVIDUAL MAY SERVE AS THE AUTHORIZING AGENT FOR
38 PURPOSES OF THIS SECTION.

39 (F) FOR AN INDIVIDUAL WHO HAS DONATED THE INDIVIDUAL'S BODY TO
40 MEDICAL SCIENCE OR WHOSE DEATH OCCURRED IN A NURSING HOME OR OTHER
41 PRIVATE INSTITUTION, A REPRESENTATIVE OF THE INSTITUTION TO WHICH THE

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1 BODY WAS DONATED OR IN WHICH THE DECEDENT DIED MAY SERVE AS THE
2 AUTHORIZING AGENT OF THE DECEDENT AND THE INSTITUTION IS CHARGED WITH
3 MAKING ARRANGEMENTS FOR THE FINAL DISPOSITION OF THE BODY.

4 7-411.

5 (A) BEFORE BURIAL OR INTERMENT, A MORTICIAN SHALL AFFIX TO THE
6 LONG BONES OF THE ~~DECEASED~~ DECEASED HUMAN BODY A PLASTIC OR METAL
7 IDENTIFICATION TAG.

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

10 (C) THE IDENTIFICATION TAG SHALL CONTAIN:

- 11 (1) THE NAME OF THE DECEDENT;
12 (2) THE SOCIAL SECURITY NUMBER OF THE DECEDENT;
13 (3) THE DECEDENT'S DATE OF BIRTH; AND
14 (4) THE DECEDENT'S DATE OF DEATH.

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