

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 1307

Short Title: Crematory Act.

(Public)

Sponsors: Representatives Stamey; Edwards, Hasty, Holt, Lilley, Lineberry, Locks, Nesbitt, and Warren.

Referred to: Commerce.

April 12, 1989

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR THE LICENSURE OF CREMATORY OPERATORS
3 AND TO ESTABLISH THE CREMATORY AUTHORITY WITHIN THE BOARD
4 OF MORTUARY SCIENCE.

5 The General Assembly of North Carolina enacts:

6 Section 1. Chapter 90 of the General Statutes is amended by adding a new
7 Article to read:

8 **“ARTICLE 13C.**
9 **”CREMATIONS.**

10 **“§ 89-210.40. Short title.**

11 This Article shall be known and may be cited as the North Carolina Crematory Act.

12 **“§ 89-210.41. Definitions.**

13 As used in this Article, unless the context requires otherwise:

- 14 (1) ‘Authorizing agent’ means a person legally entitled to order the
15 cremation of human remains. An authorizing agent shall be, in order
16 of preference, a spouse, an adult child, a parent, any adult sibling,
17 guardian or close relation of the deceased. In the case of indigents or
18 any other individuals whose final disposition is the responsibility of
19 the State, a public official charged with arranging the final disposition
20 of the deceased, if legally authorized, may serve as the authorizing
21 agent. In the case of individuals who have donated their bodies to
22 science, or whose death occurred in a nursing home or other private
23 institution, and in which the institution is charged with making

- 1 arrangements for the final disposition of the deceased, a representative
2 of the institution, if legally authorized, may serve as the authorizing
3 agent.
- 4 (2) 'Board' means the North Carolina State Board of Mortuary Science.
- 5 (3) 'Casket' means a rigid container which is designed for the encasement
6 of human remains and which is usually constructed of wood, metal or
7 other rigid material and ornamented and lined with fabric.
- 8 (4) 'Closed container' means any container in which cremated remains can
9 be placed and closed in a manner so as to prevent leakage or spillage
10 of cremated remains or the entrance of foreign material.
- 11 (5) 'Cremated remains' means all human remains recovered after the
12 completion of the cremation process, including pulverization which
13 leaves only bone fragments reduced to unidentifiable dimensions.
- 14 (6) 'Cremation' means the technical process, using heat, that reduces
15 human remains to bone fragments.
- 16 (7) 'Cremation chamber' means the enclosed space within which the
17 cremation process takes place. Cremation chambers covered by these
18 procedures shall be used exclusively for the cremation of human
19 remains.
- 20 (8) 'Cremation container' means the container in which the human
21 remains are placed in the cremation chamber for a cremation. A
22 cremation container must meet all of the standards established by the
23 rules and regulations set by the Crematory Authority.
- 24 (9) 'Crematory' means the building or portion of a building that houses the
25 cremation chamber and the holding facility.
- 26 (10) 'Crematory authority' means the North Carolina Crematory Authority,
27 an agency within the North Carolina State Board of Mortuary Science.
- 28 (11) 'Crematory operator' means the legal entity or the authorized
29 representative of the legal entity which is licensed by the Crematory
30 Authority to operate a crematory and perform cremation.
- 31 (12) 'Holding facility' means an area within or adjacent to the crematory
32 facility designated for the retention of human remains prior to
33 cremation that shall comply with any applicable public health law and
34 the rules and regulations established by the Crematory Authority.
- 35 (13) 'Human remains' means the body of a deceased person, or part of a
36 body or limb that has been removed from a living or deceased person.
- 37 (14) 'Niche' means a compartment or cubicle for the memorialization or
38 permanent placement of an urn containing cremated remains.
- 39 (15) 'Scattering area' means a designated area for the scattering of cremated
40 remains.
- 41 (16) 'Temporary container' means a temporary container is a receptacle for
42 cremated remains usually made of cardboard, plastic film or similar
43 material designed to hold the cremated remains until an urn or other
44 permanent container is acquired.

1 (17) 'Urn' means receptacle designed to permanently encase the cremated
2 remains.

3 **"§ 90-210.42. Crematory Authority established.**

4 (a) The North Carolina Crematory Authority is hereby established as an
5 independent agency within the Board of Mortuary Science. The Crematory Authority is
6 authorized to adopt and promulgate such rules and regulations for the transaction of its
7 business and for the carrying out and enforcement of the provisions of this Article as
8 may be necessary and as are consistent with the laws of this State and the United States.
9 The rules and regulations of the Crematory Authority shall be adopted, and enforced by
10 the Board of Mortuary Science.

11 (b) The Crematory Authority shall consist of eight members appointed as
12 follows:

13 (1) One member from the Board of Mortuary Science who shall be
14 appointed by the President of the Board;

15 (2) One member from the North Carolina Cemetery Commission who
16 shall be appointed by the Chairman of the Cemetery Commission;

17 (3) Two members who are owners or managers of a licensed crematory
18 who shall be appointed by the Governor from a list of at least four
19 individuals recommended by the Cremation Association of North
20 Carolina;

21 (4) One member who shall be appointed by the Governor from the faculty
22 or staff of a recognized and accredited medical school located in North
23 Carolina;

24 (5) One member from the office of the chief medical examiner who shall
25 be the chief medical examiner or his designee.

26 (6) One member from the staff of the North Carolina Commission of
27 Anatomy to be appointed by the Commission.

28 (7) One public member who shall be appointed by the Governor and who
29 shall not own a funeral service, nor be employed in a funeral service,
30 cemetery, or crematory profession.

31 (c) Term. Each member of the Crematory Authority shall serve for a three-year
32 term. The terms of the members shall be staggered; the original term of two members
33 shall expire January 1, 1991, the original term of three members shall expire January 1,
34 1992, and the original term of the remaining three members shall expire January 1,
35 1993.

36 (d) The members of the Crematory Authority shall serve without compensation
37 provided that such members shall be reimbursed for their necessary traveling expenses
38 and the necessary expenses incident to their attendance upon the business of the
39 Crematory Authority, and in addition thereto they shall receive per diem and expense
40 reimbursement as provided in G.S. 93B-5 for all time actually spent by such member
41 upon the business of the Crematory Authority. All expenses, salaries and per diem
42 provided for in this article shall be paid from funds received under the provisions of this
43 Article and shall in no manner be an expense to the State.

1 (e) The Crematory Authority is empowered to hold hearings in accordance with
2 the provisions of this Article and Chapter 150B of the General Statutes, to subpoena
3 witnesses, and to administer oaths or to receive the affirmation of witnesses before the
4 Crematory Authority.

5 (f) The Crematory Authority shall enforce the rules adopted by it pursuant to this
6 Article.

7 (g) The Crematory Authority shall select from its members a chairman, a vice
8 chairman and a secretary who shall serve for one year or until their successors are
9 elected and qualified. No two offices may be held by the same person. The Crematory
10 Authority, with the concurrence of the Board of Mortuary Science, shall have the
11 authority to engage adequate staff as deemed necessary to perform its duties.

12 (h) The Crematory Authority shall adopt a common seal.

13 (i) The members of the Crematory Authority, before entering upon their duties,
14 shall take and subscribe to the oath of office prescribed for other State officers, which
15 said oath shall be administered by a person qualified to administer such oath and shall
16 be filed in the Office of the Secretary of State.

17 (j) The Crematory Authority shall hold at least one meeting in each year. In
18 addition, the Crematory Authority may meet as often as the proper and efficient
19 discharge of its duties shall require. Five members shall constitute a quorum.

20 **"§ 90-210.43. Licensing and inspection.**

21 (a) Any person doing business in this State, or any cemetery, funeral
22 establishment, corporation, partnership, joint venture, voluntary organization or any
23 other entity may erect, maintain and conduct a crematory in this State and provide the
24 necessary appliances and facilities for the cremation of human remains in accordance
25 with the provisions of this Article and the rules and regulations adopted by the
26 Crematory Authority.

27 (b) A crematory may be constructed on or adjacent to any cemetery, on or
28 adjacent to any funeral establishment that is zoned commercial or industrial, or at any
29 other location consistent with local zoning regulations.

30 (c) Application for license as a crematory operator shall be on forms furnished
31 and prescribed by the Crematory Authority. The Crematory Authority shall examine
32 the premises and structure to be used as a crematory, and shall issue a license to the
33 crematory operator if the applicant meets all the requirements of this Article and of any
34 rules and regulations adopted by the Crematory Authority. In the event of any change
35 of ownership of a crematory, at least 30 days prior to the change, the new owners of the
36 crematory shall provide the Crematory Authority with their names and addresses.

37 (d) Every application shall identify the individual who is responsible for
38 overseeing the management and operation of the crematory. The Crematory Authority
39 may establish standards which the manager must meet. The crematory operator shall
40 keep the Crematory Authority informed at all times of the name and address of the
41 manager.

42 (e) No person, cemetery, funeral establishment, corporation, partnership, joint
43 venture, voluntary organization or any other entity shall cremate any human remains,

1 except in a crematory licensed for this express purpose and under the limitations
2 provided in this Article.

3 (f) Whenever the Crematory Authority finds that an applicant for a license or a
4 person to whom a license has been issued by the Crematory Authority is guilty of any of
5 the following acts or omissions and the Crematory Authority also finds that the person
6 has thereby become unfit to practice, the Crematory Authority may suspend or revoke
7 the license or refuse to issue or renew the license, in accordance with the procedures set
8 out in Chapter 150B:

9 (1) Conviction of a felony or a crime involving fraud or moral turpitude;

10 (2) Fraud or misrepresentation in obtaining or renewing a license or in the
11 practice of cremation;

12 (3) False or misleading advertising;

13 (4) Gross immorality, including being under the influence of alcohol or
14 drugs while performing cremation services;

15 (5) Using profane, indecent or obscene language in the presence of a dead
16 human body, and within the immediate hearing of the family or
17 relatives of a deceased, whose body has not yet been cremated or
18 otherwise disposed of;

19 (6) Violating or cooperating with others to violate any of the provisions of
20 this Article or of the rules and regulations of the Crematory Authority;

21 (7) Violation of any State law or municipal or county ordinance or
22 regulation affecting the handling, custody, care or transportation of
23 dead human bodies;

24 (8) Refusing to surrender promptly the custody of a dead human body or
25 cremated remains upon the express order of the person lawfully
26 entitled to the custody thereof;

27 (9) Indecent exposure or exhibition of a dead human body while in the
28 custody or control of a licensee.

29 (g) In any case in which the Crematory Authority is entitled to suspend, revoke
30 or refuse to renew license, the Crematory Authority may impose a fine on the licensee
31 of not more than five thousand dollars (\$5,000) plus the reasonable costs of conducting
32 the investigation and the costs of hearings on the violation giving rise to the penalty,
33 revocation or suspension.

34 **"§ 90-210.44. Authorization and record keeping.**

35 The Crematory Authority shall establish requirements for record keeping and
36 authorization and it shall be a violation of this Article for any crematory operator to fail
37 to comply with the requirements.

38 **"§ 90-210.45. Cremation procedures.**

39 (a) Human remains shall not be cremated within 24 hours after the time of death,
40 unless such death was a result of an infectious, contagious or communicable and
41 dangerous disease, and such time requirement is waived in writing by the medical
42 examiner or county health director where the death occurred. In the event such death
43 comes under the authority of the medical examiner, the human remains shall not be
44 received by the crematory operator until authorization to cremate has been received in

1 writing from the medical examiner of the county in which the death occurred. In the
2 event the crematory operator is also authorized to perform funerals as well as cremation,
3 this restriction on the receipt of human remains shall not be applicable.

4 (b) No unauthorized person shall be permitted in the crematory area while any
5 human remains are in the crematory area awaiting cremation, being cremated, or being
6 removed from the cremation chamber. Relatives of the deceased, the authorizing agent,
7 medical examiners and law enforcement officers in the execution of their duties shall be
8 authorized to have access to the holding facility and crematory facility.

9 (c) The simultaneous cremation of the human remains of more than one person
10 within the same cremation chamber is forbidden.

11 **"§ 90-210.46. Disposition of cremated remains.**

12 (a) The authorizing agent shall provide the person with whom cremation
13 arrangements are made with a signed statement specifying the ultimate disposition of
14 the cremated remains, if known. A copy of this statement shall be retained by the
15 crematory operator.

16 (b) The authorizing agent is responsible for the disposition of the cremated
17 remains. If, after a period of 30 days from the date of cremation, the authorizing agent
18 or his representative has not specified the ultimate disposition or claimed the cremated
19 remains, the crematory operator or the person in possession of the cremated remains
20 may dispose of the cremated remains. The authorizing agent shall be responsible for
21 reimbursing the crematory operator for all reasonable expenses incurred in disposing of
22 the cremated remains pursuant to this section. A record of such disposition shall be
23 made and kept by the person making such disposition. Upon disposing of cremated
24 remains in accordance with such section, the crematory operator or person in possession
25 of the cremated remains shall be discharged from any legal obligation or liability
26 concerning such cremated remains. This provision shall apply to all cremated remains
27 currently in the possession of a crematory operator or other party.

28 (c) In addition to disposing of cremated remains in a crypt, niche, grave, or
29 scattering garden located in a dedicated cemetery, or by scattering over uninhabited
30 public land, the sea or other public waterways pursuant to subsection (f) of this section,
31 cremated remains may be disposed of in any manner on the private property of a
32 consenting owner, upon direction of the authorizing agent. If cremated remains are to
33 be disposed of by the crematory operator on private property, other than dedicated
34 cemetery property, the authorizing agent shall provide the crematory operator with the
35 written consent of the property owner.

36 (d) Except with the express written permission of the authorizing agent no person
37 may:

- 38 (1) Dispose of or scatter cremated remains in such a manner or in such a
39 location that the cremated remains are commingled with those of
40 another person. This subdivision shall not apply to the scattering of
41 cremated remains at sea or by air from individual closed containers or
42 to the scattering of cremated remains in an area located in a dedicated
43 cemetery and used exclusively for such purposes.

1 (2) Place cremated remains of more than one person in the same closed
2 container. This subdivision shall not apply to placing the cremated
3 remains of members of the same family in a common closed container
4 designed for the cremated remains of more than one person.

5 (e) Cremated remains shall be delivered by the crematory operator to the
6 individual specified by the authorizing agent on the cremation authorization form. The
7 representative of the crematory operator and the individual receiving the cremated
8 remains shall sign a receipt indicating the name of the deceased, and the date, time, and
9 place of the receipt. After this delivery, the cremated remains may be transported in any
10 manner in this State, without a permit, and disposed of in accordance with the
11 provisions of this Article.

12 (f) Cremated remains may be scattered over uninhabited public land, a public
13 waterway or sea, subject to health and environmental standards, or on the private
14 property of a consenting owner pursuant to subsection (c) of this section. A person may
15 utilize a boat or airplane to perform such scattering. Cremated remains shall be
16 removed from their closed container before they are scattered.

17 **"§ 90-210.47. Liability.**

18 (a) Any person signing a cremation authorization form shall be deemed to
19 warrant the truthfulness of any facts set forth in the cremation authorization form,
20 including the identity of the deceased whose remains are sought to be cremated and that
21 person's authority to order such cremation. Any person signing a cremation
22 authorization form shall be personally and individually liable for all damage occasioned
23 thereby and resulting therefrom.

24 (b) A crematory operator shall have authority to cremate human remains upon
25 the receipt of a cremation authorization form signed by an authorizing agent. There
26 shall be no liability of a crematory operator which cremates human remains pursuant to
27 such authorization, or which releases or disposes of the cremated remains pursuant to
28 such authorization.

29 (c) A crematory operator shall not be responsible or liable for any valuables
30 delivered to the crematory operator with human remains.

31 (d) A crematory operator shall not be liable for refusing to accept a body or to
32 perform a cremation until it receives a court order or other suitable confirmation that a
33 dispute has been settled if:

34 (1) It is aware of any dispute concerning the cremation of human remains,

35 (2) It has a reasonable basis for questioning any of the representations
36 made by the authorizing agent, or

37 (3) For any other lawful reason.

38 (e) If a crematory operator is aware of any dispute concerning the release or
39 disposition of the cremated remains, the crematory operator may refuse to release the
40 cremated remains until the dispute has been resolved or the crematory operator has been
41 provided with a court order authorizing the release or disposition of the cremated
42 remains. A crematory operator shall not be liable for refusing to release or dispose of
43 cremated remains in accordance with this subsection.

44 **"§ 90-210.48. Fees.**

1 (a) The crematory authority may set and collect fees not to exceed the following
2 amounts from licensed crematory operators and applicants:

- 3 (1) Licensee application fee. \$400.00
4 (2) Annual renewal fee. 150.00
5 (3) Late renewal penalty. 75.00
6 (4) Re-inspection fee. 100.00
7 (5) Per cremation fee. 10.00

8 (b) The funds collected pursuant to this Chapter shall become part of the general
9 fund of the Board of Mortuary Science. The cost of the maintenance of the Crematory
10 Authority shall be deemed a general expense of the Board of Mortuary Science. The
11 Board shall keep an accurate accounting of all the receipts and expenditures made
12 pursuant to this Article and shall provide a current report of such to the Crematory
13 Authority bi-annually.

14 **"§ 90-210.49. Crematory operator authority.**

15 (a) A crematory operator may employ a licensed funeral director for the purpose
16 of arranging cremations with the general public, transporting human remains to the
17 crematory, and processing all necessary paper work. Nothing in this provision may be
18 construed to require a licensed funeral director to perform any functions not otherwise
19 required by law to be performed by a licensed funeral director.

20 (b) A crematory operator may enact reasonable rules consistent with this Article
21 for the management and operation of a crematory. Nothing in this subsection may be
22 construed to prevent a crematory operator from adopting rules which are more stringent
23 than the provisions of this Article.

24 (c) Nothing in this Chapter shall prohibit or require the performance of
25 cremations by crematory operators for or directly with the public, or exclusively for or
26 through licensed funeral directors.

27 (d) Nothing in this Article may be construed to prohibit a crematory operator
28 from transporting human remains.

29 **"§ 90-210.50. Applicability, violations, and prohibitions of Article.**

30 (a) Not later than January 1, 1990, every crematory being operated in this State
31 shall apply for and be qualified to obtain a license under this Article in order to continue
32 operation.

33 (b) The provisions of this Article shall not apply to the cremation of human
34 remains and medical waste performed by or for the North Carolina Anatomical
35 Commission, licensed hospitals and medical schools, and the office of the Chief
36 Medical Examiner when the disposition of such human remains and medical waste is
37 the legal responsibility of said institutions.

38 (c) A violation of any of the provisions of this Chapter is hereby declared to be a
39 misdemeanor punishable by imprisonment for up to six months and a fine up to one
40 thousand dollars (\$1,000).

41 (d) No person, firm, or corporation may request or authorize cremation or
42 cremate a dead human body when he has information indicating a crime or violence of
43 any sort in connection with the cause of death unless such information has been

1 conveyed to the State or county medical examiner and permission from the State or
2 county medical examiner to cremate has thereafter been obtained."

3 Sec. 2. This act is effective upon ratification.