

GENERAL ASSEMBLY OF NORTH CAROLINA  
1989 SESSION

CHAPTER 988  
HOUSE BILL 2398

AN ACT TO PROVIDE FOR THE LICENSURE OF CREMATORY OPERATORS  
AND TO ESTABLISH THE CREMATORY AUTHORITY WITHIN THE BOARD  
OF MORTUARY SCIENCE.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 13C.  
"Cremations.

**"§ 90-210.40. Short title.**

This Article shall be known and may be cited as the North Carolina Crematory Act.

**"§ 90-210.41. Definitions.**

As used in this Article, unless the context requires otherwise:

- (1) 'Authorizing agent' means a person legally entitled to order the cremation of human remains. An authorizing agent shall be, in order of priority, a spouse, an adult child, a parent, any adult sibling, guardian or close relation of the deceased. In the case of indigents or any other individuals whose final disposition is the responsibility of the State, a public official charged with arranging the final disposition of the deceased, if legally authorized, may serve as the authorizing agent. In the case of individuals whose death occurred in a nursing home or other private institution, and in which the institution is charged with making arrangements for the final disposition of the deceased, a representative of the institution, if legally authorized, may serve as the authorizing agent.
- (2) 'Board' means the North Carolina State Board of Mortuary Science.
- (3) 'Casket' means a rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal or other rigid material and ornamented and lined with fabric.
- (4) 'Closed container' means any container in which cremated remains can be placed and closed in a manner so as to prevent leakage or spillage of cremated remains or the entrance of foreign material.
- (5) 'Cremated remains' means all human remains recovered after the completion of the cremation process, including pulverization which leaves only bone fragments reduced to unidentifiable dimensions.

- (6) 'Cremation' means the technical process, using heat, that reduces human remains to bone fragments.
- (7) 'Cremation chamber' means the enclosed space within which the cremation process takes place. Cremation chambers covered by this Article shall be used exclusively for the cremation of human remains.
- (8) 'Cremation container' means the container in which the human remains are placed in the cremation chamber for a cremation. A cremation container must meet all of the standards established by the rules adopted by the Board.
- (9) 'Crematory' means the building or portion of a building that houses the cremation chamber and that may house the holding facility, business office or other part of the crematory business. A crematory must comply with any applicable public health laws and rules and must contain the equipment and meet all of the standards established by the rules adopted by the Board.
- (10) 'Crematory authority' means the North Carolina Crematory Authority.
- (11) 'Crematory operator' means the legal entity which is licensed by the Board to operate a crematory and perform cremations.
- (12) 'Holding facility' means an area within or adjacent to the crematory, designated for the retention of human remains prior to cremation. A holding facility must comply with any applicable public health laws and rules and must meet all of the standards established by the rules adopted by the Board.
- (13) 'Human remains' means the body of a deceased person, or part of a body or limb that has been removed from a living or deceased person.
- (14) 'Niche' means a compartment or cubicle for the memorialization or permanent placement of an urn containing cremated remains.
- (15) 'Scattering area' means a designated area for the scattering of cremated remains.
- (16) 'Temporary container' means a temporary receptacle for cremated remains, usually made of cardboard, plastic film or similar material designed to hold the cremated remains until an urn or other permanent container is acquired.
- (17) 'Urn' means a receptacle designed to permanently encase the cremated remains.

**"§ 90-210.42. Crematory Authority established.**

(a) The North Carolina Crematory Authority is established as a Committee within the Board. The Crematory Authority shall suggest rules to the Board for the carrying out and enforcement of the provisions of this Article.

(b) The Crematory Authority shall initially consist of five members appointed by the Governor and two members of the Board appointed by the Board. The Governor may consider a list of recommendations from the Cremation Association of North Carolina.

(c) The initial terms of the members of the Crematory Authority shall be staggered by the appointing authorities so that the terms of three members (two of which shall be appointees of the Governor) expire December 31, 1991, the terms of two members (both of which shall be appointees of the Governor) expire December 31, 1992, and the terms of the remaining two members (one of which shall be an appointee of the Governor) expire December 31, 1993.

As the terms of the members appointed by the Governor expire, their successors shall be elected from among a list of nominees in an election conducted by the Board in which all licensed crematory operators are eligible to vote. The Board may conduct the election for members of the Crematory Authority simultaneously with the election for members of the Board or at any other time. The Board shall prescribe the procedures and establish the time and date for nominations and elections to the Crematory Authority. A nominee who receives a majority of the votes cast shall be declared elected. The Board shall appoint the successors to the two positions for which it makes initial appointments pursuant to this section.

The terms of the elected members of the Crematory Authority shall be three years. The terms of the members appointed by the Board, including the members initially appointed pursuant to this subsection, shall be coterminous with their terms on the Board. Any vacancy occurring in an elective seat shall be filled for the unexpired term by majority vote of the remaining members of the Crematory Authority. Any vacancy occurring in a seat appointed by the Governor shall be filled by the Governor. Any vacancy occurring in a seat appointed by the Board shall be filled by the Board.

(d) The members of the Crematory Authority shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 93B-5 for all time actually spent upon the business of the Crematory Authority. All expenses, salaries and per diem provided for in this Article shall be paid from funds received under the provisions of this Article and Article 13A and shall in no manner be an expense to the State.

(e) The Crematory Authority shall select from its members a chairman, a vice chairman and a secretary who shall serve for one year or until their successors are elected and qualified. No two offices may be held by the same person. The Crematory Authority, with the concurrence of the Board, shall have the authority to engage adequate staff as deemed necessary to perform its duties.

(f) The Crematory Authority shall hold at least one meeting in each year. In addition, the Crematory Authority may meet as often as the proper and efficient discharge of its duties shall require. Five members shall constitute a quorum.

**"§ 90-210.43. Licensing and inspection.**

(a) Any person doing business in this State, or any cemetery, funeral establishment, corporation, partnership, joint venture, voluntary organization or any other entity may erect, maintain and conduct a crematory in this State and may provide the necessary appliances and facilities for the cremation of human remains, provided that such person has secured a license as a crematory operator in accordance with the provisions of this Article.

(b) A crematory may be constructed on or adjacent to any cemetery, on or adjacent to any funeral establishment that is zoned commercial or industrial, or at any other location consistent with local zoning regulations.

(c) Application for a license as a crematory operator shall be made on forms furnished and prescribed by the Board. The Board shall examine the premises and structure to be used as a crematory and shall issue a license to the crematory operator if the applicant meets all the requirements and standards of the Board and the requirements of this Article. In the event of a change of ownership of a crematory, at least 30 days prior to the change the new owners shall provide the Board with the name and address of the new owners.

(d) Every application for licensure shall identify the individual who is responsible for overseeing the management and operation of the crematory. The crematory operator shall keep the Board informed at all times of the name and address of the manager.

(e) No person, cemetery, funeral establishment, corporation, partnership, joint venture, voluntary organization or any other entity shall cremate any human remains, except in a crematory licensed for this express purpose and under the limitations provided in this Article.

(f) Whenever the Board finds that an owner, partner or officer of a crematory operator or an applicant to become a crematory operator, or that any agent or employee of a crematory operator or an applicant to become a crematory operator, with the direct or implied permission of such owner, partner or officer, has violated any provision of this Article, or is guilty of any of the following acts, and when the Board also finds that the crematory operator or applicant has thereby become unfit to practice, the Board may suspend, revoke, or refuse to issue or renew the license, in accordance with the procedures of Chapter 150B:

- (1) Conviction of a felony or a crime involving fraud or moral turpitude;
- (2) Fraud or misrepresentation in obtaining or renewing a license or in the practice of cremation;
- (3) False or misleading advertising;
- (4) Gross immorality, including being under the influence of alcohol or drugs while performing cremation services;
- (5) Using profane, indecent or obscene language in the presence of a dead human body, and within the immediate hearing of the family or relatives of a deceased, whose body has not yet been cremated or otherwise disposed of;
- (6) Violating or cooperating with others to violate any of the provisions of this Article or of the rules of the Board;
- (7) Violation of any State law or municipal or county ordinance or regulation affecting the handling, custody, care or transportation of dead human bodies;
- (8) Refusing to surrender promptly the custody of a dead human body or cremated remains upon the express order of the person lawfully

entitled to the custody thereof, except as provided in G.S. 90-210.47(e);

(9) Indecent exposure or exhibition of a dead human body while in the custody or control of a licensee.

(g) The Board and Crematory Authority may hold hearings in accordance with the provisions of this Article and Chapter 150B. Any such hearing shall be conducted jointly by the Board and the Crematory Authority. The Board and the Crematory Authority shall jointly constitute an 'agency' under Article 3A of Chapter 150B of the General Statutes with respect to proceedings initiated pursuant to this Article. The Board is empowered to regulate and inspect crematories and crematory operators and to enforce as provided by law the provisions of this Article and the rules adopted hereunder.

In addition to the powers enumerated in Chapter 150B of the General Statutes, the Board shall have the power to administer oaths and issue subpoenas requiring the attendance of persons and the production of papers and records before the Board in any hearing, investigation or proceeding conducted by it or conducted jointly with the Crematory Authority. Members of the Board's staff or the sheriff or other appropriate official of any county of this State shall serve all notices, subpoenas and other papers given to them by the President of the Board for service in the same manner as process issued by any court of record. Any person who neglects or refuses to obey a subpoena issued by the Board shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined or imprisoned in the discretion of the court.

**"§ 90-210.44. Authorization and record keeping.**

The Board shall establish requirements for record keeping and authorizations, and it shall be a violation of this Article for any crematory operator to fail to comply with the requirements.

**"§ 90-210.45. Cremation procedures.**

(a) No human body shall be cremated before the crematory operator receives a death certificate signed by the attending physician or an authorization for cremation signed by a medical examiner.

(b) Human remains shall not be cremated within 24 hours after the time of death, unless such death was a result of an infectious, contagious or communicable and dangerous disease as listed by the Commission of Health Services pursuant to G.S. 130A-134, and unless such time requirement is waived in writing by the medical examiner, county health director, or attending physician where the death occurred. In the event such death comes under the jurisdiction of the medical examiner, the human remains shall not be received by the crematory operator until authorization to cremate has been received in writing from the medical examiner of the county in which the death occurred. In the event the crematory operator is authorized to perform funerals as well as cremation, this restriction on the receipt of human remains shall not be applicable.

(c) No unauthorized person shall be permitted in the crematory area while any human remains are in the crematory area awaiting cremation, being cremated, or being removed from the cremation chamber. Relatives of the deceased, the authorizing agent,

medical examiners and law enforcement officers in the execution of their duties shall be authorized to have access to the holding facility and crematory facility.

(d) The simultaneous cremation of the human remains of more than one person within the same cremation chamber is forbidden.

(e) Crematory operators shall comply with standards established by the Board for the reduction and pulverization of human remains by the cremation process.

**"§ 90-210.46. Disposition of cremated remains.**

(a) The authorizing agent shall provide the person with whom cremation arrangements are made with a signed statement specifying the ultimate disposition of the cremated remains, if known. A copy of this statement shall be retained by the crematory operator.

(b) The authorizing agent is responsible for the disposition of the cremated remains. If, after a period of 30 days from the date of cremation, the authorizing agent or his representative has not specified the ultimate disposition or claimed the cremated remains, the crematory operator or the person in possession of the cremated remains may dispose of the cremated remains only in a manner permitted in this section. The authorizing agent shall be responsible for reimbursing the crematory operator for all reasonable expenses incurred in disposing of the cremated remains pursuant to this section. A record of such disposition shall be made and kept by the person making such disposition. Upon disposing of cremated remains in accordance with this section, the crematory operator or person in possession of the cremated remains shall be discharged from any legal obligation or liability concerning such cremated remains.

(c) In addition to the disposal of cremated remains in a crypt, niche, grave, or scattering garden located in a dedicated cemetery, or by scattering over uninhabited public land, the sea or other public waterways pursuant to subsection (f) of this section, cremated remains may be disposed of in any manner on the private property of a consenting owner, upon direction of the authorizing agent. If cremated remains are to be disposed of by the crematory operator on private property, other than dedicated cemetery property, the authorizing agent shall provide the crematory operator with the written consent of the property owner.

(d) Except with the express written permission of the authorizing agent no person may:

(1) Dispose of or scatter cremated remains in such a manner or in such a location that the cremated remains are commingled with those of another person. This subdivision shall not apply to the scattering of cremated remains at sea or by air from individual closed containers or to the scattering of cremated remains in an area located in a dedicated cemetery and used exclusively for such purposes.

(2) Place cremated remains of more than one person in the same closed container. This subdivision shall not apply to placing the cremated remains of members of the same family in a common closed container designed for the cremated remains of more than one person.

(e) Cremated remains shall be delivered by the crematory operator to the individual specified by the authorizing agent on the cremation authorization form. The

representative of the crematory operator and the individual receiving the cremated remains shall sign a receipt indicating the name of the deceased, and the date, time, and place of the receipt. After this delivery, the cremated remains may be transported in any manner in this State, without a permit, and disposed of in accordance with the provisions of this Article.

(f) Cremated remains may be scattered over uninhabited public land, a public waterway or sea, subject to health and environmental standards, or on the private property of a consenting owner pursuant to subsection (c) of this section. A person may utilize a boat or airplane to perform such scattering. Cremated remains shall be removed from their closed container before they are scattered.

**"§ 90-210.47. Liability.**

(a) Any person signing a cremation authorization form shall be deemed to warrant the truthfulness of any facts set forth in the cremation authorization form, including the identity of the deceased whose remains are sought to be cremated and that person's authority to order such cremation.

(b) A crematory operator shall have authority to cremate human remains upon the receipt of a cremation authorization form signed by an authorizing agent. There shall be no liability of a crematory operator that cremates human remains pursuant to such authorization, or that releases or disposes of the cremated remains pursuant to such authorization.

(c) A crematory operator shall not be responsible or liable for any valuables delivered to the crematory operator with human remains.

(d) A crematory operator shall not be liable for refusing to accept a body or to perform a cremation until it receives a court order or other suitable confirmation that a dispute has been settled if:

- (1) It is aware of any dispute concerning the cremation of human remains;
- (2) It has a reasonable basis for questioning any of the representations made by the authorizing agent; or
- (3) For any other lawful reason.

(e) If a crematory operator is aware of any dispute concerning the release or disposition of the cremated remains, the crematory operator may refuse to release the cremated remains until the dispute has been resolved or the crematory operator has been provided with a court order authorizing the release or disposition of the cremated remains. A crematory operator shall not be liable for refusing to release or dispose of cremated remains in accordance with this subsection.

**"§ 90-210. 48. Fees.**

(a) The Board may set and collect fees not to exceed the following amounts from licensed crematory operators and applicants:

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|--------------------------------------|-----------------|
| <u>(1) Licensee application fee.</u> | <u>\$400.00</u> |
| <u>(2) Annual renewal fee.</u>       | <u>150.00</u>   |
| <u>(3) Late renewal penalty.</u>     | <u>75.00</u>    |
| <u>(4) Re-inspection fee.</u>        | <u>100.00</u>   |
| <u>(5) Per cremation fee.</u>        | <u>10.00.</u>   |

(b) The funds collected pursuant to this Article shall become part of the general fund of the Board. The cost of the maintenance of the Crematory Authority shall be deemed a general expense of the Board. The Board shall keep an accurate accounting of all the receipts and expenditures made pursuant to this Article and shall provide a current report of such to the Crematory Authority biannually.

**"§ 90-210.49. Crematory operator authority.**

(a) A crematory operator may employ a licensed funeral director for the purpose of arranging cremations with the general public, transporting human remains to the crematory, and processing all necessary paper work. Nothing in this provision may be construed to require a licensed funeral director to perform any functions not otherwise required by law to be performed by a licensed funeral director.

(b) A crematory operator may adopt reasonable rules consistent with this Article for the management and operation of a crematory. Nothing in this subsection may be construed to prevent a crematory operator from adopting rules which are more stringent than the provisions of this Article.

(c) Nothing in this Article shall prohibit or require the performance of cremations by crematory operators for or directly with the public, or exclusively for or through licensed funeral directors.

(d) Nothing in this Article may be construed to prohibit a crematory operator from transporting human remains.

(e) Nothing in this Article may be construed to relieve the holder of a license issued hereunder from obtaining any other licenses or permits required by law.

**"§ 90-210.50. Rulemaking, applicability, violations, and prohibitions of Article.**

(a) The Board is authorized to adopt and promulgate such rules for the carrying out and enforcement of the provisions of this Article as may be necessary and as are consistent with the laws of this State and of the United States. The Board shall adopt rules only after consideration of the Crematory Authority's suggested rules pursuant to G.S. 90-210.42(a). The Board may perform such other acts and exercise such other powers and duties as may be provided in this Article, in Article 13A of this Chapter, and otherwise by law and as may be necessary to carry out the powers herein conferred.

(b) The provisions of this Article shall not apply to the cremation of human remains and medical waste performed by the North Carolina Anatomical Commission, licensed hospitals and medical schools, and the office of the Chief Medical Examiner when the disposition of such human remains and medical waste is the legal responsibility of said institutions.

(c) A violation of any of the provisions of this Article is a misdemeanor punishable by imprisonment for up to six months and a fine up to one thousand dollars (\$1,000).

(d) No person, firm, or corporation may request or authorize cremation or cremate a dead human body when he has information indicating a crime or violence of any sort in connection with the cause of death unless such information has been conveyed to the State or county medical examiner and permission from the State or county medical examiner to cremate has thereafter been obtained."



Sec. 2. This act is effective upon ratification, except that (i) no license shall be required to operate a crematory prior to January 1, 1991 and (ii) G.S. 90-210.50(c) shall become effective October 1, 1990 and shall apply only to violations occurring on or after that date.

In the General Assembly read three times and ratified this the 19th day of July, 1990.