

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 703

Short Title: Abolish Cemetery Comm/Amend Funeral Laws. (Public)

Sponsors: Representative K. Alexander (Primary Sponsor).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Rules, Calendar, and Operations of the House.

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO ABOLISH THE NORTH CAROLINA CEMETERY COMMISSION AND TRANSFER ITS POWERS AND DUTIES UNDER THE NORTH CAROLINA CEMETERY ACT TO THE NORTH CAROLINA BOARD OF FUNERAL SERVICE (BOARD); EXTEND THE JURISDICTION OF THE BOARD TO INCLUDE PUBLIC, PRIVATE, RELIGIOUS, AND FRATERNAL CEMETERIES; REQUIRE THAT PROVISIONS BE MADE IN ALL CEMETERIES FOR GREEN BURIALS; EXPAND THE MEMBERSHIP OF THE BOARD FROM NINE TO TWELVE MEMBERS; INCLUDE UNDER THE JURISDICTION OF THE BOARD ANY PERSON OR ENTITY SELLING FUNERAL MERCHANDISE TO THE GENERAL PUBLIC; DIRECT THE BOARD TO MAKE CERTAIN CONSIDERATIONS IN DETERMINING VIOLATIONS FOR LICENSEES; CLARIFY WHAT CONSTITUTES ABANDONED HUMAN REMAINS UNDER THE LAWS PERTAINING TO PUBLIC HEALTH AND THE DISPOSITION OF UNCLAIMED BODIES; DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO PREPARE A REPORT ON THE EFFECTS OF GROUND WATER QUALITY OF HYDROLYSIS AS A MEANS OF DISPOSAL OF HUMAN REMAINS; AND MANDATE LIQUIDATION OF ALL MUTUAL BURIAL ASSOCIATIONS WITH ASSETS OF NO MORE THAN TEN THOUSAND DOLLARS.

The General Assembly of North Carolina enacts:

SECTION 1. Except for G.S. 65-49 through G.S. 65-52, which are repealed, Article 9 of Chapter 65 of the General Statutes, G.S. 65-46 through G.S. 65-73, is recodified as Article 13G of Chapter 90 of the General Statutes, G.S. 90-210.140 through G.S. 90-210.164.

SECTION 2. G.S. 90-210.140, as recodified by Section 1 of this act, reads as rewritten:

"§ 90-210.140. Short title.

This Article 9 may be cited as "~~North Carolina Cemetery Act.~~"the 'North Carolina Cemetery Act.'"

SECTION 3. G.S. 90-210.141(b), as recodified by Section 1 of this act, reads as rewritten:

"(b) Any cemetery beneficially owned and operated by a fraternal organization or its corporate agent for at least 50 years prior to September 1, 1975, shall be exempt from the provisions of ~~Article 9 of this Chapter.~~this Article."

SECTION 4. G.S. 90-210.142, as recodified by Section 1 of this act, reads as rewritten:



1 **"§ 90-210.142. Definitions.**

2 As used in this Article, unless otherwise stated or unless the context or subject matter
3 clearly indicates otherwise:

4 ...

5 (2a) 'Board' means the North Carolina Board of Funeral Service.

6 ...

7 ~~(9) "Commission" means the North Carolina Cemetery Commission.~~

8"

9 **SECTION 5.** G.S. 90-210.143, as recodified by Section 1 of this act, reads as
10 rewritten:

11 **"§ 90-210.143. Powers.**

12 In addition to other powers conferred by this Article, the ~~Cemetery Commission~~Board shall
13 have the following powers and duties:

14 (1) ~~The administrator shall be appointed by the Governor upon recommendation~~
15 ~~of the Cemetery Commission. The compensation of the administrator and~~
16 ~~such other personnel as is necessary to operate the Commission is subject to~~
17 ~~the provisions of Chapter 126 of the General Statutes of North Carolina. The~~
18 ~~Commission is authorized and empowered to employ such staff, including~~
19 ~~legal counsel, as may be necessary.~~

20"

21 **SECTION 6.** G.S. 90-210.146, as recodified by Section 1 of this act, reads as
22 rewritten:

23 **"§ 90-210.146. Existing companies; effect of Article.**

24 Existing cemetery companies at the time of the adoption of this Chapter shall continue in
25 full force and effect and be granted a license but shall hereafter be operated in accordance with
26 the provisions of ~~Article 9 of this Chapter~~this Article."

27 **SECTION 7.** Article 11 of Chapter 65 of the General Statutes, G.S. 65-77, is
28 recodified as Article 13H of Chapter 90 of the General Statutes, G.S. 90-210.170.

29 **SECTION 8.** The following Parts of Article 12 of Chapter 65 of the General
30 Statutes are recodified as follows:

31 (1) Part 1 of Article 12 of Chapter 65 of the General Statutes, G.S. 65-85, is
32 recodified as Part 1 of Article 13I of Chapter 90 of the General Statutes,
33 G.S. 90-210.175.

34 (2) Part 2 of Article 12 of Chapter 65 of the General Statutes, G.S. 65-91
35 through G.S. 65-96, is recodified as Part 2 of Article 13I of Chapter 90 of the
36 General Statutes, G.S. 90-210.180 through G.S. 90-210.185.

37 (3) Part 3 of Article 12 of Chapter 65 of the General Statutes, G.S. 65-101 and
38 G.S. 65-102, is recodified as Part 3 of Article 13I of Chapter 90 of the
39 General Statutes, G.S. 90-210.190 and G.S. 90-210.191.

40 (4) Part 4 of Article 12 of Chapter 65 of the General Statutes, G.S. 65-106, is
41 recodified as Part 4 of Article 13I of Chapter 90 of the General Statutes,
42 G.S. 90-210.200.

43 (5) Part 5 of Article 12 of Chapter 65 of the General Statutes, G.S. 65-111
44 through G.S. 65-113, is recodified as Part 5 of Article 13I of Chapter 90 of
45 the General Statutes, G.S. 90-210.205 through G.S. 90-210.207.

46 **SECTION 9.** G.S. 90-210.18A(b) reads as rewritten:

47 **"§ 90-210.18A. Board of Funeral Service created; qualifications; vacancies; removal.**

48 (b) The North Carolina Board of Funeral Service is created and shall regulate the
49 practice of funeral service in this State. The Board shall have ~~nine~~12 members as follows:

- 1 (1) Four members appointed by the Governor from nominees recommended by
2 the North Carolina Funeral Directors Association, Inc. These members shall
3 be persons licensed under this Article.
- 4 (2) Two members appointed by the Governor from nominees recommended by
5 the Funeral Directors & Morticians Association of North Carolina, Inc.
6 These members shall be persons licensed under this Article.
- 7 (3) One member appointed by the Governor who is licensed under this Article
8 and who is not affiliated with any funeral service trade association.
- 9 (3a) One member appointed by the Governor who is not licensed under Article
10 13G of this Chapter and who is a consumer advocate interested in cemetery
11 issues.
- 12 (4) One member appointed by the General Assembly, upon the recommendation
13 of the President Pro Tempore of the Senate. This member shall be a person
14 who is not licensed under this Article or employed by a person who is
15 licensed under this Article.
- 16 (4a) One member appointed by the General Assembly, upon the recommendation
17 of the President Pro Tempore of the Senate. This member shall be a person
18 who is licensed under Article 13G of this Chapter and is a representative of
19 the cemetery industry.
- 20 (5) One member appointed by the General Assembly, upon the recommendation
21 of the Speaker of the House of Representatives. This member shall be a
22 person who is not licensed under this Article or employed by a person who is
23 licensed under this Article.
- 24 (6) One member appointed by the General Assembly, upon the recommendation
25 of the Speaker of the House of Representatives. This member shall be a
26 person who is licensed under Article 13G of this Chapter and is a
27 representative of the cemetery industry.

28 Members of the Board shall serve staggered three-year terms, ending on December 31 of
29 the last year of the term or when a successor has been duly appointed, whichever is later. No
30 member may serve more than two complete consecutive terms."

31 **SECTION 10.** G.S. 90-210.23 is amended by adding a new subsection to read:

32 "(j) The Board shall have the power to regulate and adopt rules regarding any
33 individual, partnership, corporation, or other business entity selling funeral merchandise to the
34 public so long as any rules adopted pursuant to this subsection are in accordance with the
35 Federal Trade Commission Funeral regulation prohibiting deceptive acts and
36 misrepresentations regarding funeral merchandise."

37 **SECTION 11.** G.S. 90-210.25(e)(1) reads rewritten:

38 "(e) Revocation; Suspension; Compromise; Disclosure. –

- 39 (1) Whenever the Board finds that an applicant for a license or a person to
40 whom a license has been issued by the Board is guilty of any of the
41 following acts or omissions and the Board also finds that the person has
42 thereby become unfit to practice, the Board may suspend or revoke the
43 license or refuse to issue or renew the license, in accordance with the
44 procedures set out in Chapter 150B of the General Statutes:
- 45 a. Conviction of a felony or a crime involving fraud or moral turpitude.
- 46 a1. Denial, suspension, or revocation of an occupational or business
47 license by another jurisdiction.
- 48 b. Fraud or misrepresentation in obtaining or renewing a license or in
49 the practice of funeral service.
- 50 c. False or misleading advertising as the holder of a license.

- 1 d. Solicitation of dead human bodies by the licensee, his agents,
2 assistants, or employees; but this paragraph shall not be construed to
3 prohibit general advertising by the licensee.
- 4 e. Employment directly or indirectly of any resident trainee agent,
5 assistant or other person, on a part-time or full-time basis, or on
6 commission, for the purpose of calling upon individuals or
7 institutions by whose influence dead human bodies may be turned
8 over to a particular licensee.
- 9 f. The payment or offer of payment of a commission by the licensee,
10 his agents, assistants or employees for the purpose of securing
11 business except as authorized by Article 13D of this Chapter.
- 12 g. Gross immorality, including being under the influence of alcohol or
13 drugs while practicing funeral service.
- 14 h. Aiding or abetting an unlicensed person to perform services under
15 this Article, including the use of a picture or name in connection with
16 advertisements or other written material published or caused to be
17 published by the licensee.
- 18 i. Failing to treat a dead human body with respect at all times.
- 19 j. Violating or cooperating with others to violate any of the provisions
20 of this Article or Articles 13D, 13E, or 13F of Chapter 90 of the
21 General Statutes, any rules and regulations of the Board, or the
22 standards set forth in Funeral Industry Practices, 16 C.F.R. 453
23 (1984), as amended from time to time.
- 24 k. Violation of any State law or municipal or county ordinance or
25 regulation affecting the handling, custody, care or transportation of
26 dead human bodies.
- 27 l. Refusing to surrender promptly the custody of a dead human body or
28 cremated remains upon the express order of the person lawfully
29 entitled to the custody thereof.
- 30 m. Knowingly making any false statement on a certificate of death or
31 violating or cooperating with others to violate any provision of
32 Article 4 or 16 of Chapter 130A of the General Statutes or any rules
33 or regulations promulgated under those Articles as amended from
34 time to time.
- 35 n. Indecent exposure or exhibition of a dead human body while in the
36 custody or control of a licensee.

37 In any case in which the Board is entitled to suspend, revoke or refuse to
38 renew a license, the Board may accept from the licensee an offer to pay a
39 penalty of not more than five thousand dollars (\$5,000). The Board may
40 either accept a penalty or revoke or refuse to renew a license, but not both.
41 In determining sanctions for licensees who have violated the provisions of
42 this Article, the Board shall consider the following:

- 43 1. The licensee's reputation in the community.
44 2. The length of time the licensee has been licensed to practice
45 funeral service.
46 3. The number and severity of Board findings against the
47 licensee within the three years immediately preceding the
48 date sanctions are considered.

49 "

50 **SECTION 12.** G.S. 90-210.80 reads as rewritten:
51 "Article 13E.

"Mutual Burial Associations.

"§ 90-210.80. Duties of Board; meetings.

It shall be the duty of the North Carolina Board of Funeral Service to supervise, pursuant to this Article, all burial associations authorized by this Article to operate in North Carolina, to determine that such associations are operated in conformity with this Article and the rules adopted pursuant to this Article; to prosecute violations of this Article or rules adopted pursuant thereto; and to protect the interest of members of mutual burial associations.

The North Carolina Board of Funeral Service, after a public hearing, may promulgate reasonable rules and regulations for the enforcement of this Article and in order to carry out the intent thereof. The Board is authorized and directed to adopt specific rules to provide for the orderly transfer of a member's benefits in cash or merchandise and services from the funeral director sponsoring the member's association to the funeral establishment which furnishes a funeral service, or merchandise, or both, for the burial of the member, provided that any funeral establishment to which the member's benefits are transferred in accordance with such rules shall, if located in North Carolina, be a funeral establishment registered and permitted under the provisions of G.S. 90-210.25 or shall, if located in any other state, territory or foreign country, be a funeral establishment recognized by and operating in conformity with the laws of such other state, territory or foreign country. One or more burial associations operating in North Carolina may merge into another burial association operating in North Carolina and two or more burial associations operating in North Carolina may consolidate into a new burial association provided that any such plan of merger or plan of consolidation shall be adopted and carried out in accordance with rules adopted by the Board pursuant to this Article.

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

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

SECTION 13. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"Article 13J.

"Green Burials.

"§ 90-210.215. Green burials.

On or after January 2, 2013, any cemetery licensed under Article 13G of this Chapter and offering green burials shall not increase the price for a green burial greater than the price for burial in any other section of the cemetery. The North Carolina Board of Funeral Service shall adopt rules and establish guidelines for green burials. For purposes of this section, a 'green burial' includes a burial either without an outside burial container or in a biodegradable container, such as a wooden box, cardboard container, winding sheet, or other form of biodegradable container."

SECTION 14. G.S. 130A-415 reads as rewritten:

1 "§ 130A-415. Unclaimed and abandoned bodies; bodies claimed by the Lifeguardianship
2 Council of the Association for Retarded Citizens of North Carolina;
3 disposition.

4 (a) Any person, including officers, employees and agents of the State or of any unit of
5 local government in the State, undertakers doing business within the State, hospitals, nursing
6 homes or other institutions, having physical possession of a dead body shall make reasonable
7 efforts to contact relatives of the deceased or other persons who may wish to claim the body for
8 final disposition. If the body remains unclaimed for final disposition for 10 days, the person
9 having possession shall notify the Commission of Anatomy. Upon request of the Commission
10 of Anatomy, the person having possession shall deliver the dead body to the Commission of
11 Anatomy at a time and place specified by the Commission of Anatomy or shall permit the
12 Commission of Anatomy to take and remove the body.

13 (a1) A dead body shall be deemed unclaimed under this section if any of the following
14 apply:

15 (1) Within 10 days from the date of death, the person in possession of the dead
16 body has not received notice from any person desiring to dispose of the dead
17 body.

18 (2) All individuals who have expressed an interest in arranging for the final
19 disposition of the dead body have ceased communication with the person in
20 possession of the dead body for at least 10 days from the date of the last
21 communication, including electronic communication.

22 (b) ~~All dead bodies not claimed for final disposition within 10 days of the decedent's~~
23 ~~death~~ unclaimed dead bodies may be received and delivered by the Commission of Anatomy
24 pursuant to the authority contained in G.S. 130A-33.30 and this Part and in accordance with the
25 rules of the Commission of Anatomy. Upon receipt of a body by the Commission of Anatomy
26 all interests in and rights to the unclaimed dead body shall vest in the Commission of Anatomy.
27 The recipient to which the Commission of Anatomy delivers the body shall pay all expenses for
28 the embalming and delivery of the body, and for the reasonable expenses arising from efforts to
29 notify relatives or others.

30 (b1) ~~The 10-day period-periods~~ referenced in ~~subsections (a) and (b)~~ subsection (a1) of
31 this section may be shortened by the county director of social services upon determination that
32 a dead body will not be claimed for final ~~disposition within the 10-day period.~~ disposition.

33 (b2) Notwithstanding any provision in this section, it shall be the intent of the General
34 Assembly that the surviving spouse or adult child of the deceased person bear the obligation of
35 caring for the remains of a deceased spouse or parent, including the disposition of ashes, as
36 appropriate.

37"

38 **SECTION 15.** G.S. 143B-431(a)(2) reads as rewritten:

39 "(a) The functions of the Department of Commerce, except as otherwise expressly
40 provided by Article 1 of this Chapter or by the Constitution of North Carolina, shall include:

41 ...

42 (2) All functions, powers, duties and obligations heretofore vested in an agency
43 enumerated in Article 15 of Chapter 143A, to wit:

- 44 a. The State Board of Alcoholic Control,
- 45 b. The North Carolina Utilities Commission,
- 46 c. The Employment Security Commission,
- 47 d. The North Carolina Industrial Commission,
- 48 e. State Banking Commission and the Commissioner of Banks,
- 49 f. Savings Institutions Division,
- 50 g. Repealed by Session Laws 2001-193, s. 10, effective July 1, 2001.
- 51 h. Credit Union Commission,

- 1 i. Repealed by Session Laws 2004-199, s. 27(c), effective August 17,
2 2004.
3 j. ~~The North Carolina Mutual Burial Association Commission,~~
4 k. The North Carolina Rural Electrification Authority,
5 l. The North Carolina State Ports Authority,
6 all of which enumerated agencies are hereby expressly transferred by a Type
7 II transfer, as defined by G.S. 143A-6, to this recreated and reconstituted
8 Department of Commerce; and

9"

10 **SECTION 16.** G.S. 143B-433(1) reads as rewritten:

11 **"§ 143B-433. Department of Commerce – organization.**

12 The Department of Commerce shall be organized to include:

13 (1) The following agencies:

- 14 a. The North Carolina Alcoholic Beverage Control Commission.
15 b. The North Carolina Utilities Commission.
16 c. The Employment Security Commission.
17 d. The North Carolina Industrial Commission.
18 e. State Banking Commission.
19 f. Savings Institutions Division.
20 g. Repealed by Session Laws 2001-193, s. 11, effective July 1, 2001.
21 h. Credit Union Commission.
22 i. Repealed by Session Laws 2004-199, s. 27(d), effective August 17,
23 2004.
24 j. ~~The North Carolina Mutual Burial Association Commission.~~
25 k. ~~North Carolina Cemetery Commission.~~
26 l. The North Carolina Rural Electrification Authority.
27 m. Repealed by Session Laws 1985, c. 757, s. 179(d).
28 n. North Carolina Science and Technology Research Center.
29 o. The North Carolina State Ports Authority.
30 p. Repealed by Session Laws 2010-180, s. 7(f), effective August 2,
31 2010.
32 q. Economic Development Board.
33 r. Labor Force Development Council.
34 s., t. Repealed by Session Laws 2000, c. 140, s. 76.(j), effective
35 September 30, 2000.
36 u. Navigation and Pilotage Commissions established by Chapter 76 of
37 the General Statutes.
38 v. Repealed by Session Laws 1993, c. 321, s. 313b."

39 **SECTION 17.** Any rules being considered for adoption by the North Carolina
40 Board of Funeral Service pursuant to G.S. 90-210.23, as enacted by Section 10 of this act, shall
41 be presented to the General Assembly no later than February 15, 2012.

42 **SECTION 18.** The Department of Environment and Natural Resources
43 (Department) is directed to prepare a report of the effects on ground water quality when
44 alkaline hydrolysis is used as a means of disposal of human remains, with emphasis on any
45 changes in pH and lipids generated by discharge into municipal stormwater systems or private
46 systems or directly into surface waters. The Department shall report its findings to the North
47 Carolina Board of Funeral Service and the House of Representatives Environment Committee
48 no later than February 1, 2012. No person shall use alkaline hydrolysis as a means of disposal
49 of human remains in this State until the study conducted pursuant to this section is completed
50 and the Department has adopted rules for the use of the process.

1 **SECTION 19.** All mutual burial associations operating in this State pursuant to
2 Article 13E of Chapter 90 of the General Statutes with assets of no more than ten thousand
3 dollars (\$10,000), including any reserves pursuant to G.S. 90-210.81(b), shall liquidate the
4 assets by a distribution of assets to members of record as of December 31, 2010. Each mutual
5 burial association required to liquidate assets pursuant to this section shall complete the
6 liquidation no later than December 31, 2011.

7 Each year thereafter, any mutual burial association whose assets fall below ten
8 thousand dollars (\$10,000) at the end of the annual reporting period shall liquidate assets in
9 accordance with the section no later than December 31 of the following year. Any mutual
10 burial association subject to the requirements of this section that fails to liquidate its assets shall
11 be subject to dissolution of the mutual burial association by the North Carolina Board of
12 Funeral Service.

13 **SECTION 20.(a)** The terms of members currently serving on the North Carolina
14 Cemetery Commission on the effective date of this act shall expire on the effective date of this
15 act.

16 **SECTION 20.(b)** Notwithstanding the provisions of G.S. 90-210.18A, as enacted
17 by Section 9 of this act, to establish staggered terms for the three members appointed to the
18 North Carolina Board of Funeral Service (Board) pursuant to this act, appointments to the
19 Board shall be as follows:

- 20 (1) The member appointed by the Governor pursuant to G.S. 90-210.18A(3a), as
21 enacted by Section 9 of this act, shall be appointed for a two-year term to
22 commence January 1, 2012, and expire December 31, 2014.
- 23 (2) The member appointed by the General Assembly, upon the recommendation
24 of the President Pro Tempore of the Senate, pursuant to
25 G.S. 90-210.18A(4a), as enacted by Section 9 of this act, shall be appointed
26 for a one-year term to commence January 1, 2012, and expire December 31,
27 2013.
- 28 (3) The member appointed by the General Assembly, upon the recommendation
29 of the Speaker of the House of Representatives, pursuant to
30 G.S. 90-210.18A(6), as enacted by Section 9 of this act, shall be appointed
31 for a three-year term to commence January 1, 2012, and expire December
32 31, 2015.

33 Members described in this section shall serve for the terms for which they were appointed and
34 until their successors are appointed and qualified.

35 **SECTION 21.** The Revisor of Statutes shall change the word "Commission" or the
36 phrase "Cemetery Commission" to the word "Board" wherever it appears in Article 13G of
37 Chapter 90 of the General Statutes, as recodified by Section 1 of this act.

38 **SECTION 22.** The Revisor of Statutes shall, on or after the effective date of this
39 act, correct any reference or citation in the General Statutes that is amended by this act by
40 deleting the incorrect references and substituting correct references.

41 **SECTION 23.** This act is effective when it becomes law.