

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 2398*

Short Title: Crematory Act.

(Public)

Sponsors: Representatives Stamey, Lineberry, and Judy Hunt.

Referred to: Commerce.

June 28,1990

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR THE LICENSURE OF CREMATORY OPERATORS
3 AND TO ESTABLISH THE CREMATORY AUTHORITY WITHIN THE BOARD
4 OF MORTUARY SCIENCE.

5 The General Assembly of North Carolina enacts:

6 Section 1. Chapter 90 of the General Statutes is amended by adding a new
7 Article to read:

8 **“ARTICLE 13C.**
9 **“CREMATIONS.**

10 **“§ 90-210.40. Short title.**

11 This Article shall be known and may be cited as the North Carolina Crematory Act.

12 **“§ 90-210.41. Definitions.**

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

- 14 (1) ‘Authorizing agent’ means a person legally entitled to order the
15 cremation of human remains. An authorizing agent shall be, in order
16 of priority, a spouse, an adult child, a parent, any adult sibling,
17 guardian or close relation of the deceased. In the case of indigents or
18 any other individuals whose final disposition is the responsibility of
19 the State, a public official charged with arranging the final disposition
20 of the deceased, if legally authorized, may serve as the authorizing
21 agent. In the case of individuals whose death occurred in a nursing
22 home or other private institution, and in which the institution is
23 charged with making arrangements for the final disposition of the

- 1 deceased, a representative of the institution, if legally authorized, may
2 serve as the authorizing agent.
- 3 (2) 'Board' means the North Carolina State Board of Mortuary Science.
- 4 (3) 'Casket' means a rigid container which is designed for the encasement
5 of human remains and which is usually constructed of wood, metal or
6 other rigid material and ornamented and lined with fabric.
- 7 (4) 'Closed container' means any container in which cremated remains can
8 be placed and closed in a manner so as to prevent leakage or spillage
9 of cremated remains or the entrance of foreign material.
- 10 (5) 'Cremated remains' means all human remains recovered after the
11 completion of the cremation process, including pulverization which
12 leaves only bone fragments reduced to unidentifiable dimensions.
- 13 (6) 'Cremation' means the technical process, using heat, that reduces
14 human remains to bone fragments.
- 15 (7) 'Cremation chamber' means the enclosed space within which the
16 cremation process takes place. Cremation chambers covered by this
17 Article shall be used exclusively for the cremation of human remains.
- 18 (8) 'Cremation container' means the container in which the human
19 remains are placed in the cremation chamber for a cremation. A
20 cremation container must meet all of the standards established by the
21 rules adopted by the Board.
- 22 (9) 'Crematory' means the building or portion of a building that houses the
23 cremation chamber and that may house the holding facility, business
24 office or other part of the crematory business. A crematory must
25 comply with any applicable public health laws and rules and must
26 contain the equipment and meet all of the standards established by the
27 rules adopted by the Board.
- 28 (10) 'Crematory authority' means the North Carolina Crematory Authority.
- 29 (11) 'Crematory operator' means the legal entity which is licensed by the
30 Board to operate a crematory and perform cremations.
- 31 (12) 'Holding facility' means an area within or adjacent to the crematory,
32 designated for the retention of human remains prior to cremation. A
33 holding facility must comply with any applicable public health laws
34 and rules and must meet all of the standards established by the rules
35 adopted by the Board.
- 36 (13) 'Human remains' means the body of a deceased person, or part of a
37 body or limb that has been removed from a living or deceased person.
- 38 (14) 'Niche' means a compartment or cubicle for the memorialization or
39 permanent placement of an urn containing cremated remains.
- 40 (15) 'Scattering area' means a designated area for the scattering of cremated
41 remains.
- 42 (16) 'Temporary container' means a temporary receptacle for cremated
43 remains, usually made of cardboard, plastic film or similar material

1 designed to hold the cremated remains until an urn or other permanent
2 container is acquired.

3 (17) 'Urn' means a receptacle designed to permanently encase the cremated
4 remains.

5 **"§ 90-210.42. Crematory Authority established.**

6 (a) The North Carolina Crematory Authority is established as a Committee
7 within the Board. The Crematory Authority shall suggest rules to the Board for the
8 carrying out and enforcement of the provisions of this Article.

9 (b) The Crematory Authority shall consist of five members appointed by the
10 Cremation Association of North Carolina and two members of the Board appointed by
11 the Board.

12 (c) The term of each member of the Crematory Authority shall be determined by
13 the entity which appointed them.

14 (d) The members of the Crematory Authority shall serve without compensation,
15 provided that they shall be reimbursed for their necessary travel expenses and the
16 necessary expenses incident to their attendance upon the business of the Crematory
17 Authority, and in addition thereto they shall receive per diem and expense
18 reimbursement as provided in G.S. 93B-5 for all time actually spent upon the business
19 of the Crematory Authority. All expenses, salaries and per diem provided for in this
20 Article shall be paid from funds received under the provisions of this Article and Article
21 13A and shall in no manner be an expense to the State.

22 (e) The Crematory Authority shall select from its members a chairman, a vice
23 chairman and a secretary who shall serve for one year or until their successors are
24 elected and qualified. No two offices may be held by the same person. The Crematory
25 Authority, with the concurrence of the Board, shall have the authority to engage
26 adequate staff as deemed necessary to perform its duties.

27 (f) The Crematory Authority shall hold at least one meeting in each year. In
28 addition, the Crematory Authority may meet as often as the proper and efficient
29 discharge of its duties shall require. Five members shall constitute a quorum.

30 **"§ 90-210.43. Licensing and inspection.**

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

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

40 (c) Application for a license as a crematory operator shall be made on forms
41 furnished and prescribed by the Board. The Board shall examine the premises and
42 structure to be used as a crematory and shall issue a license to the crematory operator if
43 the applicant meets all the requirements and standards of the Board and the
44 requirements of this Article. In the event of a change of ownership of a crematory, at

1 least 30 days prior to the change the new owners shall provide the Board with the name
2 and address of the new owners.

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

7 (e) No person, cemetery, funeral establishment, corporation, partnership, joint
8 venture, voluntary organization or any other entity shall cremate any human remains,
9 except in a crematory licensed for this express purpose and under the limitations
10 provided in this Article.

11 (f) Whenever the Board finds that an owner, partner or officer of a crematory
12 operator or an applicant to become a crematory operator, or that any agent or employee
13 of a crematory operator or an applicant to become a crematory operator, with the direct
14 or implied permission of such owner, partner or officer, has violated any provision of
15 this Article, or is guilty of any of the following acts, and when the Board also finds that
16 the crematory operator or applicant has thereby become unfit to practice, the Board may
17 suspend, revoke, or refuse to issue or renew the license, in accordance with the
18 procedures of Chapter 150B:

19 (1) Conviction of a felony or a crime involving fraud or moral turpitude;

20 (2) Fraud or misrepresentation in obtaining or renewing a license or in the
21 practice of cremation;

22 (3) False or misleading advertising;

23 (4) Gross immorality, including being under the influence of alcohol or
24 drugs while performing cremation services;

25 (5) Using profane, indecent, or obscene language in the presence of a dead
26 human body, and within the immediate hearing of the family or
27 relatives of a deceased, whose body has not yet been cremated or
28 otherwise disposed of;

29 (6) Violating or cooperating with others to violate any of the provisions of
30 this Article or of the rules of the Board;

31 (7) Violation of any State law or municipal or county ordinance or
32 regulation affecting the handling, custody, care, or transportation of
33 dead human bodies;

34 (8) Refusing to surrender promptly the custody of a dead human body or
35 cremated remains upon the express order of the person lawfully
36 entitled to the custody thereof, except as provided in G.S. 90-
37 210.47(e); and

38 (9) Indecent exposure or exhibition of a dead human body while in the
39 custody or control of a licensee.

40 (g) The Board may hold hearings in accordance with the provisions of this
41 Article and Chapter 150B. In any such hearing held by the Board, the Crematory
42 Authority shall be authorized to participate in the hearing to the same extent as members
43 of the Board. The Board is empowered to regulate and inspect crematories and
44 crematory operators and to enforce as provided by law the provisions of this Article and

1 the rules adopted hereunder. The Board shall have the power to administer oaths and
2 issue subpoenas requiring the attendance of persons and the production of papers and
3 records before the Board in any hearing, investigation, or proceeding conducted by it.
4 Members of the Board's staff or the sheriff or other appropriate official of any county of
5 this State shall serve all notices, subpoenas, and other papers given to them by the
6 President of the Board for service in the same manner as process issued by any court of
7 record. Any person who neglects or refuses to obey a subpoena issued by the Board
8 shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined or
9 imprisoned in the discretion of the court.

10 **"§ 90-210.44. Authorization and record keeping.**

11 The Board shall establish requirements for record keeping and authorizations, and it
12 shall be a violation of this Article for any crematory operator to fail to comply with the
13 requirements.

14 **"§ 90-210.45. Cremation procedures.**

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

18 (b) Human remains shall not be cremated within 24 hours after the time of death,
19 unless such death was a result of an infectious, contagious, or communicable and
20 dangerous disease as listed by the Commission of Health Services pursuant to G.S.
21 130A-134, and unless such time requirement is waived in writing by the medical
22 examiner, county health director, or attending physician where the death occurred. In
23 the event such death comes under the jurisdiction of the medical examiner, the human
24 remains shall not be received by the crematory operator until authorization to cremate
25 has been received in writing from the medical examiner of the county in which the
26 death occurred. In the event the crematory operator is authorized to perform funerals as
27 well as cremation, this restriction on the receipt of human remains shall not be
28 applicable.

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

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

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

38 **"§ 90-210.46. Disposition of cremated remains.**

39 (a) The authorizing agent shall provide the person with whom cremation
40 arrangements are made with a signed statement specifying the ultimate disposition of
41 the cremated remains, if known. A copy of this statement shall be retained by the
42 crematory operator.

43 (b) The authorizing agent is responsible for the disposition of the cremated
44 remains. If, after a period of 30 days from the date of cremation, the authorizing agent

1 or his representative has not specified the ultimate disposition or claimed the cremated
2 remains, the crematory operator or the person in possession of the cremated remains
3 may dispose of the cremated remains only in a manner permitted in this section. The
4 authorizing agent shall be responsible for reimbursing the crematory operator for all
5 reasonable expenses incurred in disposing of the cremated remains pursuant to this
6 section. A record of such disposition shall be made and kept by the person making such
7 disposition. Upon disposing of cremated remains in accordance with this section, the
8 crematory operator or person in possession of the cremated remains shall be discharged
9 from any legal obligation or liability concerning such cremated remains. This provision
10 shall apply to all cremated remains currently in the possession of a crematory operator
11 or other party.

12 (c) In addition to disposing of cremated remains in a crypt, niche, grave, or
13 scattering garden located in a dedicated cemetery, or by scattering over uninhabited
14 public land, the sea or other public waterways pursuant to subsection (f) of this section,
15 cremated remains may be disposed of in any manner on the private property of a
16 consenting owner, upon direction of the authorizing agent. If cremated remains are to
17 be disposed of by the crematory operator on private property, other than dedicated
18 cemetery property, the authorizing agent shall provide the crematory operator with the
19 written consent of the property owner.

20 (d) Except with the express written permission of the authorizing agent, no
21 person may:

- 22 (1) Dispose of or scatter cremated remains in such a manner or in such a
23 location that the cremated remains are commingled with those of
24 another person. This subdivision shall not apply to the scattering of
25 cremated remains at sea or by air from individual closed containers or
26 to the scattering of cremated remains in an area located in a dedicated
27 cemetery and used exclusively for such purposes.
28 (2) Place cremated remains of more than one person in the same closed
29 container. This subdivision shall not apply to placing the cremated
30 remains of members of the same family in a common closed container
31 designed for the cremated remains of more than one person.

32 (e) Cremated remains shall be delivered by the crematory operator to the
33 individual specified by the authorizing agent on the cremation authorization form. The
34 representative of the crematory operator and the individual receiving the cremated
35 remains shall sign a receipt indicating the name of the deceased, and the date, time, and
36 place of the receipt. After this delivery, the cremated remains may be transported in any
37 manner in this State, without a permit, and disposed of in accordance with the
38 provisions of this Article.

39 (f) Cremated remains may be scattered over uninhabited public land, a public
40 waterway or sea, subject to health and environmental standards, or on the private
41 property of a consenting owner pursuant to subsection (c) of this section. A person may
42 utilize a boat or airplane to perform such scattering. Cremated remains shall be
43 removed from their closed container before they are scattered.

44 **"§ 90-210.47. Liability.**

1 (a) Any person signing a cremation authorization form shall be deemed to
2 warrant the truthfulness of any facts set forth in the cremation authorization form,
3 including the identity of the deceased whose remains are sought to be cremated and that
4 person's authority to order such cremation.

5 (b) A crematory operator shall have authority to cremate human remains upon
6 the receipt of a cremation authorization form signed by an authorizing agent. There
7 shall be no liability of a crematory operator that cremates human remains pursuant to
8 such authorization, or that releases or disposes of the cremated remains pursuant to such
9 authorization.

10 (c) A crematory operator shall not be responsible or liable for any valuables
11 delivered to the crematory operator with human remains.

12 (d) A crematory operator shall not be liable for refusing to accept a body or to
13 perform a cremation until it receives a court order or other suitable confirmation that a
14 dispute has been settled if:

15 (1) It is aware of any dispute concerning the cremation of human remains;

16 (2) It has a reasonable basis for questioning any of the representations
17 made by the authorizing agent; or

18 (3) For any other lawful reason.

19 (e) If a crematory operator is aware of any dispute concerning the release or
20 disposition of the cremated remains, the crematory operator may refuse to release the
21 cremated remains until the dispute has been resolved or the crematory operator has been
22 provided with a court order authorizing the release or disposition of the cremated
23 remains. A crematory operator shall not be liable for refusing to release or dispose of
24 cremated remains in accordance with this subsection.

25 **"§ 90-210.48. Fees.**

26 (a) The Board may set and collect fees not to exceed the following amounts from
27 licensed crematory operators and applicants:

28 (1) Licensee application fee \$400.00

29 (2) Annual renewal fee 150.00

30 (3) Late renewal penalty 75.00

31 (4) Reinspection fee 100.00

32 (5) Per cremation fee 10.00.

33 (b) The funds collected pursuant to this Article shall become part of the general
34 fund of the Board. The cost of the maintenance of the Crematory Authority shall be
35 deemed a general expense of the Board. The Board shall keep an accurate accounting
36 of all the receipts and expenditures made pursuant to this Article and shall provide a
37 current report of such to the Crematory Authority biannually.

38 **"§ 90-210.49. Crematory operator authority.**

39 (a) A crematory operator may employ a licensed funeral director for the purpose
40 of arranging cremations with the general public, transporting human remains to the
41 crematory, and processing all necessary paperwork. Nothing in this provision may be
42 construed to require a licensed funeral director to perform any functions not otherwise
43 required by law to be performed by a licensed funeral director.

1 (b) A crematory operator may adopt reasonable rules consistent with this Article
2 for the management and operation of a crematory. Nothing in this subsection may be
3 construed to prevent a crematory operator from adopting rules which are more stringent
4 than the provisions of this Article.

5 (c) Nothing in this Article shall prohibit or require the performance of cremations
6 by crematory operators for or directly with the public, or exclusively for or through
7 licensed funeral directors.

8 (d) Nothing in this Article may be construed to prohibit a crematory operator
9 from transporting human remains.

10 (e) Nothing in this Article may be construed to relieve the holder of a license
11 issued hereunder from obtaining any other licenses or permits required by law.

12 **"§ 90-210.50. Rule making, applicability, violations, and prohibitions of Article.**

13 (a) The Board is authorized to adopt and promulgate such rules for the carrying
14 out and enforcement of the provisions of this Article as may be necessary and as are
15 consistent with the laws of this State and of the United States. The Board shall not
16 adopt any rules before considering the adoption of rules suggested to it pursuant to G.S.
17 90-210.42(a). The Board may perform such other acts and exercise such other powers
18 and duties as may be provided in this Article, in Article 13A of this Chapter, and
19 otherwise by law and as may be necessary to carry out the powers herein conferred.

20 (b) Not later than January 1, 1991, every crematory being operated in this State
21 shall apply for and obtain a license under this Article in order to continue operation.

22 (c) The provisions of this Article shall not apply to the cremation of human
23 remains and medical waste performed by the North Carolina Anatomical Commission,
24 licensed hospitals and medical schools, and the office of the Chief Medical Examiner
25 when the disposition of such human remains and medical waste is the legal
26 responsibility of said institutions.

27 (d) A violation of any of the provisions of this Article is a misdemeanor
28 punishable by imprisonment for up to six months and a fine up to one thousand dollars
29 (\$1,000).

30 (e) No person, firm, or corporation may request or authorize cremation or
31 cremate a dead human body when he has information indicating a crime or violence of
32 any sort in connection with the cause of death unless such information has been
33 conveyed to the State or county medical examiner and permission from the State or
34 county medical examiner to cremate has thereafter been obtained."

35 Sec. 2. This act is effective upon ratification.