

COMMITTEE REPORT

TO: Patrick O'Donnell
Clerk of the Legislature

FROM: Senator Sara Howard
Chair, Health and Human Services Committee

DATE: 11.13.2020

RE: Health and Human Services Committee Report and Recommendations on
Regulated Occupations within Committee Jurisdiction – Funeral Directors
and Embalmers

GENERAL INFORMATION

- I. Occupation Regulated
 - A) Funeral Directors and Embalmers

- II. Name of Occupational Board Responsible for Enforcement
 - A) Per Nebraska Revised Statutes Section [38-161](#), the Board of Funeral Directing and Embalming provides recommendations to the Department of Health and Human Services regarding the issuance or denial of credentials, and provides recommendations to the Department of Health and Human Services regarding rules and regulations to carry out the Uniform Credentialing Act.

- III. Public Purpose and Assumptions Underlying License Creation
 - A) Funeral Directing is counseling families or next of kin in regards to the conduct of a funeral service for a dead human body for burial, disposition, or cremation, and/or directing or supervising burial, disposition, or cremation of dead human bodies. Funeral Directors may also provide for or maintain a funeral establishment. Only licensed Funeral Directors may represent themselves as or use in connection with their own name the title of funeral director, mortician, or any other title implying that he or she is engaged in the business of funeral directing. Embalming means preparing dead human bodies for burial or other final disposal by a licensed funeral director. Embalming may also include requesting and obtaining burial or removal permits, or assuming any of the other duties incident to the practice of embalming.

This license was started as a means to protect the public consumer by monitoring the actions of those practicing in the funeral business and to

ensure that health and sanitation standards as far as the disposition of the deceased, were being adhered to. It gave practitioners guidelines to follow assuring that all consumers received best practices and standards established by others in the profession. It protects the consumer from unfair actions by funeral professionals by providing written protocols for how a funeral director should provide services when caring for a deceased individual. It also gave funeral professionals standards to hold all licensees to, creating accountability to the profession. It reassures the public, that the licensee has met and proven that he/she meets the qualifications and provides service as defined by other funeral professionals. Proper sanitation procedures were also developed and still today, those procedures remains a high protocol to follow. These professionals work with dangerous chemicals, oversee vital statistics, and counsel individuals experiencing extreme emotional distress.

IV. Number of Regulated Professionals in Nebraska

- A) There are 375 licensed Funeral Directors and Embalmers in Nebraska. There are also twelve apprentices.

BOARD MEMBERSHIPS AND MEETINGS

I. Number of Members

- A) There are four members of the Board of Funeral Directing and Embalming.

II. Who Appoints Members of the Board / Is Legislative Approval Required?

- A) The Board of Health appoints the members of the Board of Funeral Directing and Embalming. Legislative approval is not required.

III. Term Length

- A) The length of term for service on the Board of Funeral Directing and Embalming is up to two consecutive five year terms, on a rotating basis.

IV. Qualifications for Membership of the Board

- A) The Board of Funeral Directing and Embalming is made up of three professional Funeral Directors and Embalmers and one public member. The professional Funeral Directors and Embalmers shall have held and maintained an active credential and be and have been actively engaged in the practice of his or her profession for a period of five years just preceding his or her appointment and shall maintain such credential and practice while serving as a board member.

- V. The Number of Meetings Required Per Year / Meetings Actually Held
- A) For fiscal year (FY) 2014-2015: Meetings Required – 1; Meetings Held – 5.
 - B) For FY 2015-2016: Meetings Required – 1; Meetings Held – 4.
 - C) For FY 2016-2017: Meetings Required – 1; Meetings Held – 3.
 - D) For FY 2017-2018: Meetings Required – 1; Meetings Held – 5.
 - E) For FY 2018-2019: Meetings Required – 1; Meetings Held – 5.

VI. Annual Budget Information for the Previous Five Years

- A) The Board of Funeral Directing and Embalming is cash-funded from licensure fees. Funds for credentialed occupations may come from interest earned on the Professional and Occupational Credentialing Cash Fund, certification and verification of credentials, administrative fees, reinstatement fees, general funds and federal funds, fees for miscellaneous services, gifts, and grants.
- B) For FY 2014-2015: \$3,974
- C) For FY 2015-2016: \$9,275
- D) For FY 2016-2017: \$31,407
- E) For FY 2017-2018: \$40,602
- F) For FY 2018-2019: \$34,631

VII. Statement from Occupational Board on Effectiveness of Regulations

- A) The Chair of the Board of Funeral Directing and Embalming stated, “Today, more than ever it is crucial for the public to have confidence that their deceased loved one will be properly and professional cared for. With the rise in the number of cremations (an irreversible process), dysfunctional families, federal rules and regulations, funeral professionals have to be properly trained and educated to perform their duties. The recent COVID pandemic has reinforced the need for sanitation, disinfection and proper disposition of the deceased. With rules and regulations, the consumer has written expectations of the services they should receive and a path to restitution if they don’t.”

AUTHORIZATION

I. Statutory Authorization

- A) Statutory authorization for the Funeral Director and Embalmer occupation may be found in the Nebraska Revised Statutes, sections [38-1401](#) to [38-1428](#), which may be cited as the Funeral Directing and Embalming Practice Act. For text of the Nebraska statutes relating to the Funeral Director and Embalmer occupation, see Appendix A.

II. Other Authorization

- A) Rules and regulations regarding the Funeral Director and Embalmer occupation may be found in the Nebraska Administrative Code [Title 172, Chapter 67](#).

CREDENTIALING

- I. Number of Licenses, Certifications, or Registrations Issued In Past Five Years
 - A) From January 1, 2015 to January 1, 2020, there were 167 total licenses issued for Funeral Director and Embalmers and apprentice Funeral Director and Embalmers, including 69 Funeral Director and Embalmers and 98 apprentice Funeral Director and Embalmers.
- II. Number of Licenses, Certifications, or Registrations Denied in Past Five Years
 - A) There have been no Funeral Director and Embalmer licenses denied in the past five years.
- III. Number of Licenses, Certifications, or Registrations Revoked in Past Five Years
 - A) There were two Funeral Director and Embalmer licenses revoked in the past five years.
 - B) The licenses were revoked for multiple reasons, including dishonorable conduct, failure to file reports, misrepresentation of material facts, felony convictions, and substance use disorder.
- IV. Number of Licenses, Certifications, or Registrations Penalized in Past Five Years
 - A) There was one Funeral Director and Embalmer license penalized in the past five years. Two funeral homes were also penalized.
 - B) The Funeral Director and Embalmer was assessed a civil penalty per Nebraska Revised Statutes, sections [38-196](#) and [38-198](#).
- V. Comparison of How Other States Regulate This Occupation
 - A) All states, with the exception of Colorado, license Funeral Directors and Embalmers. The majority of states require an Associate Degree (with no specific coursework), completion of a mortuary science program accredited by the American Board of Funeral Service Education or its equivalent (there are at least 60 accredited programs), and an apprenticeship of 1-2 years. There is no mortuary school in Nebraska, the closest state is Iowa and Kansas. In reviewing the 5 states surrounding Nebraska (Iowa, Kansas, Missouri, South Dakota, and Wyoming), only 1 of the 5 requires specific coursework within the pre-mortuary 60 hours/associate degree. Nebraska requirements, found in

Nebraska Revised Statutes, section [38-1414](#), requires the equivalent of sixty semester hours of college credit in addition to a full course of instruction in an accredited school of mortuary science. Such hours shall include the equivalent of (i) six semester hours of English, (ii) six semester hours of accounting, (iii) eight semester hours of chemistry, (iv) twelve semester hours of a biological science relating to the human body, and (v) six semester hours of psychology or counseling.

VI. What Is The Potential Harm if This Occupation Is No Longer Licensed, Certified, or Regulated?

A) If the Funeral Director and Embalmer occupation is no longer licensed, certified, or regulated, consumers will not be protected by the professional protocols. Currently, wrongful cremations are rare. However, if the rules and regulations did not exist, anyone could provide cremations, which could increase the rate of wrongful cremations. Consumers would have greater difficulty proving liability for malpractice if there were no guidelines or protocols to reference. The quality, character and ethics of the practitioner could diminish if there were no guidelines to follow. Proper sanitation and disposition needs could be overlooked as a means to lower the expenses of the practitioner with no repercussions. Ultimately, it would negatively affect the public health, safety, and welfare.

COMMITTEE RECOMMENDATION ON CONTINUATION, MODIFICATION, OR TERMINATION OF OCCUPATIONAL REGULATIONS

Regulated occupations under the purview of the Health and Human Services Committee are unique in that through the Nebraska Regulation of Health Professions Act (Neb. Rev. Stat. Sections 71-6201 to 71-6229), health professions which are not licensed or regulated, or health professions that wish to change their scope of practice, go through a three-stage credentialing process.

Credentialing review is a three-stage process conducted by the following review bodies in the following order:

- 1) The review of an ad hoc technical review committee appointed by the Director of the Division of Public Health;
- 2) The review of the State Board of Health;
- 3) The review of the Director of the Division of Public Health.

The three review bodies each create their own independent report on each proposal. All reports created by the review process are available to members of the Health and Human Services Committee to assist them during their review of any bills that might arise from credentialing review proposals. These reports include

recommendations regarding the level of licensure of the health profession. These reports are advisory to the Legislature, and only the action of the Legislature may create changes in the regulatory status of a profession. These reports represent expert input into possible public health and safety aspects of credentialing review proposals, and the nine-month process is overseen by those with experience in the provision of health-related or medical services.

The licenses, certifications, and registrations overseen by the Board of Funeral Directing and Embalming and the Department of Health and Human Services are intended to protect the health, safety, and welfare of Nebraskans. The current regulation of the Funeral Director and Embalmer occupation by licensure is appropriate and balanced and does not need modification at this time.

Currently, some of the educational requirements are archaic and could be revised. For instance, because Funeral Directors and Embalmers generally no longer mix or create their own embalming fluid, there could be less emphasis on chemistry. Instead, there could be more emphasis on ethics, business law, and sociology.

APPENDIX A

STATUTES PERTAINING TO THE FUNERAL DIRECTING AND EMBALMING PRACTICE ACT

38-1401. Act, how cited.

Sections 38-1401 to 38-1428 shall be known and may be cited as the Funeral Directing and Embalming Practice Act.

Source: Laws 2007, LB463, § 537.

38-1402. Definitions, where found.

For purposes of the Funeral Directing and Embalming Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1403 to 38-1413 apply.

Source: Laws 1927, c. 167, § 92, p. 479; C.S.1929, § 71-1301; Laws 1931, c. 123, § 1, p. 355; C.S.Supp.,1941, § 71-1301; R.S.1943, § 71-194; Laws 1957, c. 293, § 1, p. 1052; R.S.1943, (1990), § 71-194; Laws 1993, LB 187, § 13; Laws 1996, LB 1044, § 557; Laws 1999, LB 828, § 152; Laws 2003, LB 95, § 35; R.S.1943, (2003), § 71-1301; Laws 2007, LB296, § 465; Laws 2007, LB463, § 538.

38-1403. Accredited school of mortuary science, defined.

Accredited school of mortuary science means a school of the same type as those rated Class A by the Conference of Funeral Service Examining Boards of the United States, Inc., approved by the board.

Source: Laws 2007, LB463, § 539.

38-1404. Apprentice, defined.

Apprentice means a person registered with the department as an apprentice who is completing a twelve-month apprenticeship under the supervision of a licensed funeral director and embalmer practicing in the State of Nebraska. The licensed funeral director and embalmer is responsible for all funeral assists and embalmings completed by the apprentice.

Source: Laws 2007, LB463, § 540.

38-1405. Board, defined.

Board means the Board of Funeral Directing and Embalming.

Source: Laws 2007, LB463, § 541.

38-1406. Branch establishment, defined.

Branch establishment means a place of business situated at a specific street address or location which is a subsidiary of a licensed funeral establishment, which contains a

casket display room, a viewing area, or an area for conducting funeral services, or all of them, and where any portion of the funeral service or arrangements for the disposition of a dead human body is conducted.

Source: Laws 2007, LB463, § 542.

38-1407. Casket, defined.

Casket means a receptacle for a dead human body and does not include vaults, lawn crypts, mausoleums, or other outside receptacles for caskets.

Source: Laws 2007, LB463, § 543.

38-1408. Crematory authority, defined.

Crematory authority means the legal entity subject to licensure by the department to maintain and operate a crematory and perform cremation.

Source: Laws 2007, LB463, § 544.

38-1409. Embalming, defined.

(1) Embalming means the practice of preparing a dead human body for burial or other final disposal by a licensed funeral director and embalmer or an apprentice, requesting and obtaining burial or removal permits, or assuming any of the other duties incident to the practice of embalming.

(2) Any person who publicly professes to be a funeral director and embalmer or an apprentice is deemed to be practicing embalming.

(3) The performance of the following acts is also deemed to be the practice of embalming: (a) The disinfection and preservation of dead human beings, entire or in part; and (b) the attempted disinfection and preservation thereof by the use or application of chemical substances, fluids, or gases ordinarily used, prepared, or intended for such purposes, either by outward application of such chemical substances, fluids, or gases on the body or by introducing them into the body, by vascular or hypodermic injection, or by direct introduction into the organs or cavities.

Source: Laws 2007, LB463, § 545.

38-1410. Funeral directing, defined.

Funeral directing means (1) counseling families or next of kin in regard to the conduct of a funeral service for a dead human body for burial, disposition, or cremation or directing or supervising burial, disposition, or cremation of dead human bodies, (2) providing for or maintaining a funeral establishment, or (3) the act of representing oneself as or using in connection with one's name the title of funeral director, mortician, or any other title implying that he or she is engaged in the business of funeral directing.

Source: Laws 2007, LB463, § 546.

38-1411. Funeral establishment, defined.

Funeral establishment means a place of business situated at a specific street address or location devoted to the care and preparation of dead human bodies for burial, disposition, or cremation or to conducting or arranging funeral services for dead human bodies.

Source: Laws 2007, LB463, § 547.

38-1412. Licensure examination, defined.

Licensure examination means a national standardized examination, the state jurisprudence examination, and the vital statistic forms examination.

Source: Laws 2007, LB463, § 548.

38-1413. Supervision, defined.

Supervision means the direct oversight or the easy availability of the supervising funeral director and embalmer. The first twenty-five funeral assists and embalmings shall be completed under direct onsite supervision of the supervising funeral director and embalmer.

Source: Laws 2007, LB463, § 549.

38-1414. Funeral directing and embalming; license; requirements.

(1) The department shall issue a single license to practice funeral directing and embalming to applicants who meet the requirements of this section. An applicant for a license as a funeral director and embalmer shall:

(a) Present satisfactory proof that the applicant has earned the equivalent of sixty semester hours of college credit in addition to a full course of instruction in an accredited school of mortuary science. Such hours shall include the equivalent of (i) six semester hours of English, (ii) six semester hours of accounting, (iii) eight semester hours of chemistry, (iv) twelve semester hours of a biological science relating to the human body, and (v) six semester hours of psychology or counseling; and

(b) Present proof to the department that he or she has completed the following training:

(i) A full course of instruction in an accredited school of mortuary science;

(ii) A twelve-month apprenticeship under the supervision of a licensed funeral director and embalmer practicing in the State of Nebraska, which apprenticeship shall consist of arterially embalming twenty-five bodies and assisting with twenty-five funerals; and

(iii) Successful completion of the licensure examination approved by the board.

(2) Any person holding a valid license as an embalmer on January 1, 1994, may continue to provide services as an embalmer after such date. Upon expiration of such valid license, the person may apply for renewal thereof, and the department shall renew such license to practice embalming.

(3) Any person holding a valid license as a funeral director on January 1, 1994, may continue to provide services as a funeral director after such date. Upon expiration of such valid license, the person may apply for renewal thereof, and the department shall renew such license to practice funeral directing.

Source: Laws 1927, c. 167, § 93, p. 480; C.S.1929, § 71-1302; Laws 1931, c. 123, § 1, p. 355; Laws 1937, c. 155, § 1, p. 612; C.S.Supp.,1941, § 71-1302; R.S.1943, § 71-195; Laws 1955, c. 271, § 1, p. 852; Laws 1986, LB 926, § 43; Laws 1987, LB 473, § 19; Laws 1988, LB 1100, § 35; R.S.1943, (1990), § 71-195; Laws 1993, LB 187, § 14; R.S.1943, (2003), § 71-1302; Laws 2007, LB463, § 550.

38-1415. Examinations; requirements.

When the applicant has satisfied the department that he or she either has completed a full course of instruction in an accredited school of mortuary science or has completed all but the final semester of such course, the applicant shall be eligible to take the national standardized examination. The applicant shall pass such examination before beginning his or her twelve-month apprenticeship or the final six months thereof. When the applicant has satisfied the department that he or she has the qualifications specified in section 38-1416, he or she shall be eligible to take the state jurisprudence and vital statistic forms examination. A grade of seventy-five or above on each part of the licensure examination shall be a passing grade.

Source: Laws 1927, c. 167, § 94, p. 480; C.S.1929, § 71-1303; Laws 1931, c. 123, § 1, p. 356; Laws 1937, c. 155, § 2, p. 613; C.S.Supp.,1941, § 71-1303; R.S.1943, § 71-196; Laws 1955, c. 271, § 2, p. 853; R.S.1943, (1990), § 71-196; Laws 1993, LB 187, § 15; R.S.1943, (2003), § 71-1303; Laws 2007, LB463, § 551.

38-1416. Apprenticeship; apprentice license; examination.

(1) Before beginning an apprenticeship, an applicant shall apply for an apprentice license. The applicant shall show that he or she has completed thirty-nine of the sixty hours required in subdivision (1)(a) of section 38-1414. The applicant may complete the twelve-month apprenticeship in either a split apprenticeship or a full apprenticeship as provided in this section.

(2) A split apprenticeship shall be completed in the following manner:

(a) Application for an apprentice license to complete a six-month apprenticeship prior to attending an accredited school of mortuary science, which license shall be valid for six months from the date of issuance and shall not be extended by the board. The apprenticeship shall be completed over a continuous six-month period;

(b) Successful completion of a full course of study in an accredited school of mortuary science;

(c) Successful passage of the national standardized examination; and

(d) Application for an apprentice license to complete the final six-month apprenticeship, which license shall be valid for six months from the date of issuance and shall not be extended by the board. The apprenticeship shall be completed over a continuous six-month period.

(3) A full apprenticeship shall be completed in the following manner:

(a) Successful completion of a full course of study in an accredited school of mortuary science;

(b) Successful passage of the national standardized examination; and

(c) Application for an apprentice license to complete a twelve-month apprenticeship. This license shall be valid for twelve months from the date of issuance and shall not be extended by the board. The apprenticeship shall be completed over a continuous twelve-month period.

(4) An individual registered as an apprentice on December 1, 2008, shall be deemed to be licensed as an apprentice for the term of the apprenticeship on such date.

Source: Laws 1927, c. 167, § 96, p. 481; C.S.1929, § 71-1305; Laws 1931, c. 123, § 1, p. 357; Laws 1937, c. 155, § 3, p. 613; C.S.Supp.,1941, § 71-1305; R.S.1943, § 71-198; Laws 1986, LB 926, § 44; Laws 1987, LB 473, § 20; Laws 1988, LB 1100, § 36; R.S.1943, (1990), § 71-198; Laws 1993, LB 187, § 16; Laws 2003, LB 242, § 97; R.S.1943, (2003), § 71-1304; Laws 2007, LB463, § 552.

38-1417. Teaching and demonstration; use of dead human bodies.

The board shall have the privileges extended to them for the use of bodies for dissection, demonstrating, and teaching under the requirements of the State Anatomical Board for the distribution and delivery of dead human bodies.

Source: Laws 1927, c. 167, § 97, p. 481; C.S.1929, § 71-1306; Laws 1931, c. 123, § 1, p. 357; C.S.Supp.,1941, § 71-1306; R.S.1943, § 71-199; R.S.1943, (1990), § 71-199; Laws 1993, LB 187, § 17; Laws 1999, LB 828, § 153; R.S.1943, (2003), § 71-1305; Laws 2007, LB463, § 553.

38-1418. Violations; evidence.

The finding of chemical substances, fluids, or gases ordinarily used in embalming or any trace thereof in a dead human body, the use of which is prohibited except by a licensed funeral director and embalmer, or the placing thereof upon a dead human body by

other than a licensed funeral director and embalmer shall constitute prima facie evidence of the violation of the Funeral Directing and Embalming Practice Act.

Source: Laws 1927, c. 167, § 98, p. 481; C.S.1929, § 71-1307; Laws 1931, c. 123, § 1, p. 357; C.S.Supp.,1941, § 71-1307; R.S.1943, § 71-1,100; R.S.1943, (1990), § 71-1,100; Laws 1993, LB 187, § 18; R.S.1943, (2003), § 71-1306; Laws 2007, LB463, § 554.

38-1419. Funeral establishment; qualifications; relocation; change of manager; change of name.

(1) In order for a funeral establishment to be licensed, it shall employ as its manager a licensed funeral director and embalmer who shall be responsible for all transactions conducted in the funeral establishment, except that any person holding a valid license as a funeral director may serve as a manager of a funeral establishment. The manager shall maintain and operate the funeral establishment in accordance with all laws, rules, and regulations relating thereto.

(2) If the applicant for a funeral establishment license proposes to operate more than one establishment, a separate application and fee shall be required for each location.

(3) A funeral establishment desiring to relocate shall make application to the department at least thirty days prior to the designated date of such change in location.

(4) A funeral establishment desiring to change its manager shall make application to the department at least fifteen days prior to the designated date of such change, except that in the case of death of a manager, the application shall be made immediately following such death. No license shall be issued under this subsection by the department until the original license has been surrendered.

(5) A funeral establishment desiring to change its name shall request such change to the department at least thirty days prior to the designated change in name.

Source: Laws 1957, c. 295, § 3, p. 1060; Laws 1973, LB 515, § 15; Laws 1980, LB 94, § 6; Laws 1986, LB 926, § 49; Laws 1987, LB 473, § 37; Laws 1992, LB 1019, § 61; Laws 1993, LB 187, § 20; Laws 2003, LB 242, § 98; R.S.1943, (2003), § 71-1327; Laws 2007, LB463, § 555.

38-1420. Branch establishment; application for license; qualifications; relocation; change of manager; change of name.

(1) If the applicant for a branch establishment license proposes to operate more than one branch establishment, a separate application and fee shall be required for each location.

(2) A branch establishment desiring to relocate shall make application to the department at least thirty days prior to the designated date of such change in location.

(3) A branch establishment desiring to change its manager shall make application to the department at least fifteen days prior to the designated date of such change, except that in the case of death of the manager, the establishment shall make application immediately after such death. No license shall be issued by the department under this subsection until the original license has been surrendered.

(4) A branch establishment desiring to change its name shall apply to the department at least thirty days prior to the designated change in name.

Source: Laws 1993, LB 187, § 21; Laws 2003, LB 242, § 99; R.S.1943, (2003), § 71-1327.01; Laws 2007, LB463, § 556.

38-1421. Reciprocity; military spouse; temporary license.

The department, with the recommendation of the board, may issue a license based on licensure in another jurisdiction to an individual who meets the requirements of the Funeral Directing and Embalming Practice Act or substantially equivalent requirements as determined by the department, with the recommendation of the board. An applicant for licensure under the act who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2007, LB463, § 557; Laws 2017, LB88, § 51.

38-1422. Fees.

The department shall establish and collect fees for credentialing under the Funeral Directing and Embalming Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2007, LB463, § 558.

38-1423. Prohibited acts.

Any person, partnership, limited liability company, firm, corporation, association, or other organization which (1) without having complied with the Funeral Directing and Embalming Practice Act and without having first obtained a license (a) engages directly or indirectly in the business of funeral directing and embalming, (b) holds himself, herself, or itself out to the public as a funeral director and embalmer, or (c) performs or attempts to perform any of the services of a funeral establishment or branch establishment or of a funeral director and embalmer relating to the disposition of dead human bodies or (2) continues to perform such services after the license has expired or has been revoked or suspended shall be dealt with in the same manner as outlined in section 38-1,118. Each day so engaged in such business shall constitute and be deemed a separate offense.

Source: Laws 1957, c. 295, § 7, p. 1062; Laws 1973, LB 515, § 16; Laws 1977, LB 39, § 158; Laws 1980, LB 94, § 9; Laws 1986, LB 926, § 50; Laws 1988, LB 1100, § 101; Laws 1991, LB 10, § 5; Laws 1992, LB 1019, § 62; Laws 1993, LB 121, § 423; Laws 1993, LB

187, § 23; Laws 1994, LB 1223, § 33; Laws 2003, LB 242, § 100; R.S.1943, (2003), § 71-1331; Laws 2007, LB463, § 559.

38-1424. Funeral directors and embalmers and funeral establishments; prohibited acts; section, how construed.

(1) In addition to the grounds for disciplinary action found in sections 38-178 and 38-179, a credential issued under the Funeral Directing and Embalming Practice Act may be denied, refused renewal, limited, revoked, or suspended or have other disciplinary measures taken against it in accordance with section 38-196 when the applicant or credential holder is found guilty of any of the following acts or offenses:

- (a) Solicitation of dead human bodies by the credential holder or his or her agents, assistants, or employees, either prior to or following death;
- (b) The purchasing of funeral or embalming engagements or the payment of a commission either directly or indirectly or offer of payment of such commission to any agent, assistant, or employee for the purpose of securing business;
- (c) Using indecent, profane, or obscene language in the presence of a dead human body or within the immediate presence or hearing of the family, relatives, or friends of the deceased prior to the burial of the deceased;
- (d) Soliciting or accepting any remuneration, commission, bonus, or rebate in consideration of the recommending or causing a dead human body to be placed in any crematory, mausoleum, or cemetery;
- (e) Using any casket or part thereof which has previously been used as a receptacle for, or in connection with, the shipment, burial, or other disposition of a dead human body without first identifying such item as used;
- (f) Violations of any state law, municipal ordinance, or rule or regulation of the department or other body having regulatory powers, relating to the handling, custody, care, or transportation of dead human bodies;
- (g) Refusal to surrender promptly the custody of a dead human body upon request of a person or persons lawfully entitled to the custody thereof; or
- (h) Taking undue advantage of a patron or patrons, or being found guilty of fraud, or misrepresentation in the selling of merchandise or service to patrons.

(2) An applicant or a credential holder shall be subject to the penalty provisions of this section if found guilty of any of the following:

- (a) Paying, directly or indirectly, any money or other thing of value as a commission or gratuity for the securing of business;

(b) The buying of a business of any person, firm, or corporation, or the paying of a commission to any person, firm, or corporation or to any hospital or any institution where death occurs or to any hospital superintendent, nurse, intern, or other employee, whether directly or indirectly; or

(c) Willful malpractice.

(3) Any funeral director and embalmer who commits any of the acts or things prohibited by this section or otherwise violates any of the provisions thereof shall be guilty of a Class II misdemeanor.

(4) Nothing in this section shall be construed to prohibit a licensed funeral director and embalmer from engaging in sales of funeral goods or services under the Burial Pre-Need Sale Act.

Source: Laws 1957, c. 295, § 9, p. 1063; Laws 1963, c. 411, § 1, p. 1331; Laws 1980, LB 94, § 11; Laws 1987, LB 473, § 40; Laws 1988, LB 1100, § 103; Laws 1993, LB 187, § 25; R.S.1943, (2003), § 71-1333; Laws 2007, LB463, § 560.

38-1425. Deceased persons; funeral and disposition arrangements; liability.

(1) Any person signing a funeral service agreement, a cremation authorization form, or any other authorization for disposition shall be deemed to warrant the truthfulness of any facts set forth in such agreement, form, or authorization, including the identity of the decedent whose remains are to be buried, cremated, or otherwise disposed of and the person's right of disposition. A funeral establishment, cemetery, or crematory authority shall have the right to rely on such agreement, form, or authorization and shall have the authority to carry out the instructions of the person or persons whom the funeral establishment, cemetery, or crematory authority reasonably believes holds the right of disposition. No funeral establishment, cemetery, or crematory authority shall have the responsibility to contact or to independently investigate the existence of any next-of-kin or relative of the decedent.

If there is more than one person in a class equal in priority and the funeral establishment, cemetery, or crematory authority has no knowledge of any objection by other members of such class, the funeral establishment, cemetery, or crematory authority shall be entitled to rely on and act according to the instructions of the first such person in the class to make funeral and disposition arrangements so long as no other person in such class provides written notice of his or her objections to the funeral establishment, cemetery, or crematory authority, as the case may be.

(2) The liability for the reasonable cost of the final disposition of the remains of the decedent devolves jointly and severally upon all kin of the decedent in the same degree of kindred into which the right of disposition fell and upon the estate of the decedent and, in cases where a county board has the right to control disposition of the remains

under subdivision (2)(j) of section 30-2223, upon the county in which the death occurred from funds available for such purpose.

(3) If the decedent died during active military service, as provided in 10 U.S.C. 1481 (a)(1) through (8), in any branch of the United States armed forces, United States reserve forces, or national guard, the person authorized by the decedent to direct disposition pursuant to section 564 of Public Law 109-163, as listed on the decedent's United States Department of Defense record of emergency data, DD Form 93, or its successor form, shall take priority over all other persons described in section 30-2223.

Source: Laws 1959, c. 325, § 1, p. 1186; Laws 1959, c. 326, § 1, p. 1189; Laws 1998, LB 1354, § 7; Laws 1999, LB 46, § 5; Laws 2003, LB 95, § 36; R.S.1943, (2003), § 71-1339; Laws 2007, LB463, § 561; Laws 2013, LB420, § 1; Laws 2014, LB998, § 9.

38-1426. Final disposition; instructions; remains of deceased person; disposition; liability.

(1) A decedent, prior to his or her death, may direct the preparation for the final disposition of his or her remains by written instructions as provided in sections 30-2223 and 38-1425. If such instructions are in a will or other written instrument, the decedent may direct that the whole or any part of such remains be given to a teaching institution, university, college, or legally licensed hospital, to the director, or to or for the use of any nonprofit blood bank, artery bank, eye bank, or other therapeutic service operated by any agency approved by the director under rules and regulations established by the director. The person or persons otherwise entitled to control the disposition of the remains under this section shall faithfully carry out the directions of the decedent.

(2) If such instructions are contained in a will or other written instrument, they shall be immediately carried out, regardless of the validity of the will in other respects or of the fact that the will may not be offered for or admitted to probate until a later date.

(3) This section shall be administered and construed to the end that such expressed instructions of any person shall be faithfully and promptly performed.

(4) A funeral director and embalmer, physician, or cemetery authority shall not be liable to any person or persons for carrying out such instructions of the decedent, and any teaching institution, university, college, or legally licensed hospital or the director shall not be liable to any person or persons for accepting the remains of any deceased person under a will or other written instrument as set forth in this section.

Source: Laws 1959, c. 325, § 2, p. 1187; Laws 1993, LB 187, § 30; Laws 1996, LB 1044, § 559; Laws 2003, LB 95, § 37; R.S.1943, (2003), § 71-1340; Laws 2007, LB296, § 467; Laws 2007, LB463, § 562; Laws 2014, LB998, § 10.

38-1427. Autopsy; written authorization; removal of organs; when performed.

A written authorization for an autopsy given by the person listed in section 30-2223 having the right of disposition of the remains may, subject to section 23-1824 and when not inconsistent with any directions given by the decedent pursuant to section 38-1426, include authorization for the removal of any specifically named organ or organs for therapeutic or scientific purposes. Pursuant to any such written authorization, any structure or organ may be given to the director or to any other therapeutic service operated by any nonprofit agency approved by the director, including, but not limited to, a teaching institution, university, college, legally licensed hospital, nonprofit blood bank, nonprofit artery bank, nonprofit eye bank, or nationally recognized nonprofit hormone and pituitary program. The person or persons performing any autopsy shall do so within a reasonable time and without delay and shall not exceed the removal permission contained in such written authorization, and the remains shall not be significantly altered in external appearance nor shall any portion thereof be removed for purposes other than those expressly permitted in this section.

Source: Laws 1959, c. 325, § 3, p. 1188; Laws 1959, c. 326, § 2, p. 1189; Laws 1985, LB 130, § 1; Laws 1996, LB 1044, § 560; Laws 1999, LB 46, § 6; R.S.1943, (2003), § 71-1341; Laws 2007, LB296, § 468; Laws 2007, LB463, § 563; Laws 2014, LB998, § 11.

38-1428. Funeral director and embalmer; principal services; statement of costs.

A written statement, signed by the funeral director and embalmer or legal representative, of all principal services and furnishings to be supplied by the funeral director and embalmer for the preparation and burial or cremation of the deceased, together with the actual cost of the services including the total actual costs, shall be given to the next of kin or other person responsible for the making of the funeral arrangements prior to the burial or disposition of the deceased. For purposes of this section principal services shall include, but not be limited to, the casket, outer receptacle, facilities and equipment, professional services, nonlocal transportation, clothing, an itemization of all cash advances, and sales tax. A copy of such statement, signed by the person to whom it was tendered, shall be retained in the records of the funeral director and embalmer for a period of at least two years.

Source: Laws 1980, LB 94, § 17; Laws 1993, LB 187, § 32; R.S.1943, (2003), § 71-1346; Laws 2007, LB463, § 564.