

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

3

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

Short Title: Mortuary Science Changes.

(Public)

Sponsors:

Referred to:

March 2, 1999

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

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 143B-472.2 reads as rewritten:

7 "**§ 143B-472.2. Duties of Board; meetings.**

8 It shall be the duty of the North Carolina Board of Mortuary Science to supervise,
9 pursuant to this Article, all burial associations authorized by this Article to operate in
10 North Carolina, to determine that such associations are operated in conformity with this
11 Article and the rules adopted pursuant to this Article; to ~~assist the Board of Mortuary~~
12 ~~Science with prosecution of~~ prosecute violations of this Article or rules adopted pursuant
13 thereto; and to protect the interest of members of mutual burial associations.

14 The North Carolina Board of Mortuary Science, after a public hearing, may
15 promulgate reasonable rules and regulations for the enforcement of this Article and in
16 order to carry out the intent thereof. The Board is authorized and directed to adopt
17 specific rules to provide for the orderly transfer of a member's benefits in cash or
18 merchandise and services from the funeral director sponsoring the member's association

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

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

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

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

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

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

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

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

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

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

15 (b) Upon receipt of a written proposal:

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

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

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

23 b. State the purpose of the meeting.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 10 (1) Cease accepting new members.
11 (2) Collect all debts owed to the association and pay all debts owed by the
12 association from monies on hand, including the reserve.
13 (3) Distribute pro rata any remaining monies on hand and in the reserve
14 among those who were members of the association and whose transfer
15 could not be accomplished on the date that the liquidation order was
16 issued by the Board. Each member's distributive share shall be
17 determined by dividing the amount of the member's benefit by the
18 aggregate benefits of all members of the association and then
19 multiplying the total amount of money available for distribution by the
20 percentage so derived. Assessments owed by the members to the
21 association at the time of distribution shall be taken into account and
22 shall be offset against the members' distributive shares.
23 (4) Issue a certificate to members in an amount that equals the difference
24 between the distributive share issued in subdivision (3) of this
25 subsection and the full amount of the member's association benefit.
26 Any certificate issued shall supersede and supplant any other certificate
27 already issued by the association. The certificate shall be on a form
28 prescribed by the Board and shall be prepared and distributed by the
29 association at its expense.
30 (5) File a final report with the Board on or before December 31 in the year
31 in which the order of liquidation was issued. This report shall show all
32 receipts and disbursements, including the amount distributed to each
33 member, since the last annual report of the association was filed with
34 the Board.

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

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

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

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

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

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

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

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

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

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