

SENATE BILL 910

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9lr2910

By: **Senator Conway**

Introduced and read first time: February 12, 2009

Assigned to: Rules

Re-referred to: Education, Health, and Environmental Affairs, February 18, 2009

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 24, 2009

CHAPTER _____

1 AN ACT concerning

2 **Health Occupations – Morticians and Funeral Directors – Crematory License**

3 FOR the purpose of repealing an exemption for a crematory from the scope of the
4 Maryland Morticians and Funeral Directors Act; ~~requiring one member altering~~
5 the membership of the State Board of Morticians and Funeral Directors ~~to be an~~
6 ~~owner or operator of a crematory~~; authorizing the Board to inspect the records,
7 premises, equipment, and physical operations of licensed funeral
8 establishments and licensed crematories; prohibiting an individual or certain
9 entities from establishing, owning, or operating a crematory in the State on or
10 after a certain date unless the crematory is licensed; requiring an applicant for
11 a crematory license to submit a certain application to the Board; requiring an
12 applicant for a crematory license to pay a certain fee; requiring that the
13 application for a crematory license include certain information; prohibiting a
14 licensed crematory from being required to pay funds into the Family Security
15 Trust Fund; requiring an inspection of a crematory to be unannounced;
16 authorizing an unannounced inspection of a crematory to include advance notice
17 under certain circumstances; defining certain terms; and generally relating to
18 morticians, funeral directors, and crematories.

19 BY repealing and reenacting, with amendments,
20 Article – Health Occupations
21 Section 7–101, 7–102, 7–202(a), 7–205, and 7–409
22 Annotated Code of Maryland
23 (2005 Replacement Volume and 2008 Supplement)

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 BY repealing and reenacting, without amendments,
2 Article – Health Occupations
3 Section 7–201, 7–406, and 7–410
4 Annotated Code of Maryland
5 (2005 Replacement Volume and 2008 Supplement)

6 BY adding to
7 Article – Health Occupations
8 Section 7–406.1
9 Annotated Code of Maryland
10 (2005 Replacement Volume and 2008 Supplement)

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

13 **Article – Health Occupations**

14 7–101.

15 (a) In this title the following words have the meanings indicated.

16 (b) “Apprentice” means an individual licensed by the Board who assists a
17 licensed mortician or funeral director in the practice of mortuary science or funeral
18 direction, under direct supervision of a licensed mortician or funeral director.

19 (c) “Apprentice sponsor” means a person who:

20 (1) Is a licensed mortician or funeral director practicing mortuary
21 science as a licensed mortician or funeral director in Maryland at least 1 year
22 immediately prior to accepting the applicant as an apprentice; and

23 (2) Provides direct supervision to an apprentice.

24 **(D) “AUTHORIZING AGENT” MEANS A PERSON LEGALLY ENTITLED TO**
25 **ORDER THE CREMATION OF HUMAN REMAINS OR LEGALLY AUTHORIZED TO**
26 **CONTROL THE FINAL DISPOSITION OF HUMAN REMAINS.**

27 **[(d)] (E)** “Board” means the Maryland State Board of Morticians and
28 Funeral Directors.

29 **[(e)] (F)** (1) “Corporation” means a mortuary science business whose
30 articles of incorporation are in good standing with the Maryland State Department of
31 Assessments and Taxation, or its successor, the initial business for which the license is
32 issued must have been incorporated on or before June 1, 1945 and have
33 “Incorporated”, “Inc.”, or “Corporation” in its name.

1 (2) “Corporation” does not include, for purposes of issuing a
2 corporation license, a “professional association” (P.A.) or a “professional corporation”
3 (P.C.).

4 [(f)] (G) “Courtesy card” means a license issued by the Board to licensed
5 practitioners of mortuary science in other states, to make a removal of a dead human
6 body in this State and to return the body to another state or country, to return dead
7 bodies from another state or country to this State, to fill out the family history portion
8 of the death certificate, and to sign the death certificate in the holder’s capacity as a
9 licensed practitioner of mortuary science.

10 (H) **“CREMATION” MEANS THE PROCESS OF REDUCING HUMAN**
11 **REMAINS TO BONE FRAGMENTS THROUGH INTENSE HEAT AND EVAPORATION,**
12 **WHICH MAY INCLUDE ANY MECHANICAL OR THERMAL PROCESS.**

13 (I) **“CREMATORY” MEANS A STRUCTURE THAT HAS OR CONTAINS**
14 **CREMATION EQUIPMENT WHERE AN INDIVIDUAL, SOLE PROPRIETORSHIP,**
15 **PARTNERSHIP, PROFESSIONAL ASSOCIATION, OR CORPORATION PROVIDES**
16 **CREMATION SERVICES AND THAT CHARGES A FEE FOR THE CREMATION OF**
17 **HUMAN REMAINS.**

18 (J) **“CREMATORY LICENSE” MEANS A LICENSE ISSUED BY THE BOARD**
19 **TO ALLOW A SOLE PROPRIETORSHIP, PARTNERSHIP, PROFESSIONAL**
20 **ASSOCIATION, OR CORPORATION TO OPERATE A CREMATORY BUSINESS**
21 **THROUGH WHICH A LICENSEE MAY ENGAGE IN THE OPERATION OF A**
22 **CREMATORY.**

23 (K) **“FINAL DISPOSITION” MEANS THE CREMATION, BURIAL, OR OTHER**
24 **FINAL DISPOSITION OF HUMAN REMAINS.**

25 [(g)] (L) “Funeral director” means an individual who is licensed by the
26 Board to practice all aspects of mortuary science except for embalming.

27 [(h)] (M) “Funeral establishment” means any building, structure, or
28 premises from which the business of practicing mortuary science is conducted.

29 (N) **“HUMAN REMAINS” MEANS THE DEAD BODY OF A DECEASED HUMAN**
30 **INDIVIDUAL, OR PART OF A BODY OR LIMB THAT HAS BEEN REMOVED FROM A**
31 **LIVING INDIVIDUAL, INCLUDING THE BODY, PART OF A BODY, OR LIMB IN ANY**
32 **STATE OF DECOMPOSITION.**

33 [(i)] (O) (1) “License” means, unless the context requires otherwise, a
34 license issued by the Board.

35 (2) “License” includes, unless otherwise indicated:

- 1 (i) A mortician license;
- 2 (ii) An apprentice license;
- 3 (iii) A funeral director license;
- 4 (iv) A surviving spouse license;
- 5 (v) A corporation license;
- 6 (vi) A funeral establishment license; [and]
- 7 (vii) A courtesy card; **AND**

8 **(VIII) A CREMATORY LICENSE.**

9 [(j)] (P) “Licensed apprentice” means, unless the context requires
 10 otherwise, an apprentice who is licensed by the Board to assist a licensed mortician or
 11 funeral director in the practice of mortuary science or funeral direction.

12 [(q)] (Q) **“LICENSED CREMATORY” MEANS A CREMATORY LICENSED BY THE**
 13 **BOARD.**

14 [(k)] (R) “Licensed funeral director” means, unless the context requires
 15 otherwise, a funeral director who is licensed by the Board to practice funeral direction.

16 [(l)] (S) “Licensed funeral establishment” means, unless the context
 17 requires otherwise, a funeral establishment that is licensed by the Board.

18 [(m)] (T) “Licensed mortician” means, unless the context requires otherwise,
 19 a mortician who is licensed by the Board under this title to practice mortuary science.

20 [(n)] (U) “Licensee” means an individual or entity licensed by the Board to
 21 practice mortuary science to the extent determined by the Board.

22 [(o)] (V) “Mortician” means an individual who practices mortuary science.

23 [(p)] (W) (1) “Practice funeral direction” means:

- 24 (i) To operate a funeral establishment;
- 25 (ii) For compensation, to prepare a dead human body for
 26 disposition; or
- 27 (iii) For compensation, to arrange for or make final disposition of
 28 a dead human body.

1 (2) “Practice funeral direction” does not include, for compensation,
2 disinfecting or preserving a dead human body or any of its parts by arterial or cavity
3 injection or any other type of preservation.

4 [(q)] (X) (1) “Practice mortuary science” means:

5 (i) To operate a funeral establishment;

6 (ii) For compensation, to prepare a dead human body for
7 disposition; or

8 (iii) For compensation, to arrange for or make final disposition of
9 a dead human body.

10 (2) “Practice mortuary science” includes:

11 (i) The practice of funeral direction; and

12 (ii) Disinfecting or preserving a dead human body or any of its
13 parts by arterial or cavity injection.

14 (3) “Practice mortuary science” does not include the pickup, removal,
15 or transportation of a dead human body, if the unlicensed individual is acting under
16 the direction of a licensed mortician or funeral director.

17 [(r)] (Y) “Pre-need contract” means an agreement between a consumer and
18 a licensed funeral director, licensed mortician, or surviving spouse to provide any
19 goods and services purchased prior to the time of death. Goods and services shall
20 include:

21 (1) A service, including any form of preservation and disposition, that
22 a mortician normally provides in the ordinary course of business; or

23 (2) Merchandise, including a casket, vault, or clothing, that a
24 mortician normally provides in the ordinary course of business.

25 [(s)] (Z) “Surviving spouse” means the legal widow or widower of a licensed
26 funeral director or licensed mortician, whose license was in good standing at the time
27 of death, and who at the time of death, wholly or partly owned and operated a
28 mortuary science business.

29 7-102.

30 (a) This title does not limit the right of an individual to practice a health
31 occupation that the individual is authorized to practice under this article.

1 (b) This title does not apply to the business of operating a cemetery [or
2 crematory], including the sale of cemetery lots, grave sites, mausoleums, monuments,
3 lawn crypts, or vaults.

4 7-201.

5 There is a State Board of Morticians and Funeral Directors in the Department.

6 7-202.

7 (a) (1) The Board consists of 11 members.

8 (2) Of the 11 Board members:

9 (i) ~~6 shall be licensed morticians or licensed funeral directors,~~
10 ~~ONE OF WHOM SHALL BE AN OWNER OR OPERATOR OF A CREMATORY; and~~

11 ~~(ii) 5 shall be consumer members.~~

12 (i) [6] 5 shall be licensed morticians or licensed funeral
13 directors;

14 (II) 1 SHALL BE AN OWNER OR OPERATOR OF A CREMATORY;
15 and

16 [(ii)] (III) 5 shall be consumer members.

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

18 (4) The Governor shall appoint each member with the advice of the
19 Secretary, and with the advice and consent of the Senate.

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

24 7-205.

25 (a) In addition to the powers and duties set forth elsewhere in this title, the
26 Board has the following powers and duties:

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

29 (2) To adopt a seal;

- 1 (3) To establish procedures for licensing apprentices;
- 2 (4) To keep a list of all individuals currently licensed by the Board;
- 3 (5) To investigate any alleged violation of this title;
- 4 (6) To enforce this title;
- 5 (7) To adopt rules and regulations regarding false and misleading
6 advertising and misrepresentation;
- 7 (8) To inspect **THE RECORDS, PREMISES, EQUIPMENT, AND**
8 **PHYSICAL OPERATIONS OF** licensed funeral establishments **AND LICENSED**
9 **CREMATORIES**;
- 10 (9) On receipt of a written and signed complaint, including a referral
11 from the Commissioner of Labor and Industry, to conduct an unannounced inspection
12 of the funeral establishment to determine compliance at that funeral establishment
13 with the Centers for Disease Control’s guidelines on universal precautions;
- 14 (10) To establish standards for the practice of mortuary science; and
- 15 (11) To establish standards for sanitation and waste disposal in
16 connection with the practice of mortuary science.

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

- 18 (1) Receives pre-need funds;
- 19 (2) Places pre-need funds in a trust; or
- 20 (3) Enters into a pre-need contract.

21 7-406.

22 A licensee shall maintain a complete file of a cremation that includes the
23 signature of the next of kin, person identifying the body, or person responsible for
24 disposition, time of death, and the date and time of cremation.

25 **7-406.1.**

26 **(A) ON OR AFTER NOVEMBER 30, 2010, AN INDIVIDUAL, SOLE**
27 **PROPRIETORSHIP, PARTNERSHIP, PROFESSIONAL ASSOCIATION, OR**
28 **CORPORATION MAY NOT ESTABLISH, OWN, OR OPERATE A CREMATORY IN THE**
29 **STATE UNLESS THE CREMATORY IS LICENSED UNDER THIS TITLE.**

30 **(B) TO APPLY FOR A CREMATORY LICENSE, AN APPLICANT SHALL:**

1 **(1) SUBMIT TO THE BOARD AN APPLICATION ON THE FORM**
2 **PROVIDED BY THE BOARD; AND**

3 **(2) PAY TO THE BOARD A NONREFUNDABLE BIENNIAL**
4 **LICENSURE FEE OF:**

5 **(I) \$250 IF THE CREMATORY IS IN OR ON THE IMMEDIATE**
6 **PREMISES OF A LICENSED FUNERAL ESTABLISHMENT; OR**

7 **(II) \$350 IF THE CREMATORY IS NOT IN OR ON THE**
8 **IMMEDIATE PREMISES OF A LICENSED FUNERAL ESTABLISHMENT.**

9 **(C) THE APPLICATION FOR A CREMATORY LICENSE SHALL STATE:**

10 **(1) THE NAME AND FIXED STREET ADDRESS OF THE CREMATORY;**
11 **AND**

12 **(2) ANY OTHER REASONABLE INFORMATION THAT THE BOARD**
13 **DETERMINES IS NECESSARY TO CARRY OUT THIS TITLE.**

14 **(D) A CREMATORY MAY NOT BE REQUIRED TO CONTRIBUTE ANY FUNDS**
15 **TO THE FAMILY SECURITY TRUST FUND.**

16 7-409.

17 (a) All inspections of funeral establishments **AND CREMATORIES** shall be
18 unannounced and may take place at any time without notice from the Board.

19 (b) An unannounced inspection may include advance notice that an
20 investigator may be in the region of the funeral establishment **OR CREMATORY**, if:

21 (1) The advance notice is no more than 14 days prior to the inspection;

22 (2) No specific date or time is provided for the inspection; and

23 (3) The advance notice is provided solely to ensure that a licensed
24 mortician [or], funeral director, **OR THE OWNER OR OPERATOR OF A CREMATORY**
25 will be on-site for the inspection.

26 7-410.

27 (a) Any individual who is 18 years of age or older may decide the disposition
28 of the individual's own body after the individual's death without the pre-death or
29 post-death consent of another person by executing a document that expresses the
30 individual's wishes or by entering into a pre-need contract.

1 (b) In order to be valid, any document executed under subsection (a) of this
2 section must be written and signed by the individual in the presence of a witness, who,
3 in turn, shall sign the document in the presence of the individual.

4 (c) Unless a person has knowledge that contrary directions have been given
5 by the decedent, if a decedent has not executed a document under subsection (a) of this
6 section, the following persons, in the order of priority stated, have the right to arrange
7 for the final disposition of the body of the decedent under this section and are liable for
8 the reasonable costs of preparation, care, and disposition of the decedent:

9 (1) The surviving spouse or domestic partner, as defined in § 1–101 of
10 the Health – General Article, of the decedent;

11 (2) An adult child of the decedent;

12 (3) A parent of the decedent;

13 (4) An adult brother or sister of the decedent;

14 (5) A person acting as a representative of the decedent under a signed
15 authorization of the decedent;

16 (6) The guardian of the person of the decedent at the time of the
17 decedent's death, if a guardian has been appointed; or

18 (7) In the absence of any person under paragraphs (1) through (6) of
19 this subsection, any other person willing to assume the responsibility to act as the
20 authorizing agent for purposes of arranging the final disposition of the decedent's
21 body, including the personal representative of the decedent's estate, after attesting in
22 writing that a good faith effort has been made to no avail to contact the persons
23 described in paragraphs (1) through (6) of this subsection.

24 (d) (1) Subject to paragraph (2) of this subsection, if a decedent has more
25 than one survivor under subsection (c)(1) through (4) of this section, any adult child,
26 parent, or adult brother or sister of the decedent who confirms in writing to a licensee
27 that all of the other members of the same class have been notified may serve as the
28 authorizing agent unless the licensee receives a written objection from another
29 member of that class.

30 (2) If a decedent has more than one survivor under subsection (c)(1)
31 through (4) of this section, the majority of a class may serve as the authorizing agent.

32 (e) For an individual whose final disposition is the responsibility of the State
33 or any of its instrumentalities, a public administrator, medical examiner, coroner,
34 State-appointed guardian, or any other public official charged with arranging the final
35 disposition of the body of the individual may serve as the authorizing agent for
36 purposes of this section.

1 (f) For an individual who has donated the individual's body to medical
2 science or whose death occurred in a nursing home or other private institution, a
3 representative of the institution to which the body was donated or in which the
4 decedent died may serve as the authorizing agent of the decedent and the institution
5 is charged with making arrangements for the final disposition of the body.

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 2009.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.