

Plain Talk

From the Funeral Consumers Alliance of Maryland & Environs (FCAME)

Legislation passed will benefit consumers

FCAME joined with state funeral home and cemetery regulators to convince legislators in the Maryland General Assembly to pass three bills that will strengthen regulation of funeral homes and cemeteries in our state.

During the recently concluded session of the General Assembly, FCAME also worked with funeral home regulators in successful efforts to defeat two bills introduced on behalf of two funeral industry trade associations that would have weakened current funeral home regulation. Our combined efforts failed to stop passage of a third industry bill.

One especially important bill that FCAME and funeral home regulators fought for that would have allowed immediate access to all parts of a funeral home for inspection went down to defeat after 25 morticians and funeral directors organized by the Maryland State Funeral Directors Association showed up at hearings in the House and Senate to testify in opposition to the bill.

Another bill that FCAME supported which was defeated would have allowed state health occupation boards to require criminal background checks of individuals seeking a license in the health-related fields that are regulated by the state.

FCAME Vice President Brian Ditzler submitted written testimony 14 times and testified in person on behalf of FCAME on funeral and cemetery-related legislation at numerous House and Senate committee hearings during the session.

“Maryland consumers clearly benefitted from the funeral and cemetery-related bills that passed and were defeated by the General Assembly this year. While the three bills we wanted that passed were watered down somewhat from what

was initially proposed and there were some other disappointments too, we are pleased overall with the outcomes achieved,” said Ditzler.

Copies of FCAME testimony on the bills supported and opposed can be found on the FCAME website. Since a number of bills were cross-filed (ie., bills worded the same were introduced in both chambers) and the subject of hearings in committees of the House of Delegates and the Senate, written testimony on only the House or Senate version of the bill has been posted.

Here is a brief summary of the legislation FCAME supported and opposed during the 90 days the Maryland General Assembly was in

session this year (from January 9 to April 8, 2013).

Legislation FCAME supported Authorizing discipline of funeral establishments

(House Bill 314 / Senate Bill 358 - PASSED) - This bill allows the Board of Morticians and Funeral Directors to suspend, revoke or put on probation the license of a funeral establishment for certain violations of law if done with the knowledge or at direction of the establishment. Previously, only supervising morticians and funeral directors at funeral establishments could be subject to disciplinary action for violations of health statute and regulations.

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Testimony reveals troubling info

Testimony heard at committee hearings on two legislative proposals considered during the recent session of the Maryland General Assembly revealed some unsettling truths about the importance of inspecting funeral homes, and how inspections are done in neighboring states.

During hearings on House Bill 313 / Senate Bill 357 which sought immediate access to inspect funeral establishments, testimony mentioned some of the problems uncovered in Maryland during unannounced inspections in recent years. Problems included bodies being found piled on top of each other haphazardly on the floor, bodies totally uncovered during processing while a number of employees milled about, a woman’s breasts wired together with a rusted coat hanger, and a body positioned to be used for sex at a funeral home.

Board of Morticians and Funeral Directors staff report about 10 percent of funeral establishments have significant problems noted during unannounced inspections. Immediate access to all parts of funeral establishments is denied about 30 percent of the time because employees present claim no licensed employee (eg., apprentice, mortician or funeral director) is available to accompany the inspector.

A number of funeral directors and morticians who testified against HB 313 said they are concerned about the “bad apples” in their profession and would like to get rid of them, “But we have enough rules and regulations already.” HB 313 / SB 357 were defeated in committee because of vehement opposition from more than two dozen funeral directors and morticians who testified at the hearings.

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Legislation passed will benefit consumers *(continued from page 1)*

Increasing requirements for apprentice sponsors and supervising morticians (HB 529 / SB 463 - PASSED) - This bill requires apprentice sponsors and supervising morticians at funeral establishments to be approved by the Board of Morticians and Funeral Directors. Previously, individuals seeking to become apprentice sponsors and supervising morticians may have been on probation or otherwise not been in good standing but the Board had limited statutory authority to restrict who could perform those roles.

Increasing penalties for violating cemetery laws (HB 349 - PASSED) - Previously, the penalty that could be imposed for repeated violation of cemetery law was small and the same for subsequent offenses, which meant some individuals continued to violate the law. This bill establishes a greater penalty for a first offense and a tiered system of possible penalties for second and third violations including fines

ranging from \$5,000 to \$25,000 and/or two to 10 years imprisonment.

Providing immediate access to inspect funeral homes (HB 313 / SB 357 - DEFEATED) - Regulations specify that an owner or licensee must accompany an inspector during an inspection and sign the inspection report. This bill would have allowed immediate access to all parts of a funeral establishment, with an inspection report provided within 24 hours. FCAME's position is that if there's nothing to hide, why not permit immediate access? Any delay can permit problems to be cleaned up and evidence destroyed. The Board gives establishments several weeks after inspections to fix most deficiencies anyway.

Authorizing health occupation boards to require criminal history records check (HB 712 / SB 372 - DEFEATED) - Applications for licensure or certification from health occupation boards often include questions regarding an individual's past to ensure his/her trustworthiness, but

an individual may hide past convictions. This bill would have authorized health occupation boards to require criminal history records checks of applicants, would have protected confidentiality of such information, and allowed applicants to contest information which they said was inaccurate.

Legislation FCAME opposed
Repealing law regarding care of bodies transported out of state (HB 906 - DEFEATED) - This bill would have rolled back a provision of the Handling Human Remains with Dignity Act of 2012 that allows the Board of Morticians and Funeral Directors to ask out of state funeral establishments that take bodies from establishments in Maryland (for preparation and/or temporary storage) to agree to being inspected by the Board.

Removing naming requirements for funeral establishments (HB 1221 - DEFEATED) - Currently, the Board of Morticians and Funeral Directors requires the name of the owner of a funeral establishment be reflected in the establishment's name so consumers know who owns the business they are receiving services from. This bill would have removed that requirement and allowed any trade name to be used in the name of a funeral establishment.

Allowing funeral homes to not have a holding room - (HB905 / SB 335 - PASSED) This bill overruled a regulation from the Board of Morticians and Funeral Directors that every funeral establishment have at least a holding room where bodies can be stored temporarily, touched up before a viewing, and taken if a body starts purging gas or liquids during a viewing.

Currently, 90 percent of funeral establishments have holding and/or preparation rooms and the Board felt there should be consistency. The bill says if a funeral establishment uses a central preparation room at another establishment, it didn't need its own prep or holding room.

Testimony reveals troubling info *(cont.)*

House Bill 906 on transportation of human remains out of state, which was introduced on behalf of two funeral trade associations, would have allowed the body of a Maryland resident to be received by an out of state funeral establishment if it "is licensed by a state regulatory body or is subject to an inspection by an individual authorized by the state." That language is so broad that it would include every state in the U.S. plus the District of Columbia, and would also permit funeral establishments to be included that had failed all of their health inspections or had not had any health inspections for many years, if ever.

Testimony given in opposition to HB 906 revealed that in Pennsylvania, Delaware and DC, there are no inspections of funeral establishments by the health department but rather business inspections to verify business licenses are current.

In Virginia, health inspections are done by individuals who also visit beauty parlors and grocery stores among other businesses, and the inspectors are not trained to spot problems specific to funeral establishments. The West Virginia Board of Funeral Service Examiners conducts inspections of funeral establishments at least annually. (Maryland's Board of Morticians conducts inspections at least biannually.)

In summary, in three out of the five states adjacent to Maryland that could potentially receive bodies transported from Maryland, there are no health inspections of funeral homes, while in Virginia, health inspectors are not trained specifically to inspect funeral homes for problems.

HB 906 was killed in committee because of strong opposition from Maryland's Board of Morticians & Funeral Directors and FCAME.

Maryland's Family Security Trust Fund for victims of preneed theft pays first claim

Maryland's trust fund for victims of funeral "preneed" (prepayment) fraud and theft will soon pay its first claim since the fund began operation on January 1, 2010.

The Board of Morticians and Funeral Directors voted at its monthly public meeting on April 10, 2013, to refund 20 percent of the amount the claimant proved was stolen from him by the Paul Stella Funeral Home in Baltimore.

The decision by the Board to make only a partial payment to the first claim was intended to ensure there would be sufficient money remaining in the trust fund to handle additional refunds it anticipates will need to be made.

About \$900,000 in preneed funds are thought to have been misappropriated by Paul Stella, and more than \$750,000 in preneed funds were stolen by Bradley Allen Stewart when he was owner of Stewart Funeral Home in Oakton, MD.

The maximum amount that can be paid to a claimant is restricted to the actual monetary loss incurred by the claimant.

The percentage of payment will remain the same for all victims of the same licensee.

The balance in the Family Security Trust Fund was \$603,833 as of April 10.

All funeral establishment owners in Maryland currently are required to pay \$375 annually into the fund for every funeral establishment they own in the state.

Once the fund reaches \$1 million, funeral establishments will be required to pay a fee only if the fund balance falls below that amount.

The fund was created by legislation passed in 2008, and funeral establishments began paying into it in 2009.

Each individual or funeral establishment that the Board finds responsible for the misconduct that gave rise to a claim is expected to reimburse the trust fund for the amount paid out to each claimant, plus interest.

However, Stella and Brown are serving time in prison and are unable to

reimburse the trust fund for preneed funds they stole.

An article providing a fuller description of the Family Security Trust Fund was contained in FCAME's Spring 2010 newsletter, a copy of which can be found on the FCAME website, www.mdfunerals.org.

Consumers may lose prepaid funeral expenses if funeral home owner dies

Boxes of files from two deceased funeral home owners in Maryland sit stacked where space permits around the offices of the state Board of Morticians and Funeral Directors in Baltimore.

Board staff collected the boxes and then went digging through the files to determine which "preneed" account holders had to be notified their contracts cannot be fulfilled because the funeral homes have closed.

To make matters worse, current law allows the estates of deceased sole proprietor funeral home owners to keep all prepaid funds he/she received even if the contracts for delivery of products and services have not been fulfilled.

The only way consumers can hope to get a refund of their unused prepaid funds is to contact the estate of the deceased and make a claim before the estate is "closed", which usually occurs within six months after a death.

Recognizing that consumers are suffering from situations like this, the Board of Morticians and Funeral Directors is drafting a regulation to address the problem.

The first draft of the regulation presented to the Board by its Preneed Committee would require that upon the death of the sole owner of a licensed funeral establishment, a notice of the death must be published in a local newspaper within three days and notification letters must be sent to all preneed account holders within 14 days of the death.

FCAME has provided written and verbal suggestions to the Board and its staff that would strengthen the regulation being drafted, and will continue to be involved to hopefully influence the content of the regulation.

FCAME also may help address the problem through legislation that can be introduced in the next session of the Maryland General Assembly.

Individuals wanting a full perspective on the advantages and disadvantages of prepaying for funeral goods and services can reference articles in FCAME's Winter 2011 newsletter, copies of which can be found on the FCAME website, www.mdfunerals.org.

Plain Talk is the newsletter of the Funeral Consumers Alliance of Maryland & Environs, the volunteer-run regional chapter of the national non-profit consumer education and advocacy organization, the Funeral Consumers Alliance (FCA). FCAME serves residents in Maryland, DC and Delaware.

President - Barbara Blaylock
Vice President & director of communications - Brian Ditzler
Treasurer - F. (Knick) Knickerbocker
Financial assistant- Dimitrios Rizos
Other board member- Earl Kragnes
FCAME phone: 301-564-0006
email: info@mdfunerals.org
website: www.mdfunerals.org

Funeral Consumers Alliance of Maryland & Environs

9601 Cedar Lane
Bethesda, MD 20814

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FCAME needs your support to fulfill its mission

To join or remain a member of FCAME, we encourage an initial contribution of at least \$25, plus a similar donation at least every other year to help support FCAME as well as our national organization, FCA, which is sent a portion of the donation we receive.

What you get for being a member of FCAME:

- Information and advice that enable you to make more informed choices when planning a funeral, burial, cremation, memorial service and other options for after death care.
- Periodic newsletters with current information and advice that supplement what we provide on our website, www.mdfunerals.org.
- Results of periodic price surveys of the funeral industry in our area.
- An invitation to our annual meeting.
- Membership in the only regional and national non-profit organization that focuses solely on consumer education and advocacy of fair practices in the death care industry

through state and national legislation and regulation.

Individuals who give FCAME gifts of \$100 or more will be recognized

periodically in a special section of *Plain Talk*, the FCAME Newsletter.

If you'd might like to become more involved with FCAME, let us know.

Quorum quandary

FCAME's Board of Trustees meets monthly to handle the business of the organization. Typical topics discussed include problems with funeral or cemetery establishments learned about by people calling FCAME's phone, changes in relevant government regulation, relevant legislation, speaker opportunities, the FCAME website and newsletter, and membership issues.

According to FCAME's Bylaws, an annual meeting is supposed to be held for FCAME members where the election of trustees occurs and changes to the Bylaws can be voted on. The Bylaws also state, "At any meeting of the membership, a quorum shall consist of 10 percent of the total enrolled membership or 12 members, whichever is the lesser." Rules like these assure good order, but we have a problem. At the last two annual meetings, informative and useful though they were, we have not had a quorum.

For FCAME to continue functioning and obey its Bylaws, something needs to change. Would it make sense to amend the Bylaws to allow FCAME members to vote on major issues, such as electing members to the Board, via mail and email? Should we amend the Bylaws' definition of a quorum? Managing FCAME in a thoroughly professional way is important to your Board, so we would like to receive your suggestions on this. Please give us your ideas: by phone at 301 564-0006; by the Internet at info@mdfunerals.org; or by mail at FCAME, 9601 Cedar Lane, Bethesda, MD 20814 using the envelope included with this newsletter.