

# HOUSE BILL 487

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CF SB 463

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By: **Delegate Hammen (Chair, Health and Government Operations Committee)**

Introduced and read first time: January 30, 2008

Assigned to: Health and Government Operations

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 5, 2008

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **State Board of Morticians and Funeral Directors – Sunset Extension and**  
3 **Program Evaluation**

4 FOR the purpose of continuing the State Board of Morticians and Funeral Directors in  
5 accordance with the provisions of the Maryland Program Evaluation Act (sunset  
6 law) by extending to a certain date the termination provisions relating to the  
7 statutory and regulatory authority of the Board; altering the composition of the  
8 Board; requiring the Director of the Health, Education, and Advocacy Unit in  
9 the Office of the Attorney General to appoint certain Board members; requiring  
10 the Director, to the extent practicable, to fill certain vacancies occurring on the  
11 Board within a certain period of time; authorizing the Director to remove  
12 certain members from the Board under certain circumstances; requiring that an  
13 evaluation of the Board and the statutes and regulations that relate to the  
14 Board be performed on or before a certain date; requiring that pre-need  
15 contracts contain a certain disclosure statement; requiring the Board to submit  
16 certain reports on or before certain dates; requiring the additional consumer  
17 member of the Board authorized under this Act to be appointed by a certain  
18 date; providing that the term of the additional consumer member shall begin on  
19 a certain date; providing that certain positions on the Board terminate on a  
20 certain date; and generally relating to the State Board of Morticians and  
21 Funeral Directors.

22 BY repealing and reenacting, with amendments,  
23 Article – Health Occupations  
24 Section 7-202, 7-316(a)(29), 7-405(c) and (h), and 7-602

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**EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Annotated Code of Maryland  
2 (2005 Replacement Volume and 2007 Supplement)

3 BY repealing and reenacting, without amendments,  
4 Article – Health Occupations  
5 Section 7–405(a) and (b)  
6 Annotated Code of Maryland  
7 (2005 Replacement Volume and 2007 Supplement)

8 BY repealing and reenacting, without amendments,  
9 Article – State Government  
10 Section 8–403(a)  
11 Annotated Code of Maryland  
12 (2004 Replacement Volume and 2007 Supplement)

13 BY repealing and reenacting, with amendments,  
14 Article – State Government  
15 Section 8–403(b)(40)  
16 Annotated Code of Maryland  
17 (2004 Replacement Volume and 2007 Supplement)

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

20 **Article – Health Occupations**

21 7–202.

22 (a) (1) The Board consists of [12] 10 members.

23 (2) Of the [12] 10 Board members:

24 (i) [8] 5 shall be licensed morticians or licensed funeral  
25 directors; and

26 (ii) [4] 5 shall be consumer members.

27 (3) All Board members shall be residents of the State.

28 (4) [The Governor shall appoint each member with the advice of the  
29 Secretary, and with the advice and consent of the Senate.

30 (5) The Board may not have more than one member who is employed  
31 by or affiliated with, directly or indirectly, the same corporation, professional  
32 association, or other entity, that owns, directly or through a subsidiary corporation,  
33 professional association, or other entity, one or more funeral homes.

1           **(b) (1) THE GOVERNOR SHALL APPOINT EACH MORTICIAN MEMBER**  
2 **WITH THE ADVICE OF THE SECRETARY, AND WITH THE ADVICE AND CONSENT OF**  
3 **THE SENATE.**

4                   **[(1)](2)**       Each mortician member shall:

5                           (i) Be a licensed mortician whose license is in good standing  
6 with the Board; and

7                           (ii) Have practiced mortuary science actively for at least 5 years  
8 immediately before appointment.

9                   **[(2)](3)**       In this subsection, “good standing” means that the Board  
10 has not reprimanded the licensee, suspended, or revoked the mortician’s license or  
11 placed the licensee on probation within 5 years’ time prior to or after confirmation to  
12 the Board.

13                   **[(3)](4)**       To qualify for appointment to the Board, the licensee must  
14 meet all other qualifications required for renewal of a mortician license under this  
15 title.

16           **(c) (1) THE GOVERNOR SHALL APPOINT EACH FUNERAL DIRECTOR**  
17 **MEMBER WITH THE ADVICE OF THE SECRETARY, AND WITH THE ADVICE AND**  
18 **CONSENT OF THE SENATE.**

19                   **[(1)] (2)**       Each funeral director member shall:

20                           (i) Be a licensed funeral director whose license is in good  
21 standing with the Board; and

22                           (ii) Have practiced funeral direction actively for at least 5 years  
23 immediately before appointment.

24                   **[(2)] (3)**       In this subsection, “good standing” means that the Board  
25 has not reprimanded the licensee, suspended, or revoked the funeral director’s license  
26 or placed the licensee on probation within 5 years’ time prior to or after confirmation  
27 to the Board.

28                   **[(3)] (4)**       To qualify for appointment to the Board, the licensee must  
29 meet all other qualifications required for renewal of a funeral director license under  
30 this title.

31           **(d) (1) THE CONSUMER MEMBERS SHALL BE APPOINTED BY THE**  
32 **DIRECTOR OF THE HEALTH, EDUCATION, AND ADVOCACY UNIT IN THE OFFICE**  
33 **OF THE ATTORNEY GENERAL IN ACCORDANCE WITH THIS SUBSECTION.**

1           **(2)**   Each consumer member of the Board:

2           **[(1)](I)**   Shall be a member of the general public;

3           **[(2)](II)**   May not be or ever have been a mortician, funeral director,  
4 or apprentice;

5           **[(3)](III)**   May not have a household member who is a mortician,  
6 funeral director, or apprentice;

7           **[(4)](IV)**   May not participate or ever have participated in a  
8 commercial or professional field related to the practice of mortuary science;

9           **[(5)](V)**    May not have a household member who participates in a  
10 commercial or professional field related to the practice of mortuary science; and

11           **[(6)](VI)**   May not have had within 2 years before appointment a  
12 substantial financial interest in a person regulated by the Board.

13           **[(e)](3)**    While a member of the Board, a consumer member may not have a  
14 substantial financial interest in a person regulated by the Board.

15           **[(f)](E)**    Before taking office, each member of the Board shall take the oath  
16 required by Article I, § 9 of the State Constitution.

17           **[(g)](F)**    **(1)**   The term of an appointed member is 4 years, except that the  
18 initial term of 1 of the consumer members is 3 years.

19           **(2)**    The terms of appointed members are staggered as required by the  
20 terms provided for members of the Board on July 1, 1981.

21           **(3)**    At the end of a term, an appointed member continues to serve until  
22 a successor is appointed and qualifies.

23           **(4)**    A member who is appointed after a term has begun serves only for  
24 the rest of the term and until a successor is appointed and qualifies.

25           **(5)**    **(I)**   To the extent practicable, the Governor shall fill any  
26 vacancy on the Board occurring during the term of [an] A MEMBER appointed  
27 [member] BY THE GOVERNOR within 60 days of the date of the vacancy.

28                   **(II)**   TO THE EXTENT PRACTICABLE, THE DIRECTOR OF THE  
29 HEALTH, EDUCATION, AND ADVOCACY UNIT IN THE OFFICE OF THE ATTORNEY  
30 GENERAL SHALL FILL ANY VACANCY ON THE BOARD OCCURRING DURING THE

1 TERM OF A MEMBER APPOINTED BY THE DIRECTOR WITHIN 60 DAYS OF THE  
 2 DATE OF THE VACANCY.

3 (6) A member may not serve more than 2 consecutive full terms.

4 [(h)](G) (1) The Governor may remove an appointed MORTICIAN OR  
 5 FUNERAL DIRECTOR member:

6 (i) For incompetence or misconduct; or

7 (ii) Who, because of events that occur after the member's  
 8 appointment or reappointment to the Board, causes the Board to be in violation of the  
 9 prohibition set forth in subsection [(a)(5)](A)(4) of this section.

10 (2) Upon the recommendation of the Secretary, the Governor may  
 11 remove an appointed MORTICIAN OR FUNERAL DIRECTOR member whom the  
 12 Secretary finds to have been absent from 2 successive Board meetings without  
 13 adequate reason.

14 (H) (1) THE DIRECTOR OF THE HEALTH, EDUCATION, AND  
 15 ADVOCACY UNIT IN THE OFFICE OF THE ATTORNEY GENERAL MAY REMOVE AN  
 16 APPOINTED CONSUMER MEMBER:

17 (I) FOR INCOMPETENCE OR MISCONDUCT; OR

18 (II) WHO, BECAUSE OF EVENTS THAT OCCUR AFTER THE  
 19 MEMBER'S APPOINTMENT OR REAPPOINTMENT TO THE BOARD, CAUSES THE  
 20 BOARD TO BE IN VIOLATION OF THE PROHIBITION SET FORTH IN SUBSECTION  
 21 (A)(4) OF THIS SECTION.

22 (2) UPON THE RECOMMENDATION OF THE SECRETARY, THE  
 23 DIRECTOR OF THE HEALTH, EDUCATION, AND ADVOCACY UNIT IN THE OFFICE  
 24 OF THE ATTORNEY GENERAL MAY REMOVE AN APPOINTED CONSUMER MEMBER  
 25 WHOM THE SECRETARY FINDS TO HAVE BEEN ABSENT FROM TWO SUCCESSIVE  
 26 BOARD MEETINGS WITHOUT ADEQUATE REASON.

27 7-316.

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

32 (29) Fails to allow an inspection under [§ 7-205(8)] § 7-205(A)(8) of  
 33 this title;

1 7-405.

2 (a) (1) In this section the following words have the meanings indicated.

3 (2) "Beneficiary" means a person for whose benefit a pre-need contract  
4 is purchased and who will receive the merchandise or services offered under the  
5 contract.

6 (3) "Buyer" means a person that purchases a pre-need contract.

7 (4) "Seller" means a person who agrees to provide services or  
8 merchandise, directly or indirectly, under a pre-need contract.

9 (5) "Trustee" means a person that has responsibility for making  
10 pre-need arrangements in a manner that entitles the beneficiary to be eligible for  
11 benefits that restrict assets.

12 (b) (1) Only a licensed mortician, a licensed funeral director, or a holder of  
13 a surviving spouse license may offer or agree, directly or indirectly, to provide services  
14 or merchandise under a pre-need contract.

15 (2) Notwithstanding the provisions of paragraph (1) of this subsection,  
16 a licensed mortician or a licensed funeral director who is employed by a funeral  
17 establishment may execute pre-need contracts on behalf of the funeral establishment  
18 with which the mortician or funeral director is employed.

19 (3) Any funeral establishment on whose behalf pre-need contracts are  
20 executed under this subsection must comply with the requirements of this section.

21 (c) (1) A pre-need contract shall contain:

22 (i) The name of each party to the contract and, if the  
23 beneficiary is an individual other than the buyer, the name of the beneficiary of the  
24 contract;

25 (ii) A description of any service or merchandise to be provided  
26 under the pre-need contract;

27 (iii) **A DISCLOSURE STATEMENT THAT CLEARLY:**

28 **1. STATES THAT ALL FUNERAL COSTS MAY NOT BE**  
29 **COVERED UNDER THE PRE-NEED CONTRACT; AND**

30 **2. LISTS ALL FUNERAL GOODS AND SERVICES THAT**  
31 **ARE REASONABLY EXPECTED TO BE REQUIRED AT THE TIME OF NEED, BUT ARE**  
32 **NOT INCLUDED IN THE CONTRACT;**

1                            [(iii)] (IV)    The total price of the services and merchandise agreed  
2 on; and

3                            [(iv)] (V)    The method of payment.

4                            (2)    A pre-need contract shall be executed in duplicate and be signed  
5 by each party.

6                            (3)    The seller shall give one of the duplicate originals of the pre-need  
7 contract to the buyer.

8                            (h)    A seller of a pre-need contract shall disclose to the consumer[:

9                            (1)    All goods and services that are reasonably expected to be required  
10 at the time of need, but are not included in the pre-need contract; and

11                            (2)    The] **THE** buyer's cancellation and refund rights under subsection  
12 (d) of this section.

13 7-602.

14                            Subject to the evaluation and reestablishment provisions of the Program  
15 Evaluation Act, this title and all rules and regulations adopted under this title shall  
16 terminate and be of no effect after July 1, [2008] **2018**.

## 17                            **Article - State Government**

18 8-403.

19                            (a)    On or before December 15 of the 2nd year before the evaluation date of a  
20 governmental activity or unit, the Legislative Policy Committee, based on a  
21 preliminary evaluation, may waive as unnecessary the evaluation required under this  
22 section.

23                            (b)    Except as otherwise provided in subsection (a) of this section, on or before  
24 the evaluation date for the following governmental activities or units, an evaluation  
25 shall be made of the following governmental activities or units and the statutes and  
26 regulations that relate to the governmental activities or units:

27                            (40)    Morticians **AND FUNERAL DIRECTORS**, State Board of (§ 7-201  
28 of the Health Occupations Article: July 1, [2007] **2017**);

29                            SECTION 2. AND BE IT FURTHER ENACTED, That, on or before December 1,  
30 2008, the Board of Morticians and Funeral Directors shall submit a report to the  
31 Senate Education, Health, and Environmental Affairs Committee and the House

1 Health and Government Operations Committee, in accordance with § 2–1246 of the  
2 State Government Article, regarding:

3 (1) any observed changes in licensure patterns;

4 (2) a plan to reduce the Board's fund balance to 25% of biennial  
5 operating costs; and

6 (3) the status of nonstatutory recommendations contained in the  
7 Sunset Review: Evaluation of the State Board of Morticians and Funeral Directors  
8 conducted by the Department of Legislative Services.

9 SECTION 3. AND BE IT FURTHER ENACTED, That:

10 (1) The Board of Morticians and Funeral Directors shall notify the  
11 Senate, Education, Health, and Environmental Affairs Committee and the House  
12 Health and Government Operations Committee of the resolution in the matter of  
13 Charles Brown, et al. v. David Hovatter, et al.

14 (2) Within 6 months after the matter of Charles Brown et al. v. David  
15 Hovatter, et al. is resolved the Board of Morticians and Funeral Directors shall submit  
16 a report to the Senate Education, Health, and Environmental Affairs Committee and  
17 the House Health and Government Operations Committee, in accordance with §  
18 2–1246 of the State Government Article, on:

19 (i) any proposals to alter the laws or regulations regarding  
20 corporate licenses;

21 (ii) whether a surviving spouse or executor license is still  
22 necessary; and

23 (iii) whether the requirement that an individual be a licensed  
24 mortician to qualify for a funeral establishment license is necessary.

25 SECTION 4. AND BE IT FURTHER ENACTED, That, on or before December 1,  
26 2008, and each year thereafter, the Board of Morticians and Funeral Directors shall  
27 report to the Senate Education, Health, and Environmental Affairs Committee and  
28 the House Health and Government Operations Committee, in accordance with §  
29 2–1246 of the State Government Article, regarding effectiveness of pre-need  
30 regulations.

31 SECTION 5. AND BE IT FURTHER ENACTED, That, on or before December 1,  
32 2010, the Board of Morticians and Funeral Directors shall submit a report to the  
33 Senate Education, Health, and Environmental Affairs Committee and the House  
34 Health and Government Operations Committee, in accordance with § 2–1246 of the  
35 State Government Article, on the outcome of reestablishing the funeral director license  
36 including the number of: (1) students enrolled in the funeral director program at the



1 Community College of Baltimore County; (2) applicants for a funeral director  
2 apprenticeship license; and (3) funeral director licenses issued.

3 SECTION 6. AND BE IT FURTHER ENACTED, That:

4 (1) On or before June 30, 2009, the Director of the Health, Education,  
5 and Advocacy Unit in the Office of the Attorney General shall appoint the additional  
6 consumer member of the State Board of Morticians and Funeral Directors authorized  
7 under Section 1 of this Act, and, subject to item (2) of this section, the additional  
8 consumer member shall fill the vacancy on the Board, previously held by a licensed  
9 member, that existed as of February 25, 2008;

10 (2) The 4-year term of the additional consumer member of the Board  
11 appointed under item (1) of this section shall begin on July 1, 2009; and

12 (3) The two positions on the Board held by licensed members whose  
13 terms expire at the end of June 30, 2009, shall be terminated at the end of June 30,  
14 2009.

15 SECTION ~~6~~ 7. AND BE IT FURTHER ENACTED, That this Act shall take  
16 effect July 1, 2008.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.