

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

H

1

HOUSE BILL 825

Short Title: Amend Funeral/Cremation Laws.

(Public)

Sponsors: Representatives Culp; Barbee, Hayes, Nichols, Nye, Tallent, and Wainwright.

Referred to: Business and Labor.

April 11, 1995

A BILL TO BE ENTITLED

1 AN ACT TO AMEND VARIOUS STATUTES RELATING TO THE PRACTICE OF
2 FUNERAL SERVICE, CREMATIONS, AND FUNERAL AND BURIAL TRUST
3 FUNDS.
4

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 90-210.20(e1) reads as rewritten:

7 "(e1) 'Funeral chapel' means a chapel or other facility separate from the funeral
8 establishment premises for the reposing of dead human bodies, visitation or funeral
9 ceremony, which is owned, operated, or maintained by a funeral ~~establishment,~~
10 establishment or other licensee under this Article, and which does not use the word
11 'funeral' in its name, on a sign, in a directory, in advertising or in any other manner; in
12 which or on the premises of which there is not displayed or offered for sale any caskets or
13 other funeral merchandise; in which or on the premises of which there is not located any
14 funeral business office or a preparation room; in which or on the premises of which no
15 funeral sales, financing, or arrangements are made; and which no owner, operator,
16 employee, or agent thereof represents the chapel to be a funeral establishment."

17 Sec. 2. G.S. 90-210.25(a)(1) reads as rewritten:

18 "(1) To be licensed for the practice of funeral directing under this Article, a
19 person must:

20 a. Be at least 18 years of age,

- 1 b. Be of good moral character,
2 c. Have completed a minimum of 32 semester hours or 48 quarter
3 hours of instruction in a course of study including the subjects set
4 out in items e.1. and 2. of this subsection in a mortuary science
5 college approved by the Board, or be a graduate of a mortuary
6 science college approved by the Board.
7 d. Have completed 12 months of resident traineeship as funeral
8 director, pursuant to the procedures and conditions set out in G.S.
9 90-210.25(a)(4), either before or after satisfying the educational
10 requirement under item c. of this subsection, and
11 e. Have passed an oral or written funeral director examination on
12 the following subjects:
13 1. ~~Basic health sciences, including microbiology, hygiene, and~~
14 ~~public health, Psychology, sociology, funeral directing,~~
15 ~~business law, funeral law, funeral management and~~
16 ~~accounting, and~~
17 2. ~~Funeral service administration, including accounting,~~
18 ~~psychology, funeral principles and directing, and~~
19 3. Laws of North Carolina and rules of the Board of
20 Mortuary Science and other agencies dealing with the
21 care, transportation and disposition of dead human
22 bodies."

23 Sec. 3. G.S. 90-210.25(a)(2) reads as rewritten:

- 24 "(2) To be licensed for the practice of embalming under this Article, a person
25 must:
26 a. Be at least 18 years of age,
27 b. Be of good moral character,
28 c. Be a graduate of a mortuary science college approved by the
29 Board,
30 d. Have completed 12 months of resident traineeship as an
31 embalmer pursuant to the procedures and conditions set out in
32 G.S. 90-210.25(a)(4), either before or after satisfying the
33 educational requirement under item c. of this subsection, and
34 e. Have passed an oral or written embalmer examination on the
35 following subjects:
36 1. ~~Basic health sciences, including anatomy, chemistry,~~
37 ~~microbiology, pathology and forensic pathology,~~
38 ~~Embalming, restorative arts, chemistry, pathology,~~
39 ~~microbiology, and anatomy, and~~
40 2. ~~Funeral service sciences, including embalming and~~
41 ~~restorative art, and~~
42 3. Laws of North Carolina and rules of the Board of
43 Mortuary Science and other agencies dealing with the

1 care, transportation and disposition of dead human
2 bodies."

3 Sec. 4. G.S. 90-210.25(a)(3) reads as rewritten:

4 "(3) To be licensed for the practice of funeral service under this Article, a
5 person must:

- 6 a. Be at least 18 years of age,
- 7 b. Be of good moral character,
- 8 c. Be a graduate of a mortuary science college approved by the
9 Board,
- 10 d. Have completed 12 months of resident traineeship as a funeral
11 service licensee, pursuant to the procedures and conditions set
12 out in G.S. 90-210.25(a)(4), either before or after satisfying the
13 educational requirement under item c. of this subsection, and
- 14 e. Have passed an oral or written funeral service examination on the
15 following subjects:
 - 16 1. ~~Basic health sciences, including anatomy, chemistry,~~
17 ~~microbiology, pathology, forensic pathology hygiene and~~
18 ~~public health, Psychology, sociology, funeral directing,~~
19 ~~business law, funeral law, funeral management and~~
20 ~~accounting,~~
 - 21 2. ~~Funeral service sciences, including embalming and restorative~~
22 ~~art, Embalming, restorative arts, chemistry, pathology,~~
23 ~~microbiology, and anatomy, and~~
 - 24 3. ~~Funeral service administration, including accounting,~~
25 ~~psychology, funeral principles and directing, and~~
 - 26 4. Laws of North Carolina and rules of the Board of
27 Mortuary Science and other agencies dealing with the
28 care, transportation and disposition of dead human
29 bodies."

30 Sec. 5. G.S. 90-210.25 is amended by adding a new subsection to read:

31 "(a1) Inactive Licenses. – Any person holding a license, issued by the Board for
32 funeral directing, for embalming, or for the practice of funeral service may apply for an
33 inactive license in the same category as the active license held. The inactive license is
34 renewable annually. Continuing education is not required for the renewal of an inactive
35 license. The only activity that a holder of an inactive license may engage in is to vote
36 pursuant to G.S. 90-210.18(c)(2). The holder of an inactive license may apply for an
37 active license in the same category, and the Board shall issue an active license, provided
38 that the applicant has completed in North Carolina a total number of hours of accredited
39 continuing education equal to five times the number of years the applicant held the
40 inactive license. No application fee is required for the active license. The holder of an
41 inactive license shall surrender the inactive license to the Board."

42 Sec. 6. G.S. 90-210.25(b)(3) reads as rewritten:

1 "(3) The Board may issue special permits, to be known as courtesy cards,
2 permitting nonresident funeral directors, embalmers and funeral service
3 licensees to remove bodies from and to arrange and direct funerals and
4 embalm bodies in this State, but these privileges shall not include the
5 right to establish a place of business in or engage generally in the
6 business of funeral directing and embalming in this State. Provided,
7 except for special permits issued by the Board for teaching continuing
8 education programs and for work in connection with disasters, no
9 special permits may be issued to nonresident funeral directors,
10 embalmers, and funeral service licensees from states that do not issue
11 similar courtesy cards to persons licensed in North Carolina pursuant to
12 this Article."

13 Sec. 7. G.S. 90-210.27A(g) reads as rewritten:

14 "(g) No funeral establishment or other licensee under this Article shall own,
15 operate, or maintain a funeral chapel without first having registered the name, location,
16 and ownership thereof with the Board."

17 Sec. 8. G.S. 90-210.41 reads as rewritten:

18 "**§ 90-210.41. Definitions.**

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

20 (1) 'Authorizing agent' means a person legally entitled to order the
21 cremation of human remains. An authorizing agent shall be, in order of
22 priority, a spouse, an adult child, a parent, any adult sibling, guardian or
23 close relation of the deceased. In the case of indigents or any other
24 individuals whose final disposition is the responsibility of the State, a
25 public official charged with arranging the final disposition of the
26 deceased, if legally authorized, may serve as the authorizing agent. In
27 the case of individuals whose death occurred in a nursing home or other
28 private institution, and in which the institution is charged with making
29 arrangements for the final disposition of the deceased, a representative
30 of the institution, if legally authorized, may serve as the authorizing
31 agent. The authorizing agent for the cremation of a body part is the
32 owner, if living and competent, or, if not, then the authorizing agents set
33 forth in this subdivision according to the order of priorities in this
34 subdivision.

35 (2) 'Board' means the North Carolina State Board of Mortuary Science.

36 (3) ~~'Casket' means a rigid container which is designed for the encasement of~~
37 ~~human remains and which is usually constructed of wood, metal or~~
38 ~~other rigid material and ornamented and lined with fabric.~~

39 (4) 'Closed container' means any container in which cremated remains can
40 be placed and closed in a manner so as to prevent leakage or spillage of
41 cremated remains or the entrance of foreign material.

- 1 (5) 'Cremated remains' means all human remains recovered after the
2 completion of the cremation process, including pulverization which
3 leaves only bone fragments reduced to unidentifiable dimensions.
- 4 (6) 'Cremation' means the technical process, using heat, that reduces human
5 remains to bone fragments.
- 6 (7) 'Cremation chamber' means the enclosed space within which the
7 cremation process takes place. Cremation chambers covered by this
8 Article shall be used exclusively for the cremation of human remains.
- 9 (8) 'Cremation container' means the container in which the human remains
10 are placed in the cremation chamber for a cremation. A cremation
11 container must meet all of the standards established by the rules adopted
12 by the Board.
- 13 (9) 'Crematory' means the building or portion of a building that houses the
14 cremation chamber and that may house the holding facility, business
15 office or other part of the crematory business. A crematory must
16 comply with any applicable public health laws and rules and must
17 contain the equipment and meet all of the standards established by the
18 rules adopted by the Board.
- 19 (10) 'Crematory authority' means the North Carolina Crematory Authority.
- 20 (11) 'Crematory operator' means the legal entity which is licensed by the
21 Board to operate a crematory and perform cremations.
- 22 ~~(12) 'Holding facility' means an area within or adjacent to the crematory,
23 designated for the retention of human remains prior to cremation. A
24 holding facility must comply with any applicable public health laws and
25 rules and must meet all of the standards established by the rules adopted
26 by the Board.~~
- 27 (13) 'Human remains' means the body of a deceased person, ~~or part of a body
28 or limb that has been removed from a living or deceased person. or a human
29 fetus, regardless of the length of gestation, or part of a body that was
30 surgically removed or otherwise separated from a person who was
31 living when the part was removed or separated, or part of a body that
32 was separated accompanying the trauma connected with the death.~~
- 33 (14) 'Niche' means a compartment or cubicle for the memorialization or
34 permanent placement of an urn containing cremated remains.
- 35 ~~(15) 'Scattering area' means a designated area for the scattering of cremated
36 remains.~~
- 37 ~~(16) 'Temporary container' means a temporary receptacle for cremated
38 remains, usually made of cardboard, plastic film or similar material
39 designed to hold the cremated remains until an urn or other permanent
40 container is acquired.~~
- 41 ~~(17) 'Urn' means a receptacle designed to permanently encase the cremated
42 remains."~~

43 Sec. 9. G.S. 90-210.43 reads as rewritten:

1 **"§ 90-210.43. Licensing and inspection.**

2 (a) Any person doing business in this State, or any cemetery, funeral
3 establishment, corporation, partnership, joint venture, voluntary organization or any other
4 entity may erect, maintain and conduct a crematory in this State and may provide the
5 necessary appliances and facilities for the cremation of human remains, provided that
6 such person has secured a license as a crematory operator in accordance with the
7 provisions of this Article.

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

11 (c) Application for a license as a crematory operator shall be made on forms
12 furnished and prescribed by the Board. The Board shall examine the premises and
13 structure to be used as a crematory and shall issue a renewable license to the crematory
14 operator if the applicant meets all the requirements and standards of the Board and the
15 requirements of this Article. ~~In the event of a change of ownership of a crematory, at least 30~~
16 ~~days prior to the change the new owners shall provide the Board with the name and address of~~
17 ~~the new owners.~~ All licenses shall expire on the last day of December of each year. A
18 license may be reinstated without penalty on or before the first day of February
19 immediately following expiration. After the first day of February immediately following
20 expiration, a license may be reinstated by payment of a late renewal penalty in addition to
21 the annual renewal fee. Licenses that remain expired six months or more require a new
22 application for reinstatement. Licenses are not transferable. A new application for a
23 license shall be made to the Board within 30 days following a change of ownership of
24 more than fifty percent (50%) of the business.

25 (d) Every application for licensure shall identify the individual who is responsible
26 for overseeing the management and operation of the crematory. The crematory operator
27 shall keep the Board informed at all times of the name and address of the manager.

28 (e) No person, cemetery, funeral establishment, corporation, partnership, joint
29 venture, voluntary organization or any other entity shall cremate any human remains,
30 except in a crematory licensed for this express purpose and under the limitations provided
31 in this ~~Article.~~ Article, or unless otherwise permitted by statute.

32 (f) Whenever the Board finds that an owner, partner or officer of a crematory
33 operator or an applicant to become a crematory operator, or that any agent or employee of
34 a crematory operator or an applicant to become a crematory operator, with the direct or
35 implied permission of such owner, partner or officer, has violated any provision of this
36 Article, or is guilty of any of the following acts, and when the Board also finds that the
37 crematory operator or applicant has thereby become unfit to practice, the Board may
38 suspend, revoke, or refuse to issue or renew the license, in accordance with the
39 procedures of Chapter 150B:

- 40 (1) Conviction of a felony or a crime involving fraud or moral turpitude;
- 41 (2) Fraud or misrepresentation in obtaining or renewing a license or in the
42 practice of cremation;
- 43 (3) False or misleading advertising;

- 1 (4) Gross immorality, including being under the influence of alcohol or
2 drugs while performing cremation services;
- 3 (5) Using profane, indecent or obscene language in the presence of a dead
4 human body, and within the immediate hearing of the family or relatives
5 of a deceased, whose body has not yet been cremated or otherwise
6 disposed of;
- 7 (6) Violating or cooperating with others to violate any of the provisions of
8 this Article or of the rules of the Board;
- 9 (7) Violation of any State law or municipal or county ordinance or
10 regulation affecting the handling, custody, care or transportation of dead
11 human bodies;
- 12 (8) Refusing to surrender promptly the custody of a dead human body or
13 cremated remains upon the express order of the person lawfully entitled
14 to the custody thereof, except as provided in G.S. 90-210.47(e);
- 15 (9) Indecent exposure or exhibition of a dead human body while in the
16 custody or control of a licensee.

17 (g) The Board and Crematory Authority may hold hearings in accordance with the
18 provisions of this Article and Chapter 150B. Any such hearing shall be conducted jointly
19 by the Board and the Crematory Authority. The Board and the Crematory Authority shall
20 jointly constitute an 'agency' under Article 3A of Chapter 150B of the General Statutes
21 with respect to proceedings initiated pursuant to this Article. The Board is empowered to
22 regulate and inspect crematories and crematory operators and to enforce as provided by
23 law the provisions of this Article and the rules adopted hereunder. Any crematory that,
24 upon inspection, is found not to meet all of the requirements of this Article shall pay a
25 reinspection fee to the Board for each additional inspection that is made to ascertain
26 whether the deficiency or other violation has been corrected.

27 In addition to the powers enumerated in Chapter 150B of the General Statutes, the
28 Board shall have the power to administer oaths and issue subpoenas requiring the
29 attendance of persons and the production of papers and records before the Board in any
30 hearing, investigation or proceeding conducted by it or conducted jointly with the
31 Crematory Authority. Members of the Board's staff or the sheriff or other appropriate
32 official of any county of this State shall serve all notices, subpoenas and other papers
33 given to them by the President of the Board for service in the same manner as process
34 issued by any court of record. Any person who neglects or refuses to obey a subpoena
35 issued by the Board shall be guilty of a Class 1 misdemeanor."

36 Sec. 10. G.S. 90-210.45 reads as rewritten:

37 **"§ 90-210.45. Cremation procedures.**

38 (a) No human body shall be cremated before the crematory operator receives a
39 death certificate signed by the attending physician or an authorization for cremation
40 signed by a medical examiner.

41 (b) Human remains shall not be cremated within 24 hours after the time of death,
42 unless such death was a result of an infectious, contagious or communicable and
43 dangerous disease as listed by the Commission of Health Services pursuant to G.S. 130A-

1 134, and unless such time requirement is waived in writing by the medical examiner,
2 county health director, or attending physician where the death occurred. In the event
3 such death comes under the jurisdiction of the medical examiner, the human remains
4 shall not be received by the crematory operator until authorization to cremate has been
5 received in writing from the medical examiner of the county in which the death occurred.
6 In the event the crematory operator is authorized to perform funerals as well as
7 cremation, this restriction on the receipt of human remains shall not be applicable.

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

13 (c1) Human remains shall be cremated only while enclosed in a cremation
14 container.

15 (d) The simultaneous cremation of the human remains of more than one person
16 within the same cremation chamber is forbidden.

17 (d1) Every crematory shall have a holding facility, within or adjacent to the
18 crematory, designated for the retention of human remains prior to cremation. The
19 holding facility must comply with any applicable public health laws and rules and must
20 meet all of the standards established pursuant to rules adopted by the Board.

21 (e) Crematory operators shall comply with standards established by the Board for the
22 reduction and pulverization of human remains by the cremation process."

23 Sec. 11. G.S. 90-210.46(a) reads as rewritten:

24 "(a) The authorizing agent shall provide the person with whom cremation
25 arrangements are made with a signed statement specifying the ultimate disposition of the
26 cremated remains, if known. ~~A copy of this statement shall be retained by the crematory~~
27 ~~operator.~~ The crematory operator may store or retain cremated remains as directed by the
28 authorizing agent. Records of retention and disposition of cremated remains shall be kept
29 by the crematory operator pursuant to G.S. 90-210.44."

30 Sec. 12. G.S. 90-210.47(b) reads as rewritten:

31 "(b) A crematory operator shall have authority to cremate human remains only
32 upon the receipt of a cremation authorization form signed by an authorizing agent. There
33 shall be no liability of a crematory operator that cremates human remains pursuant to
34 such authorization, or that releases or disposes of the cremated remains pursuant to such
35 authorization."

36 Sec. 13. G.S. 90-210.60(3) reads as rewritten:

37 "(3) 'Insurance company' means any corporation, limited liability company,
38 association, partnership, society, order, individual or aggregation of
39 individuals engaging in or proposing or attempting to engage as
40 principals in any kind of insurance business, including the exchanging
41 of reciprocal or interinsurance contracts between individuals,
42 partnerships, and corporations;".

43 Sec. 14. G.S. 90-210.67(a) reads as rewritten:

1 "(a) No person may offer or sell preneed funeral contracts or offer to make or make
2 any funded funeral prearrangements without first securing a license from the Board.
3 There shall be two types of licenses: a preneed funeral establishment license and a
4 preneed sales license. Only funeral establishments holding a valid establishment permit
5 pursuant to G.S. 90-210.25(d) shall be eligible for a preneed funeral establishment
6 license. Employees and agents of such entities, upon meeting the qualifications to engage
7 in preneed funeral planning as established by the Board, shall be eligible for a preneed
8 sales license. The Board shall establish the preneed funeral planning activities that are
9 permitted under a preneed sales license. The Board shall adopt rules establishing such
10 qualifications and activities no later than 12 months following the ratification of this act.
11 Preneed sales licensees may sell preneed funeral contracts, prearrangement insurance
12 policies, and make funded funeral prearrangements only on behalf of one preneed funeral
13 establishment licensee; provided, however, they may sell preneed funeral contracts,
14 prearrangement insurance policies, and make funeral prearrangements for any number of
15 licensed preneed funeral establishments that are wholly owned by or affiliated with,
16 through common ownership or contract, the same entity; provided further, in the event
17 they engage in selling prearrangement insurance policies, they shall meet the licensing
18 requirements of the Commissioner of Insurance. Every preneed funeral contract shall be
19 signed by a person licensed as a funeral director or funeral service licensee pursuant to
20 Article 13A of Chapter 90 of the General Statutes.

21 Application for a license shall be in writing, signed by the applicant and duly verified
22 on forms furnished by the Board. Each application shall contain at least the following: the
23 full names and addresses (both residence and place of business) of the applicant, and
24 every partner, member, officer and director thereof if the applicant is a partnership,
25 limited liability company, association, or corporation and any other information as the
26 Board shall deem necessary. A preneed funeral establishment license shall be valid only
27 at the address stated in the application or at a new address approved by the Board."

28 Sec. 15. G.S. 90-210.70(c) reads as rewritten:

29 "(c) If a corporation or limited liability company embezzles or fraudulently or
30 knowingly and willfully misapplies or converts preneed funeral funds as provided in
31 subsection (a) hereof or otherwise violates any provision of this Article, the officers,
32 directors, members, agents, or employees responsible for committing the offense shall be
33 fined or imprisoned as herein provided."

34 Sec. 16. Article 13D of Chapter 90 is amended by adding a new section to
35 read:

36 "**§ 90-210.73. Not public record.**

37 The names and addresses of the purchasers and beneficiaries of preneed funeral
38 contracts filed with the Board shall not be subject to Chapter 132 of the General
39 Statutes."

40 Sec. 17. This act is effective upon ratification.