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**VERSIONS OF THIS BILL**

[3/28/2012](file:///p:\pprever\2011-12\1383_20120328.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 40‑19‑220 SO AS TO REQUIRE A CRIMINAL BACKGROUND CHECK FOR LICENSURE TO PRACTICE FUNERAL SERVICES, AND TO MAKE A CRIMINAL BACKGROUND CHECK OPTIONAL TO THE DEPARTMENT OF LABOR, LICENSING AND REGULATION WHEN CONDUCTING AN INVESTIGATION IN CONNECTION WITH A DISCIPLINARY PROCEEDING AGAINST A PERSON LICENSED TO CONDUCT FUNERAL SERVICES; BY ADDING SECTION 40‑19‑267 SO AS TO REQUIRE A POSITIVE IDENTIFICATION OF A BODY BEFORE THE BODY MAY BE CREMATED, AND TO SPECIFY BY WHAT MEANS THIS POSITIVE IDENTIFICATION MAY BE MADE; TO AMEND SECTION 40‑19‑20, RELATING TO DEFINITIONS RELEVANT TO THE LICENSURE OF EMBALMERS AND FUNERAL DIRECTORS, SO AS TO DEFINE ADDITIONAL TERMS; TO AMEND SECTION 40‑19‑200, RELATING TO PENALTIES FOR A VIOLATION, SO AS TO ELIMINATE A CRIMINAL PENALTY AND INCREASE THE MAXIMUM FINE; TO AMEND SECTION 40‑19‑235, RELATING TO LICENSURE REQUIREMENTS OF AN APPLICANT FOR LICENSURE AS AN EMBALMER OR FUNERAL DIRECTOR WHO HOLDS A VALID LICENSE FROM ANOTHER STATE, SO AS TO ALTER THE EXAMINATION REQUIREMENTS; TO AMEND SECTION 40‑19‑240, RELATING TO THE CERTIFICATION OF AN APPRENTICE AS AN EMBALMER OR FUNERAL DIRECTOR, SO AS TO ALTER THE REQUIREMENTS FOR EMPLOYMENT STATUS AND WORK REPORTING REQUIREMENTS, TO REQUIRE SPECIFIC TASKS TO MEET THE MANDATORY CASE WORK REQUIREMENTS, AND TO REQUIRE THE PRESENCE OF AN APPRENTICE BY A PRECEPTOR ON THE PREMISES WHERE AN APPRENTICE IS CONDUCTING AN EMBALMING OR FUNERAL SERVICE WHEN HE PERFORMS THOSE SERVICES; TO AMEND SECTION 40‑19‑250, RELATING TO CONTINUING EDUCATION PROGRAMS, SO AS TO INCREASE THE ANNUAL REQUIREMENT OF CONTINUING EDUCATION HOURS, TO IMPOSE A MAINTENANCE OF RECORDS OF HOURS COMPLETED, AND TO PROVIDE THAT THE STATE BOARD OF FUNERAL SERVICE MAY RANDOMLY AUDIT THESE RECORDS; AND TO AMEND SECTION 40‑19‑265, RELATING TO PERMIT REQUIREMENTS FOR FUNERAL HOMES, SO AS TO PROVIDE A CREMATORY MUST MAINTAIN ADEQUATE REFRIGERATION FOR THE RETENTION OF BODIES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 19, Title 40 of the 1976 Code is amended by adding:

“Section 40‑19‑220. (A) In addition to other requirements established by law and for the purpose of determining a first‑time applicant’s or renewal applicant’s eligibility for licensure to practice funeral service or to manage a funeral establishment, which may include a funeral home, a branch funeral home, a retail sales outlet, and a crematory, the department may require a state criminal records check, supported by fingerprints, by SLED, and a national criminal records check, supported by fingerprints, by the FBI. The results of these criminal records checks must be reported to the department. SLED may retain the fingerprints for certification purposes and for notification to the department regarding criminal charges. The costs of conducting a criminal history background check must be borne by the applicant or renewal applicant. The department shall keep information received pursuant to this section confidential, except that information relied upon in denying licensure may be disclosed as may be necessary to support the administrative action.

(B) In an investigation or disciplinary proceeding concerning a licensee, the department may require a state criminal records check, supported by fingerprints, by SLED, and a criminal records check, supported by fingerprints, by the FBI. The results of these criminal records checks must be reported to the department. SLED may retain the fingerprints for certification purposes and for notification to the department regarding criminal charges. The costs of conducting a criminal history background check must be borne by the department and may be recovered as administrative costs associated with an investigation or hearing pursuant to this chapter, unless ordered by the board as a cost in a disciplinary proceeding. The department shall keep information received pursuant to this section confidential, except that information relied upon in an administrative action may be disclosed as necessary to support the administrative action.”

SECTION 2. Chapter 19, Title 40 of the 1976 Code is amended by adding:

“Section 40‑19‑267. Positive identification of the body must be made prior to cremation by means of:

(1) a current photograph;

(2) positive identification by next‑of‑kin;

(3) positive identification by an authorized agent of the next‑of‑kin; or

(4) a designated agent of the deceased.”

SECTION 3. Section 40‑19‑20 of the 1976 Code is amended to read:

“Section 40‑19‑20. As used in this chapter:

(1) ‘Advertisement’ means the publication, dissemination, circulation, or placing before the public an announcement or statement in a newspaper, magazine, or other publication in the form of a book, notice, circular, pamphlet, letter, handbill, poster, bill, sign, placard, card, label, or tag, or over radio or television. The term does not include funeral or death notices and obituaries.

(2) ‘Apprentice’ means a person who is preparing to become licensed for the practice of embalming and funeral directing under the supervision and instruction of a person licensed for the practice in this State and who is registered with the board pursuant to Section 40‑19‑120.

(3) ‘Board’ means the South Carolina State Board of Funeral Service.

(4) ‘Branch funeral home’ means an establishment separate and apart from the licensed parent funeral home that has embalming facilities, a chapel, a lay‑out room, or a sales room, or any combination of these.

(5) ‘Cremation’ means the reduction of the dead body by intense heat to residue.

(6) ‘Crematory’ means an establishment in which the dead body is reduced to residue by intense heat. When providing a cremation service to the public, the crematory must meet all requirements of a funeral establishment as defined in subsection (12), and the requirements of Sections 40‑19‑265(A), and (B). If a crematory is not offering services directly to the public, but only to a licensed funeral establishment, then that crematory must only meet the requirements of Section 40‑19‑265(D).

(7) ‘Disposition’ means the final disposal of the body whether by earth interment, aboveground burial, cremation, burial at sea, or delivery to a medical institution for lawful dissection and experimentation or removal from the State pursuant to obtaining a burial transit permit.

(8) ‘Embalmer’ means a person licensed by the board to disinfect and preserve or attempt to disinfect and preserve the dead human body, entirely or in part, by the use of application of chemicals, fluids, or gases, externally or internally, or both, by their introduction into the body by vascular or hypodermic injections, by direct application into the organs or cavities, or by other method and includes the restoration or attempted restoration of the appearance of the dead human body.

(9) ‘Embalming’ means the disinfection of the dead human body by replacing certain body fluids with preserving and disinfecting chemicals.

(10) ‘Full‑time employee’ means a person whose work schedule requires the employee be present a minimum of thirty‑five hours each week for the entire normal year of operation.

(~~10~~11) ‘Funeral director’ means a person licensed by the board to engage for hire or profit in the profession of arranging, directing, or supervising funerals.

(~~11~~12) ‘Funeral home’, ‘funeral establishment’, or ‘mortuary’ means an establishment where the practice of funeral service and embalming is practiced. All of these establishments must include the following facilities:

(a) a chapel or parlor in which funeral services may be conducted and which accommodate seating of at least thirty people;

(b) a preparation room equipped with a sanitary floor and necessary drainage, ventilation, necessary approved tables, hot and cold running water, and a sink separate from table drainage, instruments, and supplies for the preparation and embalming of dead human bodies;

(c) a room containing a ~~displayed~~ stock of ~~at least six~~ adult caskets, at least six of which must be available for viewing, and other necessary funeral supplies;

(d) at least one motor hearse, licensed in this State to the funeral establishment using the vehicle, for transporting ~~casketed~~ human remains.

(~~12~~13) ‘Funeral merchandise’ means that personal property used in connection with the conduct of funerals or with the transportation and final disposition of a dead human body including, but not limited to, caskets, cremation caskets, urns, and burial clothing. The term does not mean mausoleum crypts, interment receptacles preset in a cemetery, and columbarium niches.

(~~13~~14) ‘Funeral service’ or ‘funeral’ means a period following death in which there are religious services or other rites or ceremonies with the body of the deceased present.

(~~14~~15) ‘Graveside service’ means a rite or ceremony held only at graveside, which is not generally construed as the committal service which follows a funeral.

(~~15~~16) ‘Inspector’ means an inspector employed by the Department of Labor, Licensing and Regulation.

(~~16~~17) ‘Manager’ means a licensed funeral director who has been licensed in this State for at least ~~one year~~ five years, who has at least one year of residency in this State immediately preceding the application, who is a ~~fulltime~~ full‑time, regular employee, and who is responsible for and has the binding authority from the owner for the day‑to‑day management of funeral establishments or crematories including compliance with all applicable laws governed by this chapter and Chapters 7 and 8 ~~of~~, Title 32.

(~~17~~18) ‘Memorial service’ means a gathering of persons for a program in recognition of a death without the presence of the body of the deceased.

(~~18~~19) ‘Practice of funeral service’ means:

(a) engaging in providing shelter, care, and custody of the human dead;

(b) the practice of preparing the human dead by embalming or other methods for burial or other disposition;

(c) arranging for the transportation of the human dead;

(d) making arrangements at or before the time of death, financial or otherwise, including arrangements for cremation, for providing these services, or the sale of funeral merchandise, whether for present or future use; provided, that no funeral director, embalmer, funeral company, cemetery, or related entity shall charge a fee for the assignment to the funeral director, embalmer, funeral company, cemetery, or related entity of an insurance policy providing burial expenses, excluding preneed contracts as provided in Section 32‑7‑35; and

(e) engaging in the practice or performing any functions of funeral directing or embalming as presently recognized by persons engaged in these functions.

(20) ‘Preceptor’ means a teacher, expert, or specialist who gives practical experience and training to a student or apprentice, and must be licensed for a minimum of five years in this State, and be actively connected to a funeral home for a minimum of five years.

(~~19~~21) ‘Retail sales outlet’ means an establishment wherein funeral merchandise is sold or provided, or both, to the general public. A retail sales outlet may not contain lay‑out or chapel facilities and is restricted solely to the sale of funeral merchandise and may not handle or arrange for the handling or disposition, or both, of dead human remains and may not offer or execute preneed funeral contracts, except as authorized by Chapter 7, Title 32.

(~~20~~22) ‘Owner’ means a sole proprietor, partnership, limited partnership, corporation, limited liability corporation, or any business entity possessing authority and control over a funeral establishment.”

SECTION 4. Section 40‑19‑200 of the 1976 Code is amended to read:

“Section 40‑19‑200. A person who practices or offers to practice funeral service in this State in violation of this chapter or who knowingly submits false information for the purpose of obtaining a license ~~is guilty of a misdemeanor and, upon conviction, must~~ may be fined not less than five hundred dollars or more than ~~twenty‑five hundred~~ five thousand dollars ~~or imprisoned for not more than six months, or both~~ for each violation.”

SECTION 5. Section 40‑19‑235 of the 1976 Code is amended to read:

“Section 40‑19‑235. A person holding a valid embalmer or funeral director license in another state or territory having substantially similar requirements to the requirements of this chapter may apply for a license to practice in this State by submitting the appropriate nonrefundable fee, an application on a board‑approved form, and a board‑certified statement from the state or territory in which the person holds the license and has successfully taken and ~~passed that state law exam~~ achieved a passing score on a national examination approved by the board and the South Carolina state law examination. The board may approve an applicant who presents evidence of licensure in another jurisdiction, even though that jurisdiction does not require substantially similar requirements, upon a showing that the applicant has engaged in the licensed practice of funeral service for at least five years and the applicant has achieved a passing score on ~~an~~ a national examination approved by the board as well as the South Carolina state law examination.”

SECTION 6. Section 40‑19‑240 of the 1976 Code is amended to read:

“Section 40‑19‑240. (A) A person desiring to become an apprentice funeral director or embalmer shall apply to the board on forms provided by the board. The applicant must be at least eighteen years of age, shall take the oath contained on the application form, must be a full‑time employee, and shall submit a fee established by the board in regulation. If the board is satisfied as to the qualifications of an applicant, the board shall issue a certificate of apprenticeship. If an apprentice wishes to engage in an apprenticeship with a person licensed as a funeral director or embalmer, a request must be submitted to the board. If permission is granted and the apprentice leaves the apprenticeship of the licensee in whose service the apprentice has been engaged, the licensee shall give the apprentice an affidavit showing the length of time served. The affidavit must be filed with the board. If the apprentice subsequently desires to continue the apprenticeship, the apprentice must apply to the board as provided for in this subsection.

(B) A certificate of apprenticeship must be signed by the apprentice, the licensee, and the manager of the establishment in which the apprenticeship is to be served and is renewable twenty‑four months after registration for twelve months, by payment of a renewal fee established by the board in regulation. A certificate may not be renewed more than three times. The registration of an apprentice who is actually engaged in the military service may be held in abeyance for the duration of service, and the apprentice may be relieved of the payment of renewal fees and penalties.

(C) An apprentice quarterly shall report to the board on forms provided by the board indicating the work which has been completed during the preceding three months. The report must be certified by the licensee under whom the apprentice has served, and must be submitted to the board within thirty days after the end of the quarter.

(D) Before an apprentice is eligible to receive a license for the practice of funeral service, evidence required by this chapter must be submitted to the board showing that the apprentice has completed successfully the educational requirements set forth in Section 40‑19‑230. Affidavits also must be submitted from the licensees under whom the apprentice worked showing that as an apprentice embalmer the apprentice has assisted in the embalming of at least fifty bodies or that as an apprentice funeral director the apprentice has assisted in conducting at least fifty funerals, during apprenticeship. Eligibility for licensure is determined by the board based upon the reports filed with the board pursuant to subsection (C).

(1) For apprentice embalmers, at least one‑half or twenty‑five of the fifty mandatory cases, whichever is less, must contain all of the following tasks:

(a) posing features;

(b) mixing fluids;

(c) raising vessels;

(d) injecting fluids;

(e) suturing incisions; and

(f) trocar cavity treatments.

(2) For apprentice funeral directors, at least one‑half or twenty‑five of the fifty mandatory cases must contain all of the following tasks:

(a) arrangements with family and clergy;

(b) sales of funeral services;

(c) conductions of funeral services; and

(d) preparing a death certificate.

(E) Only two apprentices at a time are permitted to register under any one person licensed as a funeral director or embalmer. Each sponsor for a registered apprentice must be actively connected with a funeral establishment. When the apprentice is assisting with funeral directing activities or embalming activities, the supervisor or preceptor must be present on the premises and readily available. A supervisor or preceptor must be licensed a minimum of five years before he can train an apprentice. A supervisor or preceptor must be licensed and a resident of this State for a minimum of five years and be actively connected with a funeral home for a minimum of five years.”

SECTION 7. Section 40‑19‑250 of the 1976 Code is amended to read:

“Section 40‑19‑250. ~~The board shall develop in regulation a continuing education program and each~~ A licensee must ~~attend~~ obtain a minimum of ~~three~~ six credit hours ~~annually~~ of continuing education biennially. ~~This continuing education program must be offered, at a minimum, four times a year at locations easily accessible to participants and must be available through correspondence courses~~ A licensee must retain records of his continuing education credits for a minimum of two years, and these records may be randomly audited by the board. This continuing education requirement does not apply to a person who is not the manager of record of a funeral home, funeral establishment, or mortuary if the person has been licensed for thirty or more years or is sixty years old or older.”

SECTION 8. Section 40‑19‑265 of the 1976 Code is amended to read:

“Section 40‑19‑265. (A) A permit for a funeral home may be issued if the applicant:

(1) submits an application on a form approved by the board;

(2) submits to and successfully passes an inspection approved by the board;

(3) submits the applicable nonrefundable fee;

(4) designates a manager who meets the requirements of Section 40‑19‑20(~~16~~17) and is current and in good standing with the board and lives within a radius of twenty‑five miles of the establishment;

(5) possesses the necessary equipment or merchandise, or both, required by regulation;

(6) is in full compliance with Section 40‑19‑290.

(B) A permit for a branch funeral home may be issued if the applicant:

(1) submits an application on a form approved by the board;

(2) submits to and successfully passes an inspection approved by the board;

(3) submits the applicable nonrefundable fee;

(4) designates a manager who meets the requirements of Section 40‑19‑20(~~16~~17) and is current and in good standing with the board and lives within a radius of twenty‑five miles of the establishment;

(5) possesses the necessary equipment or merchandise, or both, required by regulation;

(6) is in full compliance with Section 40‑19‑290;

(7) provides the name of the parent funeral home.

(C) A permit for a retail sales outlet may be issued if the applicant:

(1) submits an application on a form approved by the board;

(2) submits to and successfully passes an inspection approved by the board;

(3) submits the applicable nonrefundable fee;

(4) is in full compliance with Section 40‑19‑290.

(D) A permit for a crematory may be issued if the applicant:

(1) submits an application on a form approved by the board;

(2) submits to and successfully passes an inspection approved by the board;

(3) submits the applicable nonrefundable fee;

(4) designates a manager who meets the requirements of Section 40‑19‑20(~~16~~17) and is current and in good standing with the board, is a certified crematory operator, and lives within a radius of twenty‑five miles of the establishment;

(5) possesses the necessary equipment or merchandise, or both, required by regulation;

(6) is in full compliance with Section 40‑19‑290;

(7) provides evidence of employment of a factory trained operator; and

(8) maintains adequate refrigeration for the retention of bodies.

(E) An application for a permit issued pursuant to this section must identify every person having the ability to direct the management or policies, or both, of the funeral establishment including, but not limited to, corporate officers employed, shareholders, partners, and other representatives of the corporation or business.”

SECTION 9. This act takes effect upon approval by the Governor.

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