

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 212

Commerce Committee Substitute Adopted 4/21/99

Short Title: Mortuary Science Changes.

(Public)

Sponsors:

Referred to:

March 2, 1999

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

27 "Article 4. The annual meeting of the association shall be held at (here insert
28 the place, date and hour); each member shall have one vote at said annual meeting and 15
29 members of the association shall constitute a quorum. There shall be elected at the annual
30 meeting of said association a board of directors of seven members, each of whom shall
31 serve for a period of from one to five years as the membership may determine and until
32 his or her successor shall have been elected and qualified. Any member of the board of
33 directors who shall fail to maintain his or her membership, as provided in the rules and
34 bylaws of said association, shall cease to be a member of the board of directors and a
35 director shall be appointed by the president of said association for the unexpired term of
36 such disqualified member. There shall be at least an annual meeting of the board of
37 directors, and such meeting shall be held immediately following the annual meeting of
38 the membership of the association. The directors of the association may, by a majority
39 vote, hold other meetings of which notice shall be given to each member by mailing such
40 notice five days before the meeting to be held. At the annual meetings of the directors of
41 the association, the board of directors shall elect a president, a vice-president, and a
42 secretary-treasurer. The president and vice-president shall be elected from among the
43 directors, but the secretary-treasurer may be selected from the director membership or

1 from the membership of the association, it being provided that it is not necessary that the
2 secretary-treasurer shall be a member of the board of directors. Among other duties that
3 the secretary-treasurer may perform, he shall be chargeable with keeping an accurate and
4 faithful roll of the membership of this association at all times and he shall be chargeable
5 with the duty of faithfully preserving and faithfully applying all moneys coming into his
6 hands by virtue of his said office. The president, vice-president and secretary-treasurer
7 shall constitute a board of control who shall direct the affairs of the association in
8 accordance with these Articles and bylaws of the association, and subject to such
9 modification as may be made or authorized by an act of the General Assembly. The
10 secretary-treasurer shall keep a record of all assessments made, dues collected and
11 benefits paid. The books of the association, together with all records and bank accounts
12 shall be at all times open to the inspection of the Board of Mortuary Science or its duly
13 constituted auditors or representatives. It shall be the duty of the secretary or secretary-
14 treasurer of each association to keep the books of the association posted up-to-date so that
15 the financial standing of the association may be readily ascertained by the Board of
16 Mortuary Science or any auditor or representative employed by it. ~~Upon the failure of any~~
17 ~~secretary or secretary-treasurer to comply with this provision, it shall be the duty of the Board of~~
18 ~~Mortuary Science to take charge of the books of the association and do whatever work is~~
19 ~~necessary to bring the books up to date. The actual costs of said work may be charged the burial~~
20 ~~association and shall be paid from the thirty percent (30%) allowed by law for the operation of~~
21 ~~the burial association.~~

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

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

1 the last day of any period of extension for the filing of such report granted by the Board
2 to the burial association of such secretary or secretary-treasurer shall be guilty of a Class
3 3 misdemeanor. Each day after February 15, or the last day of any period of extension for
4 the filing of the report granted by the Board to the burial association of such secretary or
5 secretary-treasurer, that said report is not filed by the secretary or secretary-treasurer of a
6 burial association, shall constitute a separate offense."

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

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

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

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

29 **§ 143B-472.29. Acquisition, merger, dissolution, and liquidation of mutual burial**
30 **associations.**

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

38 (b) Upon receipt of a written proposal:

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

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

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

5 b. State the purpose of the meeting.

6 c. Contain or have attached the proposal submitted by the insurance
7 company.

8 d. Contain a statement limiting the time that each member will be
9 permitted to speak to the proposal, if the association deems it
10 advisable.

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

17 (d) The secretary of the association shall record the name of every member who is
18 present at the meeting and shall determine whether there is a quorum. The presence of 15
19 members or ten percent (10%) of the membership, whichever is greater, shall constitute a
20 quorum. Acceptance or rejection of the proposal shall be by majority vote of the
21 members present and voting. Any member who is at least 18 years of age shall be
22 permitted to vote. A parent or guardian of any member who is under 18 years of age may
23 vote on behalf of his or her child or ward, but only one vote may be cast on behalf of that
24 member.

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

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

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

- 1 (1) Any officer or director of the association may call a special meeting for
2 the purpose of increasing assessments, and the secretary shall call a
3 special meeting for such purpose upon the request of at least ten percent
4 (10%) of the members or upon receipt of a proposal from an insurance
5 company that is conditioned upon an increase in assessments.
- 6 (2) Written notice setting out the date, time, place, and the purpose of the
7 meeting shall be hand delivered or sent by first-class mail, postage
8 prepaid, to the last known address of each member of the association at
9 least 10 days in advance of the meeting.
- 10 (3) No vote may be had on the question of an increase in assessments unless
11 a quorum of the members of the association is present at the meeting. A
12 quorum shall be conclusively presumed if 15 members or ten percent
13 (10%) of the membership of the association, whichever is greater, is
14 present at the meeting.
- 15 (4) The proposal to increase the assessments shall be approved by an
16 affirmative vote of a majority of the members present and voting.
- 17 (5) The secretary of the association within five days following the meeting
18 shall certify the result of the vote and the presence of a quorum to the
19 Board in the manner and for the purposes set out in subsections (e) and
20 (f) of this section.

21 (h) Every association shall submit to the Board on or before June 1, 2001, a
22 written report of financial soundness prepared by a qualified actuary. If the annual report
23 prepared, pursuant to G.S. 143B-472.3, of an association's financial condition shows a
24 decline in reserves per member for two consecutive years, then the Board may require a
25 written report of financial soundness prepared by a qualified actuary annually thereafter.
26 The report of financial soundness shall indicate the adequacy of reserves and other items
27 to pay current and future claims of deceased members and shall include the following:

- 28 (1) The current number of members of the association.
29 (2) The age of the members.
30 (3) The amount of the association's annual assessments.
31 (4) The amount of the association's current reserves.
32 (5) The projected amount of the association's reserves for each of the next
33 three years.
34 (6) The net gain in membership of the association during the preceding
35 three years.
36 (7) The projected net gain in membership of the association for each of the
37 next three years.
38 (8) The association's current liability for benefits to its members.
39 (9) The association's projected net liability for benefits to its members for
40 each of the next three years.

41 (i) Upon a written request from an association that has held a valid meeting and
42 voted for voluntary dissolution in accordance with G.S. 143B-472.3, the Board shall issue
43 an order of liquidation for that association.

1 (j) If, after June 1, 2003, and upon receipt of a written report of financial
2 soundness submitted by the association under subsection (h), the Board determines that a
3 burial association is no longer financially sound, the Board shall issue an order of
4 liquidation, and the burial association shall comply with the order in a manner prescribed
5 in subsection (k) of this section.

6 (k) Upon receipt of a request for voluntary dissolution under subsection (i) or upon
7 an order of dissolution under subsection (j), the Board shall issue an order of liquidation.
8 The Board's order may direct that the agreements for members' benefits be transferred to
9 a financially sound mutual burial association, as well as all records, property, and
10 unexpended balances of funds of the association to be liquidated, if the financially sound
11 mutual burial association agrees in writing to accept the transfer. The Board's order shall
12 direct the burial association to complete the liquidation and to file a final report with the
13 Board no later than December 31 of the year of the liquidation. Upon receipt of the order
14 of liquidation, the burial association shall:

15 (1) Cease accepting new members.

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

18 (3) Distribute pro rata any remaining monies on hand and in the reserve
19 among those who were members of the association and whose transfer
20 could not be accomplished on the date that the liquidation order was
21 issued by the Board. Each member's distributive share shall be
22 determined by dividing the amount of the member's benefit by the
23 aggregate benefits of all members of the association and then
24 multiplying the total amount of money available for distribution by the
25 percentage so derived. Assessments owed by the members to the
26 association at the time of distribution shall be taken into account and
27 shall be offset against the members' distributive shares.

28 (4) Issue a certificate to members in an amount that equals the difference
29 between the distributive share issued in subdivision (3) of this
30 subsection and the full amount of the member's association benefit.
31 Any certificate issued shall supersede and supplant any other certificate
32 already issued by the association. The certificate shall be on a form
33 prescribed by the Board and shall be prepared and distributed by the
34 association at its expense.

35 (5) File a final report with the Board on or before December 31 in the year
36 in which the order of liquidation was issued. This report shall show all
37 receipts and disbursements, including the amount distributed to each
38 member, since the last annual report of the association was filed with
39 the Board.

40 (l) A certificate issued under subsection (k) of this section may be used as a credit
41 toward the cost of funeral services, facilities, and merchandise at any funeral
42 establishment that agrees on forms prescribed by the Board to accept such certificates. A
43 funeral establishment that agrees to accept certificates shall do so until the agreement

1 with the Board expires. The Board shall maintain and distribute to the public a list of
2 funeral establishments that will accept certificates.

3 (m) Upon receipt of the final report of dissolution by the association, which is
4 required by subsection (k) of this section, the Board shall immediately review the final
5 report and shall notify the association whether the report is complete and has been
6 accepted. Upon acceptance of the final report by the Board, all licenses issued to
7 soliciting agents of the association pursuant to G.S. 143B-472.6 are automatically
8 cancelled.

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

12 Section 5. G.S. 90-210.25A reads as rewritten:
13 "**§ 90-210.25A. Minimum burial depth.**

14 When final disposition of a human body entails interment, the top of the uppermost
15 part of the burial vault or other encasement shall be a minimum of 18 inches below the
16 ground surface. This section does not apply ~~to burials where no part of the burial vault or~~
17 ~~other encasement containing the body is touching the ground. to:~~

- 18 (1) Burials where no part of the burial vault or other encasement containing
19 the body is touching the ground.
20 (2) Burials where the land is located in a family owned cemetery that was
21 established by deed recorded prior to January 1, 1989, and the
22 individual to be buried is to be buried in a surface burial vault in a
23 manner similar to that of the individual's deceased spouse who was
24 buried prior to January 1, 1981."

25 Section 6. This act is effective when it becomes law.