
By: ~~Delegate Boutin~~ Delegates Boutin, Kach, McDonough, Hubbard, Kullen,
Pendergrass, and Boteler

Introduced and read first time: February 4, 2005
Assigned to: Health and Government Operations

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 21, 2005

CHAPTER _____

1 AN ACT concerning

2 **State Board of Morticians - ~~Family Security Trust Fund~~ Authority to**
3 **Conduct Audits**

4 ~~FOR the purpose of creating the Family Security Trust Fund to reimburse losses~~
5 ~~incurred by certain consumers due to the wrongdoing of certain licensees of the~~
6 ~~State Board of Morticians; requiring the Board to adopt certain regulations;~~
7 ~~authorizing the Board to assess an annual fee for a certain time period;~~
8 ~~requiring the Board to specify penalties for nonpayment of fees; specifying the~~
9 ~~duties of the Trustees of the Fund; specifying the use of the Fund; requiring the~~
10 ~~Trustees to determine certain reimbursement after considering certain~~
11 ~~factors; authorizing the Trustees to enforce a claim of restitution; providing that~~
12 ~~funds may not revert to the General Fund of the State; requiring a legislative~~
13 ~~audit; eliminating certain reporting requirements of a seller of a pre-need~~
14 ~~contract; and generally relating to persons regulated by the State Board of~~
15 ~~Morticians.~~

16 FOR the purpose of authorizing the State Board of Morticians to conduct certain
17 audits of certain licensees; authorizing the Board to issue subpoenas and
18 administer oaths in connection with certain audits; and generally relating to the
19 authority of the State Board of Morticians to conduct audits.

20 BY repealing and reenacting, with amendments,
21 Article - Health Occupations
22 Section ~~7-405(i)~~ 7-205 and 7-319(d)
23 Annotated Code of Maryland
24 (2000 Replacement Volume and 2004 Supplement)

1 ~~BY adding to~~
 2 ~~Article Health Occupations~~
 3 ~~Section 7-405.1~~
 4 ~~Annotated Code of Maryland~~
 5 ~~(2000 Replacement Volume and 2004 Supplement)~~

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

8 **Article - Health Occupations**

9 7-205.

10 (A) In addition to the powers and duties set forth elsewhere in this title, the
 11 Board has the following powers and duties:

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

14 (2) To adopt a seal;

15 (3) To establish procedures for licensing apprentices;

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

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

18 (6) To enforce this title;

19 (7) To adopt rules and regulations regarding false and misleading
 20 advertising and misrepresentation;

21 (8) To inspect licensed funeral establishments;

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

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

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

29 (B) THE BOARD MAY CONDUCT AN AUDIT OF A LICENSEE THAT:

30 (I) RECEIVES PRE-NEED FUNDS;

31 (II) PLACES PRE-NEED FUNDS IN A TRUST; OR

1 (III) ENTERS INTO A PRE-NEED CONTRACT.

2 7-319.

3 (d) Over the signature of an officer or the administrator of the Board, the
4 Board may issue subpoenas and administer oaths in connection with any AUDIT OR
5 investigation under this title and any hearings or proceedings before it.

6 ~~7-405.~~

7 (i) ~~A seller shall annually file a report with the Board which includes[:~~

8 (1) ~~A certification by a certified public accountant as to the seller's~~
9 ~~compliance with the provisions of this section; and~~

10 (2) ~~Any other] ANY information the Board deems necessary.~~

11 ~~7-405.1.~~

12 (A) ~~IN THIS SECTION, "FUND" MEANS THE FAMILY SECURITY TRUST FUND.~~

13 (B) ~~THIS SECTION APPLIES ONLY TO ENTITIES THAT ARE LICENSED FUNERAL~~
14 ~~ESTABLISHMENTS, LICENSED CORPORATIONS, AND OTHER LICENSED ENTITIES~~
15 ~~THAT RECEIVE OR PLACE IN A TRUST ANY PRE-NEED FUNDS OR ENTER INTO A~~
16 ~~PRE-NEED CONTRACT.~~

17 (C) (1) ~~THERE IS A FAMILY SECURITY TRUST FUND.~~

18 (2) ~~THE PURPOSE OF THE FUND IS TO MAINTAIN THE INTEGRITY OF THE~~
19 ~~FUNERAL HOME PROFESSION BY PAYING MONEY TO REIMBURSE LOSSES INCURRED~~
20 ~~BY A CONSUMER OF A PRE-NEED CONTRACT DUE TO THE DEFALCATION OF~~
21 ~~LICENSEES.~~

22 (D) ~~THE BOARD SHALL ADOPT REGULATIONS THAT:~~

23 (1) ~~IMPLEMENT THE ESTABLISHMENT OF THE FAMILY SECURITY TRUST~~
24 ~~FUND OF THE STATE BOARD OF MORTICIANS;~~

25 (2) ~~PROVIDE FOR THE APPOINTMENT OF TRUSTEES TO ADMINISTER THE~~
26 ~~FUND; AND~~

27 (3) ~~PROVIDE FOR THE OPERATION OF THE FUND.~~

28 (E) ~~THE BOARD SHALL:~~

29 (1) ~~REQUIRE A LICENSEE LISTED UNDER SUBSECTION (B) OF THIS~~
30 ~~SECTION TO PAY TO THE FUND AN ANNUAL FEE NOT TO EXCEED \$250 FOR UP TO 5~~
31 ~~YEARS; AND~~

1 (2) ~~SPECIFY THE PENALTIES FOR FAILURE OF A LICENSEE LISTED~~
2 ~~UNDER SUBSECTION (B) OF THIS SECTION TO PAY THE FEE ESTABLISHED BY THE~~
3 ~~BOARD, WHICH MAY INCLUDE:~~

4 (1) ~~REPRIMAND;~~

5 (2) ~~LICENSE SUSPENSION; OR~~

6 (3) ~~REVOCATION OF A LICENSE TO PRACTICE MORTUARY SCIENCE~~
7 ~~AND PROVIDE FUNERAL SERVICES.~~

8 (F) ~~THE TRUSTEES APPOINTED UNDER SUBSECTION (D)(2) OF THIS SECTION~~
9 ~~SHALL:~~

10 (1) ~~RECEIVE CONTRIBUTIONS TO THE FUND; AND~~

11 (2) ~~MANAGE THE ASSETS OF THE FUND.~~

12 (G) ~~THE FUND SHALL BE USED TO REIMBURSE A CONSUMER FOR A LOSS THAT~~
13 ~~WAS CAUSED BY A DEFALCATION OF A LICENSEE IF:~~

14 (1) ~~THE TRUSTEES CONSIDER REIMBURSEMENT PROPER AND~~
15 ~~REASONABLE; AND~~

16 (2) (1) ~~THE LICENSEE CAUSED THE LOSS WHILE UNDER A~~
17 ~~CONTRACTUAL OBLIGATION TO PROVIDE SERVICES TO THE CONSUMER; AND~~

18 (2) ~~THE CONSUMER CANNOT RECOVER THE MONEY UNDER A~~
19 ~~BOND.~~

20 (H) ~~THE TRUSTEES SHALL DETERMINE THE AMOUNT OF REIMBURSEMENT TO~~
21 ~~THE CONSUMER AFTER TAKING INTO CONSIDERATION THE AMOUNT OF MONEY IN~~
22 ~~THE FUND AND ANY ANTICIPATED CLAIMS AGAINST THE FUND.~~

23 (I) ~~THE TRUSTEES MAY ENFORCE A CLAIM FOR RESTITUTION ARISING BY~~
24 ~~SUBROGATION, ASSIGNMENT, OR OTHERWISE AGAINST ANY PERSON WHOSE~~
25 ~~ACTIONS GAVE RISE TO A CLAIM THAT THE FUND PAYS.~~

26 (J) ~~ANY UNSPENT PORTIONS OF THE FUND MAY NOT BE TRANSFERRED OR~~
27 ~~REVERT TO THE GENERAL FUND OF THE STATE, BUT SHALL REMAIN IN THE FUND TO~~
28 ~~BE USED FOR THE PURPOSES SPECIFIED IN THIS SECTION.~~

29 (K) ~~THE LEGISLATIVE AUDITOR SHALL AUDIT THE ACCOUNTS AND~~
30 ~~TRANSACTIONS OF THE FUND AS PROVIDED IN § 2-1220 OF THE STATE GOVERNMENT~~
31 ~~ARTICLE.~~

32 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
33 effect October 1, 2005.

