

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 1341

(Delegate Harrison, *et al.*)

Economic Matters and Health and Government Operations

Business Regulation - Corporations and Limited Liability Companies - License to Operate a Funeral Establishment

This bill specifies the conditions under which the State Board of Morticians may issue a corporate license to operate a funeral establishment to a corporation that is owned or controlled by a registered cemeterian or permit holder.

The bill also allows corporations that have not continuously held a license to operate a mortuary science business in Maryland since June 1, 1945 to apply for a license to operate in the State. It adds limited liability companies to the list of businesses that may operate a mortuary science business in the State. It subjects limited liability companies to the same requirements as corporations.

Fiscal Summary

State Effect: Special fund revenues to the board could increase by \$4,400 in FY 2005 to reflect an estimated five additional corporations or limited liability companies applying for a license to operate a mortuary science business. Future years reflect biennial fee renewal. The bill's requirements could be handled with existing budgeted resources.

(in dollars)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
SF Revenue	\$4,400	\$0	\$4,400	\$0	\$4,400
Expenditure	\$0	\$0	\$0	\$0	\$0
Net Effect	\$4,400	\$0	\$4,400	\$0	\$4,400

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The board may issue a funeral establishment license to a licensed individual, corporation, or limited liability company. The funeral establishment license application must be signed: (1) by a licensed individual who is not an apprentice but is the owner or co-owner of the establishment; (2) if the applicant is a corporation, by an officer or director of the corporation and the licensed individual who is not an apprentice but will be responsible for the practice of mortuary science conducted for the corporation; or (3) if the applicant is a limited liability company, by each managing member and the licensed individual who is not an apprentice but will be responsible for the practice of mortuary science for the company. The funeral establishment must be owned or operated by a licensed mortician or funeral director, holder of a surviving spouse or corporation license, or a limited liability company.

A corporation that is owned or controlled by a registered cemetarian or permit holder may be issued a corporate license if: (1) the registered cemetarian or permit holder averaged fewer than 150 burials per year for the last three years; (2) the funeral establishment is located on or adjacent to the cemetery premises; and (3) the registered cemetarian or permit holder has a perpetual care trust fund.

The bill requires the Office of Cemetery Oversight to certify to the State Board of Morticians, after the applicant has submitted satisfactory evidence, that the registered cemetarian or permit holder meets the specified requirements. The bill also provides that a corporate officer or director must sign a funeral establishment license application on behalf of a corporation that is certified under the provisions of the bill.

The board may renew the license of a corporation or limited liability company that: (1) holds a license issued by the State; (2) has continuously renewed the license since the date it was issued; (3) submits the required application form; and (4) pays the fee.

Current Law: Except as otherwise provided, a corporation may not operate a mortuary science business and the board may not issue a license to or list any corporation as licensed to operate a mortuary science business. The board may renew only the license of a corporation that: (1) on June 1, 1945, held a license issued by the State; (2) has been renewed continuously since that date; (3) submits an application on the board-required form; and (4) pays the board fee.

A funeral establishment must be licensed by the board before the establishment may be used for the preparation of the remains of an individual, viewing, and conducting

services. Funeral establishments must be owned and operated by a licensed mortician or funeral director or a holder of a surviving spouse or corporation license.

Background: The 59 corporations currently licensed by the board have continuously held a license since June 1, 1945. Current law prohibits the creation of additional corporation licenses. The board expects five additional businesses to apply for licensure to operate a mortuary science business as a result of this bill.

In every state, corporations may own a funeral establishment if a licensed mortician operates the facility. However, in Maryland, the number of corporations that can own an establishment is restricted. Corporation licenses or charters were initially issued to allow licensees to reduce their tax and liability burdens. Over time, the board found that some corporations were allowing nonlicensed individuals to perform services such as embalming. The board found it difficult to take disciplinary action against corporate owners and thus sought to restrict corporation licenses. Legislation passed in 1937 allowed the board to stop issuing new corporation licenses but grandfathered in existing licensees. The board allowed for a temporary exception to this restriction during World War II by allowing corporations to be formed by the immediate families of licensees in order to carry on the family business while those licensees served in the armed forces.

Corporation licenses are renewed biennially at a fee of \$875. Because the number of corporation licenses is limited, any corporation that intends to enter the mortuary science business in Maryland must purchase an existing corporation and its license. The last such acquisition occurred in 2000.

There are approximately 264 funeral homes operating in Maryland, most of which are independently owned small businesses. This number has remained relatively constant for the past several years. Fifty-nine of these businesses hold corporation licenses, of which 29 are owned by five publicly-held companies and one privately-held company.

According to the Office of Cemetery Oversight, there are 70 registered cemeteries in the State. At least four registered cemeteries are affiliated with a funeral establishment.

State Revenues: Special fund revenues to the board could increase by \$4,375 in fiscal 2005 reflecting an estimated five additional corporations or limited liability companies that would apply for a license to operate a mortuary science business in the State. Future years reflect biennial fee renewal.

Additional Information

Prior Introductions: Similar bills were introduced in the 2002 and 2003 sessions. HB 1113 of 2002 received an unfavorable report by the Economic Matters Committee; HB 956 of 2003 was introduced, but no further action was taken.

Cross File: None, however HB 795 is similar.

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

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