



# Board of Morticians and Funeral Directors

Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Dennis R. Schrader, Secretary

Dr. Mark E. Bailey, Board President – Christy Collins, Executive Director

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February 1, 2022

The Honorable William C. Smith, Jr.  
Chair, Judicial Proceedings Committee  
2 East Miller Senate Office Building  
11 Bladen Street  
Annapolis, MD 21401

## **RE: SB 111- Occupational Licenses or Certificates – Pre-application Determinations – Criminal Convictions – Letter of Concern**

Dear Chair Smith and Committee Members:

The Maryland State Board of Morticians and Funeral Directors along with twelve other health occupation boards (the Boards) are submitting this Letter of Concern for Senate Bill (SB) 111 – Occupational Licenses or Certificates – Pre-application Determinations – Criminal Convictions.

While the bill does have the positive intent to provide applicants with a determination as to whether or not a criminal conviction would prevent the issuance of a license or certificate, there are the following concerns from the majority of health occupations boards that encompass legal, fiscal, and administrative matters:

### **1. On page 3, lines 11-17 regarding Criminal Procedure Article § 1-209(G)(1): The requirement that a department shall provide a determination as to whether a specified criminal conviction would be the basis for denial of an occupational license or certificate to a potential applicant.**

The Boards are concerned that the bill applies only to potential applicants for licenses and certificates. Health occupations boards also issue registrations and permits.

The Boards are also concerned that although most of the twenty-two health occupations boards are required to complete a criminal records history check for applicants for initial and/or renewal licenses, certifications, registrations, and permits, not all Boards are required.<sup>1</sup> The bill requires all health occupations boards to conduct a pre-application criminal conviction impact determination, even if a criminal records history check would not be required for application.

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<sup>1</sup> The Boards that do *not* require criminal records history checks for applicants for initial and/or renewal licenses, certifications, registrations, and permits are: State Acupuncture Board, State Board of Dental Examiners, State Board of Dietetic Practice, State Board of Examiners in Optometry, State Board of Pharmacy, and State Board of Environmental Health Specialists.

The Boards are concerned that the current proposed language under SB 111 is silent as to whether, and to what extent, the Boards may require that the potential applicant submit documentation regarding their criminal history, such as submitting to fingerprinting with Criminal Justice Information Services (CJIS) (which costs additional money to the applicant), providing true test copies of the conviction(s) from the applicable court, and/or their written explanation of the circumstances surrounding the conviction(s), prior to rendering its binding determination. Without this documentation, and potentially interviewing the potential applicant, the Boards would be unable to properly consider the factors currently set forth in Criminal Procedure Article § 1-209, prior to rendering a binding decision.

If the Boards are permitted under this bill to collect information and documentation related to the potential applicant's criminal history, then the Boards are concerned that the requirement to conduct an assessment of a potential applicant's specified criminal conviction would be a duplicative administrative burden on staff, as well as the potential applicant. If a Board makes a determination on a specified conviction of a potential applicant, a Board that must do a criminal records history check would have to go through the process all over again if the individual subsequently applies for a license or certification. The Boards' current process for consideration of an applicant's criminal history consists of gathering all relevant information, including CJIS reports, narratives from the applicant about the criminal history incidents, and court documentation of charge disposition. When the documentation is not clear, some Boards conduct informal conferences to have the applicant clarify gaps in information. Then, the Boards consider the entirety of the information, in accordance with the requirements of the existing Criminal Procedure Article § 1-209. This process can be time and work intensive, and would need to be done twice in many instances. Further, this could result in applicants paying fees for CJIS fingerprinting twice over – in both this pre-application stage under SB 111 and once they do apply.

**2. On page 3, lines 16-30 regarding Criminal Procedure Article § 1-209(G)(1)(ii) and (2) requires a written determination by the department that is binding on the department and applicant, with some exceptions.**

The Boards are concerned that the process for requesting and obtaining a written determination from a department under the bill is similar to, but not identical to, the existing process for petitioning a State unit for a declaratory ruling under Md. Code Ann., State Government Article § 10-301, *et seq.* A petition for a declaratory ruling requests “the manner in which the [State] unit would apply a ... statute that the unit enforces to a person ... on the facts set forth in the petition.” State Government Article § 10-304(a).

The Boards are concerned that because there is no provision for a State unit to charge a fee for considering a petition for a declaratory ruling, a potential applicant could avoid paying any fee to the Boards to conduct an assessment under the bill by petitioning for a declaratory ruling under the State Government provisions.

For these reasons, the Maryland State Board of Morticians and Funeral Directors; the State Board of Nursing; the State Board of Social Work Examiners; the State Board of Examiners in Optometry; the State Board of Massage Therapy Examiners; the State Board of Chiropractic Examiners; the State Board of Physical Therapy Examiners; the State Acupuncture Board; the State Board of Examiners for Audiologists, Hearing Aid Dispensers, Speech-Language Pathologists and Music Therapists; the State Board of Examiners of Psychologists; the State Board of Examiners of Nursing Home Administrators; the State Board of Podiatric Medical Examiners; and the State Board for the Certification of Residential Child Care Program Professionals respectfully ask that you strongly consider this information and agree that the processes currently in place are more than sufficient to address the issues in the bill. Therefore, the Boards urge an unfavorable report on SB 111.

For more information, please contact Christy Collins, Executive Director, Board State Board of Morticians and Funeral Directors at (410) 764-4714 or [christy.collins@maryland.gov](mailto:christy.collins@maryland.gov) or, Lillian Reese, Legislative Coordinator for Boards & Commissions, at 443-794-4757 or [lillian.reese@maryland.gov](mailto:lillian.reese@maryland.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Bailey', written in a cursive style.

Mark Bailey, Ed.D  
Board Chair  
Maryland Board Morticians and Funeral Directors

cc: Senator Cory V. McCray