



SPONSOR: Sen. Poore & Rep. Brady
Sens. Lopez, Pettyjohn, Sokola, Townsend;
Reps. Bennett, Bolden, Dukes, Spiegelman

DELAWARE STATE SENATE
148th GENERAL ASSEMBLY

SENATE BILL NO. 65

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO THE BOARD OF FUNERAL SERVICES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Subchapter I, Chapter 31, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter I. Board of Funeral Services.

§ 3100. Objectives.

(a) The primary objective of the Board of Funeral Services, to which all other objectives and purposes are secondary, is to protect the general public, specifically those persons who are the direct recipients of services regulated by this chapter, from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered.

(b) The secondary objectives of the Board are to maintain minimum standards of practitioner competency, and to maintain certain standards in the delivery of services to the public. In meeting its objectives, the Board ~~shall develop standards assuring professional competence; shall monitor complaints brought against practitioners regulated by the Board; shall adjudicate at formal hearings; shall promulgate rules and regulations; and shall impose sanctions where necessary against practitioners, licensed and formerly licensed.~~ shall:

(1) Develop standards assuring professional competence.

(2) Monitor complaints brought against practitioners regulated by the Board.

(3) Adjudicate at formal hearings regarding complaints brought against practitioners regulated by the Board.

(4) Promulgate rules and regulations.

(5) Impose sanctions where necessary against practitioners, both licensed and formerly licensed.

§ 3101. Definitions.

The following words, terms and phrases, when used in this chapter shall have the meanings ascribed to them under this section, except where the context clearly indicates a different meaning:

(1) "Board" shall mean the State Board of Funeral Services established in this chapter.

(2) "Burial" shall mean the interment of human remains.

(3) "Cremation" shall mean the process of burning human remains to ashes.

(4) "Division" shall mean the State Division of Professional Regulation.

(5) "Embalming" shall mean the disinfecting or preservation of a dead human body, entirely or in part, by the use of chemical substances, fluids, or gases in the body, or by the introduction of the same into the body by vascular or hypodermic injection, or by the direct application of the same into the organs or cavities.

(6) "Embalming room assistant" shall mean a person who has met all of the requirements, including all necessary training in blood borne pathogens standards, and who has received all necessary vaccinations related to the industry, to be able to perform their duties in the embalming or dressing room areas for the preparation of a deceased human remains. Such individual shall not possess the ability to embalm a decedent.

~~(5)~~ (7) "Funeral director" shall mean a person engaged in the care of human remains or in the disinfecting and preparing by embalming of human remains for the funeral service, transportation, burial, entombment or cremation, and who shall file all death certificates or permits as required by Chapter 31 of Title 16.

~~(6)~~ (8) "Funeral establishment" shall mean any place used in the care and preparation of human remains for funeral service, burial, entombment or cremation; said place shall also include areas for embalming, the convenience of the bereaved for viewing and other services associated with human remains. A funeral establishment shall also include a place or office in which the business matters associated with funeral services are conducted. Satellite funeral establishments existing as of May 12, 1988, shall not be required to include an area for embalming.

~~(7)~~ (9) "Funeral services" shall mean those services rendered for the disinfecting, embalming, burial, entombment or cremation of human remains, including the sale of those goods and services usual to arranging and directing funeral services.

~~(8)~~ (10) "Intern" shall mean a person, duly registered with the Board, engaged in training to become a licensed funeral director in this State under the direction and personal supervision of a State-licensed funeral director.

~~(9)~~ (11) "Nonresident funeral director" shall mean a funeral director licensed in another state, district, territory or foreign country.

~~(10)~~ (12) "Person" shall mean a corporation, company, association and partnership, as well as an individual.

~~(11)~~ (13) "Practitioner" shall mean a funeral director.

(14) "Student of mortuary science" shall mean a person registered in an official accredited Institution of Mortuary Science program.

(12) (15) "Substantially related" means the nature of the criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform 1 or more of the duties or responsibilities necessarily related to the provision of funeral services.

§ 3102. Board of Funeral Services.

(a) There is created a State Board of Funeral Services which shall administer and enforce this chapter.

(b) The Board shall consist of 7 members appointed by the Governor who are residents of this State: Four of whom shall be funeral directors licensed under this chapter and 3 public members. The public members shall not be, nor ever have been, funeral directors, nor members of the immediate family of a funeral director, shall not have been employed by a funeral director, shall not have a material interest in the providing of goods and services to funeral directors; nor have been engaged in an activity directly related to funeral services. The public members shall be accessible to inquiries, comments and suggestions from the general public.

(c) Except as provided in subsection (d) of this section, each member shall serve a term of 3 years, and may succeed himself or herself for 1 additional term, provided; however that, where a member was initially appointed to fill a vacancy, such member may succeed himself or herself for only 1 additional full term. Any person appointed to fill a vacancy on the Board shall hold office for the remainder of the unexpired term of the former member. Each term of office shall expire on the date specified in the appointment; however, the Board member shall remain eligible to participate in Board proceedings unless and until replaced by the Governor.

(d) A person who has never served on the Board may be appointed to the Board for 2 consecutive terms; but, no such person shall thereafter be eligible for 2 consecutive appointments. No person, who has been twice appointed to the Board or who has served on the Board for 6 years within any 9-year period, shall again be appointed to the Board until an interim period of at least 1 year has expired since such person last served.

(e) Any act or vote by a person appointed in violation of this section shall be invalid. An amendment or revision of this chapter is not sufficient cause for any appointment or attempted appointment in violation of subsection (d) of this section, unless such an amendment or revision amends this section to permit such an appointment.

(f) A member of the Board shall be suspended or removed by the Governor for misfeasance, nonfeasance, malfeasance, misconduct, ~~incompetency~~ incompetency, or neglect of duty. A member subject to disciplinary hearing shall be disqualified from Board business until the charge is adjudicated or the matter is otherwise concluded. A Board member may appeal any suspension or removal to the Superior Court.

~~(g) Any member who is absent without adequate reason for 3 consecutive meetings, or fails to attend at least half of all regular business meetings during any calendar year, shall be guilty of neglect of duty. A member shall be deemed in~~

neglect of duty if they are absent from 3 consecutive meetings without good cause or if they attend less than 50% of regular business meetings in a calendar year.

(h) Each member of the Board shall be reimbursed for all expenses involved in each meeting, including travel, according to Division of Professional Regulation policy, and in addition shall receive not more than \$50 for each meeting attended but not more than \$500 in any calendar year. After 10 meetings have been attended, the member shall not be compensated for any subsequent meetings attended in that year.

(i) No member of the Board, while serving on the Board, ~~shall hold elective office in any local, state or national professional funeral services association; shall not serve as the head of a professional funeral services association's political action (PAC) committee; nor shall any Board member have any financial interest in any funeral services college, school or cemetery.~~ shall:

(1) Hold elective office in any local, state, or national professional funeral services association.

(2) Serve as the head of a professional funeral services association's political action committee.

(3) Have any financial interest in any funeral services college, school, or cemetery.

(j) Chapter 58 of Title 29 shall apply to all members of the Board.

(k) No member of the Board shall in any manner whatsoever discriminate against any applicant or person holding or applying for a license to practice funeral services by reason of sex, race, color, age, ~~ered~~ creed, or national origin.

(l) No member of the Board shall participate in any action of the Board ~~involving~~ involving, directly or ~~indirectly~~ indirectly, any person related in any way by blood or marriage to said member.

(m) No member of the Board shall be subject to, and all members of the Board shall be immune from, claims, suits, liability, ~~damages~~ damages, or any other recourse, civil or criminal, arising from any act or proceeding, decision or determination ~~undertaken~~, undertaken or performed, or recommendation made, so long as such member of the Board acted in good faith and without malice in carrying out the responsibilities, authority, duties, ~~powers~~ powers, and privileges of the office conferred by law upon the member under this chapter, or any other provisions of Delaware or federal law or rules or ~~regulations~~ regulations, or duly adopted rule or regulation of the Board. Good faith is presumed unless otherwise proven and malice is required to be proven by the complainant.

§ 3103. Organization; meetings; officers; quorum.

(a) The Board shall hold regularly scheduled business meetings at least once in each quarter of a calendar year, and at such times as the President deems necessary; ~~or~~, or at the request of a majority of the Board members.

(b) The Board shall elect annually a President and Secretary. Each officer shall serve for 1 year, and shall not succeed himself or herself for more than 2 consecutive terms.

(c) A majority of members shall constitute a quorum for the purpose of transacting business; and no disciplinary action shall be taken without the affirmative vote of at least 4 members of the Board.

(d) Minutes of all meetings shall be recorded, and copies shall be maintained by the Division of Professional Regulation. At any hearing where evidence is presented, a record from which a verbatim transcript can be prepared shall be made. The expense of preparing any transcript shall be incurred by the person requesting it.

§ 3104. Records.

The Division of Professional Regulation shall keep a register of all approved applications for license as a funeral director and director, registration as an intern, and registration of establishment ~~permits, and permits~~. The Division shall also complete records relating to meetings of the Board, examinations, rosters, changes and additions to the Board's rules and regulations, complaints, ~~hearings~~ hearings, and such other matters as the Board shall determine. Such register and records shall be prima facie evidence of the proceedings of the Board.

§ 3105. Powers and duties.

(a) The Board of Funeral Services shall have the authority ~~to~~ to do all of the following:

(1) Formulate rules and regulations, with appropriate notice to those affected; all rules and regulations shall be promulgated in accordance with the procedures specified in the Administrative Procedures Act of this State [Chapter 101 of Title 29]. Each rule or regulation shall implement or clarify a specific section of this chapter.

(2) Designate the application form to be used by all applicants, ~~and to~~ and process all ~~applications~~ applications.

(3) Designate the written, standardized examination on funeral services, prepared by an independent testing service, recognized by the Conference of Funeral Service Examining Boards, or its successor, and approved by the Division. The examination shall be taken by all persons applying for licensure, except those applicants who qualify for licensure by ~~reciprocity~~ reciprocity.

(4) Designate a written, validated examination, prepared by an independent testing service and approved by the Division, based solely on the laws of Delaware governing the professional of funeral services. The Division shall administer the state ~~examination~~ examination.

(5) Provide for the administration of examinations, including notice and information to ~~applicants~~ applicants.

(6) Establish minimum education, training and experience requirements for licensure as funeral ~~directors~~ directors.

(7) Establish minimum requirements, and issue permits for funeral establishments that meet the requirements of § 3117 of this ~~title~~ title.

(8) Evaluate the credentials of all persons or establishments applying for a license to practice funeral services in ~~Delaware~~ Delaware, in order to determine whether such persons or establishments meet the qualifications for licensing set forth in this ~~chapter~~; chapter.

(9) Grant licenses to, and renew licenses of, all persons who meet the qualifications for licensure; ~~and, and~~ and register persons who are fulfilling the licensure experience requirement under the personal supervision of a state-licensed funeral ~~director~~; director.

(10) Establish by rule and regulation continuing education standards required for license renewal for those practitioners under 65 years of age; ~~provided however, that~~ provided that, in establishing rules for continuing funeral services education, the Board shall consider potential economic hardship on single practitioners and other licensees, and shall not impose rules that are likely to place undue economic hardship on licensees. License renewal shall not consist of, nor ~~by be~~ dependent upon, retesting for those practitioners under 65 years of age; ~~provided however, that~~ provided that, in establishing rules for continuing funeral services education, the Board shall consider potential economic hardship on single practitioners and other licensees, and shall not impose rules that are likely to place undue economic hardship on ~~licensees~~; licensees.

(11) Evaluate certified records to determine whether an applicant for licensure, who previously has been licensed, certified or registered in another jurisdiction to practice funeral services, has engaged in any act or offense that would be grounds for disciplinary action under this chapter and whether there are disciplinary proceedings or unresolved complaints pending against such applicant for such acts or ~~offenses~~; offenses.

(12) Refer all complaints from licensees and the public concerning practitioners, or concerning practices of the Board or of the profession, to the Division of ~~Professional Regulation~~ for investigation pursuant to § 8735 of Title ~~29~~; 29, and assign a member of the Board to assist the Division in an advisory capacity with the investigation of the technical aspects of the ~~complaint~~; complaint.

(13) Conduct hearings and issue orders in accordance with procedures established pursuant to this chapter, Chapter 101 of Title ~~29~~ 29, and § 8735 of Title 29. Where such provisions conflict with this chapter, this chapter shall govern. The Board shall determine whether ~~or not~~ a practitioner shall be subject to a disciplinary hearing; ~~and and~~ and, if so, shall conduct such hearing in accordance with this chapter and the Administrative Procedures ~~Act~~; Act.

(14) Where it has been ~~determined~~ determined, after a disciplinary hearing, that penalties or sanctions should be imposed, to designate and impose the appropriate sanction or penalty after time for appeal has lapsed.

(15) Adopt and implement an inspection program for funeral establishments and crematoriums. Through the inspection program, the Board shall have the authority to:

a. Review all licenses for accuracy and refer any inaccuracies to the appropriate agencies for investigation and resolution.

b. Send written notification to any individual or entity who is in violation of any of the licensing regulations of the State, as an initial warning. If the violation is not corrected, it may be forwarded to the appropriate agencies for investigation and resolution.

(16) Regulate cremation and crematoriums.

(b) The Board of Funeral Services shall promulgate regulations specifically identifying those crimes which are substantially related to the provision of funeral services.

Section 2. Amend Subchapter II, Chapter 31, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter II. License and ~~registration; limited license; establishment permit.~~ Registration; Limited License; Establishment Permit.

§ 3106. License; registration required; responsibility.

(a) No person shall, without a license, engage in the practice of funeral ~~services or~~ services; hold himself or herself out to the public in this State as being qualified to practice funeral services; ~~or use use or display~~ or use in connection with that person's name, ~~or display~~ any sign or advertise in any manner as being a funeral director or ~~provide funeral services, provider of funeral services;~~ or otherwise assume or ~~use;~~ use any title or description conveying or tending to convey the impression that the person is qualified to practice funeral services, ~~unless such person has been duly licensed under this chapter.~~

(b) Practitioners regulated under this chapter shall observe and be subject to all federal, ~~state~~ state, and municipal regulations relating to the control of contagious and infectious diseases, and any and all matters pertaining to public health, including reporting to the proper health office the same as other practitioners.

(c) Whenever a license to practice as a funeral director in this State has expired or been suspended or revoked, it shall be unlawful for the person to practice funeral services in this ~~state.~~ State and, if the individual is a sole proprietor, the establishment permit shall also be revoked.

(d) No person shall act as an intern or hold himself or herself out as a funeral services intern unless such person has been duly registered by the Board under this chapter.

(e) No person shall collect or disseminate pricing materials from different funeral establishments or entities with the intent of steering potential clients based solely on the information collected. Such practice shall be deemed engaging in the practice of funeral services.

(f) No person or entity outside of this State shall broker funeral services within this State without being a duly licensed Delaware funeral director operating from a duly licensed Delaware funeral establishment.

§ 3107. Qualifications of applicants for licensure; judicial review; report to Attorney General.

(a) An applicant who is applying for licensure as a funeral director under this chapter shall submit evidence, verified by oath and satisfactory to the Board, that such person:

(1) Has graduated from an accredited high school, or its equivalent, and has received an Associate Degree or its equivalent in mortuary science, consisting of ~~60-credit~~ 60 credit hours, from a school fully accredited by the American Board of Funeral Services Education, or its successor.

(2) Has achieved the passing score, as established by an independent testing service, on the written, standardized examination on funeral services recognized by the Conference of Funeral Service Examining Boards, or its successor.

(3) Has achieved the passing score, as established by an independent testing service, on a written, validated examination based solely on the laws of Delaware governing the profession of funeral services. In conjunction with the independent testing service, said examination shall be administered by the Division of Professional Regulation, which shall have sole authority to contract for the validated examination.

(4) Has satisfactorily completed an internship in this state of 1 year's duration, under the auspices of a licensed Delaware funeral director. An applicant is responsible for arranging the internship. If, after contacting 20 firms, the applicant is unable to obtain an internship within 6 months, the applicant shall so stipulate in an affidavit presented to the Board. The Board shall determine whether the applicant has pursued a position as intern to the applicant's fullest capability. The Board shall have 6 months from the date it receives the affidavit to place the applicant in an internship. If no position has been made available, the applicant shall be issued a license upon satisfaction of all other requirements for licensure.

(5) Shall not have been the recipient of any administrative penalties regarding the applicant's practice of funeral services, including ~~but not limited to~~ fines, formal reprimands, license suspensions or revocation ~~(except for license revocations other than for nonpayment of license renewal fees), , and~~ probationary limitations ~~and/or has not~~ ; and shall not have entered into any "consent agreements" which contain conditions placed by a ~~Board~~ board on the applicant's professional conduct and practice, including any voluntary surrender of a license. The Board may determine, after a hearing, whether such administrative penalty is grounds to deny licensure.

(6) Shall not have any impairment related to ~~drugs,~~ drugs or alcohol or a finding of mental incompetence by a physician that would limit the applicant's ability to undertake the practice of funeral services in a manner consistent with the safety of the public.

(7) Shall not have a criminal conviction record, nor pending criminal charge relating to an offense, the circumstances of which substantially relate to the practice of funeral services. Applicants who have criminal conviction records or pending criminal charges shall require appropriate authorities to provide information about the record or charge directly to the Board in sufficient specificity to enable the Board to make a determination whether the record or charge is substantially related to the practice of funeral services. ~~However, after a hearing or review of documentation demonstrating~~ After a hearing at which is it determined, or a review of documentation demonstrating, that the applicant meets the specified criteria for a waiver, the Board, by an affirmative vote of a majority of the quorum, may waive this paragraph (a)(7), if it finds all of the following:

a. For waiver of a felony conviction, more than 5 years have elapsed since the date of the conviction. At the time of the application the applicant may not be incarcerated, on work release, on probation, on ~~parole~~ parole, or serving any part of a suspended ~~sentence~~ sentence, and must be in substantial compliance with all court orders pertaining to fines, ~~restitution~~ restitution, and community service.

b. For waiver of a misdemeanor conviction or violation, ~~at the time of the application~~ the applicant may not , at the time of the application, be incarcerated, on work release, on probation, on ~~parole~~ parole, or serving any part of a suspended ~~sentence~~ sentence, and must be in substantial compliance with all court orders pertaining to fines, ~~restitution~~ restitution, and community service.

c. The applicant is capable of practicing funeral services in a competent and professional manner.

d. The granting of the waiver will not endanger the public health, ~~safety~~ safety, or welfare.

(8) ~~Shall provide~~ Has provided such information as may be required on an application form designed and furnished by the Board and approved by the Division of Professional Regulation. No application form shall require a picture of the applicant, except where required for verification of identity for testing ~~purposes,~~ require purposes; information relating to citizenship, place of ~~birth~~ birth, or length of state ~~residence or require~~ residence; or personal references. The applicant shall not be required to submit a police report as a condition of application for licensure or internship.

(b) Where the Board has found to its satisfaction that an application has been intentionally fraudulent, or that false information has been intentionally supplied, it shall report its findings to the Attorney General for further action.

(c) Where the application of a person has been refused or rejected and such applicant feels that the Board has acted without justification, ~~has~~ imposed higher or different standards for that person than for other applicants or licensees, ~~or has or~~ in some other ~~manner~~ manner, contributed to or caused the failure of such application, the applicant may appeal to the Superior Court.

(d) The Board shall not violate an applicant's rights during the application and internship process for licensure as a funeral director in this State.

§ 3108. Limited license.

Upon payment to the Board of a fee, established by the Division, and completion of an application on forms provided by the Board, the Board shall issue a limited license to a ~~person~~, person who is validly licensed as a funeral director by another state of the United States, its possessions, ~~territory~~ territory, or the District of ~~Columbia~~; ~~provided~~, Columbia, provided that a similar privilege is granted by that jurisdiction to Delaware licensed funeral directors. A limited license will allow the licensee to make a removal of a dead human body in this ~~State~~; ~~to~~ State, return the body to another state or ~~country~~; ~~to~~ country, return dead bodies from another state or country to this State for final ~~disposition~~; ~~to~~ disposition, complete the family history portion of the death ~~certificate~~; ~~to~~ certificate, sign the death certificate in the licensee's capacity as a licensed funeral ~~director~~; ~~and to~~ director, and execute any other procedures necessary to arrange for the final disposition of a dead human body.

§ 3109. Reciprocity.

(a) Upon payment of the appropriate fee and submission and acceptance of a written application on forms provided by the Board, the Board shall grant a license to each applicant who ~~shall present~~ presents proof of current licensure in good standing in another state, the District of ~~Columbia~~ Columbia, or territory of the United States, whose standards for licensure are substantially similar to those of this State, as determined by the ~~board~~ Board, and who meets all of the following criteria:

(1) The applicant's license is in "good standing" ~~is as~~ defined in § 3107(a)(5) through (7) of this ~~title~~; ~~and~~ title.

(2) The applicant has achieved a passing score on the exam required by § 3107(a)(3) of this title.

(b) An ~~applicant~~, applicant who is licensed in a state whose standards are not substantially similar to those of this ~~State~~, State shall have practiced for at least 3 of the past 5 years in another jurisdiction; ~~provided however~~, provided that the applicant meets all other qualifications for reciprocity in this section.

(c) An applicant from a state that separately licenses funeral directors and embalmers must have both licenses to qualify for licensure under subsection (b) of this section.

(d) It shall be the responsibility of the applicant to provide verification of all information required by § 3107 of this title.

§ 3110. Fees.

The amount to be charged for each fee imposed under this chapter shall approximate and reasonably reflect all costs necessary to defray the expenses of the Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its service on behalf of the Board. There shall be a separate fee charged for each service or activity, but no fee shall be charged for a purpose not specified in this chapter. The application fee shall not be combined with any other fee or charge. At the beginning of each licensure biennium, the Division of Professional Regulation, or any other state agency acting in its behalf, shall compute, for each separate service or activity, the appropriate Board fees for the licensure biennium.

§ 3111. Licensure; renewal of license; lapsed license; inactive status; special exception.

(a) The Board shall issue a license to each ~~applicant~~, applicant who meets the requirements of this title for licensure as a funeral director and who pays the fees established under § 3110 of this title. Prior to practicing in this State, each applicant shall file for and obtain an occupational license from the Division of Revenue in accordance with Chapter 23 of Title 30.

(b) Each license shall be renewed biennially, in such manner as is determined by the Division, and upon payment of the appropriate ~~fee and fee~~, submission of a renewal form provided by the Division, and proof that the licensee has met the continuing education requirements established by the Board.

(c) Any licensee whose license lapses as a result of a failure to renew may regain the license within 12 months of such lapse upon payment to the Board of a fee established by the Division, and evidence of successful completion of continuing education courses required by the Board.

(d) Any licensee, upon written request to the Board, may be placed on inactive status not to exceed 5 years. Such ~~person~~ licensee may reenter practice upon notification to the Board of an intention to do so, provided ~~said person~~ the licensee has satisfied all continuing education requirements prescribed by the Board. The fee to reenter practice shall be in accordance with § 3110 of this title.

(e) Notwithstanding subsection (b) of this section, in the event a funeral ~~director~~, director who was previously licensed in ~~Delaware, and who Delaware and~~ allowed ~~that funeral director's~~ his or her license to lapse for a period in excess of 12 ~~months~~, months is applying for licensure under this section, the Board shall grant a license to such applicant, subject, ~~however, to completion of the continuing education requirements set forth in subsection (b) of this section; formal submission of a completed written application on forms provided by the Board; successful completion of the state law~~

examination required by § 3105 of this title; and payment of a reinstatement fee established by the Division. to the applicant complying with all of the following:

(1) Completion of the continuing education requirements set forth in subsection (b) of this section.

(2) Formal submission of a completed, written application on forms provided by the Board.

(3) Successful completion of the state law examination required by § 3105 of this title.

(4) Payment of a reinstatement fee established by the Division.

§ 3112. Grounds for discipline.

(a) A practitioner licensed under this chapter shall be subject to disciplinary actions set forth in § 3114 of this title, if, after a hearing, the Board finds ~~that the funeral director has~~ one or more of the following:

(1) ~~Employed~~ The funeral director has employed or knowingly cooperated in fraud or material deception in order to acquire a license as a funeral ~~director;~~ has director, impersonated another person holding a ~~license;~~ license or allowed another person to use that practitioner's license, or aided or abetted a person not licensed as a funeral director to represent himself or herself as a funeral ~~director;~~ director.

(2) ~~Illegally, incompetently~~ The funeral director has illegally, incompetently, or negligently practiced funeral ~~services;~~ services.

(3) ~~Been~~ The funeral director has been convicted of a crime that is substantially related to the provision of funeral services or any offense which would limit the ability of the practitioner to carry out the practitioner's professional duties with due regard for the health and safety of the ~~public;~~ a public. A copy of the record of conviction certified by the clerk of the court entering the conviction shall be conclusive evidence ~~therefor;~~ of the conviction.

(4) ~~Excessively~~ The funeral director has used or abused drugs either in the past or currently; ~~excessive use or abuse of drugs~~ currently. For the purposes of this subsection, "excessive use or abuse of drugs" shall mean any use of narcotics, controlled substances, or illegal drugs without a prescription from a licensed physician, or the abuse of alcoholic beverage such that it impairs the practitioner's ability to perform the work of a funeral ~~director;~~ director.

(5) ~~Engaged~~ The funeral director has engaged in an act of consumer fraud or deception; engaged in the restraint of competition; or participated in price-fixing ~~activities;~~ activities.

(6) ~~Violated~~ The funeral director has violated a lawful provision of this chapter, or any lawful regulation established ~~thereunder;~~ under this chapter.

(7) ~~Had that practitioner's~~ The practitioner's license as a funeral director was suspended or revoked, or other disciplinary action was taken by the appropriate licensing authority in another jurisdiction; ~~provided however,~~ , provided that the underlying grounds for such action in another jurisdiction have been presented to the Board by

certified ~~record~~; record and the Board has determined that the facts found by the appropriate authority in the other jurisdiction constitute one or more of the acts defined in this chapter. Every person licensed as a funeral director in this State shall be deemed to have given consent to the release of this information by the Board of ~~Funeral Services~~ or other comparable agencies in another jurisdiction and to waive all objections to the admissibility of previously adjudicated evidence of such acts or ~~offenses~~; offenses.

(8) Failed to notify the Board that the practitioner, in his or her capacity as a funeral director in another state, has been subjected to discipline, or the practitioner's license as a funeral director in another state has been subject to discipline, or has been surrendered, ~~suspended~~ suspended, or revoked. A certified copy of the record of disciplinary action, surrender, ~~suspension~~ suspension, or revocation shall be conclusive evidence ~~thereof~~; thereof.

(9) A physical condition such that the performance of funeral services is or may be injurious or prejudicial to the ~~public~~; or public.

(10) Has solicited a customer or potential customer to grant a power of attorney to the funeral ~~director~~, director or a business associate, employee, or family member of the funeral director, or to make any of the foregoing an heir of the customer or potential customer.

(b) Where a practitioner fails to comply with the Board's request that the practitioner attend a hearing, the Board may petition the Superior Court to order such attendance, and the ~~said~~ Court or any judge assigned thereto shall have the jurisdiction to issue such order.

(c) Subject to this chapter and subchapter IV of Chapter 101 of Title 29, no license shall be restricted, ~~suspended~~ suspended, or revoked by the Board, and no practitioner's right to practice funeral services shall be limited by the Board, until such practitioner has been given notice and an opportunity to be heard in accordance with the Administrative Procedures Act.

§ 3113. Complaints.

(a) All complaints shall be received and investigated by the Division of ~~Professional Regulation~~ in accordance with § 8735 of Title 29, and the Division shall be responsible for issuing a final written report at the conclusion of its investigation.

(b) When it is determined that an individual is ~~engaging, or has engaged,~~ engaging or has engaged in the practice of funeral services, or is using the title "funeral director" and is not licensed under the laws of this State, the Board shall apply to the ~~Office of the Attorney General~~ to issue a cease and desist ~~order~~ order, after formally warning the unlicensed practitioner in accordance with this chapter.

(c) Any complaints involving allegations of unprofessional conduct or incompetence shall be investigated by the Division of Professional Regulation.

§ 3114. Disciplinary sanctions.

(a) The Board may impose any of the following sanctions, singly or in combination, when it finds that one or more of the conditions or violations set forth in § 3112 of this title applies to a practitioner regulated by this chapter:

(1) Issue a letter of ~~reprimand~~; reprimand.

(2) Censure a ~~practitioner~~; practitioner.

(3) Place a practitioner on probationary status, and require the practitioner to:

a. Report regularly to the Board upon the matters which are the basis of the ~~probation~~; probation.

b. Limit all practice and professional activities to those areas prescribed by the ~~Board~~; Board.

(4) Suspend any practitioner's ~~license~~; license.

(5) Revoke any practitioner's ~~license~~; license.

(6) Impose a monetary penalty not to exceed ~~\$500~~ \$1,000 for each violation.

(b) The Board may withdraw or reduce conditions of probation when it finds that the deficiencies which required such action have been remedied.

(c) In the event of a formal or informal complaint concerning the activity of a licensee that presents a clear and immediate danger to the public health, ~~safety~~ safety, or welfare, the Board may temporarily suspend the person's license, pending a hearing, upon the written order of the Secretary of State or the Secretary's designee, with the concurrence of the Board chair or the Board chair's designee. An order temporarily suspending a license may not be issued unless the person or the person's attorney received at least 24 hours' written or oral notice before the temporary ~~suspension~~ suspension, so that the person or the person's attorney may file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. An order of temporary suspension pending a hearing may remain in effect for no longer than 60 days from the date of the issuance of the ~~order~~ order, unless the temporarily suspended person requests a continuance of the hearing date. If the temporarily suspended person requests a continuance, the order of temporary suspension remains in effect until the hearing is convened and a decision is rendered by the Board. A person whose license has been temporarily suspended pursuant to this section may request an expedited hearing. The Board shall schedule the hearing on an expedited basis, provided that the Board receives the request within 5 calendar days from the date on which the person received notification of the decision to temporarily suspend the person's license.

(d) Where a license has been suspended due to a disability of the licensee, the Board may reinstate such license if, after a hearing, the Board is satisfied that the licensee is able to practice with reasonable skill and safety.

(e) As a condition to reinstatement of a suspended license, or removal from probationary status, the Board may impose such disciplinary or corrective measures as are authorized under this chapter.

§ 3115. Hearing procedures.

(a) If a complaint which alleges a violation of § 3112 of this title is filed with the Board pursuant to § 8735 of Title 29, ~~alleging violation of § 3112 of this title~~, the Board shall set a time and place to conduct a hearing on the complaint. Notice of the hearing shall be given and the hearing shall be conducted in accordance with the Administrative Procedures Act, Chapter 101 of Title 29.

(b) All hearings shall be informal and without use of rules of evidence. If the Board finds, by a majority vote of all members, that the complaint has merit, the Board shall take such action permitted under this chapter as it deems necessary. The Board's decision shall be in writing and shall include its reasons for such decision. The Board's decision shall be mailed immediately to the practitioner.

(c) Where the practitioner is in disagreement with the action of the Board, the practitioner may appeal the Board's decision to the Superior Court within 30 days of service, or of the postmarked date of the copy of the decision mailed to the practitioner. Upon such appeal the Court shall hear the evidence on the record. Stays shall be granted in accordance with § 10144 of Title 29.

§ 3116. Reinstatement of a suspended license; removal from probationary status; replacement of license.

(a) As a condition to reinstatement of a suspended license, or removal from probationary status, the Board may reinstate such license if, after a hearing, the Board is satisfied that the licensee has taken the prescribed corrective actions and otherwise satisfied all of the conditions of the suspension ~~and/or the~~ or probation.

(b) Where a license or registration has been suspended due to the licensee's inability to practice pursuant to this chapter, the Board may reinstate such license, if, after a hearing, the Board is satisfied that the licensee is again able to perform the essential functions of a funeral director, with or without reasonable ~~accommodations; and/or, accommodations,~~ accommodations, and there is no longer a significant risk of substantial harm to the health and safety of the individual or others.

(c) Applicants for reinstatement must pay the appropriate fees and submit documentation required by the Board as evidence that all the conditions of a suspension ~~and/or~~ or probation have been met. Proof that the applicant has met the continuing education requirements of this chapter may also be required, as appropriate.

(d) A new license to replace any license lost, ~~destroyed~~ destroyed, or mutilated may be issued subject to the rules of the Board. A charge shall be made for such issuance.

Section 3. Amend Subchapter III, Chapter 31, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter III. Other Provisions.

§ 3117. Funeral establishment permit; circumstances for termination and continuation.

(a) Upon completion of an application provided by the Board, payment of the appropriate fee, and fulfillment of all standards set by the Board by regulation, the Board shall issue a funeral establishment permit when the applicant provides evidence, verified by oath, that the establishment meets all of the following requirements:

(1) ~~That funeral~~ Funeral services shall be conducted from a building that meets the requirements of a funeral establishment as defined in § 3101(6) of this title.

(2) ~~That the~~ The funeral establishment shall have in charge full time therein a person licensed in accordance with this chapter; ~~provided~~ provided, however, that this paragraph shall not apply to funeral establishments maintained, ~~operated~~ operated, or conducted prior to September 6, 1972.

(3) ~~That the~~ The property on which the funeral establishment is located shall be properly zoned by the local zoning authority.

(4) ~~That the~~ The funeral establishment has acquired all appropriate business licenses issued by the State Division of Revenue.

(b) No person shall conduct, maintain, ~~manage~~ manage, or operate a funeral establishment unless a permit for each such establishment has been issued by the Board. Violation of this subsection shall constitute grounds for discipline. A funeral establishment permit shall be conspicuously displayed in said funeral establishment. ~~In case of funeral services~~ When funeral services are held in any private residence, church church, or lodge hall, no permit shall be required. required, ~~provided that the funeral director of record at said funeral services is operating from a firm with an already-existing funeral establishment permit.~~

(c) All funeral establishment permits shall be renewed biennially in a manner determined by the Division, and shall be accompanied by a fee determined by the Division pursuant to § 3110 of this title. All permits shall list the name of the licensed full-time funeral director in charge of the establishment.

(d) The applicant to whom the establishment permit has been issued shall not permit the unauthorized practice of funeral services, personally or by agents, on or off the premises of said funeral establishment.

(e) In the event of the death, ~~disability or~~ disability, or circumstance that prevents the direct supervision and management by the funeral director of the funeral establishment, said permit is void, except under the occurrence of at least one of the following conditions:

(1) Where a funeral establishment has been operated by a funeral director under the director's license, the director's estate may continue the funeral establishment under the supervision and management of a licensed funeral director of this State until such time as the estate may be settled, but for no more than 2 years after the date of the decedent's ~~death~~; or death.

(2) Where a funeral establishment has been operated by a corporation, said corporation may continue operating and assume all responsibilities of the funeral ~~establishment~~ establishment, provided that an officer of the corporation is a licensed funeral director of this State. Any change in officers of the corporation shall be reported to the Board.

(f) The Board is authorized to suspend or revoke a permit, after notice and hearing, for failure to comply with this statute or any lawful regulation applicable to funeral establishments.

(g) A funeral establishment with multiple branch locations in Delaware operated under the same trade name or owned by the same owner or owners is required to maintain an embalming area in at least one of its Delaware locations, and the embalming area shall be disclosed on the appropriate establishment licenses. Nothing in this chapter shall grant permission for the transfer, on a regular basis, of decedents back and forth across state boundaries for the purposes of centralized embalming.

§ 3118. Exemptions.

(a) Nothing in this chapter shall be construed to prevent persons licensed to practice in any other state, district, ~~territory~~ territory, or foreign country who, as practicing funeral directors, enter this State to transport ~~and/or~~ or bury human ~~remains~~ remains, or to consult with a funeral director of this State. Such consultation shall be limited to examination, ~~recommendation~~ recommendation, or testimony in litigation.

(b) Nothing in this chapter shall be construed to prevent the practice of funeral services by any student of an accredited school or college of funeral services, or any intern duly registered with the Board, from receiving practical training under the personal supervision of a licensed funeral director in this State.

(c) Nothing in this chapter shall be construed to prevent the practice of funeral services by any funeral director commissioned by any of the armed forces of the United States, or by the Public Health Service; ~~provided~~ provided that practice as a funeral director is limited to the confines of a military reservation or Public Health Service facility.

(d) Nothing in this chapter shall be construed to prevent the practice of funeral services by individuals performing the administrative and management aspects of funeral services under the direct supervision of a license funeral director; ~~provided~~ provided that any sales of goods and services must be reviewed and authorized by, and under the signature of, the licensed funeral director in this State.

§ 3119. Interference with free choice of funeral establishment; operating mortuary in cemetery; accepting fees from cemeteries.

No person licensed for the practice of funeral services, nor any person acting on behalf of the licensee shall do any of the following:

(1) Take part in any transaction or business which in any way interferes with the freedom of choice of the general public to choose a funeral establishment, except where the body or a part thereof is given for anatomical ~~purposes;~~ purposes.

(2) Operate a mortuary or funeral establishment located within the confines of, or connected with, any ~~cemetery;~~ cemetery.

(3) Receive or accept any commission, fee, remuneration or benefit of any kind from any cemetery, mausoleum or crematory, or from any proprietor or agent thereof, in connection with the sale or transfer of any cemetery lot, entombment vault, burial privilege or cremation, nor act, directly or indirectly, as a broker or jobber of any cemetery property or interest therein.

~~§ 3120. Interstate transportation of human remains.~~

~~(a) Under circumstances where human remains are to be interred outside of this State, the custodian of those remains must obtain, for the nonresident funeral director, an interstate transportation of human remains form, prior to surrendering said remains to a nonresident funeral director. The temporary interstate transportation of human remains form shall be designated by the Office of Vital Statistics and contain the following information:~~

~~(1) The complete legal name and address of the deceased.~~

~~(2) The certificate or license number and state of issuance of the certificate number of the transporting nonresident funeral director.~~

~~(3) The complete address of the transporting nonresident funeral director.~~

~~(4) The carrier vehicle identification or registration number of the transporting vehicle.~~

~~(5) The signature of the nonresident funeral director or the director's agent.~~

~~(b) The temporary interstate transportation of human remains form shall be issued to the receiving funeral director and a copy shall be retained by the issuing funeral director.~~

~~(c) This section shall not prevent the final interstate transportation of human remains form from being incorporated into this State's death certificate.~~

§ 3121. Cremation.

(a) Where not previously identified, human remains may not be cremated until they have been identified by either the next-of-kin, the person authorized to make funeral ~~arrangements~~ arrangements, or the medical examiner. This subsection shall not apply to disposition of human remains by any school of anatomy, ~~medicine~~ medicine, or dentistry.

(b) Human remains shall be transported to a crematory using a ~~cot or a receptacle~~ rigid, leak-resistant container which meets all of the following criteria:

(1) Is made of readily combustible material.

(2) Is of sufficient strength and rigidity for ease of handling.

(3) Complies with all local, state, and federal governmental emissions regulations.

(4) Is not composed of metal or polyethylene.

(5) Maintains a secure closure for the respectful conveyance of the decedent.

(c) A person who knowingly engages a Delaware-licensed funeral establishment to arrange for the cremation of the deceased human remains shall also be responsible, following cremation, for the identification and arrangement of the final disposition of said human remains. Failure to do so within 60 days of the date of death shall be grounds for the funeral establishment of record to submit notification to the Attorney General that the cremated remains have been abandoned.

(d) Cremated remains which have been unclaimed or abandoned for a period of more than 12 months from the date of death may be disposed of in a cemetery of the funeral establishment's choice, in a manner so as to permit the return of said cremated remains to the appropriate authorized individual at a future date. All expenses surrounding the disposition and subsequent retrieval of the cremated remains shall be at the sole expense of the authorizing party. A record of the disposition of said cremated remains must be maintained by the funeral establishment of record.

§ 3122. Processing human remains where investigation of death is required.

No person licensed under this chapter shall remove or embalm human remains when the person has information indicating that an investigation of death is required pursuant to § 4706 of Title 29.

§ 3123. Penalties.

~~(a) A person not currently licensed as a funeral director, or registered as an intern, under this chapter, when guilty of engaging in the practice of funeral services, or of acting as an intern, or using in connection with that person's name, or otherwise assuming or using any title or description conveying, or tending to convey the impression that the person is qualified to practice funeral services, or to act as an intern, such offender shall be guilty of a misdemeanor. Upon the first offense, the person shall be fined not less than \$500 nor more than \$1,000 for each offense and shall pay all costs. For a~~

~~second or subsequent conviction, the fine shall be not less than \$1,000 nor no more than \$2,000 for each offense, and the offender shall pay all costs. Superior Court shall have jurisdiction over all violations of this chapter.~~

(a) A person is guilty of a misdemeanor when:

(1) The person is not licensed as a funeral director under this chapter and, while not licensed, that person does at least one of the following:

a. Engages in the practice of funeral services.

b. Uses that person's name or otherwise assumes or uses any title or description conveying or tending to convey the impression that the person is qualified to practice funeral services.

(2) The person is not registered as an intern under this chapter and, while not registered, that person does at least one of the following:

a. Acts as an intern registered under this title.

b. Uses that person's name or otherwise assumes or uses any title or description conveying or tending to convey the impression that the person is qualified to act as an intern registered under this title.

(b) Upon the first conviction of an offense under this section, the person shall be fined not less than \$500 nor more than \$1,000 for each offense and shall pay all costs.

(c) Upon the second or subsequent conviction for an offense under this section, the person shall be fined not less than \$1,000 nor more than \$2,000 for each offense and shall pay all costs.

(d) Superior Court shall have jurisdiction over all violations of this chapter.

~~(b)~~ (e) Where it is alleged that such violation of this section has resulted in injury to any person, the offender shall be charged and tried under the applicable provisions of Title 11.

§ 3123. Criminal background checks of licensed funeral directors.

An applicant for licensure to practice as a licensed funeral director shall submit, at the applicant's expense, fingerprints and other necessary information in order to obtain all of the following:

(1) A report of the individual's entire criminal history record from the State Bureau of Identification or a statement from the State Bureau of Identification that the State Central Repository contains no such information relating to that person.

(2) A report of the individual's entire federal criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C. § 534). The State Bureau of Identification shall be the intermediary for purposes of this section and the Board shall be the screening point for the receipt of the individual's federal criminal history records.

SYNOPSIS

The Joint Sunset Committee recommended in 2014 that the Board of Funeral Services (the Board) and the Division of Professional Regulation (the Division) review Chapter 24, Title 31 of the Delaware Code and submit in 2015 proposed legislation to bring the law up to date with current funeral services standards and practices. This Act is the result of the Board and Division's review and submission.

This Act also makes technical corrections to conform existing law to the guidelines of the *Delaware Legislative Drafting Manual*.

Author: Sen. Poore