

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 212

Short Title: Mortuary Science Changes.

(Public)

Sponsors: Senator Rand.

Referred to: Commerce.

March 2, 1999

A BILL TO BE ENTITLED

1 AN ACT TO AMEND CERTAIN STATUTES REGARDING THE NORTH
2 CAROLINA BOARD OF MORTUARY SCIENCE AND MUTUAL BURIAL
3 ASSOCIATIONS.
4

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 143B-472.2 reads as rewritten:

7 "**§ 143B-472.2. Duties of Board; meetings.**

8 It shall be the duty of the North Carolina Board of Mortuary Science to supervise,
9 pursuant to this Article, all burial associations authorized by this Article to operate in
10 North Carolina, to determine that such associations are operated in conformity with this
11 Article and the rules adopted pursuant to this Article; to ~~assist the Board of Mortuary~~
12 ~~Science with prosecution of~~ prosecute violations of this Article or rules adopted pursuant
13 thereto; and to protect the interest of members of mutual burial associations.

14 The North Carolina Board of Mortuary Science, after a public hearing, may
15 promulgate reasonable rules and regulations for the enforcement of this Article and in
16 order to carry out the intent thereof. The Board is authorized and directed to adopt
17 specific rules to provide for the orderly transfer of a member's benefits in cash or
18 merchandise and services from the funeral director sponsoring the member's association
19 to the funeral establishment which furnishes a funeral service, or merchandise, or both,
20 for the burial of the member, provided that any funeral establishment to which the

1 member's benefits are transferred in accordance with such rules shall, if located in North
2 Carolina, be a funeral establishment registered and permitted under the provisions of G.S.
3 90-210.25 or shall, if located in any other state, territory or foreign country, be a funeral
4 establishment recognized by and operating in conformity with the laws of such other
5 state, territory or foreign country. One or more burial associations operating in North
6 Carolina may merge into another burial association operating in North Carolina and two
7 or more burial associations operating in North Carolina may consolidate into a new burial
8 association provided that any such plan of merger or plan of consolidation shall be
9 adopted and carried out in accordance with rules adopted by the Board pursuant to this
10 Article.

11 All rules heretofore adopted by the North Carolina Mutual Burial Association
12 Commission or the North Carolina Board of Mortuary Science in accordance with prior
13 law and which have not been amended, rescinded, revoked or otherwise changed, or
14 which have not been nullified or made inoperative or unenforceable because of any
15 statute enacted after the adoption of any such rule, shall remain in full force and effect
16 until amended, rescinded, revoked or otherwise changed by action of the North Carolina
17 Board of Mortuary Science as set out above, or until nullified or made inoperative or
18 unenforceable because of statutory enactment or court decision.

19 Members of the Board shall receive, when attending such regular or special meetings
20 such per diem, expense allowance and travel allowance as are allowed other commissions
21 and boards of the State. The legal adviser to the Board shall be entitled to actual expenses
22 when attending regular or special meetings of the Board held other than in Raleigh. All
23 expenses of the Board shall be paid from funds coming to the Board pursuant to this
24 Article or appropriated for this purpose."

25 Section 2. Article 4 of G.S. 143B-472.3 reads as rewritten:

26 "Article 4. The annual meeting of the association shall be held at (here insert
27 the place, date and hour); each member shall have one vote at said annual meeting and 15
28 members of the association shall constitute a quorum. There shall be elected at the annual
29 meeting of said association a board of directors of seven members, each of whom shall
30 serve for a period of from one to five years as the membership may determine and until
31 his or her successor shall have been elected and qualified. Any member of the board of
32 directors who shall fail to maintain his or her membership, as provided in the rules and
33 bylaws of said association, shall cease to be a member of the board of directors and a
34 director shall be appointed by the president of said association for the unexpired term of
35 such disqualified member. There shall be at least an annual meeting of the board of
36 directors, and such meeting shall be held immediately following the annual meeting of
37 the membership of the association. The directors of the association may, by a majority
38 vote, hold other meetings of which notice shall be given to each member by mailing such
39 notice five days before the meeting to be held. At the annual meetings of the directors of
40 the association, the board of directors shall elect a president, a vice-president, and a
41 secretary-treasurer. The president and vice-president shall be elected from among the
42 directors, but the secretary-treasurer may be selected from the director membership or
43 from the membership of the association, it being provided that it is not necessary that the

1 secretary-treasurer shall be a member of the board of directors. Among other duties that
2 the secretary-treasurer may perform, he shall be chargeable with keeping an accurate and
3 faithful roll of the membership of this association at all times and he shall be chargeable
4 with the duty of faithfully preserving and faithfully applying all moneys coming into his
5 hands by virtue of his said office. The president, vice-president and secretary-treasurer
6 shall constitute a board of control who shall direct the affairs of the association in
7 accordance with these Articles and bylaws of the association, and subject to such
8 modification as may be made or authorized by an act of the General Assembly. The
9 secretary-treasurer shall keep a record of all assessments made, dues collected and
10 benefits paid. The books of the association, together with all records and bank accounts
11 shall be at all times open to the inspection of the Board of Mortuary Science or its duly
12 constituted auditors or representatives. It shall be the duty of the secretary or secretary-
13 treasurer of each association to keep the books of the association posted up-to-date so that
14 the financial standing of the association may be readily ascertained by the Board of
15 Mortuary Science or any auditor or representative employed by it. ~~Upon the failure of any
16 secretary or secretary-treasurer to comply with this provision, it shall be the duty of the Board of
17 Mortuary Science to take charge of the books of the association and do whatever work is
18 necessary to bring the books up-to-date. The actual costs of said work may be charged the burial
19 association and shall be paid from the thirty percent (30%) allowed by law for the operation of
20 the burial association.~~

21 Whenever in the opinion of the Board of Mortuary Science, it is necessary to audit the
22 books of any burial association more than once in any calendar year, the Board of
23 Mortuary Science shall have authority to assess such burial association the actual cost of
24 any audit in excess of one per calendar year, provided that no more than one audit may be
25 deemed necessary unless a discrepancy exists at the last regular audit. Such cost shall be
26 paid from the thirty percent (30%) allowed by law for the operation of the burial
27 association.

28 Every burial association shall file with the Board of Mortuary Science an annual
29 report of its financial condition on a form furnished to it by the Board of Mortuary
30 Science. Such report shall be certified by an accountant who is certified in this State
31 under Chapter 93 of the General Statutes. The burial association shall be responsible for
32 paying the cost of the certification. The report shall be filed on or before February 15 of
33 each calendar year and shall cover the complete financial condition of the burial
34 association for the immediate preceding calendar year. The Board of Mortuary Science
35 shall levy and collect a penalty of twenty-five dollars (\$25.00) for each day after
36 February 15 that the report called for herein is not filed. The Board may, in its discretion,
37 grant any reasonable extension of the above filing date without the penalty provided in
38 this section. Such penalty shall be paid from the thirty percent (30%) allowed by law for
39 the operation of the burial association. Any secretary or secretary-treasurer who fails to
40 file such financial report on or before February 15 of each calendar year or on or before
41 the last day of any period of extension for the filing of such report granted by the Board
42 to the burial association of such secretary or secretary-treasurer shall be guilty of a Class
43 3 misdemeanor. Each day after February 15, or the last day of any period of extension for

1 the filing of the report granted by the Board to the burial association of such secretary or
2 secretary-treasurer, that said report is not filed by the secretary or secretary-treasurer of a
3 burial association, shall constitute a separate offense."

4 Section 3. Article 10 of G.S. 143B-472.3 reads as rewritten:

5 "Article 10. It is understood and stipulated that the benefits provided for shall be
6 payable only to a funeral establishment which provides a funeral service for a deceased
7 member and which, if located in North Carolina, is a funeral establishment registered
8 under the provisions of G.S. ~~90-210.17~~ 90-210.25 or which, if located in any other state,
9 territory or foreign country, is a funeral establishment recognized by and operating in
10 conformity with the laws of such other state, territory or foreign country. Upon the death
11 of any member, it shall be the duty of the person or persons making the funeral
12 arrangements for such deceased member to notify the secretary of the member's burial
13 association of the death of such member. The person or persons making the funeral
14 arrangements for such deceased member shall have 30 days from the date of the death of
15 such member in which to make demand upon the burial association for the funeral
16 benefits to which such member is entitled.

17 The benefits provided for are to be paid by the burial association to the funeral
18 director providing such funeral and burial service either in cash or in merchandise and
19 service as elected by the person or persons making the funeral arrangements for such
20 deceased member. If the burial association shall fail, on demand, to provide the benefits
21 to which the deceased member was entitled to the funeral establishment which provided
22 the funeral service for the deceased member, then the benefits shall be paid in cash to the
23 representative of the deceased member qualified under law to receive such benefits."

24 Section 4. Part 13 of Article 10 of Chapter 143B is amended by adding the
25 following new section:

26 "**§ 143B-472.29. Acquisition, merger, dissolution, and liquidation of mutual burial**
27 **associations.**

28 (a) Any insurance company which desires to purchase the assets of or to merge
29 with a burial association as provided in G.S. 143B-472.28 shall submit to the Board of
30 Mortuary Science and to the secretary of the association a written proposal containing the
31 terms and conditions of the proposed purchase or merger. A proposal may be conditioned
32 upon an increase in the assessments of an association in the manner set out in subsection
33 (g) of this section. In such a case, the issues of purchase or merger and an increase in
34 assessments may be considered at the same meeting of the association.

35 (b) Upon receipt of a written proposal:

36 (1) The Board shall issue an order directing the association to hold a
37 meeting of the membership within 30 days following receipt of the
38 order for the purpose of voting on the proposal.

39 (2) Within 10 days of receiving the order from the Board, the association
40 shall give at least 10 days' written notice of the meeting to each of its
41 members. The notice shall:

42 a. State the date, time, and place of the meeting.

43 b. State the purpose of the meeting.

1 c. Contain or have attached the proposal submitted by the insurance
2 company.

3 d. Contain a statement limiting the time that each member will be
4 permitted to speak to the proposal, if the association deems it
5 advisable.

6 (c) A representative of the insurance company shall be permitted to attend the
7 meeting held by the association for the purposes of explaining the proposal and
8 answering any questions from the members. The officers of the association may present
9 their views concerning the proposal. Any member of the association who wishes to
10 speak to the proposal shall be permitted to do so subject to any time limitation stated in
11 the notice of the meeting.

12 (d) The secretary of the association shall record the name of every member who is
13 present at the meeting and shall determine whether there is a quorum. The presence of 15
14 paid-up members or fifteen percent (15%) of the paid-up membership, whichever is less,
15 shall constitute a quorum. Acceptance or rejection of the proposal shall be by majority
16 vote of the members present and voting. Any paid-up member who is at least 18 years of
17 age shall be permitted to vote. A parent or guardian of any member who is under 18
18 years of age may vote on behalf of his or her child or ward, but only one vote may be cast
19 on behalf of that member.

20 (e) The secretary of the association shall certify the result of the vote and the
21 presence of a quorum to the Board within five days following the meeting and shall
22 include with the certification a copy of the notice of the meeting that was sent to the
23 members of the association.

24 (f) The Board shall immediately review the certification, the notice, and any other
25 records that may be necessary to determine the adequacy of notice, the presence of a
26 quorum, and the validity of the vote. Upon determining that the meeting and vote were
27 regular and held following proper notice and that a majority of a quorum of the paid-up
28 members voted in favor of the proposal, the Board shall issue an order approving the
29 purchase or merger and directing that the purchase or merger proceed in accordance with
30 the proposal.

31 (g) Any burial association whose current assessments are not, or are unlikely to be
32 within the next three years, adequate to reach or maintain a reserve of at least twenty-one
33 dollars (\$21.00) per member or are inadequate to meet the requirements of a proposal
34 from an insurance company to acquire the assets of or to merge with the association may
35 increase its assessments by an amount necessary to reach and maintain the reserve or to
36 meet the proposal. The increase shall be approved by a vote of the members of the
37 association at a regular meeting of the association or at a special meeting called for the
38 purpose of increasing assessments.

39 (1) Any officer or director of the association may call a special meeting for
40 the purpose of increasing assessments, and the secretary shall call a
41 special meeting for such purpose upon the request of at least ten percent
42 (10%) of the members or upon receipt of a proposal from an insurance
43 company that is conditioned upon an increase in assessments.

- 1 (2) Written notice setting out the date, time, place, and the purpose of the
2 meeting shall be hand delivered or sent by first-class mail, postage
3 prepaid, to the last known address of each member of the association at
4 least 10 days in advance of the meeting.
- 5 (3) No vote may be had on the question of an increase in assessments unless
6 a quorum of the paid-up members of the association is present at the
7 meeting. A quorum shall be conclusively presumed if 15 paid-up
8 members or fifteen percent (15%) of the paid-up membership of the
9 association, whichever is less, is present at the meeting.
- 10 (4) The proposal to increase the assessments shall be approved by an
11 affirmative vote of a simple majority of the paid-up members present
12 and voting.
- 13 (5) The secretary of the association within five days following the meeting
14 shall certify the result of the vote and the presence of a quorum to the
15 Board in the manner and for the purposes set out in subsections (e) and
16 (f) of this section.

17 (h) Every association shall submit to the Board on or before June 1, 2000, and
18 thereafter as may be required by the Board, but not more frequently than once each
19 calendar year, a written report of financial soundness prepared by a qualified actuary.
20 The report shall indicate the adequacy of reserves and other items to pay current and
21 future claims of deceased members and shall reflect a consideration of the following:

- 22 (1) The current number of members of the association.
23 (2) The age of the members.
24 (3) The sex of the members.
25 (4) The amount of the association's annual assessments.
26 (5) The amount of the association's current reserves.
27 (6) The projected amount of the association's reserves for each of the next
28 three years.
29 (7) The net gain in membership of the association during the preceding
30 three years.
31 (8) The projected net gain in membership of the association for each of the
32 next three years.
33 (9) The association's current liability for benefits to its members.
34 (10) The association's projected net liability for benefits to its members for
35 each of the next three years.

36 (i) Upon a written request from an association that has held a valid meeting and
37 vote for voluntary dissolution in accordance with G.S. 143B-472.3, the Board shall issue
38 an order of liquidation for that association. The Board shall issue an order of liquidation
39 to every association that has not been acquired by or merged with an insurance company
40 if the association is not financially sound on June 1, 2001, as shown by the actuary's
41 report required in subsection (h) of this section. The Board's order may direct that all
42 members in good standing be transferred to a financially sound association as well as all
43 records, property, and unexpended balances of funds of the association to be liquidated, if

1 the financially sound association agrees in writing to accept the transfer. The order shall
2 direct the association to complete the liquidation and to file a final report with the Board
3 no later than December 31, 2001. If the transfer of members cannot be accomplished, the
4 association, upon receipt of an order of liquidation, shall:

5 (1) Cease accepting new members.

6 (2) Collect all debts owed to the association and pay all debts owed by the
7 association from monies on hand, including the reserve.

8 (3) Distribute any remaining monies on hand and in the reserve pro rata
9 among those who were members of the association on the date the
10 liquidation order was issued by the Board. Each member's distributive
11 share shall be determined by dividing the amount of that member's
12 benefit by the aggregate benefits of all members of the association and
13 then multiplying the total amount of money available for distribution by
14 the percentage so derived. Assessments owed by the members to the
15 association at the time of distribution shall be taken into account and
16 shall be offset against the members' distributive shares.

17 (4) Issue a certificate to members in an amount that equals the difference
18 between the distributive share issued in subdivision (3) of this
19 subsection and the full amount of the member's association benefit.
20 Any certificate issued shall supersede and supplant any other certificate
21 already issued by the association. The certificate shall be on a form
22 prescribed by the Board and shall be prepared and distributed by the
23 association at its expense.

24 (5) File a final report with the Board on or before December 31, 2001,
25 which shall show all receipts and disbursements, including the amount
26 distributed to each member, since the last annual report of the
27 association was filed with the Board.

28 (j) A certificate issued under subsection (i) of this section may be used as a credit
29 toward the cost of funeral services, facilities, and merchandise at any funeral
30 establishment that agrees on forms prescribed by the Board to accept such certificates. A
31 funeral establishment that agrees to accept certificates shall do so until the agreement
32 with the Board expires. The Board shall maintain and distribute to the public a list of
33 funeral establishments that will accept certificates.

34 (k) If after June 1, 2001, the Board determines, upon receipt of a written report
35 submitted by an association under subsection (h) of this section, that an association is no
36 longer financially sound, the Board shall issue an order of liquidation, and the association
37 shall comply with such order in the manner prescribed in subsection (i) of this section.

38 (l) The Board shall immediately review the final report filed pursuant to
39 subdivision (i)(5) of this section and shall notify the association whether the report has
40 been accepted. All licenses issued to soliciting agents of the association pursuant to G.S.
41 143B-472.4 and the written authority to operate issued to the association pursuant to G.S.
42 143B-472.6 are automatically canceled upon acceptance of the final report by the Board.

1 (m) No new association may be authorized, organized, or licensed on or after
2 January 1, 2000, but associations existing on that date may merge or consolidate as
3 provided in G.S. 143B-472.2 and G.S. 143B-472.28."

4 Section 5. This act is effective when it becomes law.