

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 1091 (Delegate Benson, *et al.*)
Health and Government Operations

Task Force to Study Funeral Establishment Licensing

This bill establishes a Task Force to Study Funeral Establishment Licensing. The task force has to • review and develop options for the licensing of funeral establishments in the State; • assess the forms of ownership of funeral home licenses, as well as the forms of licensing funeral professionals in other states; • assess whether ownership of a funeral home by a limited liability corporation provides adequate safeguards to protect Maryland consumers; • determine whether the injunctive power of the State Board of Morticians and Funeral Directors should be strengthened; • review the current composition of the board and determine whether there should be more consumer representation; • assess the efficiency of the board and its fairness in regulating all licensees; • assess the trusting of preneed funds, including a determination of whether current protection is adequate for consumers; and • propose legislative, regulatory, and other changes required to implement any recommendations. The task force has to report its findings and recommendations to the Governor and the General Assembly by December 31, 2008.

The bill takes effect July 1, 2008 and terminates December 31, 2008.

Fiscal Summary

State Effect: Any expense reimbursements for task force members are assumed to be minimal and absorbable with existing resources. The Department of Legislative Services and the Antitrust Division of the Office of Attorney General should be able to provide staffing with existing resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: The State Board of Morticians and Funeral Directors is one of approximately 70 entities currently subject to evaluation under the Maryland Program Evaluation Act (sunset law). The sunset law requires the Department of Legislative Services to prepare a preliminary evaluation report on each governmental activity or unit subject to review, with a recommendation as to whether further (full) evaluation is necessary, typically conducted the following year.

The board is scheduled to terminate July 1, 2008.

Established in 1902, the board is one of the oldest health occupations boards in Maryland. Charged with the mission of protecting public health and consumer interests and promoting quality funeral service practices in the field of mortuary science, the board serves the following five major functions:

- licensing and regulating funeral service providers;
- licensing, inspecting, and regulating funeral establishments;
- receiving and resolving complaints regarding licensees and funeral establishments;
- establishing standards for the practice of mortuary science; and
- providing education to consumers regarding the funeral service industry.

The Maryland Morticians Act expressly prohibits the practice of mortuary science by an unlicensed individual and further limits the operation of funeral establishments by corporations. The board issues licenses for ● apprentices; ● morticians; ● funeral directors; ● the surviving spouse of a mortician or funeral director who will continue operating the funeral establishment in the event of the mortician's or funeral director's death; ● funeral establishments; ● corporations; and ● individuals who practice mortuary science in another state or country and apply for a courtesy card authorizing them to transport dead human bodies into or out of Maryland to the other state or country of licensure. All licenses are issued on a biennial basis except apprentice licenses, which are issued annually.

Chapter 186 of 2007 reopened the funeral director license to new licensees. Individuals seeking licensure must meet all requirements of a licensed mortician with the exception of demonstrating competency in embalming.

Background: On October 17, 2007, in the case of *Brown, et al. v. Hovatter, et al.*, a U.S. District Court ruled that the board may not enforce the provisions of the Morticians Act that restrict new corporate ownership of funeral homes in Maryland with the indefinite exemptions for corporation licenses held as of June 1, 1945. The decision is being appealed in circuit court. If the ruling stands, the board will have to implement a process for issuing new corporation licenses.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene; Department of Labor, Licensing, and Regulation; Office of the Attorney General; Department of Legislative Services

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mll/ljm

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