

## Chapter 9 Funeral Services Licensing Act

### Part 1 General Provisions

#### **58-9-101 Title.**

This chapter is known as the "Funeral Services Licensing Act."

Enacted by Chapter 49, 2003 General Session

#### **58-9-102 Definitions.**

In addition to the definitions in Section 58-1-102, as used in this chapter:

- (1) "Authorizing agent" means a person legally entitled to authorize the cremation of human remains.
- (2) "Beneficiary" means the individual who, at the time of the individual's death, is to receive the benefit of the property and services purchased under a preneed funeral arrangement.
- (3) "Board" means the Board of Funeral Service created in Section 58-9-201.
- (4) "Body part" means:
  - (a) a limb or other portion of the anatomy that is removed from a person or human remains for medical purposes during treatment, surgery, biopsy, autopsy, or medical research; or
  - (b) a human body or any portion of a body that has been donated to science for medical research purposes.
- (5) "Buyer" means a person who purchases a preneed funeral arrangement.
- (6) "Calcination" means a process in which a dead human body is reduced by intense heat to a residue that is not as substantive as the residue that follows cremation.
- (7) "Cremated remains" means all the remains of a cremated body recovered after the completion of the cremation process, including pulverization which leaves only bone fragments reduced to unidentifiable dimensions and may possibly include the residue of foreign matter including casket material, bridgework, or eyeglasses that were cremated with the human remains.
- (8) "Cremation" means the technical process, using direct flame and heat, that reduces human remains to bone fragments through heat and evaporation and includes the processing and usually the pulverization of the bone fragments.
- (9) "Cremation chamber" means the enclosed space within which the cremation process takes place and which is used exclusively for the cremation of human remains.
- (10) "Cremation container" means the container:
  - (a) in which the human remains are transported to the crematory and placed in the cremation chamber for cremation; and
  - (b) that meets substantially all of the following standards:
    - (i) composed of readily combustible materials suitable for cremation;
    - (ii) able to be closed in order to provide a complete covering for the human remains;
    - (iii) resistant to leakage or spillage;
    - (iv) rigid enough for handling with ease; and
    - (v) able to provide protection for the health, safety, and personal integrity of crematory personnel.
- (11) "Crematory" means the building or portion of a building that houses the cremation chamber and the holding facility.

- (12) "Direct disposition" means the disposition of a dead human body:
- (a) as quickly as law allows;
  - (b) without preparation of the body by embalming; and
  - (c) without an attendant funeral service or graveside service.
- (13) "Disposition" means the final disposal of a dead human body by:
- (a) earth interment;
  - (b) above ground burial;
  - (c) cremation;
  - (d) calcination;
  - (e) burial at sea;
  - (f) delivery to a medical institution; or
  - (g) other lawful means.
- (14) "Embalming" means replacing body fluids in a dead human body with preserving and disinfecting chemicals.
- (15)
- (a) "Funeral merchandise" means any of the following into which a dead human body is placed in connection with the transportation or disposition of the body:
    - (i) a vault;
    - (ii) a casket; or
    - (iii) other personal property.
  - (b) "Funeral merchandise" does not include:
    - (i) a mausoleum crypt;
    - (ii) an interment receptacle preset in a cemetery; or
    - (iii) a columbarium niche.
- (16) "Funeral service" means a service, rite, or ceremony performed:
- (a) with respect to the death of a human; and
  - (b) with the body of the deceased present.
- (17) "Funeral service director" means an individual licensed under this chapter who may engage in all lawful professional activities regulated and defined under the practice of funeral service.
- (18)
- (a) "Funeral service establishment" means a place of business at a specific street address or location licensed under this chapter that is devoted to:
    - (i) the embalming, care, custody, shelter, preparation for burial, and final disposition of dead human bodies; and
    - (ii) the furnishing of services, merchandise, and products purchased from the establishment as a preneed provider under a preneed funeral arrangement.
  - (b) "Funeral service establishment" includes:
    - (i) all portions of the business premises and all tools, instruments, and supplies used in the preparation and embalming of dead human bodies for burial, cremation, and final disposition as defined by division rule; and
    - (ii) a facility used by the business in which funeral services may be conducted.
- (19) "Funeral service intern" means an individual licensed under this chapter who is permitted to:
- (a) assist a funeral service director in the embalming or other preparation of a dead human body for disposition;
  - (b) assist a funeral service director in the cremation, calcination, or pulverization of a dead human body or its remains; and
  - (c) perform other funeral service activities under the supervision of a funeral service director.
- (20) "Graveside service" means a funeral service held at the location of disposition.

(21) "Memorial service" means a service, rite, or ceremony performed:

- (a) with respect to the death of a human; and
- (b) without the body of the deceased present.

(22) "Practice of funeral service" means:

- (a) supervising the receipt of custody and transportation of a dead human body to prepare the body for:
  - (i) disposition; or
  - (ii) shipment to another location;
- (b) entering into a contract with a person to provide professional services regulated under this chapter;
- (c) embalming or otherwise preparing a dead human body for disposition;
- (d) supervising the arrangement or conduct of:
  - (i) a funeral service;
  - (ii) a graveside service; or
  - (iii) a memorial service;
- (e) cremation, calcination, or pulverization of a dead human body or the body's remains;
- (f) supervising the arrangement of:
  - (i) a disposition; or
  - (ii) a direct disposition;
- (g) facilitating:
  - (i) a disposition; or
  - (ii) a direct disposition;
- (h) supervising the sale of funeral merchandise by a funeral establishment;
- (i) managing or otherwise being responsible for the practice of funeral service in a licensed funeral service establishment;
- (j) supervising the sale of a preneed funeral arrangement; and
- (k) contracting with or employing individuals to sell a preneed funeral arrangement.

(23)

- (a) "Preneed funeral arrangement" means a written or oral agreement sold in advance of the death of the beneficiary under which a person agrees with a buyer to provide at the death of the beneficiary any of the following as are typically provided in connection with a disposition:
  - (i) goods;
  - (ii) services, including:
    - (A) embalming services; and
    - (B) funeral directing services;
  - (iii) real property; or
  - (iv) personal property, including:
    - (A) a casket;
    - (B) another primary container;
    - (C) a cremation or transportation container;
    - (D) an outer burial container;
    - (E) a vault;
    - (F) a grave liner;
    - (G) funeral clothing and accessories;
    - (H) a monument;
    - (I) a grave marker; and
    - (J) a cremation urn.

- (b) "Preneed funeral arrangement" does not include a policy or product of life insurance providing a death benefit cash payment upon the death of the beneficiary which is not limited to providing the products or services described in Subsection (23)(a).
- (24) "Processing" means the reduction of identifiable bone fragments after the completion of the cremation process to unidentifiable bone fragments by manual means.
- (25) "Pulverization" means the reduction of identifiable bone fragments after the completion of the cremation and processing to granulated particles by manual or mechanical means.
- (26) "Sales agent" means an individual licensed under this chapter as a preneed funeral arrangement sales agent.
- (27) "Temporary container" means a receptacle for cremated remains usually made of cardboard, plastic, or similar material designed to hold the cremated remains until an urn or other permanent container is acquired.
- (28) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-9-501.
- (29) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-9-502.
- (30) "Urn" means a receptacle designed to permanently encase the cremated remains.

Amended by Chapter 278, 2013 General Session

## **Part 2 Board**

### **58-9-201 Board.**

- (1) There is created the Board of Funeral Service consisting of:
  - (a) four funeral service directors who own, have an ownership interest in, or have management responsibilities for a funeral service establishment;
  - (b) one preneed funeral arrangement sales agent, who does not have an ownership interest in a funeral service establishment; and
  - (c) two members from the general public who have no association with the funeral service profession.
- (2) The board shall be appointed and serve in accordance with Section 58-1-201.
- (3)
  - (a) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.
  - (b) The board shall designate one of its members on a permanent or rotating basis to:
    - (i) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and
    - (ii) advise the division in its investigation of these complaints.
- (4) A board member who has, under Subsection (3), reviewed a complaint or advised the division in its investigation may be disqualified from participating with the board when the board serves as a presiding officer of an administrative proceeding concerning the complaint.

Amended by Chapter 144, 2007 General Session

## **Part 3 Licensing**

**58-9-301 Licensure required -- License classifications.**

- (1) A license is required to engage in the practice of funeral service, except as specifically provided in Sections 58-1-307 and 58-9-305.
- (2) The division shall issue to a person who qualifies under this chapter a license in the classification of:
  - (a) funeral service director;
  - (b) funeral service intern;
  - (c) funeral service establishment; or
  - (d) preneed funeral arrangement sales agent.

Amended by Chapter 144, 2007 General Session

**58-9-302 Qualifications for licensure.**

- (1) Each applicant for licensure as a funeral service director shall:
  - (a) submit an application in a form prescribed by the division;
  - (b) pay a fee as determined by the department under Section 63J-1-504;
  - (c) be of good moral character in that the applicant has not been convicted of:
    - (i) a first or second degree felony;
    - (ii) a misdemeanor involving moral turpitude; or
    - (iii) any other crime that when considered with the duties and responsibilities of a funeral service director is considered by the division and the board to indicate that the best interests of the public are not served by granting the applicant a license;
  - (d) have obtained a high school diploma or its equivalent or a higher education degree;
  - (e) have obtained an associate degree, or its equivalent, in mortuary science from a school of funeral service accredited by the American Board of Funeral Service Education or other accrediting body recognized by the U.S. Department of Education;
  - (f) have completed not less than 2,000 hours and 50 embalmings, over a period of not less than one year, of satisfactory performance in training as a licensed funeral service intern under the supervision of a licensed funeral service director; and
  - (g) obtain a passing score on examinations approved by the division in collaboration with the board.
- (2) Each applicant for licensure as a funeral service intern shall:
  - (a) submit an application in a form prescribed by the division;
  - (b) pay a fee as determined by the department under Section 63J-1-504;
  - (c) be of good moral character in that the applicant has not been convicted of:
    - (i) a first or second degree felony;
    - (ii) a misdemeanor involving moral turpitude; or
    - (iii) any other crime that when considered with the duties and responsibilities of a funeral service intern is considered by the division and the board to indicate that the best interests of the public are not served by granting the applicant a license;
  - (d) have obtained a high school diploma or its equivalent or a higher education degree; and
  - (e) obtain a passing score on an examination approved by the division in collaboration with the board.
- (3) Each applicant for licensure as a funeral service establishment and each funeral service establishment licensee shall:
  - (a) submit an application in a form prescribed by the division;
  - (b) pay a fee as determined by the department under Section 63J-1-504;

- (c) have in place:
    - (i) an embalming room for preparing dead human bodies for burial or final disposition, which may serve one or more facilities operated by the applicant;
    - (ii) a refrigeration room that maintains a temperature of not more than 40 degrees fahrenheit for preserving dead human bodies prior to burial or final disposition, which may serve one or more facilities operated by the applicant; and
    - (iii) maintain at all times a licensed funeral service director who is responsible for the day-to-day operation of the funeral service establishment and who is personally available to perform the services for which the license is required;
  - (d) affiliate with a licensed preneed funeral arrangement sales agent or funeral service director if the funeral service establishment sells preneed funeral arrangements;
  - (e) file with the completed application a copy of each form of contract or agreement the applicant will use in the sale of preneed funeral arrangements; and
  - (f) provide evidence of appropriate licensure with the Insurance Department if the applicant intends to engage in the sale of any preneed funeral arrangements funded in whole or in part by an insurance policy or product to be sold by the provider or the provider's sales agent.
- (4) Each applicant for licensure as a preneed funeral arrangement sales agent shall:
- (a) submit an application in a form prescribed by the division;
  - (b) pay a fee as determined by the department under Section 63J-1-504;
  - (c) be of good moral character in that the applicant has not been convicted of:
    - (i) a first or second degree felony;
    - (ii) a misdemeanor involving moral turpitude; or
    - (iii) any other crime that when considered with the duties and responsibilities of a preneed funeral sales agent is considered by the division and the board to indicate that the best interests of the public are not served by granting the applicant a license;
  - (d) have obtained a high school diploma or its equivalent or a higher education degree;
  - (e) have obtained a passing score on an examination approved by the division in collaboration with the board;
  - (f) affiliate with a licensed funeral service establishment; and
  - (g) provide evidence of appropriate licensure with the Insurance Department if the applicant intends to engage in the sale of any preneed funeral arrangements funded in whole or in part by an insurance policy or product.

Amended by Chapter 183, 2009 General Session

**58-9-303 Term of license -- Expiration -- Renewal.**

- (1)
  - (a) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by rule.
  - (b) The division may by rule extend or shorten a renewal cycle by as much as one year to stagger the renewal cycles it administers.
- (2) Notwithstanding Subsection (1), a person who has once held a license as a funeral service intern and has not qualified for licensure as a funeral service director may be issued a subsequent funeral service intern license for only one additional two-year term upon the specific approval of the division in collaboration with the board.
- (3) At the time of renewal, the funeral service director licensee shall show satisfactory evidence of completion of continuing education as required under Section 58-9-304.

- (4) Each license automatically expires on the expiration date shown on the license unless the licensee renews it in accordance with Section 58-1-308.
- (5)
  - (a) Except as otherwise provided in Subsections (5)(b) and (c), the division may take action against the license of a funeral service establishment that does not have a licensed funeral service director.
  - (b) If a licensed funeral service director dies and leaves the funeral service establishment as part of the assets of the funeral service director's estate:
    - (i) the personal representative of the funeral service director's estate may operate the funeral service establishment under the license, or renewals of the license, for not more than two years from the date of the funeral service director's death without meeting the qualifications of an applicant and without having a licensed funeral service director; but
    - (ii) Subsection (5)(b)(i) does not allow an unlicensed person to perform a function that requires performance by a funeral service director licensed under this chapter.
  - (c) If the funeral service director of a licensed funeral service establishment terminates employment with the establishment, the establishment has 90 days to hire a new licensed funeral service director before action may be taken against the license under Subsection (5) (a).

Amended by Chapter 144, 2007 General Session

**58-9-304 Continuing education.**

- (1) As a condition precedent for license renewal, each funeral service director shall, during each two-year licensure cycle or other cycle defined by rule, complete 20 hours of qualified continuing professional education in accordance with standards defined by rule.
- (2) If a renewal cycle is extended or shortened under Section 58-9-303, the continuing education hours required for license renewal under this section shall be increased or decreased proportionally.

Enacted by Chapter 49, 2003 General Session

**58-9-305 Exemptions from licensure.**

In addition to the exemptions from licensure in Section 58-1-307, a person may engage in the following acts included within the definition of the practice of funeral service, subject to the stated circumstances and limitations, without being licensed under this chapter:

- (1) transportation of a dead human body in accordance with other applicable state and federal laws;
- (2) ambulance or other emergency transportation of a dead human body;
- (3) the sale of any of the following that is delivered to the buyer or the buyer's designee within 90 days after the day of the sale:
  - (a) funeral merchandise;
  - (b) headstones; or
  - (c) other memorial merchandise;
- (4) the performance of funeral, graveside, or memorial services by:
  - (a) a member of the clergy;
  - (b) a member of the decedent's family; or
  - (c) any other recognized individual;

- (5) assisting a Utah licensed funeral service director regarding disasters or special emergencies by individuals licensed in other states as funeral service directors or embalmers;
- (6) activities of an unlicensed individual employed by a funeral service establishment involving arrangement for a funeral service or the sale of funeral merchandise if the binding contract is reviewed, approved, and signed in behalf of the funeral service establishment by a licensed funeral service director; and
- (7) nonprofessional tasks or activities which:
  - (a) do not require independent professional judgment; and
  - (b) are required of persons employed by a funeral service establishment under the supervision of a funeral service director.

Amended by Chapter 144, 2007 General Session

**58-9-306 License by endorsement.**

The division may issue a license by endorsement under this chapter to a person who:

- (1) provides documentation that the funeral service director's current licensure is active, in good standing, and free from any disciplinary action;
- (2) submits an application on a form provided by the division;
- (3) pays a fee determined by the department;
- (4) is of good moral character in that the person has not been convicted of:
  - (a) a first or second degree felony;
  - (b) a misdemeanor involving moral turpitude; or
  - (c) any other crime that when considered with the duties and responsibilities of the license for which the person is applying is considered by the division and the board to indicate that the best interests of the public are not served by granting the applicant a license;
- (5) has completed five years of lawful and active practice as a licensed funeral service director and embalmer within the 10 years immediately preceding the application for licensure by endorsement;
- (6) has passed a national examination determined by the division; and
- (7) has demonstrated competency of the laws and the rules of the state as determined by the division.

Amended by Chapter 144, 2007 General Session

**58-9-307 Supervision of funeral service intern.**

- (1) A person seeking licensure as a funeral service intern shall submit as a part of the application for a license:
  - (a) the name of the licensed funeral service director who has agreed to supervise all duties performed by the applicant as an intern; and
  - (b) the name of the licensed funeral service establishment at which the training and supervision shall take place.
- (2) A licensed funeral service director may supervise only one licensed funeral service intern at one time.
- (3)
  - (a) Within 30 days after the day on which the supervisor-supervisee relationship between a licensed funeral service director and a licensed funeral service intern terminates, the funeral service director shall furnish to the division a report of the performance of the funeral service intern.



- (b) The report shall be in form and content as prescribed by the division.
- (4)
  - (a) A licensed funeral service intern shall notify the division of any change in the intern's supervising funeral service director.
  - (b) The supervising funeral service director shall submit to the division, in accordance with Subsection (3), a report of the funeral service intern's performance.
- (5) The licensed funeral service director is responsible for supervision of all of the duties and functions performed by the funeral service intern throughout the entire internship period.

Amended by Chapter 144, 2007 General Session

## **Part 4 License Denial and Discipline**

### **58-9-401 Grounds for denial of license -- Disciplinary proceedings.**

Grounds for refusing to issue a license to an applicant, for refusing to renew the license of a licensee, for revoking, suspending, restricting, or placing on probation the license of a licensee, for issuing a public or private reprimand to a licensee, and for issuing a cease and desist order shall be in accordance with Section 58-1-401.

Enacted by Chapter 49, 2003 General Session

## **Part 5 Unlawful and Unprofessional Conduct - Penalties**

### **58-9-501 Unlawful conduct.**

"Unlawful conduct" includes:

- (1) doing any of the following to prepare a dead human body for disposition unless licensed as a funeral service director or a funeral service intern:
  - (a) embalming;
  - (b) calcinating;
  - (c) pulverizing;
  - (d) cremating; or
  - (e) using any method that invades a dead human body;
- (2) using the title "funeral service director," "funeral service intern," "preneed funeral service sales agent," or "funeral service establishment" unless licensed under this chapter;
- (3) engaging in, providing, or agreeing to provide funeral arrangements to be provided under a preneed funeral arrangement without first obtaining a license as a funeral service establishment under this chapter;
- (4) engaging in selling, representing for sale, or in any other way offering to sell any contract under which preneed funeral arrangements are to be provided without first obtaining a license under this chapter as:
  - (a) a preneed funeral arrangement sales agent; or
  - (b) a funeral service director; and
- (5) failing to comply with Section 58-9-702.

Amended by Chapter 144, 2007 General Session

**58-9-502 Unprofessional conduct.**

- (1) "Unprofessional conduct" includes:
- (a) the failure of a funeral service director to accurately document, report, and supervise the activities of a funeral service intern;
  - (b) knowingly soliciting the sale of any funeral service or funeral merchandise for a person whose death occurred or was imminent prior to the solicitation;
  - (c) paying or offering to pay a commission or anything of value to secure deceased human remains for a funeral service or disposition to:
    - (i) medical personnel;
    - (ii) a nursing home;
    - (iii) a nursing home employee;
    - (iv) a hospice;
    - (v) a hospice employee;
    - (vi) clergy;
    - (vii) a government official; or
    - (viii) any other third party; and
  - (d) failure to provide the following current information to the division:
    - (i) a licensee's business address;
    - (ii) a licensee's primary residence;
    - (iii) a funeral service establishment's funeral service director; or
    - (iv) a supervising funeral service director's funeral service intern's name.
- (2) "Unprofessional conduct" does not include:
- (a) general advertising directed to the public at large; or
  - (b) responding to a notification of death from:
    - (i) medical personnel;
    - (ii) a nursing home;
    - (iii) a nursing home employee;
    - (iv) a hospice;
    - (v) a hospice employee;
    - (vi) clergy;
    - (vii) a government official; or
    - (viii) any authorized representative of the family of the deceased person.

Amended by Chapter 144, 2007 General Session

**58-9-503 Penalty for unlawful conduct.**

- (1) A person who violates the unlawful conduct provisions defined in Subsections 58-9-501(1) through (4) is guilty of a class A misdemeanor.
- (2) A person who violates the unlawful conduct provision defined in Subsection 58-9-501(5) may be prosecuted under Title 76, Chapter 6, Part 4, Theft.

Amended by Chapter 144, 2007 General Session

**58-9-504 Authority to promulgate rules.**

In addition to the authority granted under Section 58-1-106, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division in collaboration with the board shall establish by rule:

- (1) the minimum requirements for a licensed funeral establishment for the following:
  - (a) physical facilities;
  - (b) equipment;
  - (c) instruments; and
  - (d) supplies;
- (2) license cycles under Section 58-9-303;
- (3) standards to protect the interests of buyers and potential buyers of preneed funeral arrangements under Section 58-9-701; and
- (4) standards for preneed funeral arrangement trusts.

Amended by Chapter 382, 2008 General Session

**58-9-505 Disclosure requirements.**

A licensee under this chapter shall disclose information in accordance with regulations of the Federal Trade Commission and rules adopted by the division pursuant to this chapter.

Enacted by Chapter 49, 2003 General Session

**58-9-506 Inspection -- Right to access.**

A licensed funeral service establishment is subject to inspection during normal business hours to determine compliance with the laws of Utah by:

- (1) any authorized representative of the division; or
- (2) any authorized representative of a local or state health department.

Enacted by Chapter 49, 2003 General Session

**Part 6  
Control of Disposition**

**58-9-601 Advance directions.**

- (1) A person may provide written directions, acknowledged before a Notary Public or executed with the same formalities required of a will under Section 75-2-502, to direct the preparation, type, and place of the person's disposition, including:
  - (a) designating a funeral service establishment;
  - (b) providing directions for burial arrangements; or
  - (c) providing directions for cremation arrangements.
- (2) A funeral service director shall carry out the written directions of the decedent prepared under this section to the extent that:
  - (a) the directions are lawful; and
  - (b) the decedent has provided resources to carry out the directions.
- (3) Directions for disposition contained in a will shall be carried out pursuant to Subsection (2) regardless of:
  - (a) the validity of other aspects of the will; or

- (b) the fact that the will may not be offered or admitted to probate until a later date.
- (4) A person may change or cancel written directions prepared under this section at any time prior to the person's death by providing written notice to all applicable persons, including:
  - (a) if the written directions designate a funeral service establishment or funeral service director, the funeral service establishment or funeral service director designated in the written directions; and
  - (b) if the written directions are contained in a will, the personal representative as defined in Section 75-1-201.

Amended by Chapter 364, 2013 General Session

**58-9-602 Determination of control of disposition.**

The right and duty to control the disposition of a deceased person, which may include cremation as well as the location, manner and conditions of the disposition, and arrangements for funeral goods and services to be provided, vests in the following degrees of relationship in the order named, provided the person is at least 18 and is mentally competent:

- (1) the person designated:
  - (a) in a written instrument, excluding a power of attorney that terminates at death under Section 75-9-110, if the written instrument is acknowledged before a Notary Public or executed with the same formalities required of a will under Section 75-2-502; or
  - (b) by a service member while serving in a branch of the United States Armed Forces as defined in 10 U.S.C. Sec. 1481 in a federal Record of Emergency Data, DD Form 93 or subsequent form;
- (2) the surviving, legally recognized spouse of the decedent, unless a personal representative was nominated by the decedent subsequent to the marriage, in which case the personal representative shall take priority over the spouse;
- (3) the person nominated to serve as the personal representative of the decedent's estate in a will executed with the formalities required in Section 75-2-502;
- (4)
  - (a) the sole surviving child of the decedent, or if there is more than one child of the decedent, the majority of the surviving children;
  - (b) less than one-half of the surviving children are vested with the rights of this section if they have used reasonable efforts to notify all other surviving children of their instructions and are not aware of any opposition to those instructions on the part of more than one-half of all surviving children;
- (5) the surviving parent or parents of the decedent, however:
  - (a) if one of the surviving parents is absent, the remaining parent is vested with the rights and duties of this section after reasonable efforts have been unsuccessful in locating the absent surviving parent; or
  - (b) if the parents are divorced or separated and the decedent was an incapacitated adult, the parent who was designated as the guardian of the decedent is vested with the rights and duties of this section;
- (6)
  - (a) the surviving brother or sister of the decedent, or if there is more than one sibling of the decedent, the majority of the surviving siblings;
  - (b) less than the majority of surviving siblings, if they have used reasonable efforts to notify all other surviving siblings of their instructions and are not aware of any opposition to those instructions on the part of more than one-half of all surviving siblings;

- (7) the person in the classes of the next degree of kinship, in descending order, under the laws of descent and distribution to inherit the estate of the decedent, and if there is more than one person of the same degree, any person of that degree may exercise the right of disposition;
- (8) in the absence of any person under Subsections (1) through (7), the person who was the decedent's guardian at the time of death;
- (9) any public official charged with arranging the disposition of deceased persons; and
- (10) in the absence of any person under Subsections (1) through (9), any other person willing to assume the responsibilities to act and arrange the final disposition of the decedent's remains, including the personal representative of the decedent's estate or the funeral service director with custody of the body, after attesting in writing that a good faith effort has been made to no avail to contact the individuals referred to in Subsections (1) through (9).

Amended by Chapter 256, 2016 General Session

**58-9-603 Loss of right of disposition.**

- (1) As used in this section, "estranged" means a physical and emotional separation from the decedent at the time of death which has existed for a period of time that clearly demonstrates an absence of affection, trust, and regard for the decedent.
- (2) A person who has a right of disposition under this chapter forfeits that right and the right is passed on to the next qualifying person as listed in Section 58-9-602 under the following circumstances:
  - (a) the person is charged with first or second degree murder or voluntary manslaughter in connection with the decedent's death, and the charges are known by the funeral service director, except that if the charges against the person are dropped or if the person is acquitted of the charges, the right of disposition is returned to the person;
  - (b) the person does not exercise the person's right of disposition within three days of notification of the decedent's death or within five days of the decedent's death, whichever is earlier; or
  - (c) if a probate court under Section 58-9-605 determines that the person entitled to the right of disposition and the decedent were estranged at the time of death.

Repealed and Re-enacted by Chapter 144, 2007 General Session

**58-9-604 Control by funeral service director.**

A funeral service director may control the disposition of the decedent and recover reasonable charges if:

- (1)
  - (a) the funeral service director has actual knowledge that none of the persons described in Section 58-9-602 exist; or
  - (b) after reasonable efforts the funeral service director is not able to contact any of the persons described in Section 58-9-602; and
- (2) the appropriate public official charged with arranging the disposition of deceased persons fails to assume responsibility for disposition of the decedent within 36 hours after receiving written notice from the funeral service director.

Enacted by Chapter 49, 2003 General Session

**58-9-605 Disputes.**

- (1) Notwithstanding Sections 58-9-601 through 58-9-604, the probate court for the county in which the decedent resided may:
  - (a) award the right of disposition to the person determined by the court to be the most fit and appropriate to carry out the right of disposition; and
  - (b) make decisions regarding the decedent's remains if those sharing the right of disposition cannot agree.
- (2) The following provisions apply to the probate court's determinations under this section:
  - (a) if the persons holding the right of disposition are two or more persons with the same relationship to the decedent, and they cannot, by majority vote, make a decision regarding the disposition of the decedent's remains, any of those persons or a funeral service director with custody of the remains may petition the probate court to make the decision;
  - (b) in making a determination the probate court shall consider:
    - (i) the reasonableness and practicality of the proposed funeral arrangements and disposition;
    - (ii) the degree of the personal relationship between the decedent and each of the persons claiming the right of disposition;
    - (iii) the desires of the person or persons who are ready, able, and willing to pay the cost of the funeral arrangements and disposition;
    - (iv) the convenience and needs of other families and friends wishing to pay their respects;
    - (v) the desires of the decedent; and
    - (vi) the degree to which the funeral arrangements would allow maximum participation by all who wish to pay their respects.
- (3)
  - (a) In a dispute regarding the right of disposition, until the funeral service director receives a court order or other written agreement signed by the parties to the dispute that decides the final disposition of the remains, the funeral service director is not liable for refusing to:
    - (i) accept the decedent's remains;
    - (ii) inter or otherwise dispose of the decedent's remains; or
    - (iii) complete the arrangements for the final disposition of the decedent's remains.
  - (b) If, during a dispute, a funeral service director retains a decedent's remains for final disposition, the director may:
    - (i) embalm or refrigerate and shelter the body, or both, to preserve it while awaiting the final decision of the probate court; and
    - (ii) add the costs incurred under Subsection (3)(b)(i) to the final disposition costs.
- (4) The legal fees and court costs incurred by a funeral service director for petitioning the probate court under Subsection (2)(a) may be added to the final disposition costs.
- (5)
  - (a) This section does not require or impose a duty upon a funeral service director to bring an action under Subsection (2)(a).
  - (b) A funeral service director may not be held criminally or civilly liable for failing to bring an action under Subsection (2)(a).
- (6) Except to the degree that it may be considered by the probate court under Subsection (2)(b)(iii), the fact that a person has paid for or agreed to pay for all or part of the decedent's funeral arrangements and final disposition does not give that person a higher priority to the right of disposition than the person would otherwise have.
- (7) The personal representative of the decedent's estate does not, by virtue of being the personal representative, have a greater claim to the right of disposition than the personal representative would otherwise have.

Enacted by Chapter 144, 2007 General Session

**58-9-606 Right to rely -- Immunity.**

- (1) A person signing a funeral service agreement, cremation authorization form, or other authorization for a decedent's disposition warrants the truthfulness of the facts set forth in the document, including the identity of the decedent and the person's authority to order the disposition.
- (2) A funeral service establishment has the right to rely on a contract or authorization executed under Subsection (1) and may carry out the instructions of the person whom its funeral service director reasonably believes holds the right of disposition.
- (3) A funeral service director incurs no civil or criminal liability for failure to contact or independently investigate the existence of any next-of-kin or relative of the decedent.
- (4) If there are at least two persons in the nearest class of the next-of-kin who are equal in priority and a funeral service director has no knowledge of an objection by other members of the class, the funeral service director may rely on and act according to the instructions of the first person in the class to make funeral and disposition arrangements.
- (5) A funeral service establishment or funeral service director who relies in good faith on the instructions of a person claiming the right of disposition under this part is immune from civil and criminal liability and disciplinary action in carrying out the disposition of a decedent's remains in accordance with that person's instructions.

Enacted by Chapter 144, 2007 General Session

**58-9-607 Authorization to cremate -- Penalties for removal of items from human remains.**

- (1) Except as otherwise provided in this section, a funeral service establishment may not cremate human remains until it has received:
  - (a) a cremation authorization form signed by an authorizing agent;
  - (b) a completed and executed burial transit permit or similar document, as provided by state law, indicating that human remains are to be cremated; and
  - (c) any other documentation required by the state, county, or municipality.
- (2)
  - (a) The cremation authorization form shall contain, at a minimum, the following information:
    - (i) the identity of the human remains and the time and date of death, including a signed declaration of visual identification of the deceased or refusal to visually identify the deceased;
    - (ii) the name of the funeral director and funeral service establishment that obtained the cremation authorization;
    - (iii) notification as to whether the death occurred from a disease declared by the department of health to be infectious, contagious, communicable, or dangerous to the public health;
    - (iv) the name of the authorizing agent and the relationship between the authorizing agent and the decedent;
    - (v) a representation that the authorizing agent has the right to authorize the cremation of the decedent and that the authorizing agent is not aware of any living person with a superior or equal priority right to that of the authorizing agent, except that if there is another living person with a superior or equal priority right, the form shall contain a representation that the authorizing agent has:
      - (A) made reasonable efforts to contact that person;
      - (B) been unable to do so; and

- (C) no reason to believe that the person would object to the cremation of the decedent;
  - (vi) authorization for the funeral service establishment to cremate the human remains;
  - (vii) a representation that the human remains do not contain a pacemaker or other material or implant that may be potentially hazardous or cause damage to the cremation chamber or the person performing the cremation;
  - (viii) the name of the person authorized to receive the cremated remains from the funeral service establishment;
  - (ix) the manner in which the final disposition of the cremated remains is to take place, if known;
  - (x) a listing of each item of value to be delivered to the funeral service establishment along with the human remains, and instructions as to how each item should be handled;
  - (xi) the signature of the authorizing agent, attesting to the accuracy of all representations contained on the authorization form;
  - (xii) if the cremation authorization form is being executed on a preneed basis, the form shall contain the disclosure required for preneed programs under this chapter; and
  - (xiii) except for a preneed cremation authorization, the signature of the funeral director of the funeral service establishment that obtained the cremation authorization.
- (b)
- (i) The individual referred to in Subsection (2)(a)(xiii) shall execute the funeral authorization form as a witness and is not responsible for any of the representations made by the authorizing agent.
  - (ii) The funeral director or the funeral service establishment shall warrant to the crematory that the human remains delivered to the funeral service establishment have been positively identified as the decedent listed on the cremation authorization form by the authorizing agent or a designated representative of the authorizing agent.
  - (iii) The authorizing agent or the agent's designee may make the identification referred to in Subsection (2)(b)(ii) in person or by photograph.
- (3)
- (a) A funeral service establishment may not accept unidentified human remains for cremation.
  - (b) If a funeral service establishment takes custody of a cremation container subsequent to the human remains being placed within the container, it can rely on the identification made before the remains were placed in the container.
  - (c) The funeral service establishment shall place appropriate identification on the exterior of the cremation container based on the prior identification.
- (4)
- (a) A person who removes or possesses dental gold or silver, jewelry, or mementos from human remains:
    - (i) with purpose to deprive another over control of the property is guilty of an offense and subject to the punishments provided in Section 76-6-412;
    - (ii) with purpose to exercise unauthorized control and with intent to temporarily deprive another of control over the property is guilty of an offense and subject to the punishments provided in Section 76-6-404.5; and
    - (iii) under circumstances not amounting to Subsection (4)(a)(i) or (ii) and without specific written permission of the individual who has the right to control those remains is guilty of a class B misdemeanor.
  - (b) The fact that residue or any unavoidable dental gold or dental silver or other precious metals remain in a cremation chamber or other equipment or a container used in a prior cremation is not a violation of Subsection (4)(a).



Enacted by Chapter 353, 2008 General Session

**58-9-608 Recordkeeping.**

- (1)
  - (a) A funeral service establishment shall furnish to the person who delivers human remains to the establishment for cremation a receipt signed by a representative of the establishment and the person making the delivery, showing:
    - (i) the date and time of the delivery;
    - (ii) the type of casket or alternative container delivered;
    - (iii) the name of the person from whom the human remains were received;
    - (iv) the name of the funeral establishment or other entity with whom the person making the delivery is affiliated;
    - (v) the name of the person who received the human remains on behalf of the funeral service establishment; and
    - (vi) the name of the decedent.
  - (b) The funeral service establishment shall keep a copy of the receipt in its permanent records for a period of seven years.
- (2)
  - (a) Upon release of cremated remains, a funeral service establishment shall furnish to the person who receives the cremated remains a receipt signed by a representative of the funeral service establishment and the person who receives the remains, showing:
    - (i) the date and time of the release;
    - (ii) the name of the person to whom the cremated remains were released; and
    - (iii) if applicable:
      - (A) the name of the funeral establishment, cemetery, or other entity with whom the person receiving the cremated remains is affiliated;
      - (B) the name of the person who released the cremated remains on behalf of the funeral service establishment; and
      - (C) the name of the decedent.
  - (b)
    - (i) The receipt shall contain a representation from the person receiving the cremated remains confirming that the remains will not be used for any improper purpose.
    - (ii) Upon release of the cremated remains, the person to whom the remains were released may transport them in any manner in the state, without a permit, and dispose of them in accordance with this chapter.
  - (c) The funeral service establishment shall retain a copy of the receipt in its permanent records for a period of seven years.
- (3)
  - (a) The funeral service establishment shall maintain at its place of business a permanent record of each cremation that took place at its crematory.
  - (b) The permanent record shall contain:
    - (i) the name of the decedent;
    - (ii) the date of cremation;
    - (iii) the final disposition of the cremated remains; and
    - (iv) any other document required by this chapter.

Enacted by Chapter 353, 2008 General Session

**58-9-609 Cremation containers.**

- (1)
  - (a) Except as provided in Subsection (2), a funeral service establishment may not make or enforce a rule requiring that human remains be:
    - (i) placed in a casket before cremation; or
    - (ii) cremated in a casket.
  - (b) A funeral service establishment may not refuse to accept human remains for cremation because they are not in a casket.
- (2)
  - (a) Human remains must be delivered to a crematory in a casket or cremation container.
  - (b) Human remains may not be removed from a casket or cremation container once delivered to the crematory, and the casket or cremation container shall be cremated with the human remains, unless:
    - (i) the funeral service establishment has been provided with written instructions to the contrary by the authorizing agent; or
    - (ii) the funeral service establishment does not accept metal caskets for cremation.

Enacted by Chapter 353, 2008 General Session

**58-9-610 Cremation procedures.**

- (1) A funeral service establishment may not cremate human remains until the funeral service establishment:
  - (a) completes and files a death certificate with the office of vital statistics and the county health department as indicated on the regular medical certificate of death or the coroner's certificate; and
  - (b) complies with the provisions of Section 26-4-29.
- (2)
  - (a) A funeral service establishment may not cremate human remains with a pacemaker or other battery-powered, potentially hazardous implant in place.
  - (b)
    - (i) An authorizing agent for the cremation of human remains is responsible for informing the funeral service establishment in writing on the cremation authorization form about the presence of a pacemaker or other battery-powered, potentially hazardous implant in the human remains to be cremated.
    - (ii)
      - (A) Except as provided in Subsection (2)(b)(ii)(B), the authorizing agent is responsible to ensure that a pacemaker or other battery-powered, potentially hazardous implant is removed prior to cremation.
      - (B) If the authorizing agent informs the funeral service establishment of the presence of a pacemaker or other battery-powered, potentially hazardous implant under Subsection (2)(b)(i), and the funeral service establishment fails to have the pacemaker or other battery-powered, potentially hazardous implant removed prior to cremation, then the funeral service establishment is liable for all resulting damages.
- (3) Only authorized persons are permitted in the crematory while human remains are in the crematory area awaiting cremation, being cremated, or being removed from the cremation chamber.
- (4)

- (a) Simultaneous cremation of the human remains of more than one person within the same cremation chamber or processor is not allowed, unless the funeral service establishment has received specific written authorization to do so from the authorizing agent of each person to be cremated.
  - (b) The written authorization, described in Subsection (4)(a), exempts the funeral license establishment from liability for co-mingling of the cremated remains during the cremation process.
- (5) A funeral service establishment shall:
- (a) verify the identification of human remains as indicated on a cremation container immediately before placing the human remains in the cremation chamber;
  - (b) attach a metal identification tag to the cremation container;
  - (c) remove the identification tag from the cremation container; and
  - (d) place the identification tag near the cremation chamber control where the identification tag shall remain until the cremation process is complete.
- (6) Upon completion of a cremation, the funeral service establishment shall:
- (a) in so far as is possible, remove all of the recoverable residue of the cremation process from the cremation chamber;
  - (b) separate all other residue from the cremation process from remaining bone fragments, in so far as possible, and process the bone fragments so as to reduce them to unidentifiable particles; and
  - (c) remove anything other than the unidentifiable bone particles from the cremated residuals, as far as is possible, and dispose of that material.
- (7)
- (a) A funeral service establishment shall pack cremated remains, including the identification tag described in Subsection (5), in a temporary container or urn ordered by the authorizing agent.
  - (b) The container or urn shall be packed in clean packing materials and not be contaminated with any other object, unless otherwise directed by the authorizing agent.
  - (c) If the cremated remains cannot fit within the designated temporary container or urn, the funeral service establishment shall:
    - (i) return the excess to the authorizing agent or the agent's representative in a separate container; and
    - (ii) mark both containers or urns on the outside with the name of the deceased person and an indication that the cremated remains of the named decedent are in both containers or urns.
- (8)
- (a) If the cremated remains are to be shipped, then the funeral services establishment shall pack the designated temporary container or urn in a suitable, sturdy container.
  - (b) The funeral service establishment shall have the remains shipped only by a method that:
    - (i) has an available internal tracing system; and
    - (ii) provides a receipt signed by the person accepting delivery.

Amended by Chapter 68, 2009 General Session  
Amended by Chapter 223, 2009 General Session

**58-9-611 Disposition of cremated remains.**

- (1)
- (a) An authorizing agent shall provide the person with whom cremation arrangements are made with a signed statement specifying the final disposition of the cremated remains, if known.
  - (b) The funeral services establishment shall retain a copy of the statement.

- (2)
  - (a) The authorizing agent is responsible for the disposition of the cremated remains.
  - (b) If the authorizing agent or the agent's representative has not specified the ultimate disposition of or claimed the cremated remains within 60 days from the date of the cremation, the funeral service establishment may dispose of the remains in any manner permitted by law, except scattering.
  - (c) The authorizing agent shall reimburse the funeral services establishment for all reasonable costs incurred in disposing of the cremated remains under Subsection (2)(b).
  - (d) The person or entity disposing of cremated remains under this section:
    - (i) shall make and keep a record of the disposition of the remains; and
    - (ii) is discharged from any legal obligation or liability concerning the remains once the disposition has been made.
  - (e) Subsection (2)(d)(ii) applies to cremated remains in the possession of a funeral services establishment or other responsible party as of May 5, 2008, or any time after that date.
- (3)
  - (a) An authorizing agent may direct a funeral service establishment to dispose of or arrange for the disposition of cremated remains:
    - (i) in a crypt, niche, grave, or scattering garden located in a dedicated cemetery;
    - (ii) by scattering them over inhabited public land, the sea, or other public waterways subject to health and environmental laws and regulations; or
    - (iii) in any manner on the private property of a consenting owner.
  - (b) If cremated remains are to be disposed of on private property, other than dedicated cemetery property, the authorizing agent shall provide the funeral service establishment with the written consent of the property owner prior to disposal of the remains.
  - (c) In order to scatter cremated remains under Subsection (3)(a)(ii) or (iii), the remains must be reduced to a particle size of one-eighth inch or less and removed from their closed container.
- (4) A funeral service establishment may not release cremated remains for scattering under this section to the authorizing agent or the agent's designated representative until the funeral service establishment is given a receipt that shows the proper filing has been made with the local registrar of births and deaths.

Enacted by Chapter 353, 2008 General Session

**58-9-612 Limitation of liability.**

- (1) An authorizing agent who signs a cremation authorization form warrants the truthfulness of the facts set forth on the form, including:
  - (a) the identity of the deceased whose remains are to be cremated; and
  - (b) the authorizing agent's authority to order the cremation.
- (2) A funeral service establishment may rely upon the representations made by an authorizing agent under Subsection (1).
- (3) The authorizing agent is personally and individually liable for all damage resulting from a misstatement or misrepresentation made under Subsection (1).
- (4)
  - (a) A funeral service establishment may arrange for the cremation of and cremate human remains upon receipt of a cremation authorization form signed by an authorizing agent.
  - (b) A funeral service establishment that arranges a cremation, cremates human remains, or releases or disposes of cremated human remains pursuant to a cremation authorization form is not liable for an action it takes pursuant to that authorization.

- (5) A funeral service establishment is not responsible or liable for any valuables delivered to the establishment with human remains to be cremated.
- (6) A funeral service establishment may refuse to arrange for a cremation, to accept human remains for cremation, or to perform a cremation:
  - (a) if the establishment is aware of a dispute concerning the cremation of the human remains and it has not received a court order or other suitable confirmation that the dispute has been resolved;
  - (b) if the establishment has a reasonable basis for questioning any of the representations made by an authorizing agent; or
  - (c) for any other lawful reason.
- (7)
  - (a) If a funeral service establishment is aware of a dispute concerning the release or disposition of cremated remains in its possession, the establishment may refuse to release the remains until:
    - (i) the dispute has been resolved; or
    - (ii) it has received a court order authorizing the release or disposition of the remains.
  - (b) A funeral service establishment is not liable for its refusal to release or dispose of cremated remains in accordance with this Subsection (7).

Enacted by Chapter 353, 2008 General Session

## **Part 7**

### **Preneed Funeral Arrangement Requirements**

#### **58-9-701 Preneed contract requirements.**

- (1)
  - (a) A preneed funeral arrangement sold in Utah shall be evidenced by a written contract.
  - (b) The funeral service establishment shall maintain a copy of the contract until five years after all of the establishment's obligations under the contract have been executed.
- (2) The form for a written contract of a preneed funeral arrangement under Subsection (1) shall:
  - (a) be written in clear and understandable language printed in an easy-to-read type size and font;
  - (b) bear the preprinted name, address, telephone number, and license number of the funeral service establishment obligated to provide the services under the contract terms;
  - (c) clearly identify that the contract is a guaranteed product contract;
  - (d) provide that a trust is established in accordance with the provisions of Section 58-9-702;
  - (e) if the contract is funded by an insurance policy or product, provide that the insurance policy or product is filed with the Insurance Department and meets the requirements of Title 31A, Insurance Code; and
  - (f) conform to other standards created by rules made by division under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to protect the interests of buyers and potential buyers.
- (3) A preneed funeral arrangement contract shall provide for payment by the buyer in a form which may be liquidated by the funeral service establishment within 30 days after the day the funeral service establishment or sales agent receives the payment.
- (4) A preneed funeral arrangement contract may not be revocable by the funeral service establishment except:
  - (a) in the event of nonpayment; and

- (b) under terms and conditions clearly set forth in the contract.
- (5)
  - (a) A preneed funeral arrangement contract may not be revocable by the buyer or beneficiary except:
    - (i) in the event of:
      - (A) a substantial contract breach by the funeral service establishment; or
      - (B) substantial evidence that the funeral service establishment is or will be unable to provide the personal property or services to the beneficiary as provided under the contract; or
    - (ii) under terms and conditions clearly set forth in the contract.
  - (b) The preneed funeral arrangement contract shall contain a clear statement of the manner in which payments made on the contract shall be refunded to the buyer or beneficiary upon revocation by the beneficiary.
- (6)
  - (a) A preneed funeral arrangement contract shall provide the buyer the option to require the funeral service establishment to furnish a written disclosure to a person who does not live at the same residence as the buyer.
  - (b) The preneed funeral arrangement buyer may choose:
    - (i) a full disclosure containing a copy of the entire preneed funeral arrangement contract;
    - (ii) a partial disclosure informing the recipient of:
      - (A) the existence of a preneed funeral arrangement contract; and
      - (B) the name, address, telephone number, and license number of the funeral service establishment obligated to provide the services under the preneed funeral arrangement contract; or
    - (iii) not to require the funeral service establishment to furnish a written disclosure to another person.

Amended by Chapter 30, 2012 General Session

**58-9-702 Payments to be held in trust -- Trustee qualifications.**

- (1) All money representing payments for the purchase of a preneed funeral arrangement shall be deposited by the provider or sales agent receiving the payment:
  - (a) within 10 business days after the day on which the provider or sales agent receives the payment in the form of cash or cash equivalent; or
  - (b) within 35 calendar days after the day on which the provider or sales agent receives the payment in the form of a negotiable instrument.
- (2) All money received under Subsection (1) shall be placed in a trust account naming as trustee a Utah financial institution authorized to engage in the trust business under Title 7, Chapter 5, Trust Business.

Enacted by Chapter 49, 2003 General Session

**58-9-703 Trust agreement.**

- (1) Each trust established by a funeral service establishment shall be administered in accordance with a trust agreement conforming with:
  - (a) the requirements of this chapter;
  - (b) rules adopted with respect to this chapter;
  - (c) the provisions of Title 75, Chapter 7, Utah Uniform Trust Code; and
  - (d) all other state and federal laws applicable to trusts and trust agreements.

- (2) Each trust agreement shall require that the funeral service establishment maintain a copy of the trust agreement until five years after all of its obligations under the trust agreement have been executed or transferred.
- (3) Each trust agreement shall require that the trustee:
  - (a) separately account for each contract; and
  - (b) separately record payments with respect to each contract made into the corpus of the trust.
- (4) Each trust agreement shall provide for distributions from the trust in accordance with the provisions of this chapter upon:
  - (a) the death of the beneficiary;
  - (b) revocation of the contract by the funeral service establishment upon nonpayment by the buyer; or
  - (c) revocation of the contract by the beneficiary or buyer.

Amended by Chapter 144, 2007 General Session

**58-9-704 Interest earned on trust funds.**

Interest earned on trust funds shall be available for expenditure according to the following priority:

- (1) to pay the reasonable trustee expenses of administering the trust within a maximum amount established by rule;
- (2) to pay within a maximum amount established by rule under Section 58-9-504 the reasonable provider expenses associated with:
  - (a) the sale of the plan;
  - (b) administering the collection, remittance, and accounting of the amount of payments made into the corpus of the trust; and
  - (c) reporting required with respect to those contracts:
    - (i) that have been sold; and
    - (ii) under which the provider is obligated;
- (3) to pay the costs of providing any of the following for which the provider is obligated under a specific outstanding preneed funeral arrangement contract:
  - (a) personal property; and
  - (b) services at need; and
- (4) to pay the provider available funds left in the individual trust account after:
  - (a) all costs of providing personal property and services for which the provider is obligated under the contract underlying the trust; or
  - (b)
    - (i) the contract is canceled as provided under this chapter; and
    - (ii) all amounts payable to the buyer, beneficiary, or any other person have been paid in full.

Enacted by Chapter 49, 2003 General Session

**58-9-705 Distribution of funds.**

- (1) Interest earned on trust funds shall be available to the provider according to the priority set forth in Section 58-9-704.
- (2) The amount of payments made into the corpus of the trust and any other amount which has been paid into the corpus of the trust shall be paid to the provider in the amount credited to a specific account upon the event of one of the following:

- (a) the death of the beneficiary which shall be demonstrated to the trustee by the provider by furnishing to the trustee:
  - (i) a request for payment from the trust; and
  - (ii) a certified copy of the death certificate of the beneficiary; or
- (b) revocation of the preneed funeral arrangement contract by either the provider or the buyer according to the terms and conditions of the contract, which shall be demonstrated to the trustee by the provider by furnishing to the trustee satisfactory evidence that:
  - (i) the contract has been revoked; and
  - (ii) the provider has paid all funds due to the buyer or beneficiary.
- (3) Upon an order of a court having jurisdiction, all amounts that have been paid into the corpus of the trust shall be paid to the buyer or beneficiary in the event of:
  - (a) a judgment to the benefit of a buyer or beneficiary upon a finding that:
    - (i) the provider is in substantial breach of the contract; or
    - (ii) there is substantial evidence that the provider is or will be unable to provide the personal property or services to the beneficiary under the contract;
  - (b) a judgment of bankruptcy against the provider; or
  - (c) a finding by the court that determines the funds should be rightfully returned to the buyer or beneficiary.

Amended by Chapter 353, 2008 General Session

**58-9-706 Trust funds and insurance reports.**

- (1)
  - (a) Each funeral service establishment shall maintain an annual report of preneed trust funds and insurance.
  - (b) The report shall contain:
    - (i) the name of the trustees with which the funeral service establishment has trust funds on deposit; and
    - (ii) the amount remaining on deposit in the trust fund on:
      - (A) December 31 of the preceding year; or
      - (B) another annual reporting period as the division may establish.
- (2) Each funeral service establishment may be audited by the division at any time.

Amended by Chapter 144, 2007 General Session

**58-9-707 Records of trustee -- Contents.**

- (1) The trustee shall keep an orderly record of all agreements.
- (2) The record shall contain:
  - (a) the name and address of the person making a payment;
  - (b) the date and the amount of each payment made;
  - (c) the date and amount of each withdrawal and to whom paid; and
  - (d) the name of the bank or trust company depository.

Amended by Chapter 144, 2007 General Session

**58-9-708 Audits.**

- (1)
  - (a) The division may at any time:



- (i) audit records of the provider; and
  - (ii) inspect records of the provider.
- (b) The provider or trustee shall make available to the division for examination, inspection, or auditing all records pertaining to the accounts relating to:
  - (i) any contract sold under this chapter; and
  - (ii) any trust established under this chapter.
- (2)
  - (a) The director may employ experts from outside the division if special need exists to perform examinations, inspections, and audits under this section.
  - (b) The provider shall be responsible for payment to the division of all reasonable and necessary costs related to the employment of experts under this section.

Enacted by Chapter 49, 2003 General Session