

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 358

(Senator Conway)

Education, Health, and Environmental Affairs

Health and Government Operations

State Board of Morticians and Funeral Directors - Authority to Discipline -
Funeral Establishment Licenses

This bill authorizes the State Board of Morticians and Funeral Directors, subject to hearing provisions, to deny a license to an applicant for a funeral establishment license, reprimand the holder of a funeral establishment license, place the holder of a funeral establishment license on probation, or suspend or revoke a funeral establishment license if, with the knowledge or at the direction of the funeral establishment (1) an unlicensed individual practices mortuary science or funeral direction for or within the funeral establishment; (2) an employee of the funeral establishment fails to properly store the body of a decedent or unlawfully embalms the body of a decedent; or (3) an employee of the funeral establishment fails to comply with laws governing pre-need contracts.

Fiscal Summary

State Effect: The bill does not materially affect State finances.

Local Effect: None.

Small Business Effect: Potential meaningful. Holders of funeral establishment licenses may now be subject to discipline by the board for certain violations in their establishments.

Analysis

Current Law: Subject to hearing provisions, and except as to a funeral establishment license, the board may deny a license to any applicant, reprimand any licensee, place any licensee on probation, or suspend or revoke any license if the applicant or licensee violates any of 32 grounds for discipline under the Maryland Morticians and Funeral

Directors Act. The board may not discipline a funeral establishment license because of a violation by an employee of the establishment, unless the employee has a proprietary interest in the business that is conducted from the establishment.

Section 5-513(b) of the Health-General Article requires that, if the unembalmed body of a decedent is to be stored for more than 48 hours before final disposition, a funeral establishment or crematory must maintain the body with refrigeration and at a temperature determined by regulation. Section 5-513(d) of the Health-General Article prohibits the body of a decedent from being embalmed or artificially preserved without the express permission of the person authorized to arrange for the final disposition of the body or a court order.

Section 7-405 of the Health Occupations Article governs the provision of pre-need contracts. Only a licensed mortician, funeral director, or holder of a surviving spouse license may offer or agree to provide services or merchandise under a pre-need contract. A licensed mortician or funeral director who is employed by a funeral establishment may execute pre-need contracts on behalf of the funeral establishment with which the mortician or funeral director is employed. Pre-need contracts must contain certain information and disclosure statements and be executed in a specified manner. The seller of a pre-need contract must deposit payment into a specified account within a specified timeframe. A seller is prohibited from withdrawing funds from the account unless the services and merchandise have been provided as agreed in the contract. Unlawful withdrawal of funds from a pre-need account is an unfair or deceptive trade practice. A buyer may demand in writing a refund of all payments under specified circumstances. The buyer of a pre-need contract has the option, at any time, to establish an irrevocable trust to all or any portion of the payment made under the pre-need contract.

Background: The State Board of Morticians and Funeral Directors issues licenses for apprentices, morticians, funeral directors, the surviving spouse of a mortician or funeral director (who continues to operate the funeral establishment in the event of the mortician's or funeral director's death), funeral establishments, and corporations. In fiscal 2012, the board issued 39 new and 897 renewal licenses, investigated 83 complaints, and conducted more than 225 inspections of funeral establishments. There are 297 funeral establishments in Maryland.

According to the board, in certain disciplinary cases, an employee of a facility may be instructed to conduct business in a manner that violates State law or regulations. While the board may be able to discipline the individual, it has been unable to discipline the holder of the funeral establishment license for the holder's potential role in the violation unless the employee has a proprietary interest in the business that is conducted from the establishment.

Additional Information

Prior Introductions: None.

Cross File: HB 314 (Delegate Pena-Melnyk, *et al.*) - Health and Government Operations.

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

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