

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

S.L. 1997-313
SENATE BILL 930

AN ACT TO ABOLISH THE MUTUAL BURIAL ASSOCIATION COMMISSION
AND TO TRANSFER ITS DUTIES TO THE BOARD OF MORTUARY
SCIENCE.

Whereas, mutual burial associations no longer provide an adequate funeral benefit for their members, considering the current cost of funerals, and have largely fulfilled their function; and

Whereas, many mutual burial associations have merged with or sold their assets to insurance companies, and others contemplate doing so; and

Whereas, a number of the remaining associations are not financially sound and have little likelihood of becoming so; and

Whereas, the number of associations remaining after all mergers are accomplished will be inadequate, in all likelihood, to support the activities of the Mutual Burial Association Commission; and

Whereas, as it is appropriate to provide for the merger or dissolution of associations which are not financially sound, to transfer the duties and responsibilities of the Commission for any remaining associations to the Board of Mortuary Science, and to abolish the Commission; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Effective January 1, 1998, the authority, powers, duties, and functions vested in the North Carolina Mutual Burial Association Commission and in the Burial Association Administrator by Part 13 of Article 10 of Chapter 143B of the General Statutes are transferred to the North Carolina Board of Mortuary Science, created by Article 13A of Chapter 90 of the General Statutes, and the North Carolina Mutual Burial Association Commission is abolished. All records, property, and unexpended balances of funds of the North Carolina Mutual Burial Association Commission and the Burial Association Administrator are transferred in their entirety to the Board of Mortuary Science. On and after January 1, 1998, the Board of Mortuary Science shall be responsible for the administration of Part 13 of Article 10 of Chapter 143B of the General Statutes.

Section 2. Effective January 1, 1998, G.S. 143B-472 and G.S. 143B-472.1 are repealed.

Section 3. Effective January 1, 1998, G.S. 143B-472.2 reads as rewritten:

"§ 143B-472.2. Duties of ~~Commission; Board; meetings; meetings.~~ Burial Administrator; secretary.

It shall be the duty of the ~~North Carolina Mutual Burial Association Commission~~ North Carolina Board of Mortuary Science 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 ~~and regulations~~ adopted pursuant to this Article; to assist the Burial Association Administrator with prosecution of violations of this Article or rules ~~and regulations~~ adopted pursuant thereto; ~~to counsel with and advise the Burial Association Administrator in the performance of his duties~~ and to protect the interest of members of mutual burial associations.

~~The North Carolina Mutual Burial Association Commission,~~ The North Carolina Board of Mortuary Science, 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 ~~Commission Board~~ is authorized and directed to adopt specific rules ~~and regulations~~ 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 ~~and regulations~~ shall, if located in North Carolina, be a funeral establishment registered and permitted under the provisions of ~~G.S. 90-210.17~~ 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 ~~and regulations~~ adopted by the ~~Commission Board~~ pursuant to this Article.

All rules ~~and regulations~~ heretofore adopted by the Burial Association Administrator or the Mutual Burial Association Commission 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 ~~Burial Association Commission~~ North Carolina Board of Mortuary Science as set out above, or until nullified or made inoperative or unenforceable because of statutory enactment or court decision.

~~The Commission shall elect its own chairman, who shall vote only when the Commission is evenly divided.~~

~~The Commission shall hold regular meetings at least twice each year, and more often if called by the chairman in Raleigh, or such place in North Carolina as the chairman may direct. Special meetings of the Commission may also be called in Raleigh or such other place in North Carolina as they may direct, by a majority of the Commission.~~

~~The Burial Association Administrator shall serve as secretary of the Commission and shall keep minutes of all regular and special meetings.~~

~~All regular or special meetings of the Commission, unless a majority of the members of the Commission vote otherwise, shall be open to the public. All regular meetings shall be advertised in at least three newspapers having intercounty circulation in North Carolina.~~

Members of the ~~Commission~~ 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 ~~Commission~~ Board shall be entitled to actual expenses when attending regular or special meetings of the ~~Commission~~ Board held other than in Raleigh. All expenses of the ~~Commission~~ Board shall be paid from funds coming to the ~~Administrator~~ Board pursuant to this ~~Article~~. Article or appropriated for this purpose."

Section 4. G.S. 143B-472.3 reads as rewritten:

"§ 143B-472.3. Requirements as to rules and bylaws.

All burial associations now operating within the State of North Carolina, ~~and all burial associations hereafter organized and operating within the State of North Carolina~~ Carolina shall have and maintain rules and bylaws embodying the following:

Article 1. The name of this association shall be _____, which shall indicate that said association is a mutual burial association.

Article 2. The objects and purposes for which this association is formed and the purposes for which it has been organized, and the methods and plan of operation of this association shall be to provide a plan for each member of this association for the payment of one funeral benefit for each member, which shall consist of a funeral benefit in cash or merchandise and service, with no free embalming or free ambulance service included in this benefit. No other free service or any other thing free shall be held out, promised or furnished, in any case. Such funeral benefit shall be in the amount of one hundred dollars (\$100.00) of cash or merchandise and service, without free embalming or free ambulance service, for persons of the age of 10 years and over, or in the amount of fifty dollars (\$50.00) for persons under the age of 10 years; provided, however, that any member of this association of the age of 10 years or more may purchase a double benefit (for a total benefit of two hundred dollars (\$200.00)), and provided further, however, that any member of this association under the age of 10 years may purchase a double benefit (for a total benefit of one hundred dollars (\$100.00)) or a quadruple benefit (for a total benefit of two hundred dollars (\$200.00)); however, any additional benefit (as set out herein) shall be based on the assessment rate, as provided in Article 6 of this section, at the attained age of applicant at the time the additional benefit takes effect. The purchase of an additional benefit shall not be available to any member who cannot fulfill the requirements as set forth in Article 3 of this section.

Provided, further, that mutual burial associations organized and operating pursuant to this Article may offer for sale to its members in good standing, funeral benefits payable only in cash in excess of two hundred dollars (\$200.00), but those sales shall be subject to all applicable insurance laws of this State and shall in no manner be subject to the provisions of this Article or impair whatsoever funds heretofore or hereafter

collected and held by that Association pursuant to this Article. All mutual burial association policies heretofore or hereafter sold in this State in an amount of two hundred dollars (\$200.00) or less shall continue to be administered by the Burial Association Administrator and shall be subject to all provisions of this Article.

Article 3. Any person who has passed his or her first birthday, and who has not passed his or her sixty-fifth birthday, and who is in good health and not under treatment of any physician, nor confined in any institution for the treatment of mental or other disease, may become a member of this burial association by the payment by such person, or for such person, of a membership fee in accordance with the provisions of this Article and the first assessment due on the membership issued for such member in accordance with the provisions of Article 6 herein. The membership fee for any person joining prior to July 1, 1975, is twenty-five cents (25¢). The membership fee of any person joining after July 1, 1975, is twenty-five cents (25¢) for each one hundred dollars (\$100.00) of benefits provided in such membership, with a minimum membership fee of twenty-five cents (25¢). The payment of the membership fee, without the payment of the first quarterly assessment due on the membership, shall not authorize the issuance of a certificate of membership in this burial association, and a certificate of membership for such person shall not be issued until the first such assessment is paid. Any member of this association joining after July 1, 1975, and who shall thereafter purchase an increased benefit shall pay an additional membership fee in accordance with this Article so that the total membership fee paid by such person shall equal twenty-five [cents] (25¢) for each one hundred dollars (\$100.00) of benefits in such member's membership; provided, that any member with a fifty-dollar (\$50.00) benefit who increases his benefit from fifty dollars (\$50.00) to one hundred dollars (\$100.00) shall not be required to pay any additional membership fee. The payment of any additional membership fee, without the payment of the first additional assessment due for the increased benefit, shall not make such member eligible for any additional benefit, and such member shall not be eligible for any additional benefit until the first such additional assessment due for such additional benefit is paid. Notwithstanding the foregoing, the provisions of the last paragraph of Article 6, hereinafter set out, shall control the increase of benefits from fifty dollars (\$50.00) to one hundred dollars (\$100.00) for any member of this association joining under the age of 10 whose benefits in force upon such member attaining his or her tenth birthday are in the amount of fifty dollars (\$50.00).

Applicant's birthday must be written in the application and subject to verification by any record the Burial Association Administrator may deem necessary to prove or establish a true date of the birth of any applicant.

Article 4. The annual meeting of the association shall be held at _____ (here insert the place, date and hour); each member shall have one vote at said annual meeting and 15 members of the association shall constitute a quorum. There shall be elected at the annual meeting of said association a board of directors of seven members, each of whom shall serve for a period of from one to five years as the membership may determine and until his or her successor shall have been elected and qualified. Any member of the board of directors who shall fail to maintain his or her membership, as provided in the rules and bylaws of said association, shall cease to be a member of the

board of directors and a director shall be appointed by the president of said association for the unexpired term of such disqualified member. There shall be at least an annual meeting of the board of directors, and such meeting shall be held immediately following the annual meeting of the membership of the association. The directors of the association may, by a majority vote, hold other meetings of which notice shall be given to each member by mailing such notice five days before the meeting to be held. At the annual meetings of the directors of the association, the board of directors shall elect a president, a vice-president, and a secretary-treasurer. The president and vice-president shall be elected from among the directors, but the secretary-treasurer may be selected from the director membership or from the membership of the association, it being provided that it is not necessary that the secretary-treasurer shall be a member of the board of directors. Among other duties that the secretary-treasurer may perform, he shall be chargeable with keeping an accurate and faithful roll of the membership of this association at all times and he shall be chargeable with the duty of faithfully preserving and faithfully applying all moneys coming into his hands by virtue of his said office. The president, vice-president and secretary-treasurer shall constitute a board of control who shall direct the affairs of the association in accordance with these Articles and bylaws of the association, and subject to such modification as may be made or authorized by an act of the General Assembly. The secretary-treasurer shall keep a record of all assessments made, dues collected and benefits paid. The books of the association, together with all records and bank accounts shall be at all times open to the inspection of the Burial Association Administrator or his duly constituted auditors or representatives. It shall be the duty of the secretary or secretary-treasurer of each association to keep the books of the association posted up-to-date so that the financial standing of the association may be readily ascertained by the Burial Association Administrator or any auditor or representative employed by him. Upon the failure of any secretary or secretary-treasurer to comply with this provision, it shall be the duty of the Burial Association Administrator to take charge of the books of the association and do whatever work is necessary to bring the books up-to-date. The actual costs of said work may be charged the burial association and shall be paid from the thirty percent (30%) allowed by law for the operation of the burial association.

Whenever in the opinion of the Burial Association Administrator, it is necessary to audit the books of any burial association more than once in any calendar year, the Burial Association Commission shall have authority to assess such burial association the actual cost of any audit in excess of one per calendar year, provided that no more than one audit may be deemed necessary unless a discrepancy exists at the last regular audit. Such cost shall be paid from the thirty percent (30%) allowed by law for the operation of the burial association.

Every burial association shall file with the North Carolina Mutual Burial Association Commission an annual report of its financial condition on a form furnished to it by the North Carolina Burial Association Administrator. Such report shall be filed on or before February 15 of each calendar year and shall cover the complete financial condition of the burial association for the immediate preceding calendar year. The Burial Association Commission shall levy and collect a penalty of twenty-five dollars

(\$25.00) for each day after February 15 that the report called for herein is not filed. The Commission may, in its discretion, grant any reasonable extension of the above filing date without the penalty provided in this section. Such penalty shall be paid from the thirty percent (30%) allowed by law for the operation of the burial association. Any secretary or secretary-treasurer who fails to file such financial report on or before February 15 of each calendar year or on or before the last day of any period of extension for the filing of such report granted by the Commission to the burial association of such secretary or secretary-treasurer shall be guilty of a Class 3 misdemeanor. Each day after February 15, or the last day of any period of extension for the filing of the report granted by the Commission to the burial association of such secretary or secretary-treasurer, that said report is not filed by the secretary or secretary-treasurer of a burial association, shall constitute a separate offense.

Article 5. Upon the death of any officer, his successor shall be elected by the board of directors for the unexpired term. The president, vice-president and secretary-treasurer shall be elected for a term of from one to five years, and shall hold office until his successor is elected and qualified, subject to the power of the board of directors to remove any officer for good cause shown; provided, that any officer removed by the board of directors shall have the right of appeal to the membership of the association, such appeal to be heard at the next ensuing annual meeting of said membership.

Article 6. Each member shall be assessed according to the following schedule for the benefit indicated (or in multiples thereof for additional benefit) at the age of entry of the member.

Assessment Rate for Age Groups:

First to tenth birthday (\$50.00) benefit	five cents (5¢)
Tenth to thirtieth birthday (\$100.00) benefit	ten cents (10¢)
Thirtieth to fiftieth birthday (\$100.00) benefit	twenty cents (20¢)
Fiftieth to sixty-fifth birthday (\$100.00) benefit	thirty cents (30¢)

(Ages shall be defined as having passed a certain birthday instead of nearest birthday.) Assessment shall always be made on the entire membership in good standing.

Any member joining under the age of 10 shall, upon attaining his or her tenth birthday, pay thereafter the assessment for a member age 10 as set out above.

Any member joining under the age of 10 whose benefits in force upon such member attaining his or her tenth birthday are in the amount of fifty dollars (\$50.00) shall, if such member is in good standing upon attaining his or her tenth birthday, thereafter have benefits in force in the amount of one hundred dollars (\$100.00) without the necessity of making application for such increased benefit. Assessments made thereafter for such member shall be the same as an assessment for a member age 10 as set out above. Such one-hundred-dollar (\$100.00) benefit shall be in full force and effect for any such member in good standing immediately upon such member attaining his or her tenth birthday even though the increased assessment provided for herein shall

not yet be due and payable, it being the intent of this Article that, notwithstanding any other provisions in these Articles, any member in good standing with a fifty-dollar (\$50.00) benefit shall immediately upon attainment of his or her tenth birthday have a one-hundred-dollar (\$100.00) benefit in force whether or not the increased assessment is then due and payable by such member in accordance with the assessment period of this association.

Article 7. No benefit will be paid for natural death occurring within 30 days from the date of the certificate of membership, which certificate shall express the true date such person becomes a member of this association, and the certificate issued shall be in acknowledgment of membership in this association. Benefits will be paid for death caused by accidental means occurring any time after date of membership certificate. No benefits will be paid in case of suicidal death of any member within one year from the date of the membership certificate. No agent or other person shall have authority to issue membership certificates in the field, but such membership certificates shall be issued at the home office of the association by duly authorized officers: the president, vice-president or secretary, and a record thereof duly made.

Article 8. Any member failing to pay any assessment within 30 days after notice shall be in bad standing, and unless and until restored, shall not be entitled to benefits. Notice shall be presumed duly given when mailed, postage paid, to the last known address of such members: Provided, moreover, that notice to the head of a family shall be construed as notice to the entire membership of such family in said association. Any member or head of a family changing his or her address shall give notice to the secretary-treasurer in writing of such change, giving the old address as well as the new, and the head of a family notifying the secretary-treasurer of change in address shall list with the secretary in such notice all the members of his or her family having membership in said association. Any member in bad standing may, within 90 days after the date of an assessment notice, be reinstated to good standing by the payment of all delinquent dues and assessments: Provided such person shall at the same time submit to the secretary-treasurer satisfactory evidence of good health, in writing, and no benefit will be paid for natural death occurring within 30 days after reinstatement. In case of death caused by accidental means, benefit will be in force immediately after reinstatement. Any person desiring to discontinue his membership for any reason shall communicate such desire to the secretary-treasurer immediately and surrender his or her certificate of membership. Any adult member who is the head of a family and who, with his family, has become in bad standing, shall furnish to the secretary-treasurer satisfactory evidence of the good health of each member desired to be reinstated in writing.

Article 9. The benefits herein provided are for the purpose of furnishing a funeral and burial benefit, in cash or merchandise and service, for a deceased member. The funeral and burial benefit, if furnished in merchandise and service, shall be in keeping with and similar to the merchandise and service sold and furnished at the same price by reputable funeral directors of this or other like communities.

Article 10. It is understood and stipulated that the benefits provided for shall be payable only to a funeral establishment which provides a funeral service for a deceased

member and which, if located in North Carolina, is a funeral establishment registered under the provisions of G.S. 90-210.17 or which, if located in any other state, territory or foreign country, is a funeral establishment recognized by and operating in conformity with the laws of such other state, territory or foreign country. Upon the death of any member, it shall be the duty of the person or persons making the funeral arrangements for such deceased member to notify the secretary of the member's burial association of the death of such member. The person or persons making the funeral arrangements for such deceased member shall have 30 days from the date of the death of such member in which to make demand upon the burial association for the funeral benefits to which such member is entitled.

The benefits provided for are to be paid by the burial association to the funeral director providing such funeral and burial service either in cash or in merchandise and service as elected by the person or persons making the funeral arrangements for such deceased member. If the burial association shall fail, on demand, to provide the benefits to which the deceased member was entitled to the funeral establishment which provided the funeral service for the deceased member, then the benefits shall be paid in cash to the representative of the deceased member qualified under law to receive such benefits.

Article 11. Assessments shall be made as provided in G.S. 143B-472.18. Whenever possible, assessments will be made at definitely stated intervals so as to reduce the cost of collection and to prevent lapse.

Article 12. In the event the proceeds of the annual assessments imposed on the entire membership for one year, as provided in G.S. 143B-472.18, do not prove sufficient at any time to yield the benefit provided for in these bylaws, then the secretary-treasurer shall notify the North Carolina Burial Association Administrator who shall be authorized, unless the membership is increased to that point where such assessments are sufficient, to cause liquidation of said association, and may transfer all members in good standing to a like organization or association.

Article 13. (a) All legitimate operating expenses of the association shall be paid out of the assessments, but in no case shall the entire expenses exceed thirty percent (30%) of the total of the assessments collected and the investment income of the burial association in one calendar year.

(b) Each burial association shall establish and maintain a reserve account for the payment of member's benefits. On the thirty-first day of December following July 1, 1975, each burial association shall transfer to such burial association's reserve account established in accordance with this Article all funds which such burial association is maintaining on that date in an account designated by such burial association as either a surplus account or a reserve account. Thereafter, beginning on January 1, 1976, each burial association shall place in such reserve account five percent (5%) of the assessments collected from and after that date and five percent (5%) of the investment income of the association earned from and after that date. These sums shall continue to be placed in the association's reserve account until the association's reserve account shall equal twenty-one dollars (\$21.00) per member. Thereafter if the reserve account shall fall below twenty-one dollars (\$21.00) per member, such sums shall again be deposited in the account until such time as the reserve account shall again be equal to

twenty-one dollars (\$21.00) per member. If the reserve account shall at any time exceed twenty-one dollars (\$21.00) per member, amounts in excess of twenty-one dollars (\$21.00) per member may be withdrawn from the reserve account.

Article 14. Special meetings of the association membership may be called by the secretary-treasurer when by him deemed necessary or advisable, and he shall call a meeting when petitioned to do so by sixty-six and two-thirds percent (66 2/3%) of the members of said association who are in good standing.

Article 15. The secretary-treasurer shall, upon satisfactory evidence that membership was granted to any person not qualified at the time of entry as provided under Article 3 of these bylaws, refund any amounts paid as assessment, and shall remove the name from the membership roll.

Article 16. Any member may pay any number of assessments in advance, in which case such member will not be further assessed until a like number of assessments shall have been levied against the remaining membership.

Article 17. No person may maintain active membership in two or more separate burial associations. Any person who is found to have membership in two or more separate burial associations shall forfeit all benefits and fees paid in all associations of which he is a member except in the association which he first joined and of which he is still then a member. A person is not a member of an association for purposes of this Article if he has discontinued his membership in such association or if such association has been placed in liquidation.

Article 18. Each year, before the annual meeting of the membership of this association, the association shall cause to be published in a newspaper of general circulation in the county in which such association has its principal place of business, or shall cause to be mailed to each member in good standing a statement showing total income collected, expenses paid and burial benefits provided for by such association during the next preceding year.

Article 19. These rules and bylaws shall not be modified, canceled or abridged by any association or other authority except by act of the General Assembly of North Carolina."

Section 5. Effective January 1, 1998, the phrases "North Carolina Mutual Burial Association Commission", "Mutual Burial Association Commission", and "Burial Association Administrator" are deleted and then replaced by the phrase "Board of Mortuary Science" wherever they occur in Part 13 of Article 10 of Chapter 143B of the General Statutes. The words "Commission" and "Administrator" are deleted and then replaced by the word "Board" wherever they occur in Part 13 of Article 10 of Chapter 143B of the General Statutes.

Section 6. Effective January 1, 1998, the pronouns "he" and "his", when referring to the Burial Association Administrator, are deleted wherever they occur in Part 13 of Article 10 of Chapter 143B of the General Statutes and are replaced, respectively, by the pronouns "it" and "its".

Section 7. (a) Effective January 1, 1998, references in the Session Laws to the North Carolina Mutual Burial Association Commission or the Burial Association Administrator shall be deemed to refer to the Board of Mortuary Science. Every

Session Law that refers to the North Carolina Mutual Burial Association Commission or the Burial Association Administrator and that relates to any power, duty, function, or obligation of the Commission or the Administrator that continues in effect after the provisions of this act become effective shall be construed in a manner consistent with this act.

(b) The Revisor of Statutes may, on and after the effective date of this act, correct any reference or citation in the General Statutes that is amended by this act by deleting incorrect references and substituting correct references.

(c) The Revisor of Statutes may, on and after the first day of January 1998, delete any reference to the North Carolina Mutual Burial Association Commission or to the Burial Association Administrator in any portion of the General Statutes to which conforming amendments are not made by this act and substitute, as appropriate and consistent with this act, any of the following terms: North Carolina Board of Mortuary Science, Board of Mortuary Science, or Board.

Section 8. Every act of the North Carolina Mutual Burial Association Commission and the Burial Association Administrator that occurred prior to the date this act becomes law or to the date that provisions of this act become effective, and which is otherwise valid, continues to be valid and effective, notwithstanding any change in name or transfer of authority, powers, duties, and functions by this act.

Section 9. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of July, 1997.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 10:55 a.m. this 17th day of July, 1997