

HOUSE BILL 995

J2, C2

0lr0845

By: **Delegate Kach**

Introduced and read first time: February 12, 2010

Assigned to: Health and Government Operations and Economic Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 23, 2010

CHAPTER _____

1 AN ACT concerning

2 **Regulation of Crematories**

3 FOR the purpose of requiring the Office of Cemetery Oversight and the State Board of
4 Morticians and Funeral Directors to establish a certain process and adopt
5 certain regulations for regulating crematories; requiring that a certain process
6 for regulating crematories provide for certain registration, issuance of permits,
7 or licensure and renewal, certain applications, certain fees, certain inspections
8 and oversight, certain grounds for discipline and penalties, and certain
9 complaints and hearings; providing that certain registration, permitting, and
10 licensure requirements do not apply to crematories with certain ownership and
11 crematories or incinerators located at certain medical facilities or educational
12 institutions; prohibiting the Director of Cemetery Oversight from assessing a
13 certain occurrence cremation fee; providing certain registration, complaint,
14 disciplinary, and hearing provisions for crematories regulated by the Office;
15 requiring the Office and Board to determine whether to adopt certain financial
16 stability requirements; defining certain terms; and generally relating to the
17 regulation of crematories.

18 BY repealing and reenacting, with amendments,

19 Article – Business Regulation

20 Section 5–101, 5–102, 5–204(a), (b), and (k), 5–205(b)(1), 5–301, 5–302, 5–303,

21 5–306, 5–308, 5–310(a) and (b), 5–311(c), 5–401, 5–402, 5–403, 5–701,

22 5–901, 5–902, and 5–903

23 Annotated Code of Maryland

24 (2004 Replacement Volume and 2009 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, with amendments,
2 Article – Health Occupations
3 Section 7–101 and 7–102
4 Annotated Code of Maryland
5 (2009 Replacement Volume)

6 BY adding to
7 Article – Health Occupations
8 Section 7–205(c)
9 Annotated Code of Maryland
10 (2009 Replacement Volume)

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

13 **Article – Business Regulation**

14 5–101.

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

16 (b) (1) “Burial goods” means goods that are used in connection with
17 burial.

18 (2) “Burial goods” includes:

19 (i) a casket;

20 (ii) a grave liner;

21 (iii) a memorial;

22 (iv) a monument;

23 (v) a scroll;

24 (vi) an urn;

25 (vii) a vase; and

26 (viii) a vault.

27 (c) “Burial goods business” means a business that provides burial goods.

28 (d) (1) “Cemetery” means land used or to be used for interment.

1 (2) “Cemetery” includes a structure used or to be used for interment.

2 **(E) “CREMATION” MEANS THE PROCESS OF REDUCING HUMAN**
3 **REMAINS TO BONE FRAGMENTS THROUGH INTENSE HEAT AND EVAPORATION,**
4 **INCLUDING ANY MECHANICAL OR THERMAL PROCESS.**

5 **(F) “CREMATORY” MEANS A BUILDING, PORTION OF A BUILDING, OR**
6 **STRUCTURE THAT HOUSES THE NECESSARY APPLIANCES AND FACILITIES FOR**
7 **CREMATION.**

8 **[(e)] (G)** “Director” means the Director of the Office of Cemetery Oversight.

9 **[(f)] (H)** “Engage in the operation of a cemetery” means owning, controlling,
10 or managing a cemetery, including performing activities necessary for:

11 (1) the establishment, improvement, care, preservation, or
12 embellishment of a cemetery;

13 (2) interment; and

14 (3) the providing of burial space or burial goods.

15 **(I) (1) “ENGAGE IN THE OPERATION OF A CREMATORY” MEANS**
16 **CONTROLLING OR MANAGING A CREMATORY.**

17 **(2) “ENGAGE IN THE OPERATION OF A CREMATORY” DOES NOT**
18 **INCLUDE:**

19 **(I) THE PRACTICE OF FUNERAL DIRECTION OR THE**
20 **PRACTICE OF MORTUARY SCIENCE; OR**

21 **(II) 1. ASSISTANCE IN MAKING DECISIONS AND FILLING**
22 **OUT FORMS THAT ARE NOT DIRECTLY RELATED TO CREMATION;**

23 **2. OBTAINING VITAL STATISTICS, SIGNATURES, AND**
24 **OTHER INFORMATION NECESSARY TO COMPLETE A DEATH CERTIFICATE;**

25 **3. TRANSPORTATION OF A BODY TO THE PLACE OF**
26 **DISPOSITION; OR**

27 **4. ANY OTHER SERVICES REGARDING THE**
28 **DISPOSITION OF A BODY THAT ARE NOT DIRECTLY RELATED TO CREMATION.**

1 **(J) “FUNERAL ESTABLISHMENT” MEANS A BUILDING, STRUCTURE, OR**
2 **PREMISES FROM WHICH THE BUSINESS OF FUNERAL DIRECTING OR EMBALMING**
3 **IS CONDUCTED.**

4 **(K) (1) “HUMAN REMAINS” MEANS:**

5 **(I) THE BODY OF A DECEASED PERSON; OR**

6 **(II) A PART OF A BODY OR LIMB THAT HAS BEEN REMOVED**
7 **FROM A LIVING PERSON.**

8 **(2) “HUMAN REMAINS” INCLUDES THE BODY OR PART OF A BODY**
9 **OR LIMB IN ANY STATE OF DECOMPOSITION.**

10 **[(g)] (L) “Interment” means all final disposition of human remains,**
11 **including:**

12 (1) earth burial;

13 (2) mausoleum entombment; and

14 (3) niche or columbarium interment.

15 **[(h)] (M) “Office” means the Office of Cemetery Oversight.**

16 **[(i)] (N) “Permit” means a permit issued by the Director to allow a**
17 **partnership, limited liability company, or corporation to operate a business through**
18 **which a registrant may:**

19 **(1) engage in the operation of a cemetery OR CREMATORY; or**

20 **(2) provide burial goods.**

21 **[(j)] (O) (1) “Preneed goods” means burial goods that are sold before the**
22 **buyer’s death.**

23 (2) “Preneed goods” does not include burial space.

24 **[(k)] (P) “Provide burial goods” means a retail transaction:**

25 (1) to erect, service, or inscribe burial memorials; or

26 (2) to sell burial goods.

27 **[(l)] (Q) “Registered cemeterian” means an individual registered to operate**
28 **a cemetery as a sole proprietor or on behalf of a sole proprietor or of a permit holder.**

1 **(R) “REGISTERED CREMATORY OPERATOR” MEANS AN INDIVIDUAL**
2 **REGISTERED TO OPERATE A CREMATORY AS A SOLE PROPRIETOR OR ON**
3 **BEHALF OF A SOLE PROPRIETOR OR PERMIT HOLDER.**

4 **[(m)] (S)** “Registered seller” means an individual registered to provide burial
5 goods as a sole proprietor or on behalf of a sole proprietor or of a permit holder.

6 **[(n)] (T)** “Registration” means a registration issued by the Director
7 authorizing an individual to operate a cemetery, **TO OPERATE A CREMATORY**, or to
8 provide burial goods.

9 **[(o)] (U)** “Responsible party” means a sole proprietor or the individual
10 designated by a partnership, limited liability company, or corporation to be responsible
11 for the operations of a cemetery, **CREMATORY**, or burial goods business.

12 5–102.

13 (a) The registration and permitting provisions of this title do not apply to:

14 (1) a person that owns and operates a bona fide religious–nonprofit
15 cemetery in this State;

16 (2) **A CEMETERY OWNED BY** a not for profit organization created
17 before 1900 by an act of the General Assembly;

18 (3) a county, city, or municipal corporation that owns and operates a
19 cemetery in the State; or

20 (4) a veterans’ cemetery operated by the State.

21 (b) This title does not apply to:

22 (1) the operation of a funeral establishment, including the sale of
23 burial goods in the ordinary course of the funeral establishment’s business;

24 **(2) THE OPERATION OR OWNERSHIP OF A CREMATORY IN WHICH**
25 **A PERSON WHO IS LICENSED AND REGULATED UNDER TITLE 7 OF THE HEALTH**
26 **OCCUPATIONS ARTICLE OWNS A GREATER PERCENTAGE OF THE CREMATORY**
27 **THAN A REGISTERED CEMETERIAN, REGISTERED SELLER, OR HOLDER OF A**
28 **PERMIT FOR THE OPERATION OF A CEMETERY OR BURIAL GOODS BUSINESS;**

29 **(3) THE OPERATION OR OWNERSHIP OF A CREMATORY OR**
30 **INCINERATOR AT A LICENSED MEDICAL FACILITY OR EDUCATIONAL**
31 **INSTITUTION;**

1 ~~[(2)]~~ **(4)** a licensed funeral director acting within the scope of the
2 funeral director's license; or

3 ~~[(3)]~~ **(5)** a mortician acting within the scope of the mortician's
4 license.

5 5-204.

6 (a) **(1)** With the advice of the Advisory Council and after consultation
7 with representatives of the cemetery industry, the Director shall adopt:

8 ~~[(1)]~~ **(I)** rules and regulations to carry out this title; and

9 ~~[(2)]~~ **(II)** a code of ethics for engaging in the operation of a cemetery
10 **OR CREMATORY** or providing burial goods.

11 **(2) IN CONJUNCTION WITH THE STATE BOARD OF MORTICIANS**
12 **AND FUNERAL DIRECTORS, THE DIRECTOR SHALL:**

13 **(I) ESTABLISH A PROCESS FOR REGULATING CREMATORIES**
14 **THAT PROVIDES FOR:**

15 **1. REGISTRATION OF CREMATORY OPERATORS OR**
16 **ISSUANCE OF PERMITS FOR OPERATING CREMATORIES, AND RENEWAL;**

17 **2. APPLICATIONS, INCLUDING CERTIFICATION OF**
18 **OWNERSHIP AND IDENTIFICATION OF INDIVIDUALS WHO WILL PERFORM**
19 **CREMATION;**

20 **3. REGISTRATION AND PERMIT FEES;**

21 **4. INSPECTIONS AND OVERSIGHT;**

22 **5. GROUNDS FOR DISCIPLINE AND PENALTIES; AND**

23 **6. COMPLAINTS AND HEARINGS; AND**

24 **(II) ADOPT REGULATIONS THAT ARE IDENTICAL TO**
25 **REGULATIONS ADOPTED BY THE STATE BOARD OF MORTICIANS AND FUNERAL**
26 **DIRECTORS TO:**

27 **1. IMPLEMENT ITEM (I) OF THIS PARAGRAPH; AND**

28 **2. ENSURE PUBLIC HEALTH AND SAFETY.**

1 (b) Upon receipt of a written complaint, or at the discretion of the Director,
2 the Director or the Director's designee may conduct an investigation and an inspection
3 of the records and site of a registered cemeterian, **REGISTERED CREMATORY**
4 **OPERATOR**, registered seller, permit holder, or any other person subject to the
5 registration or permit provisions of this title.

6 (k) In conjunction with the State Board of Morticians and the Division of
7 Consumer Protection of the Office of the Attorney General, the Director shall publish a
8 consumer information pamphlet that describes:

9 (1) the rights of consumers in the purchase of funeral, [and] cemetery,
10 **AND CREMATORY** goods and services; and

11 (2) any other information that the Director considers reasonably
12 necessary to aid consumers.

13 5-205.

14 (b) (1) **(I)** By regulation, the Director shall establish reasonable fees
15 and a fee schedule for the issuance and renewal of registrations and permits.

16 **(II) THE DIRECTOR MAY NOT ASSESS A CREMATORY A**
17 **PER-OCCURRENCE CREMATION FEE.**

18 5-301.

19 An individual shall register with the Office before:

20 (1) engaging in the operation of a cemetery **OR CREMATORY** in this
21 State; or

22 (2) providing burial goods in this State.

23 5-302.

24 (a) In order to register, an applicant shall meet the requirements of this
25 section.

26 (b) The applicant must be at least 18 years old.

27 (c) The applicant must be of good character and reputation.

28 (d) The applicant must be affiliated with a cemetery, **CREMATORY**, or burial
29 goods business operated by a registrant or permit holder.

1 (e) The cemetery, **CREMATORY**, or burial goods business with which the
2 applicant is affiliated must be financially stable in accordance with § 5–304 of this
3 subtitle.

4 5–303.

5 (a) An applicant shall register by:

6 (1) submitting to the Director an application on the form that the
7 Director provides; and

8 (2) paying a nonrefundable application fee set by the Director.

9 (b) The application shall state:

10 (1) the name, date of birth, and residential address of the applicant;

11 (2) the name and fixed address of the affiliated cemetery,
12 **CREMATORY**, or burial goods business;

13 (3) whether the cemetery, **CREMATORY**, or burial goods business with
14 which the applicant is affiliated is owned or controlled by a sole proprietor,
15 partnership, limited liability company, or corporation;

16 (4) if the applicant is designated as the responsible party, the name
17 and residential address of each employee who sells burial space, goods, or services to
18 the public for the business while engaging in the operation of a cemetery,
19 **CREMATORY**, or burial goods business; and

20 (5) any other reasonable information that the Director determines is
21 necessary to carry out this title.

22 5–306.

23 (a) While a registration is in effect, it authorizes the registrant to engage in
24 the operation of a cemetery, **CREMATORY**, or burial goods business.

25 (b) This title does not limit the right of a person to practice funeral direction
26 or mortuary science, **OR OPERATE A CREMATORY**, if the person is licensed or
27 otherwise authorized under Title 7 of the Health Occupations Article.

28 5–308.

29 Within 1 week after the effective date of the change, the applicant designated as
30 the responsible party or the registered responsible party shall submit to the Director
31 an application form that shows a change in the:

1 (1) cemetery, **CREMATORY**, or burial goods business with which a
2 registrant is affiliated;

3 (2) individual designated as the responsible party;

4 (3) employees of the business who engage in the sale of burial space,
5 goods, or services **OR CREMATION** to the public;

6 (4) officers, directors, members, or agents of the permit holder; or

7 (5) name or address of the registrant or permit holder.

8 5–310.

9 (a) Subject to the hearing provisions of § 5–312 of this subtitle, the Director
10 may deny a registration or permit to an applicant, reprimand a person subject to the
11 registration or permit provisions of this title, or suspend or revoke a registration or
12 permit if an applicant, registrant, or permit holder, or an agent, employee, officer,
13 director, or partner of the applicant, registrant, or permit holder:

14 (1) fraudulently or deceptively obtains or attempts to obtain a
15 registration or permit;

16 (2) fraudulently or deceptively uses a registration or permit;

17 (3) under the laws of the United States or of any state, is convicted of
18 a:

19 (i) felony; or

20 (ii) misdemeanor that is directly related to the fitness and
21 qualifications of the applicant, registrant, or permit holder to own or operate a
22 cemetery **OR CREMATORY** or provide burial goods;

23 (4) fails to provide or misrepresents any information required to be
24 provided under this title;

25 (5) violates this title;

26 (6) violates the code of ethics adopted by the Director;

27 (7) violates a regulation adopted under this title;

28 (8) fails to provide reasonable and adequate supervision of the
29 operation of the cemetery **OR CREMATORY** or the provision of burial goods by agents,
30 employees, officers, directors, or partners affiliated with a cemetery, **CREMATORY**, or
31 burial goods business;

1 (9) refuses to allow an inspection required by this title;

2 (10) fails to comply with an order of the Director;

3 (11) fails to comply with any terms of settlement under a binding
4 arbitration agreement; or

5 (12) is found guilty by a court in this State of violating an unfair or
6 deceptive trade practices provision under Title 13 of the Commercial Law Article.

7 (b) (1) If a person is charged with a violation of this title that could result
8 in suspension or revocation of a registration or permit, the Director may seek an
9 immediate restraining order in a circuit court in this State to prohibit the person from
10 engaging in the operation of any cemetery, **CREMATORY**, or burial goods business.

11 (2) The restraining order is in effect until:

12 (i) the court lifts the order; or

13 (ii) the charges are adjudicated or dismissed.

14 5–311.

15 (c) (1) The Director or the Director’s designee shall review each complaint
16 and shall attempt to negotiate a settlement of the complaint between the complainant
17 and the registrant, permit holder, or any other person subject to the registration or
18 permit provisions of this title.

19 (2) Notwithstanding § 5–102 of this title, the Director or the Director’s
20 designee may receive and attempt to negotiate a settlement to resolve complaints
21 concerning persons required to file statements under § 5–405 of this title and in
22 connection with the operation of a cemetery **OR CREMATORY** or the sale of preneed
23 goods.

24 (3) The Director may not take any actions described in subsection
25 (d)(1) and (2) of this section for complaints involving persons exempt under § 5–102 of
26 this title.

27 5–401.

28 (a) Subject to the provisions of this section, a registered cemeterian,
29 **REGISTERED CREMATORY OPERATOR**, or registered seller may engage in the
30 operation of a cemetery, **CREMATORY**, or burial goods business as a sole proprietor or
31 through:

1 (1) a corporation as an officer, director, employee, or agent of the
2 corporation;

3 (2) a limited liability company as a member, employee, or agent of the
4 limited liability company; or

5 (3) a partnership as a partner, employee, or agent of the partnership.

6 (b) Subject to the provisions of this title, a corporation, limited liability
7 company, or partnership may engage in the operation of a cemetery, **CREMATORY**, or
8 burial goods business through a registered cemeterian, **REGISTERED CREMATORY**
9 **OPERATOR**, or registered seller.

10 (c) (1) A registered cemeterian who engages in the operation of a
11 cemetery through a corporation, limited liability company, or partnership under this
12 title is subject to all of the provisions of this title that relate to engaging in the
13 operation of a cemetery.

14 (2) **A REGISTERED CREMATORY OPERATOR WHO ENGAGES IN THE**
15 **OPERATION OF A CREMATORY THROUGH A CORPORATION, LIMITED LIABILITY**
16 **COMPANY, OR PARTNERSHIP UNDER THIS TITLE IS SUBJECT TO ALL OF THE**
17 **PROVISIONS OF THIS TITLE THAT RELATE TO ENGAGING IN THE OPERATION OF**
18 **A CREMATORY.**

19 [(2)] (3) A registered seller who engages in the operation of a burial
20 goods business through a corporation, limited liability company, or partnership under
21 this title is subject to all of the provisions of this title that relate to providing burial
22 goods services.

23 (d) (1) A corporation, limited liability company, or partnership that
24 engages in the operation of a cemetery, **CREMATORY**, or burial goods business under
25 this title is not, by its compliance with this title, relieved of any responsibility that the
26 corporation, limited liability company, or partnership may have for an act or an
27 omission by its officer, director, member, partner, employee, or agent.

28 (2) An individual who engages in the operation of a cemetery,
29 **CREMATORY**, or burial goods business through a corporation, limited liability
30 company, or partnership is not, by reason of the individual's employment or other
31 relationship with the corporation, limited liability company, or partnership, relieved of
32 any individual responsibility that the individual may have regarding that practice.

33 5-402.

34 A corporation, limited liability company, or partnership shall obtain a permit
35 issued by the Director, before the corporation, limited liability company, or

1 partnership may engage in the operation of a cemetery, **CREMATORY**, or burial goods
2 business in the State.

3 5–403.

4 To qualify for a permit, a corporation, limited liability company, or partnership
5 shall:

6 (1) designate a separate registered cemeterian, **REGISTERED**
7 **CREMATORY OPERATOR**, or registered seller as the responsible party for the
8 operations of each affiliated cemetery, **CREMATORY**, or burial goods business;

9 (2) provide the name and business address of each affiliated cemetery,
10 **CREMATORY**, or burial goods business;

11 (3) provide a list of the officers, directors, members, partners, agents,
12 and employees of the entity applying for the permit; and

13 (4) comply with § 5–303(b)(4) and § 5–304 of this title.

14 5–701.

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

16 (b) (1) “Burial space” means land or space in a structure used or to be
17 used for burial.

18 (2) “Burial space” includes a burial right in the land or space.

19 (c) “Buyer” means a person who buys preneed goods or preneed services.

20 (d) “Preneed burial contract” means a written instrument under which
21 preneed goods or preneed services are to be sold and delivered or performed.

22 (e) (1) “Preneed services” means services that are sold:

23 (i) before the buyer’s death; and

24 (ii) in connection with burial **OR CREMATION**.

25 (2) “Preneed services” includes opening and closing a grave.

26 (f) “Seller” means a registered cemeterian, **REGISTERED CREMATORY**
27 **OPERATOR**, registered seller, or any other person who sells preneed goods or preneed
28 services.

1 (g) "Specific funds" means money that is identified to a specific preneed
2 burial contract.

3 (h) "Trust account" means a preneed trust account.

4 5-901.

5 (a) Except as otherwise provided in this title, an individual may not engage
6 in cemetery operations, attempt to engage in cemetery operations, or provide or offer
7 to provide burial space, goods, and services unless the individual is authorized as a
8 registrant.

9 (b) Except as otherwise provided in this title, an individual may not engage
10 in a burial goods business or attempt to provide burial goods unless the individual is
11 authorized as a registrant.

12 (c) **EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, AN INDIVIDUAL**
13 **MAY NOT ENGAGE IN THE OPERATION OF A CREMATORY, ATTEMPT TO ENGAGE**
14 **IN THE OPERATION OF A CREMATORY, OR PROVIDE OR OFFER TO PROVIDE**
15 **CREMATION SERVICES UNLESS THE INDIVIDUAL IS AUTHORIZED AS A**
16 **REGISTRANT.**

17 5-902.

18 Except for a registered cemeterian, **REGISTERED CREMATORY OPERATOR**, or
19 registered seller who operates a business as a sole proprietor or a registrant employed
20 by a sole proprietor, a person may not engage in the operation of a cemetery,
21 **CREMATORY**, or burial goods business unless:

22 (1) the business is a corporation, limited liability company, or
23 partnership; and

24 (2) the corporation, limited liability company, or partnership holds a
25 permit issued under this title.

26 5-903.

27 Unless a person is authorized as a registrant, a person may not represent to the
28 public, by use of a title, including cemeterian, registered cemeterian, **CREMATORY**
29 **OPERATOR**, **REGISTERED CREMATORY OPERATOR**, burial goods seller, or
30 registered seller, by description of services, methods, or procedures, or otherwise, that
31 the person is authorized to engage in the operation of a cemetery **OR CREMATORY** or
32 provide burial goods.

33 **Article – Health Occupations**

34 7-101.

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

2 (b) "Apprentice" means an individual licensed by the Board who assists a
3 licensed mortician or funeral director in the practice of mortuary science or funeral
4 direction, under direct supervision of a licensed mortician or funeral director.

5 (c) "Apprentice sponsor" means a person who:

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

9 (2) Provides direct supervision to an apprentice.

10 (d) "Board" means the Maryland State Board of Morticians and Funeral
11 Directors.

12 **(E) (1) "BUSINESS OF OPERATING A CREMATORY" MEANS**
13 **CONTROLLING OR MANAGING A CREMATORY.**

14 **(2) "BUSINESS OF OPERATING A CREMATORY" DOES NOT**
15 **INCLUDE:**

16 **(I) THE PRACTICE OF FUNERAL DIRECTION OR THE**
17 **PRACTICE OF MORTUARY SCIENCE; OR**

18 **(II) 1. ASSISTANCE IN MAKING DECISIONS AND FILLING**
19 **OUT FORMS THAT ARE NOT DIRECTLY RELATED TO CREMATION;**

20 **2. OBTAINING VITAL STATISTICS, SIGNATURES, AND**
21 **OTHER INFORMATION NECESSARY TO COMPLETE A DEATH CERTIFICATE;**

22 **3. TRANSPORTATION OF A BODY TO THE PLACE OF**
23 **DISPOSITION; OR**

24 **4. ANY OTHER SERVICES REGARDING THE**
25 **DISPOSITION OF A BODY THAT ARE NOT DIRECTLY RELATED TO CREMATION.**

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

- 1 (iv) A surviving spouse license;
- 2 (v) A corporation license;
- 3 (vi) A funeral establishment license; and
- 4 (vii) A courtesy card.

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

8 **[(k)] (O)** “Licensed funeral director” means, unless the context requires
9 otherwise, a funeral director who is licensed by the Board to practice funeral direction.

10 **[(l)] (P)** “Licensed funeral establishment” means, unless the context
11 requires otherwise, a funeral establishment that is licensed by the Board.

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

14 **[(n)] (R)** “Licensee” means an individual or entity licensed by the Board to
15 practice mortuary science to the extent determined by the Board.

16 **[(o)] (S)** “Mortician” means an individual who practices mortuary science.

17 **[(p)] (T)** (1) “Practice funeral direction” means:

18 (i) To operate a funeral establishment;

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

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

23 (2) “Practice funeral direction” does not include[,]:

24 **(I)** [for] **FOR** compensation, disinfecting or preserving a dead
25 human body or any of its parts by arterial or cavity injection or any other type of
26 preservation; **OR**

27 **(II)** **THE BUSINESS OF OPERATING A CREMATORY.**

28 **[(q)] (U)** (1) “Practice mortuary science” means:

- 1 (i) To operate a funeral establishment;
- 2 (ii) For compensation, to prepare a dead human body for
3 disposition; or
- 4 (iii) For compensation, to arrange for or make final disposition of
5 a dead human body.

6 (2) “Practice mortuary science” includes:

- 7 (i) The practice of funeral direction; and
- 8 (ii) Disinfecting or preserving a dead human body or any of its
9 parts by arterial or cavity injection.

10 (3) “Practice mortuary science” does not include [the]:

11 (I) **THE** pickup, removal, or transportation of a dead human
12 body, if the unlicensed individual is acting under the direction of a licensed mortician
13 or funeral director; **OR**

14 (II) **THE BUSINESS OF OPERATING A CREMATORY.**

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

19 (1) A service, including any form of preservation and disposition **OR**
20 **CREMATION**, that a mortician normally provides in the ordinary course of business; or

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

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

27 7-102.

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

30 (b) (1) **IN THIS SUBSECTION, “REGISTRANT OR PERMIT HOLDER”**
31 **MEANS A PERSON REGULATED UNDER TITLE 5 OF THE BUSINESS REGULATION**

1 **ARTICLE AS A REGISTERED CEMETERIAN, REGISTERED SELLER, OR HOLDER OF**
2 **A PERMIT TO OPERATE A CEMETERY OR BURIAL GOODS BUSINESS.**

3 **(2) This title does not apply to [the]:**

4 **(I) THE business of operating a cemetery [or crematory],**
5 **including the sale of cemetery lots, grave sites, mausoleums, monuments, lawn crypts,**
6 **or vaults;**

7 **(II) THE OWNERSHIP OF A CREMATORY OR THE BUSINESS**
8 **OF OPERATING A CREMATORY IN WHICH:**

9 **1. A REGISTRANT OR PERMIT HOLDER OWNS A**
10 **GREATER PERCENTAGE OF THE CREMATORY THAN A PERSON LICENSED UNDER**
11 **THIS TITLE;**

12 **2. OWNERSHIP IS EQUAL BETWEEN A REGISTRANT**
13 **OR PERMIT HOLDER AND A PERSON LICENSED UNDER THIS TITLE; OR**

14 **3. NEITHER A REGISTRANT, PERMIT HOLDER, OR**
15 **PERSON LICENSED UNDER THIS TITLE HAS AN OWNERSHIP INTEREST IN THE**
16 **CREMATORY; OR**

17 **(III) THE OWNERSHIP OF A CREMATORY OR THE BUSINESS**
18 **OF OPERATING A CREMATORY OR INCINERATOR AT A LICENSED MEDICAL**
19 **FACILITY OR EDUCATIONAL INSTITUTION.**

20 7-205.

21 **(C) IN CONJUNCTION WITH THE OFFICE OF CEMETERY OVERSIGHT,**
22 **THE BOARD SHALL:**

23 **(1) ESTABLISH A PROCESS FOR REGULATING CREMATORIES THAT**
24 **PROVIDES FOR:**

25 **(I) REGISTRATION OR LICENSURE AND RENEWAL;**

26 **(II) APPLICATIONS, INCLUDING CERTIFICATION OF**
27 **OWNERSHIP AND IDENTIFICATION OF INDIVIDUALS WHO WILL PERFORM**
28 **CREMATION;**

29 **(III) REGISTRATION OR LICENSURE FEES;**

30 **(IV) INSPECTIONS AND OVERSIGHT;**

1 (V) GROUNDS FOR DISCIPLINE AND PENALTIES; AND

2 (VI) COMPLAINTS AND HEARINGS; AND

3 (2) ADOPT REGULATIONS THAT ARE IDENTICAL TO REGULATIONS
4 ADOPTED BY THE DIRECTOR OF THE OFFICE OF CEMETERY OVERSIGHT TO:

5 (I) IMPLEMENT ITEM (1) OF THIS SUBSECTION; AND

6 (II) ENSURE PUBLIC HEALTH AND SAFETY.

7 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before October 1,
8 2011, the Office of Cemetery Oversight and the State Board of Morticians and Funeral
9 Directors shall:

10 (1) adopt identical regulations governing cremation containers;
11 holding facilities; authorization forms; waiting period before cremation; delegation of
12 authority to cremate; liability of authorizing agent and crematory; receipts and records
13 of cremation; resolution of disputes regarding cremation; prohibition against requiring
14 caskets and embalming; identification of human remains before and after cremation;
15 storage of human remains before cremation; hazardous implants; prohibition against
16 simultaneous cremation of more than one person without authorization; inspection
17 and copying of records by regulating authority; approved containers for cremains;
18 disposition of unclaimed cremains; inspections; registration or licensure fees;
19 providing identification of and updates on individuals performing cremation to the
20 regulating authority; and any other issue determined to be necessary to carry out this
21 Act; and

22 (2) determine whether to adopt financial stability requirements for
23 crematories.

24 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 2010.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.