

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE
Revised

House Bill 487

(Delegate Hammen)

(Chair, Health and Government Operations Committee)

Health and Government Operations

Education, Health, and Environmental Affairs

State Board of Morticians and Funeral Directors - Sunset Extension and
Program Evaluation

This bill extends the termination date for the State Board of Morticians and Funeral Directors by 10 years to July 1, 2018. In addition, the bill requires a disclosure statement in each preneed contract that clearly • states that all funeral costs may not be covered under the preneed contract; and • lists all funeral goods and services that are reasonably expected to be required at the time of need but are not included in the contract. The bill reduces by two the total number of board members and alters board membership so that it consists of an equal number of licensee and consumer members. Finally, the bill also requires the board to submit a number of reports.

The bill takes effect July 1, 2008.

Fiscal Summary

State Effect: Special fund revenues and expenditures for the board would be maintained in FY 2009 and future years. The Governor's proposed FY 2009 budget includes \$515,233 for board operations. The bill's reporting requirements could be handled with existing budgeted resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The Governor must appoint each mortician and funeral director member, and the director of the Health, Education, and Advocacy Unit must appoint the consumer members. The director of the Health, Education, and Advocacy Unit in the Office of the Attorney General can remove an appointed consumer board member under specified circumstances.

All the reports required of the board have to be submitted to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Operations Committee.

By December 2008, the board has to submit a report which includes • any observed changes in licensing; • a plan to reduce the board's fund balance to 25% of biennial operating costs; and • the status of nonstatutory recommendations contained in *Sunset Review: Evaluation of the State Board of Morticians and Funeral Directors (October 2007)*.

The board has to notify the committees of the resolution in the matter of *Brown, et al. v. Hovatter, et al*, and within six months, submit a report on • any proposals to alter the laws or regulations regarding corporate licenses; • whether a surviving spouse or executor license is still necessary; and • whether the requirement that an individual be a licensed mortician to qualify for a funeral establishment license is necessary.

By December 2008, and on an annual basis thereafter, the board has to submit a report regarding the effectiveness of preneed regulations. By December 2010, the board has to submit a report on the outcome of reestablishing the funeral director license including the number of • students enrolled in the funeral director program at the Community College of Baltimore County; • applicants for a funeral director apprenticeship license; and • funeral director licenses issued.

Current Law: The State Board of Morticians and Funeral Directors is one of approximately 70 entities currently subject to evaluation under the Maryland Program Evaluation Act (sunset law). The sunset law requires the Department of Legislative Services to prepare a preliminary evaluation report on each governmental activity or unit subject to review, with a recommendation as to whether further (full) evaluation is necessary, typically conducted the following year.

The board is scheduled to terminate July 1, 2008.

Established in 1902, the board is one of the oldest health occupations boards in Maryland. Charged with the mission of protecting public health and consumer interests and promoting quality funeral service practices in the field of mortuary science, the board serves the following five major functions:

- licensing and regulating funeral service providers;
- licensing, inspecting, and regulating funeral establishments;
- receiving and resolving complaints regarding licensees and funeral establishments;
- establishing standards for the practice of mortuary science; and
- providing education to consumers regarding the funeral service industry.

The Maryland Morticians Act expressly prohibits the practice of mortuary science by an unlicensed individual and further limits the operation of funeral establishments by corporations. The board issues licenses for ● apprentices; ● morticians; ● funeral directors; ● the surviving spouse of a mortician or funeral director who will continue operating the funeral establishment in the event of the mortician's or funeral director's death; ● funeral establishments; ● corporations; and ● individuals who practice mortuary science in another state or country and apply for a courtesy card authorizing them to transport dead human bodies into or out of Maryland to the other state or country of licensure. All licenses are issued on a biennial basis except apprentice licenses, which are issued annually.

Chapter 186 of 2007 reopened the funeral director license to new licensees. Individuals seeking licensure must meet all requirements of a licensed mortician with the exception of demonstrating competency in embalming.

The seller of preneed goods must disclose to the consumer all goods and services that are reasonably expected to be required at the time of need but are not included in the preneed contract as well as the buyer's cancellation and refund rights. However, this disclosure is not required to be in the contract itself.

Background: A preliminary evaluation conducted in 2005 recommended that the board be waived from further review; however the General Assembly did not take action on the legislation to extend the board's termination date during the 2006 or 2007 sessions. Thus, a full evaluation was undertaken during the 2007 interim to assist the General Assembly in making a decision about reauthorizing the board. Regulatory agencies subject to sunset review are generally reauthorized for 10 years. This bill implements some of the recommendations from the 2007 full evaluation.

On October 17, 2007, in the case of *Brown, et al. v. Hovatter, et al.*, a U.S. District Court ruled that the board may not enforce the provisions of the Morticians Act that restrict new

corporate ownership of funeral homes in Maryland with the indefinite exemptions for corporation licenses held as of June 1, 1945. The decision is being appealed in circuit court. If the ruling stands, the board will have to implement a process for issuing new corporation licenses.

Additional Information

Prior Introductions: None.

Cross File: SB 463 (Senator Conway) (Chair, Education, Health, and Environmental Affairs Committee) – Education, Health, and Environmental Affairs.

Information Source(s): Department of Health and Mental Hygiene, Department of Legislative Services

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Analysis by: Sarah K. Harvey

Direct Inquiries to:
(410) 946-5510
(301) 970-5510