

HOUSE BILL 1410

J2
HB 138/04 – HGO

71r3369

By: **Delegate Harrison**

Introduced and read first time: March 5, 2007

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **State Board of Morticians – Family Security Trust Fund and Pre-Need**
3 **Contract Funds**

4 FOR the purpose of repealing authority for the State Board of Morticians to conduct
5 audits of certain licensees; requiring certain banking institutions and savings
6 and loan associations with which certain funds are deposited to require the
7 submission of certain documentation to release certain money from certain
8 accounts; requiring money released from a certain account to be in the name of
9 the buyer under certain circumstances; creating the Family Security Trust
10 Fund to reimburse losses incurred by certain consumers due to the wrongdoing
11 of certain licensees of the Board; requiring the Board to adopt certain
12 regulations; authorizing the Board to assess an annual fee for a certain time
13 period; requiring the Board to specify penalties for nonpayment of fees;
14 specifying the duties of the Trustees of the Fund; specifying the use of the Fund;
15 authorizing the Trustees to enforce a claim of restitution; providing that funds
16 may not revert to the General Fund of the State; requiring a legislative audit;
17 providing for the application of this Act; and generally relating to persons
18 regulated by the State Board of Morticians.

19 BY repealing and reenacting, with amendments,
20 Article – Health Occupations
21 Section 7–205 and 7–405(e)
22 Annotated Code of Maryland
23 (2005 Replacement Volume and 2006 Supplement)

24 BY adding to

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Health Occupations
2 Section 7–405.1
3 Annotated Code of Maryland
4 (2005 Replacement Volume and 2006 Supplement)

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

7 **Article – Health Occupations**

8 7–205.

9 [(a)] In addition to the powers and duties set forth elsewhere in this title, the
10 Board has the following powers and duties:

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

13 (2) To adopt a seal;

14 (3) To establish procedures for licensing apprentices;

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

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

17 (6) To enforce this title;

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

20 (8) To inspect licensed funeral establishments;

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

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

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

1 [(b) The Board may conduct an audit of a licensee that:

2 (1) Receives pre-need funds;

3 (2) Places pre-need funds in a trust; or

4 (3) Enters into a pre-need contract.]

5 7-405.

6 (e) (1) Except as may be provided in an irrevocable trust established
7 under paragraph [(4)] (5) of this subsection, the banking institution or savings and
8 loan association with which funds are deposited under this section is not responsible
9 for the application of pre-need contract escrow or trust funds.

10 (2) Except as otherwise provided in this subsection, a seller may not
11 withdraw from the account any money received from a buyer unless the services and
12 merchandise have been provided as agreed in the contract.

13 (3) A pre-need contract is ended and a seller shall refund to a buyer
14 all payments and interest held for the buyer if:

15 (i) The buyer or the legal representative of the buyer demands
16 in writing a refund of all payments made;

17 (ii) The business of the seller is discontinued or sold;

18 (iii) The seller is unable to perform under the terms and
19 conditions of the pre-need contract; or

20 (iv) The buyer fails to pay the entire contract price before the
21 death of the beneficiary, and the seller considers the pre-need contract void.

22 (4) (I) **A BANKING INSTITUTION OR SAVINGS AND LOAN**
23 **ASSOCIATION WITH WHICH FUNDS ARE DEPOSITED UNDER THIS SECTION SHALL**
24 **REQUIRE SUBMISSION OF THE FOLLOWING DOCUMENTATION FROM A SELLER**
25 **BEFORE THE BANKING INSTITUTION OR SAVINGS AND LOAN ASSOCIATION MAY**
26 **RELEASE ANY MONEY FROM THE ACCOUNT:**

1 **1. A CERTIFIED DEATH CERTIFICATE IF THE**
 2 **RELEASE OF MONEY IS FOR THE FULFILLMENT OF THE PRE-NEED CONTRACT**
 3 **DUE TO THE DEATH OF THE BUYER; OR**

4 **2. AN AFFIDAVIT IF THE RELEASE OF THE MONEY IS**
 5 **DUE TO THE CANCELLATION OR TRANSFER OF A PRE-NEED CONTRACT BY THE**
 6 **BUYER.**

7 **(II) IF A SELLER SUBMITS AN AFFIDAVIT FOR RELEASE OF**
 8 **MONEY FROM AN ACCOUNT UNDER ITEM 2 OF THIS SUBPARAGRAPH, THE**
 9 **BANKING INSTITUTION OR SAVINGS AND LOAN ASSOCIATION SHALL RELEASE**
 10 **THE MONEY IN THE NAME OF THE BUYER ONLY.**

11 [(4)] **(5)** (i) Notwithstanding the provisions of paragraph (3) of
 12 this subsection, the buyer of a pre-need contract has the option, at any time, to
 13 establish, under paragraph [(5)] **(6)** of this subsection, an irrevocable trust with
 14 respect to all or any portion of the payment made under the contract in the escrow or
 15 trust account held by the seller, but only for the purpose of entitling the buyer to be
 16 eligible for any current Social Security benefits or for any benefits under any other
 17 plan that restricts eligibility to those with limited assets.

18 (ii) The trust document establishing a trust under this
 19 paragraph shall contain the following notice, conspicuously displayed in 10-point
 20 boldface type:

21 “This document creates an irrevocable trust. Under the terms of this document,
 22 a buyer may not receive a refund of any payments made for the pre-need burial
 23 contract”.

24 [(5)] **(6)** The trust document establishing a trust under paragraph
 25 [(4)] **(5)** of this subsection shall provide for:

26 (i) The disposition of the income earned by the trust which
 27 shall inure to the benefit of the buyer;

28 (ii) The transfer of the trust funds if required by a trustee
 29 substituted under paragraph [(6)] **(7)** of this subsection; and

30 (iii) The disposition of the trust funds if:

31 1. The business of the seller is discontinued or sold;

1 2. The seller is unable to perform under the terms and
2 conditions of the pre-need contract; and

3 3. The buyer fails to pay the entire contract price before
4 the death of the beneficiary and the seller considers the pre-need contract void.

5 [(6)] (7) If the buyer exercises the option described in paragraph [(4)]
6 (5) of this subsection, the buyer, a relative of the buyer, or legal representative of the
7 buyer shall retain the right to appoint, as trustee of the irrevocable trust, a trustee
8 other than the one originally designated in the contract.

9 [(7)] (8) If a contract is voided under paragraph (3) of this subsection
10 and the option to establish an irrevocable trust has been exercised under paragraph
11 [(4)] (5) of this subsection, the buyer, a relative of the buyer, or a legal representative
12 of the buyer shall retain the right to appoint, as trustee of the irrevocable trust, a
13 trustee other than the one originally designated in the contract.

14 **7-405.1.**

15 (A) **IN THIS SECTION, “FUND” MEANS THE FAMILY SECURITY TRUST**
16 **FUND.**

17 (B) **THIS SECTION APPLIES ONLY TO ENTITIES THAT ARE LICENSED**
18 **FUNERAL ESTABLISHMENTS, LICENSED CORPORATIONS, AND OTHER LICENSED**
19 **ENTITIES THAT RECEIVE OR PLACE IN A TRUST ANY PRE-NEED FUNDS OR**
20 **ENTER INTO A PRE-NEED CONTRACT.**

21 (C) (1) **THERE IS A FAMILY SECURITY TRUST FUND.**

22 (2) **THE PURPOSE OF THE FUND IS TO MAINTAIN THE INTEGRITY**
23 **OF THE FUNERAL HOME PROFESSION BY PAYING MONEY TO REIMBURSE LOSSES**
24 **INCURRED BY A CONSUMER OF A PRE-NEED CONTRACT DUE TO THE**
25 **DEFALCATION OF LICENSEES.**

26 (D) **THE BOARD SHALL ADOPT REGULATIONS THAT:**

27 (1) **IMPLEMENT THE ESTABLISHMENT OF THE FAMILY SECURITY**
28 **TRUST FUND OF THE STATE BOARD OF MORTICIANS;**

1 **(2) PROVIDE FOR THE APPOINTMENT OF TRUSTEES TO**
2 **ADMINISTER THE FUND; AND**

3 **(3) PROVIDE FOR THE OPERATION OF THE FUND.**

4 **(E) THE BOARD SHALL:**

5 **(1) REQUIRE EACH ESTABLISHMENT TO PAY TO THE FUND AN**
6 **ANNUAL FEE NOT TO EXCEED \$100 FOR UP TO 2 YEARS; AND**

7 **(2) SPECIFY THE PENALTIES FOR FAILURE OF AN**
8 **ESTABLISHMENT TO PAY THE FEE ESTABLISHED BY THE BOARD, WHICH MAY**
9 **INCLUDE:**

10 **(I) REPRIMAND;**

11 **(II) LICENSE SUSPENSION; OR**

12 **(III) REVOCATION OF A LICENSE TO PRACTICE MORTUARY**
13 **SCIENCE AND PROVIDE FUNERAL SERVICES.**

14 **(F) THE TRUSTEES APPOINTED UNDER SUBSECTION (D)(2) OF THIS**
15 **SECTION SHALL:**

16 **(1) RECEIVE CONTRIBUTIONS TO THE FUND; AND**

17 **(2) MANAGE THE ASSETS OF THE FUND.**

18 **(G) THE FUND SHALL BE USED TO REIMBURSE A CONSUMER FOR A**
19 **LOSS THAT WAS CAUSED BY A DEFALCATION OF A LICENSEE IF:**

20 **(1) THE TRUSTEES CONSIDER REIMBURSEMENT PROPER AND**
21 **REASONABLE; AND**

22 **(2) (I) THE LICENSEE CAUSED THE LOSS WHILE UNDER A**
23 **CONTRACTUAL OBLIGATION TO PROVIDE SERVICES TO THE CONSUMER; AND**

24 **(II) THE CONSUMER CANNOT RECOVER THE MONEY UNDER**
25 **A BOND.**

1 **(H) THE TRUSTEES MAY ENFORCE A CLAIM FOR RESTITUTION ARISING**
2 **BY SUBROGATION, ASSIGNMENT, OR OTHERWISE AGAINST ANY PERSON WHOSE**
3 **ACTIONS GAVE RISE TO A CLAIM THAT THE FUND PAYS.**

4 **(I) ANY UNSPENT PORTIONS OF THE FUND MAY NOT BE TRANSFERRED**
5 **OR REVERT TO THE GENERAL FUND OF THE STATE, BUT SHALL REMAIN IN THE**
6 **FUND TO BE USED FOR THE PURPOSES SPECIFIED IN THIS SECTION.**

7 **(J) THE LEGISLATIVE AUDITOR SHALL AUDIT THE ACCOUNTS AND**
8 **TRANSACTIONS OF THE FUND AS PROVIDED IN § 2-1220 OF THE STATE**
9 **GOVERNMENT ARTICLE.**

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
11 construed to apply only prospectively and may not be applied or interpreted to have
12 any effect on or application to any cause of action arising before the effective date of
13 this Act.

14 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 2007.