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HEALTH

Dead Bodies: Enable Regulation Relating to Identification, Handling, and Disposition of Dead Bodies; Create the Offense of Abandonment of a Dead Body.

CODE SECTIONS:	O.C.G.A. §§ 31-21-44 (new), 31-33-2 (amended), 43-18-1 (amended), 43-18-8 (amended), 43-18-72 (amended), 43-18-75 (amended)
BILL NUMBER:	HB 1481
ACT NUMBER:	781
GEORGIA LAWS:	2002 Ga. Laws 641
SUMMARY:	The Act serves to regulate certain practices relating to identification, handling, and disposition of dead bodies. This Act further prohibits and punishes the throwing away or abandonment of dead bodies and provides for exceptions. The Act also provides for the retention of health records by providers for at least ten years.
EFFECTIVE DATE:	May 9, 2002. Provisions regarding identification of bodies of deceased persons became effective for purposes of promulgating rules and regulations on May 9, 2002 and for all other purposes on July 1, 2002.

History

On February 15, 2002, an anonymous tipster alerted Environmental Protection Agency officials in Atlanta of potential wrongdoings at the Tri-State Crematory in Walker County, Georgia.¹ EPA investigators quickly located a discarded human skull on the property in Walker County and by Saturday, February 16, 2002, over

1. Michael Pearson, *Crematorium Was Dump Site for the Dead*, ATLANTA J. CONST., Feb. 17, 2002, at A1.

one hundred law enforcement officers were already investigating the site.² At the height of the investigation, a force of almost five hundred people was amassed.³

Workers clear-cut the woods surrounding the Tri-State Crematory's sixteen-acre lot, drained a pond on the property, and also used infrared cameras and helicopters in their search for bodies.⁴ Ultimately, the investigation resulted in the finding of 339 bodies strewn about the property.⁵ Bodies were found in sheds, in vaults, in pits, and in the pond.⁶ A coffin found lying in the backyard held several decomposing corpses.⁷ Investigators even found a hearse, which had been sitting for two years, with four flat tires, in the woods surrounding the crematory.⁸ "Inside the hearse was a coffin, still bearing its now-shriveled flower arrangement. Inside the coffin was a long-ago mourned body."⁹ Examiners eventually sent out over ten thousand pieces of human remains in the effort to identify the bodies.¹⁰

Many family members brought the urns that the Tri-State Crematory had given them to investigators.¹¹ Unfortunately, many discovered that the urns did not hold the remains of their loved ones, but rather contained powdered concrete, cement, or wood chips.¹²

2. *Id.*

3. Norman Arey, *CREMATORY PROBE: Marsh Sister, Parents Charged; Death Certificates Signings an Issue*, ATLANTA J. CONST., Mar. 9, 2002, at H1 [hereinafter *CREMATORY PROBE*].

4. Norman Arey, *TRI-STATE CREMATORY PROBE: GAO Accepts Request to Investigate*, ATLANTA J. CONST., Mar. 21, 2002, at C3 [hereinafter *TRI-STATE*]; *CREMATORY PROBE*, *supra* note 3; Norman Arey, Jim Galloway, *Crematory Regulation Bills Progress*, ATLANTA J. CONST., Feb. 26, 2002, at B3.

5. *TRI-STATE*, *supra* note 4.

6. Duane D. Stanford, *CREMATORY PROBE: Regulators Tried to Close Tri-State*, ATLANTA J. CONST., Feb. 22, 2002, at 1C; Norman Arey, *Efforts to Drain Pond Under Way*, ATLANTA J. CONST., Feb. 21, 2002, at 1B; Norman Arey, *CREMATORY PROBE: A Shock as Home Searched; More Bodies Unearthed in Backyard Pits*, ATLANTA J. CONST., Feb. 20, 2002, at 1B.

7. Norman Arey, *CREMATORY PROBE: A Shock as Home Searched; More Bodies Unearthed in Backyard Pits*, ATLANTA J. CONST., Feb. 20, 2002, at 1B.

8. Norman Arey, *CREMATORY SCANDAL: Sloppiness Behind Piles of Corpses?*, ATLANTA J. CONST., Apr. 7, 2002, at 1A.

9. *Id.*

10. David Goldberg, *Crematory Scandal Crimps Thinly Spread Budget at Bad Time*, ATLANTA J. CONST., Feb. 23, 2002, at 4G.

11. Norman Arey, *Efforts to Drain Pond Under Way*, ATLANTA J. CONST., Feb. 21, 2002, at 1B.

12. *Id.*; Alan Judd, "I Don't Have His Real Ashes" Truth Brings Grief Back to the Surface, ATLANTA J. CONST., Feb. 18, 2002, at 1A.

The investigation received national and worldwide media attention.¹³ People asked how such a tragedy could have happened and calls went out for government regulation.¹⁴ After visiting the site, Georgia Senator Max Cleland commented that “[a]s a Vietnam veteran and after seeing what I saw in Bosnia and Kosovo, I thought I had seen everything. But I’ve never seen anything like this. This is not just a crime scene, it’s a war zone.”¹⁵ Others who visited the site were just as overwhelmed at the macabre scene.¹⁶

The Georgia Board of Funeral Services attempted to close down the Tri-State Crematory several times in the 1990’s for operating without a license.¹⁷ Georgia statutes appeared to require that all crematories be licensed and submit to regular inspections.¹⁸ However, because crematory was defined in the Code section as “a place that is owned by a funeral director or funeral establishment where cremation is performed and which is open to the public, Tri-State slid through the loopholes.”¹⁹ When fighting the Board of Funeral Services in 1995, the crematory’s attorneys argued that owners and operators were not funeral directors; it was not owned by a funeral home; and it only contracted with other funeral homes, and not the public.²⁰ Consequently, the funeral home regulatory agency drafted proposed legislation in 1997 that “would have required all Georgia crematories, including Tri-State, to get a state license and submit to regular inspections.”²¹ However, for some reason, the Georgia Assembly failed to adopt the proposal.²²

The fall out from the discovery of the bodies in Walker County has been widespread, and the operator of the crematory, Ray Brent Marsh, is currently facing 266 felony counts of theft by deception in

13. See generally, David Firestone, *Cremation Case Calls for Creative Prosecution*, NY TIMES, Feb. 28, 2002, at A16; Damian Whitworth, *Dumped Crematorium Bodies Reach Hundreds*, TIMES (London), Feb. 19, 2002, available at <http://www.timesonline.co.uk/printFriendly/0,,1-3-212580,,00.html>.

14. Cynthia Tucker, *A Noble Cry for Better Regulation*, ATLANTA J. CONST., Feb. 27, 2002, at 16A.

15. Norman Arey, *Bond Ruling For Marsh Is Delayed*, ATLANTA J. CONST., Feb. 23, 2002, at 4G.

16. *Id.*

17. Duane D. Stanford, *CREMATORY PROBE: Regulators Tried to Close Tri-State*, ATLANTA J. CONST., Feb. 22, 2002, at 1C.

18. *Id.*

19. *Id.*

20. *Id.*

21. Duane D. Stanford, *Crematory Crackdown: Why so Late?*, ATLANTA J. CONST., Mar. 25, 2002, at 1A.

22. *Id.*

Georgia.²³ Other charges are also pending in Tennessee and Alabama.²⁴ Additionally, a class action lawsuit has been filed against the crematory and the funeral homes that contracted with it.²⁵ Further litigation is expected to emerge.²⁶ Georgia's legislators quickly scrambled to close the legal loophole. The first drafts of remedial legislation were completed less than a week after the Tri-State Crematory story broke.²⁷ The General Assembly responded quickly.²⁸ State Representative Mike Snow, sponsored a bill in the House and State Senator Jeff Mullis sponsored a similar bill in the Senate.²⁹ Both bills unanimously passed their respective chambers and were sent to a conference committee where they were incorporated into one bill, HB 1481.³⁰ However, the legislation was not expected to shake up the industry.³¹ As Representative Roger Williams explained, "I have a feeling that a majority of funeral homes and crematories were already adhering to the law. We were just getting the house in order."³²

23. Norman Arey, *Marsh Attorney Appeals to Seek Judge's Recusal*, ATLANTA J. CONST., May 4, 2002, at 4H.

24. *Walker County: New Lawsuit Filed Against Crematory*, ATLANTA J. CONST., Apr. 25, 2002, at 6C; Doug Payne, *Marsh to Face 6 Tennessee Charges*, ATLANTA J. CONST., Mar. 10, 2002, at 3C.

25. *WALKER COUNTY: New Lawsuit Filed Against Crematory*, ATLANTA J. CONST., Apr. 25, 2002, at 6C.

26. See generally, Lieff, Cabraser, Heimann & Bernstein, LLP: *Tri State Crematory Lawsuits*, at <http://www.lieffcabraser.com/cremations.htm> (providing information on the Tri-State Crematory situation and offering legal services for "[f]amily members of decedents whose remains were desecrated or never properly cremated . . .").

27. Telephone Interview with Rep. Charlie Smith, House District No. 175 (June 27, 2002) [hereinafter Smith Interview].

28. *Id.*

29. Video Recording of Senate Proceedings, Feb. 18, 2002 (remarks by Sen. Jeff Mullis), at <http://www.state.ga.us/services/leg/video/2002/archive.html>; Video Recording of House Proceedings, Feb. 18, 2002 (remarks by Rep. Mike Snow), at <http://www.state.ga.us/services/leg/video/2002/archive.html>.

30. Telephone Interview with Rep. Roger Williams, House District No. 5 (June 27, 2002) [hereinafter Williams Interview]; *INSPECTIONS: Crematory Loophole May Be Closed*, ATLANTA J. CONST., Apr. 11, 2002, at 8C.

31. *Id.*

32. *Id.*

*HB 1481**Introduction*

House Representatives Mike Snow of the 2nd district, Charlie Smith of the 175th district, Brian Joyce of the 1st district, Chuck Sims of the 167th district, Roger Williams of the 5th district and Robert Ray of the 128th district sponsored HB 1481.³³ The bill was introduced in the House on February 18, 2002.³⁴ The House assigned the bill to its Public Safety committee, which offered an amendment and favorably reported the bill on February 20, 2002.³⁵ The House passed the bill on February 26, 2002, by unanimous vote.³⁶ On February 27, 2002, the Senate assigned the bill to its Public Safety committee, which favorably reported the bill on March 1, 2002.³⁷ The Senate and House met in a conference committee and worked out a new version of the bill, which included parts of Senate Bill 474, and the Governor signed the bill into law on May 9, 2002.³⁸

Consideration by the House

Upon introduction, the House assigned the bill to its Public Safety committee, which created an amendment and favorably reported the bill on February 20, 2002.³⁹

*SB 474**Introduction*

Senators Jeff Mullis, William Hamrick, Steve Thompson, Charlie Tanksley, Richard Marable, and Don Thomas of the 53rd, 30th, 33rd, 32nd, 52nd and 54th districts respectively, sponsored and introduced

33. HB 1481, as introduced, 2002 Ga. Gen. Assem.

34. State of Georgia Final Composite Status Sheet, HB 1481, Apr. 12, 2002.

35. *Id.*

36. Georgia House of Representatives Voting Record, HB 1481 (Feb. 26, 2002).

37. State of Georgia Final Composite Status Sheet, HB 1481, Apr. 12, 2002.

38. 2002 Ga. Laws 641, § 7(a) at 646.

39. State of Georgia Final Composite Status Sheet, HB 1481, Apr. 12, 2002.

SB 474, on February 18, 2002.⁴⁰ The Senate assigned the bill to its Veterans and Consumer Affairs Committee, which favorably reported the bill, as substituted, on February 26, 2002.⁴¹ The Senate adopted the Committee substitute and passed the bill on March 8, 2002.⁴²

Consideration by the Senate Veterans and Consumer Affairs Committee

After introduction, the Senate assigned the bill to its Veterans and Consumer Affairs Committee.⁴³ As introduced, the bill would have amended Code section 31-21-44.1, by defining the offense of abuse of a dead body and by making it a felony.⁴⁴

The Committee substitute added the word "human" before the word "dead" in the bill; added language so that the offense also included the failure to inter, cremate, or refrigerate the dead body within seventy-two hours after taking custody of the body; and created an exception from the definition of the crime for the use of a dead body for medical training and other scientific purposes.⁴⁵

Consideration by the Senate

The Senate passed SB 474, as substituted, on March 8, 2002.⁴⁶ The Senate floor amendment extracted the word "he" on page 2, line 12 and substituted the word "she."⁴⁷

The Conference Committee

Members of the House and Senate met in Conference Committee in order to agree on a compromise version that included parts of both

40. SB 474, as introduced, 2002 Ga. Gen. Assem.

41. State of Georgia Final Composite Status Sheet, SB 474, Apr. 12, 2002.

42. *Id.*

43. State of Georgia Final Composite Status Sheet, SB 474, Apr. 12, 2002.

44. SB 474, as introduced, 2002 Ga. Gen. Assem.

45. *Compare* SB 474, as introduced, 2002 Ga. Gen. Assem., with SB 474 (SCS), 2002 Ga. Gen. Assem.

46. State of Georgia Final Composite Status Sheet, Apr. 12, 2002.

47. Audio Recording of Senate Proceedings, Mar. 8, 2002, at <http://www.state.ga.us/org/services/leg/video/2002/archive.html>.

the House and Senate bills.⁴⁸ The original HB 1481 contained language aimed more at closing the loophole and creating the offense of abandonment of a dead body.⁴⁹ With subsequent amendments and the incorporation of SB 474, HB 1481 became a strong bill that “really covered all the bases” to regulate the industry.⁵⁰

The Act

Code Section 31-21-44.2

Section 1 of the Act amends Title 31 of the O.C.G.A., relating to health, by inserting a new Code section, 31-21-44.2.⁵¹ This section provides that a person who “throws away or abandons any dead human body or portion of such dead body” commits the crime of abandonment of a dead body.⁵² Further, the section makes abandonment of a dead body a felony and imposes a punishment of imprisonment for at least a year, but no more than three.⁵³ The section excludes medical and other lawful uses from punishment.⁵⁴

Code Section 31-33-2

The Act amends Code section 31-33-2 by requiring medical providers to retain all aspects of their patients' medical records for at least ten years.⁵⁵ Further, the Act provides that, if a patient or his agent, requests a copy of his medical record, the provider must furnish a “complete and current copy of the record” to that person.⁵⁶ Additionally, if the patient is deceased, the Act allows access to the patient's records by a person authorized immediately prior to the decedent's death.⁵⁷

48. Williams Interview, *supra* note 31.

49. *Id.*; Compare HB 1481, as introduced, 2002 Ga. Gen. Assem., with 2002 Ga. Laws 641 § 1, at 641.

50. Williams Interview, *supra* note 31.

51. O.C.G.A. § 31-21-44.2 (Supp. 2002).

52. *Id.*

53. *Id.*

54. *Id.*

55. Compare 1984 Ga. Laws 1680, § 1, at 1681 (formerly found at O.C.G.A. § 31-33-2 (1984)), with O.C.G.A. § 31-33-2 (Supp. 2002).

56. *Id.*

57. See O.C.G.A. § 31-33-2 (Supp. 2002).

Code Section 43-18-1

The Act amends Code section 43-18-1 by defining “crematory” as “any place where cremation is performed” excluding hospitals, clinics, laboratories, and other such facilities.⁵⁸

Code Section 43-18-8

The Act amends Code section 43-18-8 by requiring funeral directors to place identification tags that include serial numbers identifying prosthesis removed from the body prior to cremation and also requires them to provide a written statement to the person receiving the remains which verifies that the container contains “substantially the remains of the deceased.”⁵⁹

Code Section 43-18-72

The Act also amends Code section 43-18-72 by requiring that those who operate crematories maintain a license, have a specific address, provide a room that seats at least thirty people, have a display room with a supply of urns, maintain a hearse, have a processing station for the grinding of cremated remains (retort) and have at least one truck.⁶⁰ The Act further amends Code section 43-18-72 by requiring crematories to submit reports that list the names of the people it cremates and the types of containers it uses.⁶¹

Code Section 43-18-75

The Act amends Code section 43-18-75 by requiring the board to perform inspections of funeral establishments and crematories at least

58. Compare 1990 Ga. Laws 1372, § 1, at 1373 (formerly found at O.C.G.A. § 43-18-1 (1990)), with O.C.G.A. § 43-18-1 (2002).

59. Compare 1995 Ga. Laws 839, § 1, at 839 (formerly found at O.C.G.A. § 43-18-8 (1995)), with O.C.G.A. § 43-18-8 (Supp. 2002).

60. Compare 1990 Ga. Laws 1392, § 1, at 1393 (formerly found at O.C.G.A. § 43-18-72 (1990)), with O.C.G.A. § 43-18-72 (Supp. 2002).

61. *Id.*

once per year and by providing for suspension or revocation of the facility's license, and probation or fines for any violations.⁶²

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62. Compare 1990 Ga. Laws 1394, § 1, at 1394 (formerly found at O.C.G.A. § 43-18-75 (1990)), with O.C.G.A. § 43-18-75 (2002).