

SENATE BILL 484

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2003 Regular Session
3r1195
CF 3r1196

By: **Senator Astle**

Introduced and read first time: January 31, 2003

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Crematory Regulation**

3 FOR the purpose of requiring a person to obtain a license from the State Board of
4 Morticians before the person may operate a crematory in the State; expanding
5 the powers of the Board; requiring an applicant for a crematory license to
6 provide certain information to the Board; prohibiting the simultaneous
7 cremation of human remains of more than one individual without certain
8 authorization; defining certain terms; and generally relating to crematory
9 regulation.

10 BY repealing and reenacting, with amendments,
11 Article - Health Occupations
12 Section 7-101, 7-102(b), and 7-205
13 Annotated Code of Maryland
14 (2000 Replacement Volume and 2002 Supplement)

15 BY repealing and reenacting, without amendments,
16 Article - Health Occupations
17 Section 7-316 and 7-406
18 Annotated Code of Maryland
19 (2000 Replacement Volume and 2002 Supplement)

20 BY adding to
21 Article - Health Occupations
22 Section 7-406.1 and 7-406.2
23 Annotated Code of Maryland
24 (2000 Replacement Volume and 2002 Supplement)

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

1

Article - Health Occupations

2 7-101.

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

4 (b) "Apprentice" means an individual licensed by the Board who assists a
5 licensed mortician in the practice of mortuary science, under direct supervision of a
6 licensed mortician.

7 (c) "Apprentice sponsor" means a person who:

8 (1) Is a licensed mortician practicing mortuary science as a licensed
9 mortician in Maryland at least 1 year immediately prior to accepting the applicant as
10 an apprentice; and

11 (2) Provides direct supervision to an apprentice.

12 (D) "AUTHORIZING AGENT" MEANS A PERSON LEGALLY ENTITLED TO ORDER
13 THE CREMATION OF HUMAN REMAINS OR LEGALLY AUTHORIZED TO CONTROL THE
14 FINAL DISPOSITION OF HUMAN REMAINS.

15 [(d)] (E) "Board" means the Maryland State Board of Morticians.

16 [(e)] (F) (1) "Corporation" means a mortuary science business whose
17 articles of incorporation are in good standing with the Maryland State Department of
18 Assessments and Taxation, or its successor, the initial business for which the license
19 is issued must have been incorporated on or before June 1, 1945 and have
20 "Incorporated", "Inc.", or "Corporation" in its name.21 (2) "Corporation" does not include, for purposes of issuing a corporation
22 license, a "professional association" (P.A.) or a "professional corporation" (P.C.).23 [(f)] (G) "Courtesy card" means a license issued by the Board to licensed
24 practitioners of mortuary science in other states, to make a removal of a dead human
25 body in this State and to return the body to another state or country, to return dead
26 bodies from another state or country to this State, to fill out the family history portion
27 of the death certificate, and to sign the death certificate in the holder's capacity as a
28 licensed practitioner of mortuary science.29 (H) "CREMATION" MEANS THE PROCESS OF REDUCING HUMAN REMAINS TO
30 BONE FRAGMENTS THROUGH INTENSE HEAT AND EVAPORATION, WHICH MAY
31 INCLUDE ANY MECHANICAL OR THERMAL PROCESS.32 (I) "CREMATORY" MEANS AN INDIVIDUAL, SOLE PROPRIETORSHIP,
33 PARTNERSHIP, PROFESSIONAL ASSOCIATION, OR CORPORATION THAT CHARGES A
34 FEE FOR THE CREMATION OF HUMAN REMAINS.35 (J) "CREMATORY LICENSE" MEANS A LICENSE ISSUED BY THE BOARD TO
36 ALLOW A SOLE PROPRIETORSHIP, PARTNERSHIP, PROFESSIONAL ASSOCIATION, OR

1 CORPORATION TO OPERATE A BUSINESS THROUGH WHICH A LICENSEE MAY ENGAGE
2 IN THE OPERATION OF A CREMATORY.

3 (K) "FINAL DISPOSITION" MEANS THE BURIAL, CREMATION, OR OTHER FINAL
4 DISPOSITION OF HUMAN REMAINS.

5 [(g)] (L) "Funeral director" means an individual who is licensed by the Board
6 to practice all aspects of mortuary science except for embalming.

7 [(h)] (M) "Funeral establishment" means any building, structure, or premises
8 from which the business of funeral directing or embalming is conducted.

9 (N) "HUMAN REMAINS" MEANS THE BODY OF A DECEASED INDIVIDUAL, OR
10 PART OF A BODY OR LIMB THAT HAS BEEN REMOVED FROM A LIVING INDIVIDUAL,
11 INCLUDING THE BODY, PART OF A BODY, OR LIMB IN ANY STATE OF DECOMPOSITION.

12 [(i)] (O) (1) "License" means, unless the context requires otherwise, a
13 license issued by the Board.

14 (2) "License" includes, unless otherwise indicated:

15 (i) A mortician license;

16 (ii) An apprentice license;

17 (iii) A funeral director license;

18 (iv) A surviving spouse license;

19 (v) A corporation license;

20 (vi) A funeral establishment license; [and]

21 (vii) A courtesy card; AND

22 (VIII) A CREMATORY LICENSE.

23 [(j)] (P) "Licensed apprentice" means, unless the context requires otherwise,
24 an apprentice who is licensed by the Board to assist a licensed mortician in the
25 practice of mortuary science.

26 (Q) "LICENSED CREMATORY OPERATOR" MEANS A PERSON WHO IS LICENSED
27 BY THE BOARD TO OPERATE A CREMATORY.

28 [(k)] (R) "Licensed funeral director" means, unless the context requires
29 otherwise, a funeral director who is licensed by the Board to practice funeral
30 direction.

31 [(l)] (S) "Licensed funeral establishment" means, unless the context requires
32 otherwise, a funeral establishment that is licensed by the Board.

1 [(m)] (T) "Licensed mortician" means, unless the context requires otherwise, a
2 mortician who is licensed by the Board under this title to practice mortuary science.

3 [(n)] (U) "Licensee" means an individual or entity licensed by the Board to
4 practice mortuary science to the extent determined by the Board.

5 [(o)] (V) "Mortician" means an individual who practices mortuary science.

6 [(p)] (W) (1) "Practice funeral direction" means:

7 (i) To operate a funeral establishment; or

8 (ii) For compensation, to arrange for or make final disposition of a
9 dead human body.

10 (2) "Practice funeral direction" does not include, for compensation:

11 (i) Disinfecting or preserving a dead human body or any of its parts
12 by arterial or cavity injection or any other type of preservation; or

13 (ii) Otherwise preparing a dead human body for disposition.

14 [(q)] (X) (1) "Practice mortuary science" means:

15 (i) To operate a funeral establishment;

16 (ii) For compensation, to prepare a dead human body for
17 disposition, including disinfecting or preserving a dead human body or any of its parts
18 by arterial or cavity injection; or

19 (iii) For compensation, to arrange for or make final disposition of a
20 dead human body.

21 (2) "Practice mortuary science" does not include the pickup, removal, or
22 transportation of a dead human body, if the unlicensed individual is acting under the
23 direction of a licensed mortician or funeral director.

24 [(r)] (Y) "Pre-need contract" means an agreement between a consumer and a
25 licensed funeral director, licensed mortician, or surviving spouse to provide any goods
26 and services purchased prior to the time of death. Goods and services shall include:

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

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

31 [(s)] (Z) "Surviving spouse" means the legal widow or widower of a licensed
32 funeral director or licensed mortician, whose license was in good standing at the time
33 of death, and who at the time of death, wholly or partly owned and operated a
34 mortuary science business.

1 7-102.

2 (b) This title does not apply to the business of operating a cemetery [or
3 crematory], including the sale of cemetery lots, grave sites, mausoleums, monuments,
4 lawn crypts, or vaults.

5 7-205.

6 In addition to the powers and duties set forth elsewhere in this title, the Board
7 has the following powers and duties:

8 (1) To adopt bylaws, rules, and regulations to carry out the provisions of
9 this title;

10 (2) To adopt a seal;

11 (3) To establish procedures for licensing apprentices;

12 (4) To keep a list of all individuals currently licensed by the Board;

13 (5) To investigate any alleged violation of this title;

14 (6) To enforce this title;

15 (7) To adopt rules and regulations regarding false and misleading
16 advertising and misrepresentation;

17 (8) To inspect THE RECORDS AND PREMISES OF licensed funeral
18 establishments AND CREMATORIES;

19 (9) On receipt of a written and signed complaint, including a referral
20 from the Commissioner of Labor and Industry, conduct an unannounced inspection of
21 the funeral establishment to determine compliance at that funeral establishment
22 with the Centers for Disease Control's guidelines on universal precautions;

23 (10) To establish standards for the practice of mortuary science; and

24 (11) To establish standards for sanitation and waste disposal in
25 connection with the practice of mortuary science.

26 7-316.

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

31 (1) Fraudulently or deceptively obtains or attempts to obtain a license
32 for the applicant or licensee or for another;

33 (2) Fraudulently or deceptively uses a license;

- 1 (3) Commits fraud or misrepresentation in the practice of mortuary
2 science;
- 3 (4) Is convicted of or pleads guilty or nolo contendere to a felony or to a
4 crime involving moral turpitude, whether or not any appeal or other proceeding is
5 pending to have the conviction or plea set aside;
- 6 (5) Aids or abets an unauthorized person in the practice of mortuary
7 science;
- 8 (6) Advertises falsely or in a misleading manner;
- 9 (7) Solicits mortuary science business, either personally or by an agent,
10 from a dying individual or the relatives of a dead or dying individual, other than
11 through general advertising;
- 12 (8) Employs, pays, or offers to pay a "capper", "steerer", "solicitor", or any
13 other person to obtain business, either in general or for a licensee or funeral
14 establishment;
- 15 (9) Directly or indirectly pays or offers to pay to obtain mortuary science
16 business;
- 17 (10) Solicits or accepts any payment or rebate for recommending any
18 crematory, mausoleum, or cemetery or causing a dead human body to be disposed of
19 there;
- 20 (11) Refuses to surrender custody of a dead human body on the demand of
21 a person who is entitled to its custody;
- 22 (12) Sells or offers to sell any share, certificate, or interest in a mortuary
23 science business with a promise or offer to perform services to the buyer at a cost less
24 than that offered to the general public;
- 25 (13) Fails, after proper demand, to refund promptly any payments
26 received under a pre-need contract with interest;
- 27 (14) At the time funeral arrangements are made, fails to give the contract
28 required by § 7-404 of this title;
- 29 (15) Violates any State, municipal, or county law, rule, or regulation on
30 the handling, custody, care, or transportation of dead human bodies or the disposal of
31 instruments, materials, and wastes relevant to preparation of a dead human body for
32 final disposition;
- 33 (16) Practices mortuary science under a name other than:
- 34 (i) The name that appears on the license of that person; or
- 35 (ii) The name of a partnership in accordance with § 7-401 of this
36 title;

- 1 (17) Signs an application for a funeral establishment license if the signer
2 knew or should have known that grounds existed for which the funeral establishment
3 license later was denied, suspended, or revoked;
- 4 (18) Violates any provision of this title or of the laws relating to
5 cremation;
- 6 (19) Is disciplined by a licensing or disciplinary authority of any other
7 state or country or convicted or disciplined by a court of any state or country for an act
8 that would be grounds for disciplinary action under the Board's disciplinary statutes;
- 9 (20) Willfully makes or files a false report or record in the practice of
10 mortuary science;
- 11 (21) Willfully fails to file or record any report as required under law,
12 willfully impedes or obstructs the filing or recording of the report, or induces another
13 to fail to file or record the report;
- 14 (22) Submits a false statement to collect a fee;
- 15 (23) Provides professional services while:
- 16 (i) Under the influence of alcohol; or
- 17 (ii) Using any narcotic or controlled dangerous substance, as
18 defined in § 5-101 of the Criminal Law Article, or other drug that is in excess of
19 therapeutic amounts or without valid medical indication;
- 20 (24) Violates any rule or regulation adopted by the Board;
- 21 (25) Is professionally, physically, or mentally incompetent;
- 22 (26) Commits an act of unprofessional conduct in the practice of mortuary
23 science;
- 24 (27) Refuses, withholds from, denies, or discriminates against an
25 individual with regard to the provision of professional services for which the licensee
26 is licensed and qualified to render because the individual is HIV positive;
- 27 (28) Except in an emergency life-threatening situation where it is not
28 feasible or practicable, fails to comply with the Centers for Disease Control's
29 guidelines on universal precautions;
- 30 (29) Fails to allow an inspection under § 7-205(8) of this title;
- 31 (30) Fails to comply with inspection requirements in the time specified by
32 the Board; or
- 33 (31) Fails to provide the Board the certification required under § 7-405(i)
34 of this title.

1 (b) (1) Subject to the hearing provisions of § 7-319 of this subtitle and
2 paragraph (2) of this subsection, the Board may reprimand, place on probation, deny,
3 suspend, or revoke a funeral establishment license for any of the grounds listed in
4 subsection (a) of this section.

5 (2) The Board may not reprimand, place on probation, deny, suspend, or
6 revoke a funeral establishment license because of a violation of a provision of this title
7 by an employee of the establishment, unless the employee has a proprietary interest
8 in the business that is conducted from the establishment.

9 7-406.

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

13 7-406.1.

14 (A) A PERSON MAY NOT OPERATE A CREMATORY IN THE STATE UNLESS THE
15 PERSON IS LICENSED AS A CREMATORY OPERATOR UNDER THIS TITLE.

16 (B) TO APPLY FOR A CREMATORY OPERATOR LICENSE, AN APPLICANT SHALL:

17 (1) SUBMIT TO THE BOARD AN APPLICATION ON THE FORM PROVIDED
18 BY THE BOARD; AND

19 (2) PAY A NONREFUNDABLE FEE SET BY THE BOARD.

20 (C) THE APPLICATION FOR A CREMATORY OPERATOR LICENSE SHALL STATE:

21 (1) THE NAME AND RESIDENTIAL ADDRESS OF THE APPLICANT;

22 (2) THE NAME AND FIXED ADDRESS OF THE CREMATORY;

23 (3) THE NAME AND RESIDENTIAL ADDRESS OF EACH EMPLOYEE WHO
24 ENGAGES IN THE OPERATION OF THE CREMATORY; AND

25 (4) ANY OTHER REASONABLE INFORMATION THAT THE BOARD
26 DETERMINES IS NECESSARY TO CARRY OUT THIS TITLE.

27 7-406.2.

28 (A) A LICENSED CREMATORY OPERATOR MAY NOT ENGAGE IN THE
29 SIMULTANEOUS CREMATION OF HUMAN REMAINS OF MORE THAN ONE INDIVIDUAL
30 WITHIN THE SAME CHAMBER UNLESS THE LICENSED CREMATORY OPERATOR HAS
31 RECEIVED SPECIFIC WRITTEN AUTHORIZATION TO DO SO FROM THE AUTHORIZING
32 AGENTS FOR THE HUMAN REMAINS TO BE CREMATED.

33 (B) WRITTEN AUTHORIZATION FOR SIMULTANEOUS CREMATION SHALL
34 EXEMPT THE LICENSED CREMATORY OPERATOR FROM ALL LIABILITY FOR
35 COMMINGLING OF THE PRODUCT DURING THE CREMATION PROCESS.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2003.