
Sunset Review: Evaluation of the State Board of Morticians and Funeral Directors

**Department of Legislative Services
Office of Policy Analysis
Annapolis, Maryland**

October 2007

Primary Staff for This Report

Netsanet Kibret
Jennifer Chasse

Other Staff Who Contributed to This Report

Laura McCarty
Mary LaValley

For further information concerning this document contact:

Library and Information Services
Office of Policy Analysis
Department of Legislative Services
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DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF THE EXECUTIVE DIRECTOR
MARYLAND GENERAL ASSEMBLY

Karl S. Aro
Executive Director

October 31, 2007

The Honorable Thomas V. Mike Miller, Jr.
The Honorable Michael E. Busch
Honorable Members of the General Assembly

Ladies and Gentlemen:

The Department of Legislative Services (DLS) has completed its evaluation of the State Board of Morticians and Funeral Directors. This evaluation process is more commonly known as sunset review because the agencies subject to evaluation are usually subject to termination; typically, legislative action must be taken to reauthorize them. Although a preliminary evaluation conducted in 2005 recommended the board be waived from further review, the General Assembly did not take action on the legislation to extend the board's termination date during the 2006 or 2007 sessions. Consequently, this report has been prepared to assist the committees reviewing the board – the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee – in making their recommendations to the full General Assembly. Absent legislative action during the 2008 session, the board will terminate on July 1, 2008.

DLS finds that the board is effective in its licensing, complaint, inspection, and disciplinary functions. Further, the board has promptly addressed past sunset review recommendations, recently improved its financial situation, and been proactive in overseeing the industry. For example, the board proposed regulations to inspect crematories on funeral establishment grounds in 2006, but those regulations have not been adopted. DLS finds that the board is the appropriate entity to conduct such inspections but that the requirement should be codified and apply to all crematories in the State. DLS also finds that consumer education related to preneed contracts could be enhanced and that the pre-1997 requirement for apprentices to complete 2,000 working hours should be reinstated.

The board faces other challenges in the near future. First, the funeral director license – once frozen – was reopened effective October 1. Second, the board plans to appeal the October 17, 2007 federal court ruling striking down the State's longstanding restrictions related to corporate ownership. DLS makes a series of recommendations related to both of these issues.

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Further, DLS recommends that the board's termination date be extended by 10 years to July 1, 2018. Draft legislation to implement the recommended statutory changes is included as an appendix to this report.

We would like to acknowledge the cooperation and assistance provided by the board, its staff, and many licensees and stakeholders throughout the review process. The board was provided a draft copy of the report for factual review and comment prior to its publication; its written comments are included as an appendix to this report.

Sincerely,

Karl S. Aro
Executive Director

KSA/ml

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Executive Summary

Pursuant to the Maryland Program Evaluation Act, the Department of Legislative Services (DLS) has evaluated the Maryland State Board of Morticians and Funeral Directors (the board), the State entity charged with regulating the funeral industry in Maryland. The 11 recommendations in this evaluation are summarized below.

Recommendation 1: Statute should be amended to reinstate the pre-1997 requirement that apprentices complete 2,000 working hours and repeal the education fulfillment requirements imposed on applicants in order to qualify for licensure as an apprentice. An individual must complete two-thirds of an approved mortuary science program with a minimum 2.0 grade point average to be eligible for an apprentice license. Once a license is issued, the apprentice must complete a minimum 1,000 working hours in a licensed funeral establishment. Chapter 662 of 1997 reduced the minimum number of apprenticeship hours from 2,000 to 1,000 and implemented the educational requirements an individual must have before seeking an apprentice license. Through interviews with stakeholders, DLS found that the current 1,000-hour minimum requirement may be insufficient to adequately prepare apprentices for the practice of mortuary science.

Recommendation 2: The board should report to specified committees on or before December 1, 2010, on the outcome of reopening the funeral director license including the number of (1) students enrolled in the funeral director program at the Community College of Baltimore

County (CCBC); (2) applicants for a funeral director apprenticeship license; and (3) funeral director licenses issued. Prior to October 1, 2007, the funeral director license had been closed to new applicants since 1973. Chapter 186 of 2007 reopened the funeral director license to new licensees. Reopening of the license has provided an alternative licensure path for those who do not wish to perform embalming. The State's sole mortuary science program, at CCBC, is implementing a new associate's degree in applied science and funeral service for funeral director students.

Recommendation 3: If the October 2007 court decision regarding corporate licensure is not appealed or is upheld on appeal, the board should (1) draft emergency regulations regarding the issuance of new corporation licenses; (2) develop and distribute application forms for new applicants; (3) issue new corporation licenses to qualified applicants; and (4) draft an Administration bill amending statute to implement the order of the court. Generally, a funeral establishment may only be owned by a licensed mortician, funeral director, or surviving spouse; however, a corporation license, of which there are 58 in Maryland, allows a corporation to own a funeral establishment if all services are provided by licensed individuals. New corporation licenses have not been issued by the board since 1945; only existing licenses may be renewed. 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 indefinite

exemptions for corporation licenses held as of June 1, 1945. If the ruling stands, the board must implement a process for issuing new corporation licenses – even if statute remains unchanged.

Recommendation 4: If the ruling in the corporate licensure lawsuit stands and another ownership option becomes available to surviving spouses, the board should explore whether there is a continued need for the surviving spouse license. A surviving spouse license allows the licensee to continue the operation of a funeral establishment and assist with the planning and conducting of funeral services for that business under the supervision of a licensed mortician or funeral director. Surviving spouses currently have no other option under Maryland law to permanently retain a family funeral business due to the moratorium on corporation licenses. However, if the October 2007 decision regarding corporate licensure stands and corporation licenses become available, the surviving spouse license could become unnecessary.

Recommendation 5: The board, in conjunction with the Department of Health and Mental Hygiene (DHMH), should work closely with the Governor's Office to ensure that the current 17 percent board vacancy rate is addressed as soon as possible. The board should also be diligent in anticipating departures due to the consecutive two-term limitation. The board is currently 2 members shy of a full 12-member board. Two consumer members vacated the board in April 2006 and July 2007. With the consumer membership cut in half, the board should utilize the support resources of DHMH in facilitating ongoing communication with the Governor's

Appointments Office regarding these vacancies.

Recommendation 6: The board should evaluate its ongoing revenues and expenditures, its fund balance, and the appropriate level for corporation license fees. As part of the evaluation, the board should determine any further costs associated with the corporate licensure lawsuit as well as any changes in licensure patterns and staffing needs due to the ruling. The board should submit a report to specified committees on or before December 1, 2008, on this evaluation, including any observed changes in licensure patterns, any proposals to alter the existing corporation license renewal fee, and a plan to reduce the fund balance to 25 percent of biennial operating costs. Although the board's fund balance exceeds the DHMH target of 25 percent of costs, the board could face additional expenditures associated with the corporate licensure lawsuit or potential changes in licensing patterns or staffing needs due to the ruling.

Recommendation 7: Statute should be amended to require a disclosure statement in each preneed contract that clearly states that all funeral costs may not be covered under the preneed contract. The seller of preneed goods must disclose to the consumer all goods and services that are reasonably expected to be required at the time of need but are not included in the preneed contract as well as the buyer's cancellation and refund rights. However, this disclosure does not have to be in the contract itself. While some licensees include this language prominently in their preneed contracts, a statutory requirement would make its inclusion consistent and mandatory.

Recommendation 8: The board should develop a consumer pamphlet that can be used to educate family members upon the death of a loved one who has a preneed contract about the items covered under the contract and those not covered, specifically incidental and other fees that may be charged when the contract is executed. Through interviews with licensees, DLS found that much of the confusion regarding preneed contracts arises because the person entering into the contract is not the same person enforcing the contract at the time of need. Preneed contract holders may not always clearly convey to their decedents that additional incidental or mechanical fees are due when the preneed contract is executed. Further efforts could benefit consumers and their loved ones and limit future complaints due to misunderstandings.

Recommendation 9: At a minimum, statute should be amended to require the board to inspect all Maryland crematories annually under a uniform crematory statute that imposes the same inspection requirements on all crematories regardless of location. Specifically, crematory regulations under the Maryland Morticians Act should be extended to all State crematories. All Maryland crematories should be required to file an annual statement describing the crematory's location, ownership status, number and names of employees, last Maryland Department of the Environment (MDE) inspection, and expiration date of the MDE-issued five-year permit to operate. On request, the annual statements should be made available by the board to the public for inspection. Crematory operators who fail a board inspection or do not file an annual statement should be subject to

informal disciplinary action imposed by the board.

Uncodified language should be adopted requiring the board to report to specified committees on or before December 1, 2011, regarding the information gathered from annual statements. All 28 Maryland crematories are subject to emissions regulations enforced by MDE. However, only crematories operated by a board licensee are subject to additional regulation. Past legislative proposals to provide dual oversight of cremation by the board and the Office of Cemetery Oversight have failed; however, both entities agree that a need for more stringent regulation exists. Given that the board already inspects crematories on funeral establishment grounds on a voluntary basis and has the expertise and fiscal stability to carry out broader regulatory oversight, the board should be given statutory authority to ensure that all crematories are inspected and subject to the requirements found under the Maryland Morticians Act.

Recommendation 10: The General Assembly may wish to consider further strengthening regulatory authority over cremation by amending statute to require all crematory owners and employees who handle human remains to complete a certification program. Certification could be offered by an organization authorized to do so by the board. Any such certification programs proposed by applicant organizations should include a component on environmental safety, incinerator operation and safety, and applicable State laws and regulations. There are no formal training requirements imposed on crematory operators. Competence among crematory operators cannot adequately be assessed absent

minimal training or education requirements. Twelve states require certification of crematory operators including West Virginia, and, most recently, New York.

Recommendation 11: Statute should be amended to extend the termination date of the State Board of Morticians and Funeral Directors to July 1, 2018. In addition, the board should report to specified committees on or before October 1, 2009, regarding the status of the nonstatutory recommendations contained in this report. DLS finds that the board is efficient and effective in its

licensing, complaint, inspection, and disciplinary functions. The board has followed up on past DLS sunset recommendations and implemented suggestions for improving its operations such as complaint tracking. Furthermore, the board has improved its financial situation as well as licensee compliance with regulations such as preneed requirements. DLS finds that the board conducts itself in a productive, professional manner and has been successful at protecting consumer interests.

Chapter 1. Introduction

The Sunset Review Process

This evaluation was undertaken under the auspices of the Maryland Program Evaluation Act (§ 8-400 *et seq.* of the State Government Article), which establishes a process also known as sunset review. Enacted in 1978, the Maryland Program Evaluation Act requires the Department of Legislative Services (DLS) to periodically evaluate certain State agencies according to a statutory schedule. The agencies subject to review are usually subject to termination unless legislative action is taken to reauthorize them. The Legislative Policy Committee decides whether to waive an agency from full evaluation. If waived, legislation to reauthorize the agency must be enacted or a full evaluation of the organization is completed the subsequent year.

The State Board of Morticians and Funeral Directors is one of about 70 entities currently subject to evaluation. The board last underwent a full evaluation as part of sunset review in 2000 and ensuing legislation, Chapter 156 of 2002, extended the board's termination date from July 1, 2002, to the current termination date of July 1, 2008. A preliminary evaluation conducted in 2005 recommended the board be waived from further review the following year. However, the General Assembly did not take action on the legislation to extend the board's termination date during the 2006 or 2007 sessions. Consequently, this full evaluation is being undertaken to provide the General Assembly with additional information in determining whether to reauthorize the board and for what period of time. Recommendations to improve the operations of the board are also provided. If the legislature does not take action during the 2008 session, the board will terminate on July 1, 2008.

The Death Care Industry in Maryland

Maryland's death care industry includes the funeral industry, cemeteries, burial goods providers, and crematories. The Office of Cemetery Oversight, housed within the Department of Labor, Licensing, and Regulation, regulates cemeteries and associated burial goods sales under the Maryland Cemetery Act. The funeral industry – licensed funeral providers and funeral establishments, including the sale of burial goods by those licensees – is subject to regulation by the State Board of Morticians and Funeral Directors within the Department of Health and Mental Hygiene (DHMH). Cremation is minimally regulated in Maryland – the Maryland Department of the Environment enforces emissions standards; some additional regulation is applicable only to funeral service providers under the Maryland Morticians Act.

At some point in their lives, almost everyone attends a funeral. It is a ritual that provides people with an opportunity to commemorate the life of a loved one and support others in grieving. The national average cost of a funeral, steadily rising each year, is now approximately \$6,500. As the massive Baby Boomer population ages, the demand for funeral goods and

services will only grow. Thus, a strong, professional board governing the industry is important to ensure that Maryland consumers receive quality goods and services and that the preparation and final disposition of human bodies are handled with respect and according to all applicable health and safety regulations.

The State Board of Morticians and Funeral Directors

The board is one of 18 health occupations boards housed within DHMH. Established in 1902 as the State Board of Undertakers, the board is one of the oldest health occupations boards in Maryland. Over the course of its 105-year history, the board's legislative authority to oversee and regulate funeral service providers and funeral establishments has evolved to meet emerging developments in the funeral service industry and the practice of mortuary science. In 1937, 1981, and 2007, respectively, the board was renamed the State Board of Funeral Directors and Embalmers, the State Board of Morticians, and, most recently, the State Board of Morticians and Funeral Directors.

Board Membership, Structure, and Mission

The 12-member board consists of 8 practitioner members and 4 consumer members, as shown in **Appendix 1**. Members are appointed by the Governor with the advice of the Secretary of Health and Mental Hygiene and with the advice and consent of the State Senate. Board members serve staggered four-year terms and are subject to a consecutive two-term limitation. The board is empowered to adopt bylaws, rules, and regulations to carry out the provisions of the Maryland Morticians Act. The board president, first vice president, second vice president, and secretary serve as the board's executive officers.

Although DHMH provides administrative and policy support, almost all day-to-day activities are managed by the board and its staff. A full-time executive director, licensing coordinator, investigator, and office secretary provide support for board operations, and an Assistant Attorney General is assigned to the board. A designee of the board is responsible for administering a special fund, the State Board of Morticians and Funeral Directors Fund, to cover the actual documented direct and indirect costs of fulfilling the statutory and regulatory duties of the board. Fees collected by the board must be reasonable and set to approximate the cost of maintaining the board.

Members of the board meet on a monthly basis, with the exception of August. Most of the board's work is delegated to one of eight standing committees: Apprenticeship, Complaint, Continuing Education, Executive, Inspection/Establishment, Legislative, Preneed, and Rehabilitation. Each board member serves on at least one committee but is free to raise questions or concerns regarding the findings and recommendations of any of the standing committees. The Executive and Legislative committees each comprise the board's four

executive officers; all other committees are chaired by a board member and include representation by at least one consumer member and one practitioner member.

Charged with the mission of protecting the health and welfare of the public 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, including morticians, funeral directors, surviving spouses, and apprentices;
- 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.

Recent Legislation Largely Broadens Board's Licensing Activities

As shown in **Exhibit 1.1**, since the board last underwent a full evaluation in 2000, the General Assembly has expanded the board's licensing duties, clarified its inspection authority, and strengthened regulation of preneed contracts. A more in-depth discussion of preneed regulation may be found in **Chapter 4** of this report.

Exhibit 1.1
Board of Morticians and Funeral Directors
Recent Legislation

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2002	156	Extended the termination date of the board to July 1, 2008 and, in accordance with a DLS recommendation, authorized the board to provide advance notice to a funeral establishment of an upcoming inspection.
2002	525	Established a license for the personal representative of a deceased mortician's estate for continuation of a mortuary science business.
2005	220	Authorized the board to audit a licensee that receives preneed funds, places preneed funds in a trust, or enters into a preneed contract and issue subpoenas and administer oaths in connection with a preneed audit.
2007	185, 186	Created an apprentice license for funeral directors; specified that the practical experience required of apprentice funeral directors may not include embalming; authorized two or more licensed funeral directors to practice mortuary science as a partnership; authorized one or more licensed funeral directors to practice mortuary science as a professional association; expanded the rehabilitation committee functions to serve funeral directors; and renamed the board and the associated fund.

Source: Department of Legislative Services

Research Activities

To complete this evaluation, staff of DLS engaged in extensive research activities, including:

- reviewing State statutes and regulations regarding the funeral industry;
- interviewing board staff and board members;
- observing the board in action during its meetings;
- reviewing board meeting minutes;

- visiting the board's office to analyze administrative processes and procedures;
- analyzing license, financial, complaint, and inspection data;
- accompanying board staff on site visits to funeral establishments regulated by the board;
- interviewing trade industry representatives, State officials, crematory operators, surviving spouse licensees, and other interested parties;
- reviewing documents filed by both parties involved in a recent lawsuit seeking to require the board to issue new corporation licenses as well as the October 17, 2007 federal court ruling in that lawsuit;
- researching regulation of the death care industry in other states; and
- conducting general research on the evolving funeral industry.

Report Organization

This chapter provides a summary of the sunset review process, an overview of the death care industry, a description of the State Board of Morticians and Funeral Directors, a summary of recent legislation impacting the board, and a list of the research activities undertaken to complete this evaluation. **Chapter 2** contains an analysis of the board's major functions, including licensing, inspections, and complaints. **Chapter 3** reviews the membership and financial resources of the board. **Chapter 4** examines the policy issues of preneed contracts and the regulation of cremation in Maryland. **Chapter 5** presents DLS' central recommendation about the board. Additional recommendations are included in each chapter as appropriate.

As supplements to the report, **Appendix 1** contains a roster of the current board members and staff. **Appendix 2** contains draft legislation to implement the statutory recommendations contained in the report. The State Board of Morticians and Funeral Directors reviewed a draft of this report and provided the written comments included as **Appendix 3**. Appropriate factual corrections and clarifications have been made throughout the document.

Chapter 2. Major Board Functions

Board Issues More Than 1,500 Licenses Biennially

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. Therefore, the board's central function is the issuance of the eight types of licenses shown in **Exhibit 2.1**. Licenses are issued on a biennial basis with the exception of apprentice licenses, which are annual, and executor licenses, which are one-time only. Mortician licenses are renewed in even-numbered years while other licenses are renewed in odd-numbered years. Specific licensure requirements are discussed below.

Exhibit 2.1
Number of Licenses Issued by the State Board of Morticians
Fiscal 2003 through 2008*

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008*</u>
Mortician (Original and Renewal)	51	863	37	888	33	900
Funeral Director (Renewal)	29	0	25	0	17	0
Surviving Spouse (Original and Renewal)	9	0	11	0	11	0
Executor (Original)	1	0	0	0	0	0
Apprentice (Original and Renewal)	59	64	81	55	51	55
Funeral Establishment (Original and Renewal)	276	13	298	8	299	20
Corporation (Renewal)	59	0	58	0	58	0
Courtesy Card (Original and Renewal)	133	11	106	6	101	6
Total Number of Licenses Issued	617	951	616	957	570	981

* Fiscal 2008 data are estimated.

Note: Numbers do not include licenses issued for inactive status to morticians.

Source: State Board of Morticians and Funeral Directors

Adequacy of Apprenticeship Hours in Question

One of the basic requirements for licensure as a mortician or funeral director is the successful completion of an apprenticeship. An individual must complete two-thirds of an approved mortuary science program with a minimum 2.0 grade point average to be eligible for

an apprentice license. Once a license is issued, an apprentice may assist a licensed mortician or funeral director as part of a training program. The apprentice must participate in at least 20 funerals and complete at least 1,000 working hours in a licensed funeral establishment. An apprentice who wishes to become a licensed mortician must also assist in the embalming of at least 20 human bodies.

Prior to 1997, an apprenticeship encompassed the completion of 2,000 working hours, just less than one year, in a funeral establishment. Chapter 662 of 1997 reduced this number from 2,000 to 1,000 hours, or less than six months. The legislation also established the requirement for an individual to have completed two-thirds of a mortuary science program before seeking an apprentice license.

The 2005 Department of Legislative Services (DLS) preliminary sunset evaluation recommended that the board determine the appropriate length of apprenticeship hours. In response, the board supported House Bill 1570 of 2006, which would have reinstated the 2,000-hour apprenticeship requirement and repealed the requirement for completion of a portion of the mortuary science program prior to application. This legislation did not pass.

Licensees (including board members) and others interviewed by DLS for this evaluation reported that the 50 percent reduction in apprenticeship hours has been a disappointment and has failed recent mortuary science graduates. Some went so far as to say that the new generation of graduates is not perceived to be as well-prepared as their predecessors for independent practice. Interviewees stressed that hands-on learning is a must in the funeral industry; however, some apprentices stationed in more remote locations do not assist in many more than the minimum 20 embalmings during the apprenticeship. A few practitioners also noted that delaying the start of the apprenticeship until the applicant has completed two-thirds of the mortuary science program results in some students spending thousands of dollars on mortuary science school only to find that the practical side of mortuary science does not appeal to them.

Recommendation 1: Statute should be amended to reinstate the pre-1997 requirement that apprentices complete 2,000 working hours and repeal the education fulfillment requirements imposed on applicants in order to qualify for licensure as an apprentice.

Mortician License Is Most Comprehensive and Prevalent

The most comprehensive license issued by the board is the mortician license, which authorizes licensees to arrange for the final disposition of a dead human body, prepare a dead human body for disposition – including disinfecting or preserving a body, and operate a licensed funeral establishment. To qualify for a mortician license, an applicant must graduate with a degree in mortuary science or its equivalent, complete an apprenticeship, and pass the national and State board exams governing the practice of mortuary science. In fiscal 2007, there were over 900 licensed morticians in Maryland.

Funeral Director License, Once Frozen, Now Open to New Licensees

A funeral director license authorizes the licensee to practice all aspects of mortuary science except embalming and to own a funeral establishment. Until recently, the board had not issued funeral director licenses in over 34 years. Instead, only those practicing prior to May 1973 were able to renew their licenses. As shown in Exhibit 2.1, this limitation resulted in the steady decline in the number of funeral directors to only 17 in fiscal 2007.

Chapter 186 of 2007, effective October 1, 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. Although the license is now open, the board does not anticipate a significant increase in applications. Furthermore, any increase would likely not be seen for at least two years as prospective applicants must first complete the educational and apprenticeship requirements for licensure.

The State's sole mortuary science program, at the Community College of Baltimore County (CCBC), is implementing a new associate's degree in applied science and funeral service for funeral director students. Funeral director students will be required to sit in on the embalming theory class but will be exempt from the lab component and will have to make up the lab credit with another theory course. The college currently awards associate's degrees to approximately 25 students per year; college officials do not expect more than 2 additional students per year under the new program.

Recommendation 2: The board should report to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee on or before December 1, 2010, on the outcome of reopening the funeral director license including the number of (1) students enrolled in the funeral director program at CCBC; (2) applicants for a funeral director apprenticeship license; and (3) funeral director licenses issued.

Federal Court Strikes Down Longstanding Statute Restricting Corporate Licensure

Generally, under the Maryland Morticians Act, a funeral establishment may only be owned and operated by a licensed mortician, funeral director, or surviving spouse; however, 58 corporation licenses are also held in Maryland. This license allows a corporation to own and operate a funeral establishment as long as all services are provided by licensed individuals. Each corporation license authorizes the operation of one establishment, which also must have a separate funeral establishment license; a corporation may operate a branch funeral establishment if that branch establishment was in operation on or before October 1, 1964. Of the 58 corporation licenses, approximately half are held by licensed morticians, whose businesses are structured as corporations, while the remaining half are owned by national corporate chains.

Prior to 1937, there was no limit on the number of corporation licenses issued by the board. That year, amidst growing concerns over unlicensed individuals working for funeral establishments licensed as corporations, the General Assembly authorized the board to phase out the licensure of corporations, grandfathering in those already licensed. However, an exception was later made for funeral establishments whose owners had served in World War II. Ultimately, a corporation license could only be renewed if a corporation held that license on June 1, 1945, and the license had been renewed continuously since then. Corporation licenses held in this manner have been sold to other corporations and renewed by the new corporate owner, but no new licenses have been issued. The current renewal fee for a corporation license is the highest imposed by the board: \$875.

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 indefinite exemptions for corporation licenses held as of June 1, 1945. If the ruling stands, the board needs to implement a process for issuing new corporation licenses – even if statute remains unchanged.

Limitation on Corporation Licenses Had Survived Many Recent Challenges

Chapter 209 of 1996 established the Task Force to Examine the State's Cemetery and Funeral Industry; the final report of the task force noted that the law should be changed to allow issuance of additional corporation licenses. A bill to do so was introduced on behalf of the task force during the 1997 session, but that legislative proposal did not pass. Proposals to lift or modify the limitation on corporate licensure were also introduced in subsequent years – over the nine consecutive legislative sessions from 1997 through 2005, 13 bills were considered. During the 2004 session, the Federal Trade Commission submitted written comments to the sponsor of House Bill 795 in support of the bill's removal of corporate licensure restrictions, citing potential "harm [to] consumer welfare by stifling innovation and allowing existing firms to charge higher prices." None of the proposals received favorable consideration, and only one proposal (which was amended to require study of the issue) received a vote of the full chamber in which it originated. Thus, until the recent judicial ruling, the General Assembly had maintained the statutory restriction on corporation licenses.

Legal Arguments in the Lawsuit Against the Board

In March 2006, five entrepreneurs, with the assistance of the Institute for Justice, sued the board in U.S. District Court for the District of Maryland claiming that the restriction on corporate licensure is unconstitutional under the commerce clause and the equal protection and due process clauses of the Fourteenth Amendment. The plaintiffs alleged that the prohibition discriminates against out-of-state commerce because, on balance, the statute imposes burdens on interstate commerce that substantially exceed their benefits. The restrictions, the plaintiffs asserted, also violate the plaintiffs' right to earn an honest living free from unreasonable government interference and discrimination.

In response to the plaintiffs' commerce clause claim, the board asserted that the statute regulates even-handedly: requirements for licensing apply to both Maryland residents and nonresidents, and any burdens on interstate commerce are incidental and outweighed by the benefits. During legal proceedings, the board stated that the protection of consumers through regulation of the corporate structure of businesses is well-recognized and legitimate. The board countered the plaintiffs' equal protection and due process claims with the argument that there is a rational basis for requiring that funeral establishments be owned by licensed morticians, with the exception of the surviving spouse and executor licensees. By way of example, the board noted that two other states, Pennsylvania and New Hampshire, limit corporate ownership of funeral homes. New Hampshire's statute states that "no corporation ... shall be issued a license as a funeral director." Pennsylvania law requires that all the corporation's "shareholders [must be] licensed funeral directors or the members of the immediate family of a licensed funeral director."

The Court's Ruling in the Lawsuit

On October 17, 2007, the court issued a mixed decision. The court ruled in favor of the plaintiffs by enjoining enforcement of the provisions of the Maryland Morticians Act that prohibit the issuance of new corporation licenses. The court questioned whether there is still a legitimate State interest in preserving the economic investments of the original owners of corporate funeral homes since over 95 percent of corporation licenses had been sold at least once by 2006. Thus, in 2006, only three corporation licenses were still held within the same family as in 1945 when the current statutory restriction was imposed. Although the Morticians Act prevents both in-state corporations and national, out-of-state chain corporations alike from newly owning and operating a funeral home as a corporate entity, the court found that the prohibition failed a "less strict scrutiny" test. In its analysis, the court determined that the board's consumer protection defense is "no more than" speculative and that the board had offered little demonstrable evidence that corporate funeral homes pose a discrete risk to the public.

However, the court ruling did not modify the provision requiring a corporation's mortuary science business to be practiced by a licensed individual. Further, the court sided with the board in ruling that the current requirements associated with licensing funeral establishments are permissible. Thus, each funeral establishment itself must still be licensed by the board before it may be used for preparing remains, viewing, and conducting services. In this case, statute allows ownership by a licensed mortician or funeral director or by a holder of a surviving spouse or corporation license. Other provisions of statute still require owner-operators that are not licensed as morticians to have their embalming services provided by a licensed mortician. Further, all other services must be provided under the supervision of either a licensed mortician or licensed funeral director. The court noted that the legislature "could have rationally determined that the public's health, safety, and welfare are furthered by requiring that a licensed mortician own the funeral home where mortuary science is practiced." The court declined questioning the licensing requirement under a substantive due process or equal protection challenge, finding that the licensing requirement is rationally related to the achievement of a legitimate State interest and objective.

At publication of this report, it is unclear whether either party will appeal the decision – although the board advises it will likely do so. If the decision is not appealed, the board must take steps to implement the court’s order and begin immediate licensure of new corporation licensees.

Recommendation 3: If the October 2007 decision is not appealed by either party or is upheld on appeal, the board, with assistance from the Legislative Committee and board counsel, should (1) draft emergency regulations to implement a process for issuing new corporation licenses to qualified applicants and submit the regulations to the Administrative, Executive, and Legislative Review Committee for approval; (2) develop and distribute application forms for new corporation license applicants; (3) issue new corporation licenses to applicants that meet the applicable requirements under the emergency regulations; and (4) draft an Administration bill amending statute to implement the order of the court.

Surviving Spouse and Executor Licenses Allow Continuation of Business

Due to the statutory limitations on ownership of a funeral business, two licenses exist to allow for the continuation of a business in the event of the death of a licensed mortician or funeral director: the temporary executor license and the permanent surviving spouse license. Both licenses allow the licensee to continue the operation of the funeral establishment and assist with the planning and conducting of funeral services for that business. However, a licensed mortician or funeral director must provide direct supervision, and a licensed mortician has to perform any embalming.

The legally appointed personal representative of a deceased licensee’s estate may obtain a temporary executor license to allow for continuation of the business until it is sold or the personal representative attains other licensure under the board. An executor license is valid for six months and cannot be renewed. Since inception of the license in fiscal 2003, the board has issued only one executor license.

A surviving spouse must contact the board within 30 days of the death of a licensed funeral director or mortician and apply for a surviving spouse license. Within six months of the issuance of the license, a surviving spouse has to take the board’s exam on State law; should the licensee fail the exam twice, the license becomes null and void. A surviving spouse must also obtain 12 continuing education units every two years. A surviving spouse license may be renewed indefinitely on a biennial basis. As of fiscal 2007, there were 11 surviving spouse licensees.

In the 2000 full sunset evaluation of the board, DLS recommended that the surviving spouse license be phased out with existing licensees grandfathered in to allow them to retain ownership of their family businesses. This recommendation was based on the then-defunct

funeral director license, which is similar in scope to the surviving spouse license in that both licensees can practice mortuary science with the exception of embalming. The recommendation was opposed by industry associations and was not adopted by the General Assembly. In conducting this most recent board evaluation, DLS reexamined the surviving spouse license, including interviewing several licensees. Since 2000, the funeral director license has been reopened to new applicants, providing an alternative licensure path for those who do not wish to perform embalming.

DLS found that the complaint rate against surviving spouse licensees is low and surviving spouse licensees appear to provide the same level of service to consumers as other licensees. Furthermore, surviving spouses have not had any other option under Maryland law to permanently retain a family funeral business due to the longstanding moratorium on corporation licenses.

Given these findings and the requirements for maintaining a surviving spouse license, DLS does not recommend any changes to the surviving spouse license at this time. If the ruling regarding corporation licenses stands, the surviving spouse license could become unnecessary since another avenue for maintaining the family funeral business would become available – for example, obtaining a temporary executor license and then a corporation license. Even so, the existing option of obtaining a surviving spouse license provides sufficient protection of the public and does not require restructuring of the family business as a corporation. The executor license, which only authorizes temporary ownership, would likely not require any change based on the ruling.

Recommendation 4: If the ruling in the corporate licensure lawsuit stands and another ownership option becomes available to surviving spouses, the board should explore whether there is a continued need for the surviving spouse license.

Like Providers, All Establishments Must Be Licensed

A funeral establishment license must be acquired before an establishment may be used for the preparation of the remains, viewing, and conducting funeral services. The establishment must be owned by at least one licensed mortician or funeral director or the holder of a surviving spouse or corporation license. Services have to be provided by a licensed practitioner. There are 307 licensed funeral establishments in Maryland.

Courtesy Cards Allow Interstate and International Transport of Bodies

A courtesy card license authorizes an individual who practices mortuary science in another state or country to transport dead human bodies into or out of Maryland to the other state or country of licensure. However, the courtesy card licensee may not practice mortuary science in Maryland. The board issued 107 courtesy cards during the 2006-2007 license renewal period.

Board Monitors and Enforces Morticians Act through Complaint Process

The board fields complaints from consumers, courts, employers, and other licensees regarding the operation of funeral establishments and the behavior of licensees and their employees. Except in cases of an emergency, all complaints must be submitted in writing. As shown in **Exhibit 2.2**, in fiscal 2003 through 2007, the board received between 42 and 82 new complaints annually. Compared to approximately 45,000 deaths recorded in Maryland each year, the annual complaint total is relatively low.

Exhibit 2.2
Complaint Activity
Fiscal 2003 through 2007

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>
<u>Complaint Volume</u>					
New Complaints	76	50	67	82	42
Pending Complaints from Prior Year	23	24	37	8	2
Total Complaints	99	74	104	90	44
<u>Type of Complaint</u>					
Preneed Contracts		36%	40%	50%	26.2%
Unlicensed Individuals		28%	10.5%	n/a	14.3%
Advertising		14%	n/a	4.9%	7.1%
Unprofessional Conduct		10%	9%	13.4%	9.5%
Fee Dispute		n/a	10.5%	4.9%	9.5%
Referral to Office of Cemetery Oversight		n/a	4.5%	n/a	n/a
Inability to View Body		n/a	4.5%	n/a	n/a
Death Certificate Issues		n/a	4.5%	n/a	16.6%
Refusal to Release Body		n/a	3%	n/a	n/a
Embalming Without Consent		n/a	3%	n/a	n/a
Other		12%	10.5%	26.8	16.8%

Note: Analyses of types of complaints received by the board in fiscal 2003 were not available. The fiscal 2004 analysis does not include the same data fields outlined in the fiscal 2005 analysis.

Source: State Board of Morticians and Funeral Directors

After Peak, Number of Complaints Drops Dramatically

After declining in 2004, the number of new complaints rose in both fiscal 2005 and 2006 to a high of 82 complaints. In each of these fiscal years, complaints about preneed contracts

represented 40 to 50 percent of total complaints. In fiscal 2006, the board initiated many of the preneed complaints to draw attention to the importance of complying with preneed regulations as many licensees were submitting their annual preneed compliance reports late. The board's disciplinary actions regarding preneed compliance reports, coupled with enhancing licensee education options, appear to have resulted in a dramatic reduction in the number of late submissions and contributed to the decline in the number of preneed complaints from 41 in fiscal 2006 to 11 in fiscal 2007. A more in-depth discussion of preneed regulation is included in Chapter 4.

In the 2005 preliminary evaluation of the board, DLS noted that there had been growth in the number of complaints carried over from prior years between fiscal 2003 and 2005. This backlog of complaints was largely due to a vacancy in the investigator position. The board also advises that a backlog of cases at the Attorney General's Office contributed to the number of pending cases. As shown in Exhibit 2.2, with the assistance of a full complement of staff, the board had all but eliminated this backlog as of fiscal 2007.

Complaint Process Often Results in Closure or Informal Action

The complaint process is set in motion once the office receives a written complaint; the complaint is immediately date stamped and given a case number. A complaint log containing the following information is then created: the case number, the licensee's name, the licensee's board-issued number, the complainant's name, the alleged violation(s) in order of priority, and the date of the board's receipt of the complaint. The board is authorized to conduct an unannounced inspection to investigate a complaint.

As soon as practical, a letter of acknowledgment is sent to the complainant, and the licensee is also given a copy of the complaint. The complaints are referred to the board's Complaint Committee, but all board members also receive a copy of the complaint. If the Complaint Committee finds that the board lacks jurisdiction over the complaint or that the complaint is without sufficient grounds to move forward, then the complaint is dismissed. However, if the complaint merits informal action against the licensee, the board issues one of the following to a licensee: a cease and desist order, a letter of education, a letter of advice, or an informal letter. In rare cases, the findings of the Complaint Committee necessitate formal action against the licensee; then the Office of the Attorney General is advised of the board's intent. Data related to the complaint resolution process are recorded on a spreadsheet.

The vast majority of complaints received by the board in fiscal 2006 and 2007 resulted in either closure of the case (30.1 and 54.8 percent, respectively) or informal action against licensees (46.3 and 33.3 percent, respectively). Formal action was taken against licensees in 16 cases (19.5 percent) in fiscal 2006 and 2 cases (4.8 percent) in fiscal 2007.

Complaint Tracking Ability Improved with New System

A new electronic tracking system using the Microsoft Access database program has greatly improved the accuracy of the annual complaint report as well as the board's ability to report on more aspects of licensee activity. The preliminary evaluation conducted in 2005 raised a concern regarding the complaint tracking system and recommended that, given the low volume of complaints, the board implement a comprehensive complaint tracking system that allows a user to run reports on the number of complaints received each fiscal year by licensee, the length of time needed to resolve a complaint, and outcome categories. At that time, complaints were tracked by an Excel spreadsheet; each annual complaint report necessitated a separate count of the types of complaints received. However, in July 2006, the office launched an online complaint management system to better track complaints. The database program includes various fields that can be searched and sorted. Data dating back to 1997, a full 10-year spectrum, have been input into the database and may be searched when running reports on, for instance, a licensee's disciplinary history.

Board Promptly Inspects Funeral Establishments Annually

To ensure that all 307 funeral establishments meet State and federal standards, the board's investigator inspects each funeral establishment. Board regulations require these inspections to be done annually; statute is silent on the frequency of such inspections. Establishments can also be inspected at any time based on a complaint or in the interest of public health and safety. Each inspection reviews such areas as the health, sanitation, and proper usage of the facility. Inspections also ensure that proper documentation is furnished to clients, establishment signs and advertising are accurate, and proper records are maintained.

In the 2000 full evaluation of the board, DLS recommended that legislation be enacted to clarify the definition and intent of an unannounced inspection of funeral establishments to support the board's inspection policy. Chapter 156 of 2002 allowed advance notice that the investigator may be in the region of the funeral establishment within the following 14 days if such notice was given solely to ensure that a licensed mortician would be onsite for the inspection.

DLS finds that the board continues to ensure that each funeral establishment is inspected on an annual basis. As of September 2007, the board investigator had already inspected nearly one-third of funeral establishments for fiscal 2008.

Chapter 3. Board Resources

Recent Board Vacancies Reduce Consumer Member Representation

The board is currently 2 members shy of a full 12-member board. Two consumer members vacated the board in April 2006 and July 2007. The board hopes to fill the vacancies by the summer of 2008.

Under § 7-202 of the Health Occupations Article, the board's membership must comprise four consumer members and eight licensed morticians or funeral directors. Historically, the licensees serving on the board have been morticians due to the much larger number of morticians compared with funeral directors.

To the extent practical, the Governor is responsible for filling a vacancy on the board occurring during the term of an appointed member within 60 days of the date of vacancy. It is not clear why 18 months have passed since the first consumer board member departed without being replaced. Due to regular attendance by the remaining members, the board has conducted its business without interruption. The board indicated that the Governor's Appointments Office is aware of the vacancies, and the board has solicited applications for appointments at each of the board meetings following a member's departure. With the consumer membership of the board cut in half, the board should utilize the broad administrative and policy support resources of the Department of Health and Mental Hygiene (DHMH) to its advantage in facilitating ongoing communication with the Governor's Appointments Office regarding these vacancies.

Recommendation 5: The board, in conjunction with DHMH, should work closely with the Governor's Office to ensure that the current 17 percent board vacancy rate is addressed as soon as possible. The board should also be diligent in anticipating departures due to the consecutive two-term limitation.

Board Enjoys Healthy Fiscal Status

The board became self-supporting in 1992 when the General Assembly established special funds for most of the health occupations boards. The board's special fund is supported entirely by fees collected from licensees and continuing education vendors. As shown in **Exhibit 3.1**, the board's fiscal 2007 year-end fund balance was \$153,730, 34 percent of its operating budget that year.

Exhibit 3.1
State Board of Morticians and Funeral Directors Fund History
Fiscal 2003 through 2008

	<u>FY 2003</u>	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>Estimated FY 2008</u>
Beginning Balance	\$97,923	\$50,508	\$148,495	\$171,854	\$254,618	\$153,730
Revenues Collected	326,648	461,608	312,871	492,560	350,350	496,240
Total Revenues Available	\$424,571	\$512,116	\$461,366	\$664,414	\$604,968	\$649,970
Direct Costs	\$314,763	\$293,880	\$216,861	\$338,346	369,259	335,626
Indirect Costs	59,300	69,741	72,651	71,450	81,979	82,765
Total Expenditures	\$374,063	\$363,621	\$289,512	\$409,796	\$451,238	\$418,391
Annual Surplus/(Deficit)	(47,415)	97,987	23,359	82,764	(100,888)	77,849
Biennial Surplus/(Deficit)		50,572		106,123		(18,124)
Ending Balance	\$50,508	\$148,495	\$171,854	\$254,618	\$153,730	\$231,579
Ending Balance as a Percentage of Total Costs	14%	41%	59%	62%	34%	55%

Note: Revenue and expenditure figures include receipt and repayment of loans in fiscal 2004 through 2006.

Source: State Board of Morticians and Funeral Directors

DHMH has determined that a 25 percent surplus is sufficient for a board of this size to fund any unforeseen revenue shortfalls or other unexpected expenditures. Because this board's licensure activity occurs on a biennial basis and most licensees (morticians) now renew in even-numbered fiscal years, revenues have been much higher in even-numbered years than in odd-numbered years. The ability to carry over a fund balance allows the board to cover its direct costs as well as the indirect costs charged by DHMH in both years of the licensing cycle. Maintaining a fund balance also allows the board to keep fees at the same level for several years.

Since fiscal 2003, board revenues have ranged from about \$300,000 to \$500,000. Expenditures have varied from just under \$300,000 to \$450,000. Revenues and expenditures fluctuate due to the biennial license renewal cycle. Board revenues jumped in fiscal 2006 most likely due to a large number of new licensees, including 25 new morticians. Expenditures dipped in fiscal 2005 due to a 50 percent staff vacancy rate for a significant portion of the year. In fiscal 2007, expenditures peaked due to printing costs and litigation expenses associated with the corporate licensure lawsuit, as well as moving expenses and one-time equipment and computer purchases. Expenditures are expected to decline in fiscal 2008, but this estimate assumes no further expenditures due to the lawsuit.

Though Fund Balance High, Lawsuit Makes Quick Spend Down Shortsighted

The board's fund balance increased dramatically from fiscal 2003 to 2004 due to a reduction in expenditures resulting from staff vacancies and an increase in licensure fees. The fund balance has continued to grow to a high of 62 percent of total costs in fiscal 2006. As expenditures outpaced revenues in fiscal 2007, the board was able to draw down the fund balance to 34 percent. Beginning in fiscal 2006, the fund balance follows a "see saw" pattern, peaking in even-numbered years as revenues rise with the renewal of mortician licenses and declining in odd-numbered years. The board's recent biennial expenditures of approximately \$865,000 exceed biennial revenues of approximately \$845,000. Therefore, the board is moving into a "spend-down" mode and should begin to reduce its fund balance, although slowly, through routine ongoing expenditures.

In the late 1990s, the board had amassed a large fund balance. In seeking to comply with a directive from the budget committees to reduce its fund balance to 25 percent, the board waived license renewal fees for one licensing period. Unfortunately, the board miscalculated its short-term future needs, and this action resulted in the depletion of the reserve fund. To cover expenditures and replenish its fund balance, the board had to borrow money from other boards and significantly increase fees.

Although the fund balance exceeds the DHMH target of 25 percent, the board could face additional expenditures in fiscal 2008 due to its defense of the corporate licensure lawsuit and any potential appeals of the ruling. The board could be required to pay some of the plaintiff's legal costs. Corporation license renewal fees comprise roughly 6 percent of biennial board revenues (\$52,500). If the ruling lifting the longstanding moratorium on corporation licenses stands, there would likely be additional corporation licensees and associated revenues. Thus, the board would need to set an initial license fee and likely reduce the current \$875 biennial renewal fee to reflect the costs associated with issuance of this type of license.

While the board's fund balance is twice the target level, in light of past experience of the board and the potential for appeals of the ruling, it would be shortsighted for the board to proactively reduce its fund balance in fiscal 2008. Nevertheless, the fund balance should be reevaluated at year-end and, if the balance remains high, the board should submit a plan to spend down the balance to approximately 25 percent of total costs on a biennial basis.

Recommendation 6: The board should evaluate its ongoing revenues and expenditures, its fund balance, and the appropriate level for corporation license fees. As part of the evaluation, the board should determine any further costs associated with the corporate licensure lawsuit as well as any changes in licensure patterns and staffing needs due to the ruling. The board should submit a report to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee on or before December 1, 2008, on this evaluation, including any observed changes in licensure patterns, any proposals to alter the existing corporation license renewal fee, and a plan to reduce the fund balance to 25 percent of biennial operating costs.

Chapter 4. Policy Issues Impacting the Board

Preneed Contracts Offer Consumer Choice but Can Be Misunderstood

Maryland consumers enjoy the option of controlling the eventual location, services, and goods associated with their funeral by entering into a preneed contract for funeral services and goods with a licensed mortician, funeral director, or surviving spouse. These consumers have the freedom to decide everything from the method of final disposition, cremation or burial, to related urns and caskets and memorial service arrangements.

Regulatory Authority Over Preneed Contracts Expanded

The Maryland Morticians Act provides regulatory oversight in the area of preneed contracting. Under § 7-405 of the Health Occupations Article, only a licensed mortician, licensed funeral director, or holder of a surviving spouse license may offer or agree to provide services or merchandise under a preneed contract. The seller of preneed goods must disclose to the consumer all goods and services that are reasonably expected to be required at the time of need but are not included in the preneed contract as well as the buyer's cancellation and refund rights. However, this disclosure does not have to be in the contract itself.

Furthermore, within 10 days after receiving a preneed contract payment, the seller must deposit the payment into an interest-bearing escrow or trust account with a banking institution or savings and loan association that is insured by an agency of the federal government. Under certain circumstances, including the sale of a preneed seller's business, the seller must refund to the buyer all payments and interest held for the buyer. If the buyer of preneed goods or services decides to enter into an irrevocable trust with the seller, certain additional consumer disclosures must be made and specific trust requirements apply to the sale.

The legislature strengthened the board's regulatory authority over preneed contracting in 2005 by passing Chapter 220, which authorizes the board to audit a licensee that receives preneed funds, places preneed funds in a trust, or enters into a preneed contract and to issue subpoenas and administer oaths in connection with a preneed audit. Practically speaking, the board investigator picks a random preneed contract from a funeral establishment's files during the annual inspection. Toward the end of each fiscal year, the board also requires each funeral establishment licensee to submit an annual preneed account compliance report prepared by a certified public accountant and reviewed by the board's Preneed Committee.

Isolated Case of Fraud Leaves Maryland Consumers Uncompensated

In March 2007, a federal grand jury indicted the owner-operator of a Baltimore funeral home for bank, mail, and wire fraud relating to an alleged fraudulent scheme to obtain over \$525,000 in prepaid funeral expense accounts from Maryland consumers. The indictment

alleges that the owner-operator entered into prepaid contracts with a number of consumers; instead of depositing the prepaid advances into a bank account as trustee, the owner-operator forged letters authorizing the payment of customer funds to the owner-operator and the funeral home's employees. The owner-operator then allegedly deposited proceeds in bank accounts owned by the owner-operator and the funeral home. No matter the outcome of the case, the affected consumers may never recover these lost preneed funds. The case of absconding with client funds appears to be an isolated one.

Legislation creating a Family Security Trust Fund, which the board supported, would have reimbursed consumers for losses incurred under preneed contracts due to the wrongdoing of board licensees; the bills failed in 2002 (House Bill 756), 2004 (House Bill 138), and most recently in 2007 (House Bill 1410). The board advises that industry representatives plan to reintroduce the bill with assistance from a member of the General Assembly.

Room for Improvement in Consumer Education

In the 2005 preliminary sunset evaluation, the Department of Legislative Services (DLS) observed that detailed statutory provisions governing the execution of preneed contracts may not be fully understood by the sellers of those goods and services. This observation was based on sharp increases in the number and proportion of complaints related to preneed contracts. DLS recommended that the board address the rising number of preneed complaints and noted that the board might wish to consider using its regulatory authority to impose a mandatory minimum preneed continuing education requirement on licensees – a certain number of the 12 continuing education requirements being devoted to promoting education in this area. As noted in Chapter 2, such complaints have since dropped dramatically – in part due to enforcement of regulations. In addition, in October 2006, the board's Continuing Education Committee began authorizing licensees to earn preneed continuing education courses offered by approved program sponsors. To date, six distinct preneed continuing education courses have been approved and offered to licensees. The board is in the process of approving, internally, regulations for submission to the legislature's Administrative, Executive, and Legislative Review (AELR) Committee. The proposed regulations would require that 1 of the 12 continuing education courses for renewal be devoted to preneed education.

Ultimately, regulation of preneed contracts may not prevent large-scale defrauding of customers, as the U.S. Attorney alleges occurred in the case of the Baltimore funeral home owner-operator. Such breaches of fiduciary duty are rare. For the vast majority of licensees who comply with the laws and regulations of the Maryland Morticians Act, the current regulation and enforcement efforts of the board, coupled with the continuing education requirements, are largely sufficient.

Some complaints are inevitable as preneed contracts become more popular and because the person entering into the contract is not the same person enforcing the contract. A number of licensees interviewed by DLS indicated that, when confronted with a bill for services not covered by a decedent's preneed contract, a relative often complains "But Mom said that

everything was covered.” What may not have been disclosed to the relative by the decedent is that incidental or mechanical fees are due when the preneed contract is executed. Without the decedent to corroborate that this information was disclosed prior to entering into the contract, a dispute may arise between relatives of the decedent and licensees.

Nonetheless, the board could improve its efforts in the area of consumer education. Further efforts could benefit consumers and their loved ones and limit future complaints due to misunderstandings.

Recommendation 7: Statute should be amended to require a disclosure statement in each preneed contract that clearly states that all funeral costs may not be covered under the preneed contract.

Recommendation 8: The board should develop a consumer pamphlet that may be used to educate family members upon the death of a loved one who has a preneed contract about the items covered under the contract and those not covered, specifically incidental and other fees that may be charged when the contract is executed.

Cremation Growing in Popularity but Without Uniform Regulation

Nationwide, as well as in Maryland, cremation is growing in popularity. According to the Cremation Association of North America (CANA), nearly 785,000 cremations were performed in the United States in 2005, accounting for 32 percent of all deaths that year. In Maryland alone, more than 12,000 cremations, accounting for almost 28 percent of all State deaths, were performed in 2005. The percentage of cremations performed nationally and within the State is expected to rise significantly by 2010 to almost 33 and 39 percent, respectively. By 2025, CANA estimates that more than 57 percent of Americans will be cremated instead of interred. CANA cites the consumer’s interest in cost savings as the primary reason for choosing cremation over a traditional burial. However, many crematory owner-operators interviewed by DLS cited a cultural shift and growing acceptance of the practice by individuals and religious groups, accounting for such a spike.

A few high-profile cases involving crematories have drawn the general public’s attention to the risks associated with the practice of cremation. The Tri-State Crematory, located in Noble, Georgia, received international media attention in February 2002. The operator of the crematory simply stopped cremating human remains since the late 1990s and instead amassed over 300 bodies in a storage shed and in vaults throughout the property. Georgia officials were simply unable to identify several bodies while others were decomposed to their skeletal remains. More recently, in September 2005, the remains of a 20-month-old child were mistakenly cremated at a Maryland funeral home. The parents had intended to bury the child’s remains; instead, the parents were told that the child’s body was mixed up with another body. These incidents underscore the growing concern over the limited regulation of the crematory industry and, more specifically, the need for more than basic emissions standards that apply universally to all

Maryland crematories. When errors occur regarding the misidentification of bodies prepared for interment, they are reversible. Bodies may be exhumed for further examination; families put at ease. But when a body is inadvertently cremated, the damage is irreversible.

Current Law Provides Minimal Regulation Over Cremation

Of the 28 crematories located in Maryland, 23 are located on funeral establishment grounds. All crematories – those located on cemetery grounds, funeral establishment grounds, and freestanding independent crematories – are subject to emissions regulations enforced by the Maryland Department of the Environment (MDE). However, only crematories operated by a person or entity licensed by the board (essentially those on funeral establishment grounds) are subject to additional statutory provisions under the Maryland Morticians Act. Limited recordation requirements imposed on such licensees under the Act mandate the placement of a metal or plastic identification tag in a container holding the cremains (cremated remains) and require that a complete file of a cremation be maintained. A licensee or agent of a licensee is also prohibited from indicating that a burial or funeral casket is required for cremation. The board also informally inspects, with permission from the funeral establishment operators, a licensee's onsite crematory during the regularly scheduled annual inspection of the establishment. However, the board's authority to inspect crematory facilities has been questioned. Practically speaking, this has resulted in an added layer of regulation imposed on morticians and funeral directors who operate crematories on funeral establishment grounds.

All other crematories, including those located on cemetery grounds and independent crematories, are subject to only MDE regulatory authority. To operate *any* crematory within Maryland, the owner must procure separate permits to construct and operate the facility. A valid permit to construct a crematory facility is good for the life of the facility; however, a permit to operate a crematory is subject to a five-year limitation and conditioned on the satisfactory completion of an annual inspection. The MDE inspector witnesses a cremation during the annual inspection, thereby ensuring that each facility operates with a functioning retort, more commonly known as a crematorium furnace; the infamous Tri-State Crematory operator was able to dump over 300 bodies on crematory grounds because of a loophole that exempted the Georgia crematorium from inspection.

When a complaint regarding crematory emissions is received by MDE, a follow-up inspection is conducted. If necessary, a notice of violation is issued to the crematory operator, and if the violation is not corrected, a corrective order from the Office of the Attorney General is issued. An MDE official indicated that, in the past 12 years, MDE has not taken any action beyond a notice of violation against a crematory operator; essentially, a permit to operate a crematory has not been revoked by MDE in at least a decade.

There are no consumer protection measures in place that statutorily prohibit the cremation of more than one decedent in one container or prohibit the simultaneous cremation of pet and human remains. Furthermore, there are no formal training requirements imposed on crematory operators. Competence among crematory operators cannot adequately be assessed absent minimal training or education requirements.

Regulation in Neighboring Jurisdictions Varies

Crematories and their operators are not inspected by the state's regulatory board overseeing funeral establishments in 11 states and the District of Columbia; 32 states inspect crematories at least once every three years. Neighboring states are split: Delaware, the District of Columbia, and Pennsylvania do not inspect crematories, while Virginia and West Virginia inspect triennially and annually, respectively (see **Exhibit 4.1**).

A quarter of the State's funeral establishment-owned crematory operators were interviewed by DLS, and a majority of those interviewed indicated that further regulation of the crematory industry is needed. The inspector could take away valuable information, one person suggested, from a routine inspection and share any commonly asked questions or helpful suggestions with other State crematory operators through the board's quarterly newsletter or through a continuing education course.

Exhibit 4.1

Crematory Regulation in Neighboring States

<u>State</u>	<u>Statutory Language</u>
Delaware	No current licensure, certification, or inspection provisions are imposed by the Board of Funeral Services. However, human remains may not be cremated until they are identified by next of kin, the person authorized to make funeral arrangements, or the medical examiner. Also, human remains must be transported to a crematory using a cot or receptacle.
District of Columbia	No current licensure, certification, or inspection provisions are imposed by the Board of Funeral Directors.
Pennsylvania	No current licensure, certification, or inspection provisions are imposed by the Board of Funeral Directors.
Virginia	A crematorium, cemeterian, memorial society, or other establishment, organization, or person may not cremate a dead human body without having registered with the Board of Funeral Directors and Embalmers. Crematory establishments are inspected triennially by the board. The board may suspend or revoke a crematory registration under certain circumstances.
West Virginia	All crematory operators must be certified by the Board of Funeral Service Examiners. To obtain a certificate, the operator has to complete a class on cremation and operating a crematory, remit a fee, and complete other requirements the board prescribes. The physical crematory is issued a separate license issued by the board and inspected by the board annually. Operator certificates and crematory licenses are renewed biennially.

Source: Department of Legislative Services' review of Del. Code § 3100 through 3123 (2007); D.C. Code §§ 3-401 through 3-420 (2007); Pa. Code §§ 479.1 through 480.11 (2007); Va. Code §§ 54.1-2800 through 54.1-2825 (2007); and W.Va. Code §§ 30-6-1 through 30-6-32 (2007).

New York and Several Other States Have Implemented Certification Requirements

According to CANA, 12 states require certification of crematory operators: Arizona, California, Georgia, Illinois, Louisiana, Nebraska, North Carolina, New Hampshire, South Carolina, Texas, West Virginia, and, most recently, New York. Although CANA offers training to all crematory operators – and not just CANA members – in the area of environmental considerations, packaging and handling of human remains during the cremation process, and crematory operations, CANA supports additional measures taken by states. Half of Maryland

crematories are members of CANA, but membership is not contingent on the fulfillment of any educational requirements.

In 2007, New York enacted legislation requiring certification of crematory employees by an approved organization. CANA is currently the only approved organization and offers certification courses at four state sites consisting of all-day classroom instruction that covers principles of combustion, cremation and the environment, basics of operating cremation equipment, and a segment on New York state laws, rules, and regulations. In order to complete the certification process, applicants must pass an 85-question open book examination offered by CANA. Certification, unlike the biennial certification requirement imposed by West Virginia, is valid for five years. Existing crematory employees have until the end of 2007 to become certified in order to handle a crematorium while new employees must be certified within one year of their employment.

In the Absence of Legislation, Board Seeks to Strengthen Regulation of Cremation

Legislative proposals that would have provided for dual oversight of cremation by the board and the Office of Cemetery Oversight were introduced during the 2001, 2002, and 2003 sessions; all of these proposals failed. In 2005, DLS recommended in sunset evaluations of the Office of Cemetery Oversight and the board that both entities work with MDE in formulating an appropriate regulatory framework for cremation. That has not happened. Although the chair of the Office of Cemetery Oversight's advisory council and the president of the board exchanged written correspondence from May through October 2006 regarding the need for crematory regulation, the parties failed to reach an agreement on how to implement any regulations. Nevertheless, in 2006, the office agreed in its response to a DLS publication that a need for more stringent crematory regulation exists; it did not challenge the DLS recommendation that the board be given the authority to regulate all State crematories, including free-standing crematories and crematories located on cemetery and funeral establishment grounds. The board already inspects crematories on funeral establishment grounds on a voluntary basis and has the expertise and fiscal stability to carry out broader regulatory oversight.

During the 2006 legislative interim, the Department of Health and Mental Hygiene (DHMH) submitted proposed regulations to the AELR Committee that would require (1) inspection of a funeral establishment's crematory to ensure that the crematory is maintained and operated in accordance with the board's regulations; (2) crematory operators to post all licenses and permits; and (3) furnaces to be used exclusively for the final disposition of human, as opposed to pet remains. The proposed regulations were published in the *Maryland Register* on December 8, 2006. The committee delayed the adoption of the regulations, and DHMH never moved forward for final action. The regulations remain on hold due to the committee's action.

While the board's proactive efforts to regulate its own licensees by way of the inspection regulations are commendable, Maryland consumers who choose to be cremated in facilities

located on cemetery grounds or independent property would not benefit. Due to the inability of the board and the Office of Cemetery Oversight to reach an agreement on which entity should enforce such provisions and the fact that 82 percent of crematories in Maryland are located on funeral establishment grounds, the board should be given statutory authority to ensure that *all* crematories are inspected and subject to the requirements found under the Maryland Morticians Act. This would ensure that all Maryland consumers of cremation services receive equal protection by way of regulation of all crematory establishments.

Recommendation 9: At a minimum, statute should be amended to require the board to inspect all Maryland crematories annually under a uniform crematory statute that imposes the same inspection requirements on all crematories regardless of location. Specifically, crematory regulations under the Maryland Morticians Act should be extended to all State crematories. All Maryland crematories should be required to file an annual statement describing the crematory's location, ownership status, number and names of employees, last MDE inspection, and expiration date of the MDE-issued five-year permit to operate. On request, the annual statements should be made available by the board to the public for inspection. Crematory operators who fail a board inspection or do not file an annual statement should be subject to informal disciplinary action imposed by the board.

Uncodified language should be adopted requiring the board to report to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee on or before December 1, 2011, regarding the information gathered from annual statements.

Recommendation 10: The General Assembly may wish to consider further strengthening regulatory authority over cremation by amending statute to require all crematory owners and employees who handle human remains to complete a certification program. Certification could be offered by an organization authorized to do so by the board. Any such certification programs proposed by applicant organizations should include a component on environmental safety, incinerator operation and safety, and applicable State laws and regulations.

Chapter 5. Conclusion

Board Effectively Regulates Licensees and Protects Consumers

The Department of Legislative Services (DLS) finds that the board is efficient and effective in its licensing, complaint, inspection, and disciplinary functions. The board has followed up on past DLS sunset recommendations and implemented suggestions for improving its operations such as complaint tracking. Furthermore, the board has improved its financial situation as well as licensee compliance with regulations such as preneed requirements. In conducting this evaluation, DLS found board members and staff to be proactive and responsive.

Overall, DLS finds that the board conducts itself in a productive, professional manner and has been successful at protecting consumer interests. Therefore, DLS recommends that the board's termination date be extended for 10 years. In the interim, the board should report on its implementation of the nonstatutory recommendations included in this report and continue to work with the General Assembly to improve oversight and regulation of the death care industry.

Recommendation 11: Statute should be amended to extend the termination date of the State Board of Morticians and Funeral Directors to July 1, 2018. In addition, the board should report to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee on or before October 1, 2009, regarding the status of the nonstatutory recommendations contained in this report.

Appendix 1. Board Membership and Staff

Board Members

Licensed Morticians and Funeral Directors

Michael J. Ruck, Sr. – President
Brian L. Haight, Jr – 1st Vice President
Gladys A. Sewell – 2nd Vice President
David L. Hovatter – Secretary
Donald V. Borgwardt
Robert Bradshaw, Jr.
Marshall W. Jones, Jr.
Michael D. Kruger

Consumers

Rev. Henry Green
Vernon L. Strayhorn, Sr.
Consumer Vacancy*
Consumer Vacancy*

Staff

Laurie Sheffield-James – Executive Director
LouAnn Cox– Licensing Coordinator
Grant D. Gerber – Board Counsel
Lawrence M. Blickman – Health Occupations Investigator
Sheryl McDonald – Office Secretary

* Appointments for the vacancies are expected by summer 2008.
Source: State Board of Morticians and Funeral Directors

Appendix 2. Draft Legislation

Bill No.: _____
 Requested: _____
 Committee: _____

Drafted by: Chasse

Typed by: Alan

Stored –

Proofread by _____

Checked by ☒ _____By: **Leave Blank**

A BILL ENTITLED

1 AN ACT concerning

2 **State Board of Morticians and Funeral Directors – Sunset Extension and**
 3 **Program Evaluation**

4 FOR the purpose of continuing the State Board of Morticians and Funeral Directors in
 5 accordance with the provisions of the Maryland Program Evaluation Act (sunset
 6 law) by extending to a certain date the termination provisions relating to the
 7 statutory and regulatory authority of the Board; requiring that an evaluation of
 8 the Board and the statutes and regulations that relate to the Board be
 9 performed on or before a certain date; increasing the number of working hours
 10 in a licensed funeral establishment required to obtain an apprentice license
 11 from the Board; repealing and clarifying certain educational requirements
 12 relating to qualification for an apprentice license from the Board; requiring that
 13 pre-need contracts contain a certain disclosure statement; repealing and
 14 reenacting certain requirements relating to cremation; making certain
 15 requirements relating to cremation applicable to all crematories in the State;
 16 requiring crematory operators to file a certain annual statement; authorizing
 17 the Board to inspect each crematory once annually; requiring that Board
 18 inspections of crematories be unannounced; authorizing the Board to impose
 19 informal disciplinary action against crematory operators under certain
 20 circumstances; requiring the Board to adopt certain regulations; requiring the
 21 Board to submit certain reports on or before certain dates; and generally
 22 relating to the State Board of Morticians and Funeral Directors.

23 BY repealing and reenacting, with amendments,

 EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



- 24 Article – Health Occupations
- 25 Section 7–102, 7–205, 7–305, 7–306, 7–316(a)(29), 7–405(c) and (h), 7–411, and
- 26 7–602
- 27 Annotated Code of Maryland
- 28 (2005 Replacement Volume and 2007 Supplement)

- 29 BY repealing and reenacting, without amendments,
- 30 Article – Health Occupations
- 31 Section 7–405(a) and (b)
- 32 Annotated Code of Maryland
- 33 (2005 Replacement Volume and 2007 Supplement)

- 34 BY repealing
- 35 Article – Health Occupations
- 36 Section 7–406 and 7–505
- 37 Annotated Code of Maryland
- 38 (2005 Replacement Volume and 2007 Supplement)

- 39 BY adding to
- 40 Article – Health Occupations
- 41 Section 7–4A–01 through 7–4A–09 to be under the new subtitle “Subtitle 4A.
- 42 Cremation”
- 43 Annotated Code of Maryland
- 44 (2005 Replacement Volume and 2007 Supplement)

- 45 BY repealing and reenacting, without amendments,
- 46 Article – State Government
- 47 Section 8–403(a)
- 48 Annotated Code of Maryland
- 49 (2004 Replacement Volume and 2007 Supplement)

- 50 BY repealing and reenacting, with amendments,
- 51 Article – State Government
- 52 Section 8–403(b)(40)
- 53 Annotated Code of Maryland
- 54 (2004 Replacement Volume and 2007 Supplement)

55 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
56 MARYLAND, That the Laws of Maryland read as follows:

57 **Article – Health Occupations**

58 7–102.

59 (a) This title does not limit the right of an individual to practice a health
60 occupation that the individual is authorized to practice under this article.

61 (b) This title does not apply to the business of operating a cemetery [or
62 crematory], including the sale of cemetery lots, grave sites, mausoleums, monuments,
63 lawn crypts, or vaults.

64 7–205.

65 (a) In addition to the powers and duties set forth elsewhere in this title, the
66 Board has the following powers and duties:

67 (1) To adopt bylaws, rules, and regulations to carry out the provisions
68 of this title;

69 (2) To adopt a seal;

70 (3) To establish procedures for licensing apprentices;

71 (4) To keep a list of all individuals currently licensed by the Board;

72 (5) To investigate any alleged violation of this title;

73 (6) To enforce this title;

74 (7) To adopt rules and regulations regarding false and misleading
75 advertising and misrepresentation;

76 (8) To inspect licensed funeral establishments;

77 **(9) TO INSPECT CREMATORIES;**

78 [(9)] (10) On receipt of a written and signed complaint, including a
79 referral from the Commissioner of Labor and Industry, conduct an unannounced
80 inspection of the funeral establishment to determine compliance at that funeral
81 establishment with the Centers for Disease Control's guidelines on universal
82 precautions;

83 [(10)] (11) To establish standards for the practice of mortuary science;
84 and

85 [(11)] (12) To establish standards for sanitation and waste disposal in
86 connection with the practice of mortuary science.

87 (b) The Board may conduct an audit of a licensee that:

88 (1) Receives pre-need funds;

89 (2) Places pre-need funds in a trust; or

90 (3) Enters into a pre-need contract.

91 7-305.

92 (a) Subject to the provisions of this subsection, the Board may waive the
93 examination and apprenticeship requirements of § 7-303 of this subtitle and issue a
94 mortician or funeral director license to an applicant who is licensed to practice
95 mortuary science or funeral direction in any other state.

96 (b) The Board may grant a waiver under this subsection only if the
97 applicant:

98 (1) Pays the license fee required by the Board under § 7-303 of this
99 subtitle;

100 (2) Was a licensed mortician or funeral director in good standing in
101 the other state;

102 (3) Serves an apprenticeship consisting of [1,000] **2,000** hours; and

103 (4) Passes the Maryland State written examination administered by
104 the Board.

105 (c) The Board may grant a waiver only if the state in which the applicant is
106 licensed:

107 (1) Grants a similar waiver to licensees of this State; and

108 (2) Has standards for a mortician or funeral director license that are
109 not lower than those of this State.

110 7-306.

111 (a) An individual shall obtain an apprentice license from the Board before
112 beginning an apprenticeship in this State.

113 (b) (1) An applicant for a mortician apprentice license shall have a
114 sponsor with a current mortician license.

115 (2) An applicant for a funeral director license shall have a sponsor
116 with a current mortician or funeral director license.

117 (c) An applicant for an apprentice license shall pay to the Board a fee set by
118 the Board.

119 (d) (1) Prior to an individual appearing before the Board for approval of
120 an apprentice license[, the individual must complete two-thirds of the academic
121 credits for a mortuary science program at a school accredited by the American Board
122 of Funeral Service or approved by the Board, with a 2.0 grade point average or higher
123 that is verified with a certified copy of the college transcript]:

124 (I) **AN APPLICANT SHALL:**

125 **1. HAVE GRADUATED FROM 4 YEARS OF HIGH**
126 **SCHOOL;**

127 **2. HAVE THE EQUIVALENT OF 12 YEARS OF FORMAL**
128 **EDUCATION CERTIFIED BY THE STATE DEPARTMENT OF EDUCATION; OR**

129 **3. HAVE ATTAINED AN ASSOCIATE OF ARTS,**
130 **BACHELOR OF SCIENCE, OR BACHELOR OF ARTS DEGREE FROM A COLLEGE OR**
131 **UNIVERSITY APPROVED BY AN ACCREDITING AGENCY OF THE UNITED STATES**
132 **DEPARTMENT OF EDUCATION.**

133 **(II) CERTIFIED EVIDENCE OF A HIGH SCHOOL OR GENERAL**
134 **EDUCATION DIPLOMA OR A COLLEGE DEGREE SHALL BE PRESENTED TO THE**
135 **BOARD AND MADE A PART OF THE APPLICANT'S RECORD.**

136 (2) [The] **AN** applicant shall appear before the Board with the
137 applicant's sponsor. The sponsor shall hold a current valid mortician license in
138 Maryland and shall be employed by the same funeral home that employs the
139 apprentice.

140 (3) The practical experience of an apprentice shall include:

141 (i) Participation in at least 20 funerals;

142 (ii) Except as provided in paragraph (4) of this subsection,
143 assistance in the preparation of at least 20 dead human bodies for final disposition;
144 and

145 (iii) Completion of [1,000] **2,000** working hours in a licensed
146 funeral establishment under the direct supervision of a licensed mortician or funeral
147 director. Supervision may include instruction by other licensed morticians or funeral
148 directors employed or supervised by the sponsor.

149 (4) For an apprentice funeral director, the practical experience under
150 paragraph (3)(ii) of this subsection may not include embalming.

151 (5) On termination of the sponsor-apprentice relationship, both the
152 sponsor and the apprentice shall independently notify the Board in writing of:

153 (i) The date of termination;

154 (ii) The name, date of death, and date of service for each
155 decedent for whom a funeral service was conducted under paragraph (3)(i) of this
156 subsection in which the apprentice participated; and

157 (iii) The name, date of death, and date of the preparation for
158 disposition of each decedent for whom the apprentice assisted in accordance with
159 paragraph (3)(ii) of this subsection.

160 (6) Prior approval must be granted by the Board before a change of
161 sponsorship occurs.

162 (e) While the license is effective, an apprentice license authorizes the
163 licensee to assist a licensed mortician or funeral director in the practice of mortuary
164 science or funeral direction only as part of a training program to become a licensed
165 mortician or funeral director.

166 7-316.

167 (a) Subject to the hearing provisions of § 7-319 of this subtitle and except as
168 to a funeral establishment license, the Board may deny a license to any applicant,
169 reprimand any licensee, place any licensee on probation, or suspend or revoke any
170 license if the applicant or licensee:

171 (29) Fails to allow an inspection under [§ 7-205(8)] § **7-205(A)(8)** of
172 this title;

173 7-405.

174 (a) (1) In this section the following words have the meanings indicated.

175 (2) "Beneficiary" means a person for whose benefit a pre-need contract
176 is purchased and who will receive the merchandise or services offered under the
177 contract.

178 (3) "Buyer" means a person that purchases a pre-need contract.

179 (4) "Seller" means a person who agrees to provide services or
180 merchandise, directly or indirectly, under a pre-need contract.

181 (5) “Trustee” means a person that has responsibility for making
 182 pre-need arrangements in a manner that entitles the beneficiary to be eligible for
 183 benefits that restrict assets.

184 (b) (1) Only a licensed mortician, a licensed funeral director, or a holder of
 185 a surviving spouse license may offer or agree, directly or indirectly, to provide services
 186 or merchandise under a pre-need contract.

187 (2) Notwithstanding the provisions of paragraph (1) of this subsection,
 188 a licensed mortician or a licensed funeral director who is employed by a funeral
 189 establishment may execute pre-need contracts on behalf of the funeral establishment
 190 with which the mortician or funeral director is employed.

191 (3) Any funeral establishment on whose behalf pre-need contracts are
 192 executed under this subsection must comply with the requirements of this section.

193 (c) (1) A pre-need contract shall contain:

194 (i) The name of each party to the contract and, if the
 195 beneficiary is an individual other than the buyer, the name of the beneficiary of the
 196 contract;

197 (ii) A description of any service or merchandise to be provided
 198 under the pre-need contract;

199 (III) **A DISCLOSURE STATEMENT THAT CLEARLY:**

200 **1. STATES THAT ALL FUNERAL COSTS MAY NOT BE**
 201 **COVERED UNDER THE PRE-NEED CONTRACT; AND**

202 **2. LISTS ALL FUNERAL GOODS AND SERVICES THAT**
 203 **ARE REASONABLY EXPECTED TO BE REQUIRED AT THE TIME OF NEED, BUT ARE**
 204 **NOT INCLUDED IN THE CONTRACT;**

205 [(iii)] (IV) The total price of the services and merchandise agreed
 206 on; and

207 [(iv)] (v) The method of payment.

208 (2) A pre-need contract shall be executed in duplicate and be signed
209 by each party.

210 (3) The seller shall give one of the duplicate originals of the pre-need
211 contract to the buyer.

212 (h) A seller of a pre-need contract shall disclose to the consumer[:

213 (1) All goods and services that are reasonably expected to be required
214 at the time of need, but are not included in the pre-need contract; and

215 (2) The] **THE** buyer's cancellation and refund rights under subsection
216 (d) of this section.

217 [7-406.

218 A licensee shall maintain a complete file of a cremation that includes the
219 signature of the next of kin, person identifying the body, or person responsible for
220 disposition, time of death, and the date and time of cremation.]

221 7-411.

222 (a) Before burial or interment, a mortician shall affix to the long bones of the
223 deceased human body a plastic or metal identification tag.

224 (b) [After cremation, a licensee shall ensure that a metal or plastic
225 identification tag is placed in the cremains container.

226 (c)] The identification tag shall contain:

227 (1) The name of the decedent;

228 (2) The Social Security number of the decedent;

229 (3) The decedent's date of birth; and

230 (4) The decedent's date of death.

231 **SUBTITLE 4A. CREMATION.**

232 **7-4A-01.**

233 **THIS SUBTITLE APPLIES TO ALL CREMATORIES, AND CREMATORY**
234 **OWNERS, OPERATORS, AND EMPLOYEES WITHIN THE STATE.**

235 **7-4A-02.**

236 **THE PURPOSE OF THIS SUBTITLE IS TO ENSURE THAT ALL CREMATORIES,**
237 **REGARDLESS OF LOCATION OR OWNERSHIP, ARE REGULATED IN A UNIFORM**
238 **MANNER TO ENSURE THE PROTECTION OF THE HEALTH AND WELFARE OF THE**
239 **PUBLIC.**

240 **7-4A-03.**

241 **(A) THIS SECTION DOES NOT APPLY TO A CREMATORY IN WHICH NO**
242 **CREMATIONS HAVE TAKEN PLACE WITHIN THE PREVIOUS 5 YEARS.**

243 **(B) A CREMATORY OPERATOR SHALL FILE AN ANNUAL STATEMENT**
244 **WITH THE BOARD THAT INCLUDES:**

245 **(1) THE NAME AND ADDRESS OF THE CREMATORY;**

246 **(2) THE NAME AND ADDRESS OF THE PERSON THAT OWNS AND**
247 **OPERATES THE CREMATORY;**

248 **(3) THE NAME AND ADDRESS OF THE INDIVIDUAL WHO IS**
249 **RESPONSIBLE FOR OVERSIGHT OF THE CEMETERY;**

250 **(4) THE NAMES OF EACH CREMATORY EMPLOYEE;**

251 **(5) THE DATE THE DEPARTMENT OF THE ENVIRONMENT LAST**
252 **CONDUCTED AN EMISSIONS INSPECTION OF THE CREMATORY;**

253 (6) THE EXPIRATION DATE OF THE CREMATORY'S 5-YEAR
254 DEPARTMENT OF THE ENVIRONMENT PERMIT TO OPERATE; AND

255 (7) ANY OTHER INFORMATION REQUIRED BY THE BOARD.

256 (C) ON REQUEST, THE BOARD SHALL MAKE THE ANNUAL STATEMENTS
257 AVAILABLE FOR INSPECTION BY THE PUBLIC.

258 7-4A-04.

259 (A) THE BOARD SHALL INSPECT EACH STATE CREMATORY ONCE
260 ANNUALLY.

261 (B) ALL INSPECTIONS OF CREMATORIES SHALL BE UNANNOUNCED AND
262 MAY TAKE PLACE AT ANY TIME WITHOUT NOTICE FROM THE BOARD.

263 (C) AN UNANNOUNCED INSPECTION MAY INCLUDE ADVANCE NOTICE
264 THAT AN INVESTIGATOR MAY BE IN THE REGION OF THE CREMATORY, IF:

265 (1) THE ADVANCE NOTICE IS NO MORE THAN 14 DAYS PRIOR TO
266 THE INSPECTION;

267 (2) NO SPECIFIC DATE OR TIME IS PROVIDED FOR THE
268 INSPECTION; AND

269 (3) THE ADVANCE NOTICE IS PROVIDED SOLELY TO ENSURE THAT
270 THE OWNER-OPERATOR OF THE CREMATORY WILL BE ON-SITE FOR THE
271 INSPECTION.

272 7-4A-05.

273 (A) AFTER CREMATION, A METAL OR PLASTIC IDENTIFICATION TAG
274 SHALL BE PLACED IN THE CREMAINS CONTAINER.

275 (B) THE IDENTIFICATION TAG SHALL CONTAIN:

276 (1) THE NAME OF THE DECEDENT;

277 (2) **THE SOCIAL SECURITY NUMBER OF THE DECEDENT;**

278 (3) **THE DECEDENT'S DATE OF BIRTH; AND**

279 (4) **THE DECEDENT'S DATE OF DEATH.**

280 **7-4A-06.**

281 **A CREMATORY OPERATOR SHALL MAINTAIN A COMPLETE FILE OF A**
282 **CREMATION THAT INCLUDES THE SIGNATURE OF THE NEXT OF KIN, PERSON**
283 **IDENTIFYING THE BODY, OR PERSON RESPONSIBLE FOR DISPOSITION, TIME OF**
284 **DEATH, AND THE DATE AND TIME OF CREMATION.**

285 **7-4A-07.**

286 **A PERSON MAY NOT REPRESENT THAT A BURIAL OR FUNERAL CASKET IS**
287 **REQUIRED FOR CREMATION.**

288 **7-4A-08.**

289 **IF A CREMATORY FAILS A BOARD INSPECTION, THE BOARD MAY IMPOSE**
290 **INFORMAL DISCIPLINARY ACTION AGAINST THE CREMATORY OPERATOR.**

291 **7-4A-09.**

292 **THE BOARD SHALL ADOPT REGULATIONS TO CARRY OUT THIS SUBTITLE.**

293 **[7-505.**

294 A licensee or the agent of a licensee may not represent that a burial or funeral
295 casket is required for cremation.]

296 **7-602.**

297 Subject to the evaluation and reestablishment provisions of the Program
298 Evaluation Act, this title and all rules and regulations adopted under this title shall
299 terminate and be of no effect after July 1, [2008] **2018.**

300 **Article – State Government**

301 8–403.

302 (a) On or before December 15 of the 2nd year before the evaluation date of a
303 governmental activity or unit, the Legislative Policy Committee, based on a
304 preliminary evaluation, may waive as unnecessary the evaluation required under this
305 section.

306 (b) Except as otherwise provided in subsection (a) of this section, on or before
307 the evaluation date for the following governmental activities or units, an evaluation
308 shall be made of the following governmental activities or units and the statutes and
309 regulations that relate to the governmental activities or units:

310 (40) Morticians **AND FUNERAL DIRECTORS**, State Board of (§ 7–201
311 of the Health Occupations Article: July 1, [2007] **2017**);

312 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before December 1,
313 2008, the Board of Morticians and Funeral Directors shall submit a report to the
314 Senate Education, Health, and Environmental Affairs Committee and the House
315 Health and Government Operations Committee, in accordance with § 2–1246 of the
316 State Government Article, on this evaluation, including: (1) any observed changes in
317 licensure patterns; (2) any proposals to alter the existing corporation license renewal
318 fee; and (3) a plan to reduce the Board’s fund balance to 25 percent of biennial
319 operating costs.

320 SECTION 3. AND BE IT FURTHER ENACTED, That, on or before October 1,
321 2009, the Board of Morticians and Funeral Directors shall report to the Senate
322 Education, Health, and Environmental Affairs Committee and the House Health and
323 Government Operations Committee, in accordance with § 2–1246 of the State
324 Government Article, regarding the status of the nonstatutory recommendations
325 contained in this report.

326 SECTION 4. AND BE IT FURTHER ENACTED, That, on or before December 1,
327 2010, the Board of Morticians and Funeral Directors shall submit a report to the
328 Senate Education, Health, and Environmental Affairs Committee and the House
329 Health and Government Operations Committee, in accordance with § 2–1246 of the
330 State Government Article, on the outcome of reopening the funeral director license

331 including the number of: (1) students enrolled in the funeral director program at the
332 Community College of Baltimore County; (2) applicants for a funeral director
333 apprenticeship license; and (3) funeral director licenses issued.

334 SECTION 5. AND BE IT FURTHER ENACTED, That, on or before December 1,
335 2011, the Board of Morticians and Funeral Directors shall report to the Senate
336 Education, Health, and Environmental Affairs Committee and the House Health and
337 Government Operations Committee, in accordance with § 2-1246 of the State
338 Government Article, on the information gathered from annual crematory statements.

339 SECTION 6. AND BE IT FURTHER ENACTED, That this Act shall take effect
340 July 1, 2008.

Appendix 3. Written Comments of the State Board of Morticians and Funeral Directors



Maryland Department of Health and Mental Hygiene
4201 Patterson Avenue • Baltimore, Maryland 21215

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – John M. Colmers, Secretary

State Board of Morticians and Funeral Directors

SUNSET REVIEW EVALUATION

Comments by the State Board of Morticians and Funeral Directors
October 31, 2007

Recommendation 1: Statute should be amended to reinstate the pre-1997 requirement that apprentices complete 2,000 working hours and repeal the minimal education requirements imposed on applicants in order to qualify for licensure as an apprentice.

The Board of Morticians and Funeral Directors accepts this recommendation.

The board supported HB 1570 in 2006 which would have reinstated the 2,000 hour apprenticeship requirement and repealed the minimum education requirements of apprentice applicants. The legislation did not pass. The board will continue to support efforts to increase apprenticeship hours and repeal the minimal education requirement.

Recommendation 2: The board should report to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government operations Committee on or before December 1, 2010, on the outcome of reopening the funeral director license including the number of (1) students enrolled in the funeral director program at CCBC; (2) applicants for funeral director apprenticeship license; and (3) funeral director license issued.

The Board of Morticians and Funeral Directors will comply with this mandate.

Recommendation 3: If the October 2007 decision is not appealed by either party or is upheld on appeal, the board, with assistance from the legislative committee and board counsel, should (1) draft emergency regulations to implement a process for issuing new corporation licenses to qualified applicants and submit the regulations to the Administrative, Executive, and Legislative Review Committee for approval; (2) develop and distribute application forms for new corporation license applicants; (3) issue new corporation licenses to applicants that meet the applicable requirements under emergency regulations; and (4) draft an Administration bill amending statute to implement the order of the court.

The Board of Morticians and Funeral Directors will appeal the decision.

If the decision is upheld on appeal, the board will promulgate emergency regulations; amend statute; and develop policies and procedures to comply with the decision.

Recommendation 4: If the ruling in the corporate licensure lawsuit stands and another ownership option becomes available to surviving spouses, the board should explore whether there is a continued need for the surviving spouse license.

If corporate licensure becomes available to the public, the Board of Morticians and Funeral Directors will review the surviving spouse license with all stakeholders to determine whether the surviving spouse license remains a viable and vital license.

The board will also consider recommending a time frame during which all surviving spouses must meet the educational requirements of an AA degree in Mortuary Science or Funeral Services that is mandated for all morticians and funeral directors. The surviving spouse must also take and pass the national exam. If the surviving spouse fails to achieve the requirements during the prescribed time period the license would be voided. If the surviving spouse meets the requirements, their license would become a morticians or funeral director's license.

Recommendation 5: The board, in conjunction with DHMH, should work closely with the Governor's Office to ensure that the current 25 percent board vacancy rate is addressed as soon as possible. The board should also be diligent in anticipating departures due to the consecutive two-term limitation.

The board has repeatedly discussed the lack of board membership with the executive director of the Office of Executive Nominations. The board has also written to the Office of Executive Nominations urging that every effort be made to appoint a full roster of board members. The need for consumer member has been highlighted in every board newsletter this year. The board will continue to be diligent in pursuing new board members.

Recommendation 6: The board should evaluate its ongoing revenues and expenditures, its fund balance, and the appropriate level for corporation license fees. As a part of the evaluation, the board should determine any further costs associated with the corporate licensure lawsuit as well as any changes in licensure patterns and staffing needs due to the ruling. The board should submit a report to the Senate, Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee on or before Oct. 1, 2008, on this evaluation, including any observed changes in licensure patterns, any proposals to alter the existing corporation license renewal fee, and a plan to reduce the fund balance to 25 percent of biennial operating costs.

The Board will comply with this recommendation. The board will reevaluate the budget by June 30, 2008. If the board's fund balance is high, the board will submit a plan to spend down the balance to roughly 25 percent of biennial operating costs.

Recommendation 7: Statute should be amended to require a disclosure statement in each pre-need contract that clearly states that all funeral costs may not be covered under the preneed contract.

Statute will be amended to require preneed contracts funded by insurance or trust, to disclose which items are guaranteed or not guaranteed on the funeral contract. Guaranteed items include services and merchandise. Items that are not guaranteed include cash advance items.

The board will continue to work with both funeral associations to propose regulations which establish the Family Security Trust Fund. The Family Security Trust Fund will reimburse losses incurred by preneed consumers due to the wrongdoing of licensees.

Recommendation 8: The board should develop a consumer pamphlet that may be used to educate family members upon the death of a loved one who has a preneed contract about the items covered under the contract and those not covered, specifically incidental and other fees that may be charged when the contract is executed.

The Board will comply with this recommendation.

Recommendation 9: At a minimum, statute should be amended to require the board to inspect all Maryland crematories annually under a uniform crematory statute that imposed the same inspection requirements on all crematories regardless of location. Specifically, crematory regulations under the Maryland Morticians Act should be extended to all State crematories. All Maryland crematories should be required to file an annual statement describing the crematory's location, ownership status, number and names of employees, last MDE inspection, and expiration date of the MDE-issued five-year permit to operate. On request, the annual statements should be made available by the board to the public for inspection. Crematory operators who fail a board inspection or do not file an annual statement should be subject to informal disciplinary action imposed by the board.

Uncodified language should be adopted requiring the board to report to the Senate, Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee on or before December 1, 2011, regarding the information gathered from annual statements.

The board feels strongly that crematories should be regulated. In an effort to begin to oversee crematories, the board proposed inspection regulations that would allow the board to inspect crematories that are located on funeral establishment grounds. However, the AELR Committee has put the regulation on hold as it tries to determine whether the Board exceeded its regulatory authority.

The board will develop a uniform crematory statute which will mandate that the board inspect all Maryland crematories annually.

Recommendation 10: The General Assembly may wish to consider further strengthening regulatory authority over cremation by amending the statute to require all crematory owners and employees who handle human remains to complete a certification program. Certification could be offered by an organization authorized to do so by the board. Any such certification programs proposed by applicant organizations should include a component on environmental safety, incinerator operation and safety, and application State law and regulations.

If the above recommendation becomes implemented into law, the board will review the curriculum from the Cremation Association of North America (CANA) to determine a course of action which could result in additional training and evaluation of crematory operators.

Recommendation 11: Statute should be amended to extend the termination date of the State Board of Morticians and Funeral Directors to July 1, 2018. In addition, the board should report to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee on or before October 1, 2008, regarding the status of the nonstatutory recommendations contained in this report.

The board supports this recommendation.

