

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 160

(Senator Montgomery, *et al.*)

Education, Health, and Environmental Affairs

Health and Government Operations

State Board of Morticians and Funeral Directors - Cease and Desist Orders and
Injunctive Relief - Authority

This bill authorizes the State Board of Morticians and Funeral Directors, subject to hearing provisions and in addition to other authorized sanctions, to issue a cease and desist order, impose a civil fine of up to \$5,000 per offense, or both for (1) practicing mortuary science without a license or (2) misrepresentation to the public that a person is authorized to practice mortuary science. Each violation is a separate offense if it occurs at a different time, date, or location or on the same date and location at a different time. All fines accrue to the general fund. The board may *not* issue a cease and desist order to a funeral establishment that was *previously licensed* by the board.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues from the issuance of civil fines for specified violations of the Maryland Morticians and Funeral Directors Act. Enforcement can be handled within existing resources.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Current Law: Under § 7-501 of the Health Occupations Article, a person may not practice, attempt to practice, offer to practice, or assist in the practice of mortuary science in Maryland unless licensed by the board. Under § 7-502 of the Health Occupations Article, unless authorized to practice mortuary science, a person may not represent to the

public by title, description of services, methods, procedures, or otherwise that the person is authorized to practice mortuary science.

The board or the State may bring an action to enjoin the unauthorized practice of mortuary science or conduct that constitutes a ground for disciplinary action. The action must be brought in the county where the defendant resides or engages in the practice of mortuary science. Proof of actual damage or proof that a person will sustain damage is not required to bring an action for injunction.

Background: Nine health occupations boards (Acupuncture; Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists; Dietetic Practice; Nursing; Nursing Home Administrators; Optometry; Physicians; Podiatric Medical Examiners; and Professional Counselors and Therapists) are authorized to issue cease and desist orders or obtain injunctive relief. However, for most boards, this authority is limited to actions against individuals practicing without a license or misrepresenting to the public that the individual is licensed to practice. Three of these boards have additional cease and desist or injunctive relief authority. The State Board of Examiners for Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists and the State Board of Examiners in Optometry have additional authority to issue a cease and desist order or obtain injunctive relief for a disciplinary violation by a licensee, while the State Board of Physicians has additional authority to also issue a cease and desist order or obtain injunctive relief against an individual for taking any action for which the board determines there is a preponderance of evidence of grounds for disciplinary action and that poses a serious risk to the health, safety, and welfare of a patient. Generally, most of the language adopted in this bill mirrors the current statute of the State Board of Nursing.

Additional Comments: The bill prohibits the board from issuing a cease and desist order to a funeral establishment previously licensed by the board. This provision prevents the board from issuing a cease and desist order against funeral establishments for which the license was not renewed on time and the license has lapsed. However, the provision also prevents such orders from being issued against an establishment that was previously licensed but for which the license was suspended or revoked. Under the bill, such establishments are only subject to a civil fine of up to \$5,000 per offense.

Additional Information

Prior Introductions: None.

Cross File: HB 729 (Delegate Angel, *et al.*) - Health and Government Operations.

Information Source(s): Department of Health and Mental Hygiene, Department of Legislative Services

Fiscal Note History: First Reader - March 2, 2015
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