

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 212  
Commerce Committee Substitute Adopted 4/21/99  
Third Edition Engrossed 4/27/99

Short Title: Mortuary Science Changes.

(Public)

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Sponsors:

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Referred to:

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March 2, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND CERTAIN STATUTES REGARDING THE NORTH  
3 CAROLINA BOARD OF MORTUARY SCIENCE AND MUTUAL BURIAL  
4 ASSOCIATIONS, AND MINIMUM BURIAL DEPTHS.

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

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

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15 law and which have not been amended, rescinded, revoked or otherwise changed, or  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18 until amended, rescinded, revoked or otherwise changed by action of the North Carolina  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

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

27 Section 2. Article 10 of G.S. 143B-472.3 reads as rewritten:

28 "Article 10. It is understood and stipulated that the benefits provided for shall be  
29 payable only to a funeral establishment which provides a funeral service for a deceased  
30 member and which, if located in North Carolina, is a funeral establishment registered  
31 under the provisions of G.S. ~~90-210.17~~ 90-210.25 or which, if located in any other state,  
32 territory or foreign country, is a funeral establishment recognized by and operating in  
33 conformity with the laws of such other state, territory or foreign country. Upon the death  
34 of any member, it shall be the duty of the person or persons making the funeral  
35 arrangements for such deceased member to notify the secretary of the member's burial  
36 association of the death of such member. The person or persons making the funeral  
37 arrangements for such deceased member shall have 30 days from the date of the death of  
38 such member in which to make demand upon the burial association for the funeral  
39 benefits to which such member is entitled.

40 The benefits provided for are to be paid by the burial association to the funeral  
41 director providing such funeral and burial service either in cash or in merchandise and  
42 service as elected by the person or persons making the funeral arrangements for such  
43 deceased member. If the burial association shall fail, on demand, to provide the benefits

1 to which the deceased member was entitled to the funeral establishment which provided  
2 the funeral service for the deceased member, then the benefits shall be paid in cash to the  
3 representative of the deceased member qualified under law to receive such benefits."

4 Section 3. Part 13 of Article 10 of Chapter 143B is amended by adding the  
5 following new section:

6 "**§ 143B-472.29. Acquisition, merger, dissolution, and liquidation of mutual burial**  
7 **associations.**

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

15 (b) Upon receipt of a written proposal:

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

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

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

23 b. State the purpose of the meeting.

24 c. Contain or have attached the proposal submitted by the insurance  
25 company.

26 d. Contain a statement limiting the time that each member will be  
27 permitted to speak to the proposal, if the association deems it  
28 advisable.

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

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

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

5       (f) The Board shall immediately review the certification, the notice, and any other  
6 records that may be necessary to determine the adequacy of notice, the presence of a  
7 quorum, and the validity of the vote. Upon determining that the meeting and vote were  
8 regular and held following proper notice and that a majority of a quorum of the members  
9 voted in favor of the proposal, the Board shall issue an order approving the purchase or  
10 merger and directing that the purchase or merger proceed in accordance with the  
11 proposal.

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

20           (1) Any officer or director of the association may call a special meeting for  
21 the purpose of increasing assessments, and the secretary shall call a  
22 special meeting for such purpose upon the request of at least ten percent  
23 (10%) of the members or upon receipt of a proposal from an insurance  
24 company that is conditioned upon an increase in assessments.

25           (2) Written notice setting out the date, time, place, and the purpose of the  
26 meeting shall be hand delivered or sent by first-class mail, postage  
27 prepaid, to the last known address of each member of the association at  
28 least 10 days in advance of the meeting.

29           (3) No vote may be had on the question of an increase in assessments unless  
30 a quorum of the members of the association is present at the meeting. A  
31 quorum shall be conclusively presumed if 15 members or ten percent  
32 (10%) of the membership of the association, whichever is greater, is  
33 present at the meeting.

34           (4) The proposal to increase the assessments shall be approved by an  
35 affirmative vote of a majority of the members present and voting.

36           (5) The secretary of the association within five days following the meeting  
37 shall certify the result of the vote and the presence of a quorum to the  
38 Board in the manner and for the purposes set out in subsections (e) and  
39 (f) of this section.

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

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

10           (1) Cease accepting new members.

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

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

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

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

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

41       (k) Upon receipt of the final report of dissolution by the association, which is  
42 required by subsection (i) of this section, the Board shall immediately review the final  
43 report and shall notify the association whether the report is complete and has been

1 accepted. Upon acceptance of the final report by the Board, all licenses issued to  
2 soliciting agents of the association pursuant to G.S. 143B-472.6 are automatically  
3 cancelled."

4 Section 4. G.S. 90-210.25A reads as rewritten:

5 "**§ 90-210.25A. Minimum burial depth.**

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

10 (1) Burials where no part of the burial vault or other encasement containing  
11 the body is touching the ground.

12 (2) Burials where the land is located in a family owned cemetery that was  
13 established by deed recorded prior to January 1, 1989, and the  
14 individual to be buried is to be buried in a surface burial vault in a  
15 manner similar to that of the individual's deceased spouse who was  
16 buried prior to January 1, 1981."

17 Section 5. The Legislative Research Commission is authorized to study issues  
18 relating to the insolvency of mutual burial associations in North Carolina. The  
19 Commission shall make a final report of its findings and recommendations, including any  
20 legislative proposals, to the 2001 General Assembly. The Commission may make an  
21 interim report to the 1999 General Assembly, 2000 Regular Session.

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