

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE
Revised

House Bill 795

(Delegate Benson, *et al.*)

Health and Government Operations

Education, Health, and Environmental Affairs

Task Force to Study Funeral Establishment Licensing

This bill creates a Task Force to Study Funeral Establishment Licensing staffed by the Department of Legislative Services (DLS) and the Attorney General's Office (Antitrust Division).

The bill takes effect July 1, 2004 and terminates December 31, 2004.

Fiscal Summary

State Effect: Any expense reimbursements for task force members and staffing costs for DLS and the Attorney General are assumed to be minimal and absorbable within existing budgeted resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The task force must: (1) review and develop options for licensing funeral establishments; (2) assess the forms of ownership of funeral home licenses; (3) assess the forms of licensing funeral professionals in other states; (4) assess the consumer safeguards of limited liability corporations that own funeral homes; (5) determine whether the State Board of Morticians' injunctive power should be strengthened; (6) review the board's composition; and (7) propose legislative, regulatory, and other changes required to implement the task force's recommendations.

The task force must report its findings and recommendations to the Governor and the General Assembly by December 31, 2004.

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.

The State Board of Morticians consists of 12 members: eight must be licensed morticians or licensed funeral directors and four must be consumers.

An action may be maintained in the State's or board's name to enjoin the unauthorized practice of mortuary science or conduct that constitutes a ground for disciplinary action. Proof of actual damage or proof that a person will sustain damage if an injunction is not granted is not required for an action. Criminal prosecution for the unauthorized practice of mortuary science or disciplinary action by the board does not prohibit an action to enjoin.

Background: The 59 corporations currently licensed by the board have continuously held a license since June 1, 1945. 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.

State Expenditures: DLS advises that it will likely be able to handle staffing duties with existing resources, depending upon the number of other task forces or commissions that are established during the 2004 legislative session. The bill's December 31 deadline could divert staff resources from other responsibilities.

Additional Information

Prior Introductions: A similar bill, HB 956, was introduced in the 2003 session, but no further action was taken.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene; *Sunset Review: Evaluation of the State Board of Morticians*, October 2000, Department of Legislative Services

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