

Senator David L. Gladwell proposes the following substitute bill:

**FUNERAL SERVICES AMENDMENTS**

2003 GENERAL SESSION

STATE OF UTAH

**Sponsor: David L. Gladwell**

**This act modifies the Occupations and Professions Code by repealing the provisions of the Funeral Services Licensing Act and the Preneed Funeral Arrangement Act. The act enacts the provisions of those two acts within the Funeral Services Licensing Act. The act alters the membership of the Board of Funeral Service. The act eliminates the Preneed Funeral Arrangement Licensing Board and transfers the duties and responsibilities to the Board of Funeral Service. The act enacts provisions prohibiting a convicted felon from holding certain licenses. The act enacts endorsement requirements for individuals licensed in another jurisdiction. The act enacts provisions prohibiting solicitation of funeral services or merchandise after a person's death. The act establishes criminal penalties for certain violations. The act enacts provisions dealing with the right and duty to control the disposition of a deceased person. The act modifies the Utah Health Code and the Utah Uniform Probate Code to provide cross-references to the Funeral Services Licensing Act. The act makes technical changes.**

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**26-2-18**, as last amended by Chapter 86, Laws of Utah 2000

**26-4-16**, as enacted by Chapter 126, Laws of Utah 1981

**63-55-258**, as last amended by Chapter 49, Laws of Utah 2002

**75-1-107**, as repealed and reenacted by Chapter 39, Laws of Utah 1998

**75-1-201**, as last amended by Chapter 142, Laws of Utah 1999

ENACTS:



- 26           **58-9-101**, Utah Code Annotated 1953
- 27           **58-9-102**, Utah Code Annotated 1953
- 28           **58-9-201**, Utah Code Annotated 1953
- 29           **58-9-301**, Utah Code Annotated 1953
- 30           **58-9-302**, Utah Code Annotated 1953
- 31           **58-9-303**, Utah Code Annotated 1953
- 32           **58-9-304**, Utah Code Annotated 1953
- 33           **58-9-305**, Utah Code Annotated 1953
- 34           **58-9-306**, Utah Code Annotated 1953
- 35           **58-9-307**, Utah Code Annotated 1953
- 36           **58-9-401**, Utah Code Annotated 1953
- 37           **58-9-501**, Utah Code Annotated 1953
- 38           **58-9-502**, Utah Code Annotated 1953
- 39           **58-9-503**, Utah Code Annotated 1953
- 40           **58-9-504**, Utah Code Annotated 1953
- 41           **58-9-505**, Utah Code Annotated 1953
- 42           **58-9-506**, Utah Code Annotated 1953
- 43           **58-9-601**, Utah Code Annotated 1953
- 44           **58-9-602**, Utah Code Annotated 1953
- 45           **58-9-603**, Utah Code Annotated 1953
- 46           **58-9-604**, Utah Code Annotated 1953
- 47           § [~~58-9-605, Utah Code Annotated 1953~~] §
- 48           **58-9-701**, Utah Code Annotated 1953
- 49           **58-9-702**, Utah Code Annotated 1953
- 50           **58-9-703**, Utah Code Annotated 1953
- 51           **58-9-704**, Utah Code Annotated 1953
- 52           **58-9-705**, Utah Code Annotated 1953
- 53           **58-9-706**, Utah Code Annotated 1953
- 54           **58-9-707**, Utah Code Annotated 1953
- 55           **58-9-708**, Utah Code Annotated 1953

56    REPEALS:

- 57           **58-9-1**, as repealed and reenacted by Chapter 250, Laws of Utah 1991
- 58           **58-9-2**, as last amended by Chapter 297, Laws of Utah 1993
- 59           **58-9-3**, as last amended by Chapter 297, Laws of Utah 1993
- 60           **58-9-4**, as repealed and reenacted by Chapter 297, Laws of Utah 1993
- 61           **58-9-5**, as repealed and reenacted by Chapter 297, Laws of Utah 1993
- 62           **58-9-6**, as last amended by Chapter 313, Laws of Utah 1994
- 63           **58-9-7**, as repealed and reenacted by Chapter 297, Laws of Utah 1993
- 64           **58-9-8**, as repealed and reenacted by Chapter 250, Laws of Utah 1991
- 65           **58-9-9**, as repealed and reenacted by Chapter 250, Laws of Utah 1991
- 66           **58-9-10**, as repealed and reenacted by Chapter 250, Laws of Utah 1991
- 67           **58-9-11**, as repealed and reenacted by Chapter 250, Laws of Utah 1991
- 68           **58-9-12**, as repealed and reenacted by Chapter 250, Laws of Utah 1991
- 69           **58-9-13**, as repealed and reenacted by Chapter 297, Laws of Utah 1993
- 70           **58-9-15**, as repealed and reenacted by Chapter 250, Laws of Utah 1991
- 71           **58-58-1**, as enacted by Chapter 261, Laws of Utah 1991
- 72           **58-58-2**, as last amended by Chapter 297, Laws of Utah 1993
- 73           **58-58-3**, as last amended by Chapter 3, Laws of Utah 1996
- 74           **58-58-4**, as last amended by Chapter 297, Laws of Utah 1993
- 75           **58-58-5**, as last amended by Chapter 313, Laws of Utah 1994
- 76           **58-58-6**, as repealed and reenacted by Chapter 297, Laws of Utah 1993
- 77           **58-58-7**, as repealed and reenacted by Chapter 297, Laws of Utah 1993
- 78           **58-58-8**, as enacted by Chapter 261, Laws of Utah 1991
- 79           **58-58-9**, as enacted by Chapter 261, Laws of Utah 1991
- 80           **58-58-10**, as enacted by Chapter 261, Laws of Utah 1991
- 81           **58-58-11**, as enacted by Chapter 261, Laws of Utah 1991
- 82           **58-58-12**, as enacted by Chapter 261, Laws of Utah 1991
- 83           **58-58-13**, as enacted by Chapter 261, Laws of Utah 1991
- 84           **58-58-14**, as enacted by Chapter 261, Laws of Utah 1991
- 85           **58-58-15**, as enacted by Chapter 261, Laws of Utah 1991

86    *Be it enacted by the Legislature of the state of Utah:*

87           Section 1. Section **26-2-18** is amended to read:

88 **26-2-18. Interments -- Duties of sexton or person in charge -- Record of**  
89 **interments -- Information filed with local registrar.**

90 (1) (a) A sexton or person in charge of any premises in which interments are made may  
91 not inter or permit the interment of any dead body or dead fetus unless the interment is made by  
92 a funeral director licensed under Title 58, Chapter 9, Funeral Services Licensing Act, or by a  
93 person holding a burial-transit permit.

94 (b) The right and duty to control the disposition of a deceased person shall be governed  
95 by Sections 58-9-601 through 58-9-605.

96 (2) The sexton or the person in charge of any premises where interments are made shall  
97 keep a record of all interments made in the premises under his charge, stating the name of the  
98 decedent, place of death, date of burial, and name and address of the funeral director or other  
99 person making the interment. This record shall be open to public inspection. A city or county  
100 clerk may, at the clerk's option, maintain the interment records on behalf of the sexton or  
101 person in charge of any premises in which interments are made.

102 (3) Not later than the tenth day of each month, the sexton, person in charge of the  
103 premises, or city or county clerk who maintains the interment records shall send to the local  
104 registrar and the department a list of all interments made in the premises during the preceding  
105 month. The list shall be in the form prescribed by the state registrar.

106 Section 2. Section **26-4-16** is amended to read:

107 **26-4-16. Release of body for funeral preparations.**

108 (1) Where a body is held for investigation or autopsy under the provisions of this  
109 chapter or for any medical investigation permitted by law, the body shall, if requested by [~~next~~  
110 ~~of kin~~] the person given priority under Section 58-9-602., be released for funeral preparations  
111 no later than 24 hours after the arrival at the office of the medical examiner or regional medical  
112 facility. An extension may be ordered only by a district court.

113 (2) The right and duty to control the disposition of a deceased person shall be governed  
114 by Sections 58-9-601 through 58-9-605.

115 Section 3. Section **58-9-101** is enacted to read:

116 **CHAPTER 9. FUNERAL SERVICES LICENSING ACT**

117 **Part 1. General Provisions**

118 **58-9-101. Title.**

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

120 Section 4. Section **58-9-102** is enacted to read:

121 **58-9-102. Definitions.**

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

123 (1) "Beneficiary" means the individual who, at the time of the beneficiary's death, is to  
124 receive the benefit of the property and services purchased under a preneed funeral arrangement.

125 (2) "Board" means the Board of Funeral Service created in Section 58-9-201.

126 (3) "Buyer" means any person who purchases a preneed funeral arrangement.

127 (4) "Calcination" means a process in which a dead human body is reduced by intense  
128 heat to a residue that is not as substantive as the residue that follows cremation.

129 (5) "Cremation" means the reduction of a dead human body by direct flame to residue  
130 that includes bone fragments.

131 (6) "Direct disposition" means the disposition of a dead human body:

132 (a) as quickly as law allows;

133 (b) without preparation of the body by embalming; and

134 (c) without any attendant funeral service or graveside service.

135 (7) "Disposition" means the final disposal of a dead human body by:

136 (a) earth interment;

137 (b) above ground burial;

138 (c) cremation;

139 (d) calcination;

140 (e) burial at sea;

141 (f) delivery to a medical institution; or

142 (g) other lawful means.

143 (8) "Embalming" means replacing body fluids in a dead human body with preserving  
144 and disinfecting chemicals.

145 (9) "Funeral establishment" means a place established for any of the following  
146 purposes in connection with a dead human body:

147 (a) custody;

148 (b) shelter;

149 (c) care;

150 (d) preparation;

151 (e) disposition; or

152 (f) other services.

153 (10) (a) "Funeral merchandise" means any of the following into which a dead human

154 body is placed in connection with the transportation or disposition of the body:

155 (i) vaults;

156 (ii) caskets; or

157 (iii) other personal property.

158 (b) "Funeral merchandise" does not include:

159 (i) mausoleum crypts;

160 (ii) interment receptacles preset in a cemetery; or

161 (iii) columbarium niches.

162 (11) "Funeral service" means any service, rite, or ceremony performed:

163 (a) with respect to the death of a human; and

164 (b) with the body of the deceased present.

165 (12) "Funeral service apprentice" means an individual licensed under this chapter who

166 is permitted to:

167 (a) assist a funeral service director in the embalming or other preparation of a dead

168 human body for deposition;

169 (b) assist a funeral service director in the cremation, calcination, or pulverization of a

170 dead human body or its remains; and

171 (c) perform other funeral service activities under supervision of a funeral service

172 director.

173 (13) "Funeral service director" means an individual licensed under this chapter who

174 may engage in all lawful professional activities regulated and defined under the practice of

175 funeral service.

176 (14) "Graveside service" means a funeral service held at the location of disposition.

177 (15) "Memorial service" means any service, rite, or ceremony performed:

178 (a) with respect to the death of a human; and

179 (b) without the body of the deceased present.

180 (16) "Practice of funeral service" means:

- 181 (a) supervising the receipt of custody and transportation of a dead human body to
- 182 prepare the body for:
- 183 (i) disposition; or
- 184 (ii) shipment to another location;
- 185 (b) entering into a contract with any person to provide professional services regulated
- 186 under this chapter;
- 187 (c) embalming or otherwise preparing a dead human body for disposition;
- 188 (d) supervising the arrangement or conduct of any of the following:
- 189 (i) a funeral service;
- 190 (ii) a graveside service; or
- 191 (iii) a memorial service;
- 192 (e) cremation, calcination, or pulverization of a dead human body or the body's
- 193 remains;
- 194 (f) supervising the arrangement of:
- 195 (i) a disposition; or
- 196 (ii) a direct disposition;
- 197 (g) facilitating:
- 198 (i) a disposition; or
- 199 (ii) a direct disposition;
- 200 (h) supervising sales of funeral merchandise by a funeral establishment;
- 201 (i) managing or otherwise being responsible for the practice of funeral service in a
- 202 licensed funeral establishment;
- 203 (j) supervising the sale of a preneed funeral arrangement; and
- 204 (k) contracting with or employing individuals to sell a preneed funeral arrangement.
- 205 (17) (a) "Preneed funeral arrangement" means any written or oral agreement sold in
- 206 advance of the death of the beneficiary under which a person agrees with a buyer to provide at
- 207 the death of the beneficiary any of the following as are typically provided in connection with a
- 208 disposition:
- 209 (i) goods;
- 210 (ii) services, including:
- 211 (A) embalming services; and

- 212 (B) funeral directing services;
- 213 (iii) real property; or
- 214 (iv) personal property, including:
- 215 (A) caskets;
- 216 (B) other primary containers;
- 217 (C) cremation or transportation containers;
- 218 (D) outer burial containers;
- 219 (E) vaults;
- 220 (F) grave liners;
- 221 (G) funeral clothing and accessories;
- 222 (H) monuments;
- 223 (I) grave markers; and
- 224 (J) cremation urns.

225 ~~h [(b) "Preneed funeral arrangement" includes a policy or product of life insurance:~~

- 226 ~~—— (i) providing a death benefit cash payment on the death of the beneficiary; and~~
- 227 ~~—— (ii) that is limited to providing the products and services described in Subsection~~
- 228 ~~(17)(a):~~

229 ~~—— (c) "Preneed funeral arrangement" does not include a policy or product of life insurance~~  
 230 ~~that does not meet the requirements of Subsection (17)(b):]~~

230a (b) "PRENEED FUNERAL ARRANGEMENT" DOES NOT INCLUDE A POLICY OR PRODUCT OF  
 230b LIFE INSURANCE PROVIDING A DEATH BENEFIT CASH PAYMENT UPON THE DEATH OF THE  
 230c BENEFICIARY WHICH IS NOT LIMITED TO PROVIDING THE PRODUCTS OR SERVICES DESCRIBED  
 230d IN SUBSECTION (17)(a). h

231 (18) "Provider" means a licensed funeral establishment that furnishes or will furnish  
 232 the services or property purchased under a preneed funeral arrangement.

233 (19) "Pulverization" means a grinding process that reduces the residue of a cremation  
 234 or calcination into a powdery substance.

235 (20) "Sales agent" means an individual licensed under this chapter as a preneed funeral  
 236 arrangement sales agent.

237 (21) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-9-501.

238 (22) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-9-502.

239 Section 5. Section **58-9-201** is enacted to read:

240 **Part 2. Board**

241 **58-9-201. Board.**

242 (1) There is created the Board of Funeral Service consisting of:



243 (a) three funeral service directors who own or have an ownership interest in a funeral  
244 establishment, at least two of which are preened funeral arrangement providers;

245 (b) one preened funeral arrangement sales agent, who does not have an ownership  
246 interest in a funeral service establishment;

247 (c) one owner or officer of an endowment care cemetery; and

248 (d) two members from the general public who have no association with the funeral  
249 service profession.

250 (2) The board shall be appointed and serve in accordance with Section 58-1-201.

251 (3) The duties and responsibilities of the board shall be in accordance with Sections  
252 58-1-202 and 58-1-203. In addition, the board shall designate one of its members on a  
253 permanent or rotating basis to:

254 (a) assist the division in reviewing complaints concerning the unlawful or  
255 unprofessional conduct of a licensee; and

256 (b) advise the division in its investigation of these complaints.

257 (4) A board member who has, under Subsection (3), reviewed a complaint or advised  
258 the division in its investigation may be disqualified from participating with the board when the  
259 board serves as a presiding officer of an administrative proceeding concerning the complaint.

260 Section 6. Section **58-9-301** is enacted to read:

261 **Part 3. Licensing**

262 **58-9-301. Licensure required -- License classifications.**

263 (1) A license is required to engage in the practice of funeral service, except as  
264 specifically provided in Sections 58-1-307 and 58-9-305.

265 (2) The division shall issue to a person who qualifies under this chapter a license in the  
266 classification of:

267 (a) funeral service director;

268 (b) funeral service apprentice;

269 (c) funeral service establishment;

270 (d) preened funeral arrangement provider; or

271 (e) preened funeral arrangement sales agent.

272 Section 7. Section **58-9-302** is enacted to read:

273 **58-9-302. Qualifications for licensure.**

- 274 (1) Each applicant for licensure as a funeral service director shall:  
275 (a) submit an application in a form prescribed by the division;  
276 (b) pay a fee as determined by the department under Section 63-38-3.2;  
277 (c) be of good moral character in that the applicant has not been convicted of:  
278 (i) a felony;  
279 (ii) a misdemeanor involving moral turpitude; or  
280 (iii) any other crime that when considered with the duties and responsibilities of a  
281 funeral service director is considered by the division and the board to indicate that the best  
282 interests of the public are not served by granting the applicant a license;  
283 (d) have completed a high school education or its equivalent;  
284 (e) have obtained an associate degree, or its equivalent, in mortuary science from a  
285 school of funeral service accredited by the American Board of Funeral Service Education or  
286 other accrediting body recognized by the U.S. Department of Education;  
287 (f) have completed not less than 2,000 hours and 50 embalmings, over a period of not  
288 less than one year, of satisfactory performance in training as a licensed funeral service  
289 apprentice under the supervision of a licensed funeral service director; and  
290 (g) have successfully completed examinations approved by the division in  
291 collaboration with the board.
- 292 (2) Each applicant for licensure as a funeral service apprentice shall:  
293 (a) submit an application in a form prescribed by the division;  
294 (b) pay a fee as determined by the department under Section 63-38-3.2;  
295 (c) be of good moral character in that the applicant has not been convicted of:  
296 (i) a felony;  
297 (ii) a misdemeanor involving moral turpitude; or  
298 (iii) any other crime that when considered with the duties and responsibilities of a  
299 funeral service apprentice is considered by the division and the board to indicate that the best  
300 interests of the public are not served by granting the applicant a license;  
301 (d) have completed a high school education or its equivalent; and  
302 (e) have successfully completed an examination testing the applicant's knowledge of  
303 the law and rules made under this chapter.
- 304 (3) Each applicant for licensure as a funeral service establishment shall:

- 305 (a) submit an application in a form prescribed by the division;  
306 (b) pay a fee as determined by the department under Section 63-38-3.2;  
307 (c) have in place and maintain at all times a licensed funeral service director  
308 responsible for the operation of the funeral service establishment as the sole proprietor, a  
309 managing general partner, or an officer of a corporation or other business entity; and  
310 (d) if it is the intention of the funeral service establishment to sell preneed funeral  
311 arrangements, file with the division an application for a license to sell preneed funeral  
312 arrangements.
- 313 (4) Each applicant for licensure as a preneed funeral arrangement provider shall:  
314 (a) submit an application in a form provided by the division;  
315 (b) pay a fee as determined by the department under Section 63-38-3.2;  
316 (c) be licensed in the state as a funeral service establishment;  
317 (d) be free of activities or conduct which, when considered with the responsibilities of  
318 a licensee and the public interest, is a threat to the public health, safety, or welfare;  
319 (e) file with the completed application a copy of each form of contract or agreement the  
320 applicant will use in the sale of preneed funeral arrangements; and  
321 (f) provide evidence of appropriate licensure with the Insurance Department if the  
322 applicant intends to engage in the sale of any preneed funeral arrangements funded in whole or  
323 in part by an insurance policy or product to be sold by the provider or the provider's sales agent.
- 324 (5) Each applicant for licensure as a preneed funeral arrangement sales agent shall:  
325 (a) submit an application in a form prescribed by the division;  
326 (b) pay a fee as determined by the department under Section 63-38-3.2;  
327 (c) be of good moral character in that the applicant has not been convicted of:  
328 (i) a felony;  
329 (ii) a misdemeanor involving moral turpitude; or  
330 (iii) any other crime that when considered with the duties and responsibilities of a  
331 preneed funeral sales agent is considered by the division and the board to indicate that the best  
332 interests of the public are not served by granting the applicant a license;  
333 (d) be a high school graduate or have obtained a certificate of equivalency approved by  
334 the division;  
335 (e) pass an examination approved by the division in collaboration with the board;

336 (f) provide evidence that the applicant will be associated with a licensed preneed  
337 funeral arrangement provider upon issuance of a license under terms acceptable to the division;  
338 and

339 (g) provide evidence of appropriate licensure with the Insurance Department if the  
340 applicant intends to engage in the sale of any preneed funeral arrangements funded in whole or  
341 in part by an insurance policy or product.

342 Section 8. Section **58-9-303** is enacted to read:

343 **58-9-303. Term of license -- Expiration -- Renewal.**

344 (1) The division shall issue each license under this chapter in accordance with a  
345 two-year renewal cycle established by rule. The division may by rule extend or shorten a  
346 renewal cycle by as much as one year to stagger the renewal cycles it administers.

347 (2) Notwithstanding Subsection (1), a person who has once held a license as a funeral  
348 service apprentice and has not qualified for licensure as a funeral service director may be issued  
349 a subsequent funeral service apprentice license for only one additional two-year term upon the  
350 specific approval of the division in collaboration with the board.

351 (3) At the time of renewal, the licensee shall show satisfactory evidence of completion  
352 of continuing education as required under Section 58-9-304.

353 (4) Each license automatically expires on the expiration date shown on the license  
354 unless the licensee renews it in accordance with Section 58-1-308.

355 Section 9. Section **58-9-304** is enacted to read:

356 **58-9-304. Continuing education.**

357 (1) As a condition precedent for license renewal, each funeral service director shall,  
358 during each two-year licensure cycle or other cycle defined by rule, complete 20 hours of  
359 qualified continuing professional education in accordance with standards defined by rule.

360 (2) If a renewal cycle is extended or shortened under Section 58-9-303, the continuing  
361 education hours required for license renewal under this section shall be increased or decreased  
362 proportionally.

363 Section 10. Section **58-9-305** is enacted to read:

364 **58-9-305. Exemptions from licensure.**

365 In addition to the exemptions from licensure in Section 58-1-307, a person may engage  
366 in the following acts included within the definition of the practice of funeral service, subject to

367 the stated circumstances and limitations, without being licensed under this chapter:

368 (1) transportation of a dead human body in accordance with other applicable state and  
369 federal laws;

370 (2) ambulance or other emergency transportation of a dead human body;

371 (3) the sale of any of the following that is delivered to the buyer or the buyer's designee  
372 within 90 days after the day of the sale:

373 (a) funeral merchandise;

374 (b) headstones; or

375 (c) other memorial merchandise;

376 (4) the performance of funeral, graveside, or memorial services by:

377 (a) a member of the clergy;

378 (b) a member of the decedent's family; or

379 (c) any other recognized individual;

380 (5) assisting a Utah licensed funeral service director regarding disasters or special  
381 emergencies by individuals licensed in other states as funeral service directors;

382 (6) activities of an unlicensed individual employed by a funeral service establishment  
383 involving arrangement for a funeral service or the sale of funeral merchandise if the binding  
384 contract is reviewed, approved, and signed in behalf of the funeral service establishment by a  
385 licensed funeral service director; and

386 (7) nonprofessional tasks or activities which do not require independent professional  
387 judgment which are required of persons employed by a funeral service establishment under the  
388 supervision of a funeral service director.

389 Section 11. Section **58-9-306** is enacted to read:

390 **58-9-306. License by endorsement.**

391 The division may issue a license by endorsement to a person who holds a license to  
392 engage in the practice of funeral service from another state, jurisdiction, or territory of the  
393 United States, if:

394 (1) the person's license is:

395 (a) active;

396 (b) in good standing; and

397 (c) free from disciplinary action; and

- 398           (2) the person:  
399           (a) meets the requirements of Section 58-1-302;  
400           (b) is of good moral character in that the person has not been convicted of:  
401           (i) a felony;  
402           (ii) a misdemeanor involving moral turpitude; or  
403           (iii) any other crime that when considered with the duties and responsibilities of the  
404 license for which the person is applying is considered by the division and the board to indicate  
405 that the best interests of the public are not served by granting the applicant a license;  
406           (c) has completed five years of lawful and active practice as a licensed funeral service  
407 director and embalmer within the ten years immediately preceding the application for licensure  
408 by endorsement;  
409           (d) has passed a national examination determined by the division; and  
410           (e) has passed an examination on the rules of the state determined by the division.  
411           Section 12. Section **58-9-307** is enacted to read:

412           **58-9-307. Supervision of funeral service apprentice.**

- 413           (1) A person seeking licensure as a funeral service apprentice shall submit as a part of  
414 the application for a license:  
415           (a) the name of the licensed funeral service director who has agreed to supervise the  
416 applicant; and  
417           (b) the name of the licensed funeral establishment at which the training and supervision  
418 shall take place.  
419           (2) A licensed funeral service director may supervise only one licensed funeral service  
420 apprentice at one time.  
421           (3) Within 30 days after the day on which the supervisor-supervisee relationship  
422 between a licensed funeral service director and a licensed funeral service apprentice terminates,  
423 the funeral service director shall furnish to the division a report of the performance of the  
424 funeral service apprentice. The report shall be in form and content as prescribed by the  
425 division.  
426           (4) A licensed funeral service apprentice may apply to the division to request  
427 supervision by a different funeral service director. The application shall be made on a form  
428 prescribed by the division. A change of supervisor requires approval of the division. The

429 supervising funeral service director shall submit to the division, in accordance with Subsection  
430 (3), a report of the funeral service apprentice's performance.

431 (5) The licensed funeral service director is responsible for all of the duties and  
432 functions performed by the funeral service apprentice.

433 Section 13. Section **58-9-401** is enacted to read:

434 **Part 4. License Denial and Discipline**

435 **58-9-401. Grounds for denial of license -- Disciplinary proceedings.**

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

440 Section 14. Section **58-9-501** is enacted to read:

441 **Part 5. Unlawful and Unprofessional Conduct -- Penalties**

442 **58-9-501. Unlawful conduct.**

443 "Unlawful conduct" includes:

444 (1) doing any of the following to prepare a dead human body for disposition unless  
445 licensed as a funeral service director or a funeral service apprentice:

446 (a) embalming;

447 (b) calcinating;

448 (c) pulverizing;

449 (d) cremating; or

450 (e) using any method that invades a dead human body;

451 (2) using the title "funeral service director," "funeral service apprentice," or "funeral  
452 service establishment" unless licensed under this chapter;

453 (3) engaging in, providing, or agreeing to provide funeral arrangements to be provided  
454 under a preneed funeral arrangement without first obtaining a license as a preneed funeral  
455 arrangement provider under this chapter;

456 (4) engaging in selling, representing for sale, or in any other way offering to sell any  
457 contract under which preneed funeral arrangements are to be provided without first obtaining a  
458 license under this chapter as:

459 (a) a preneed funeral arrangement sales agent; or

460 (b) a funeral service director;  
461 (5) selling or representing for sale any preneed funeral arrangement contract or  
462 agreement;

463 (a) which has not been approved as to form and content by the division; and  
464 (b) a current copy of which is not on file with the division; and  
465 (6) failing to comply with Section 58-9-702.

466 Section 15. Section **58-9-502** is enacted to read:

467 **58-9-502. Unprofessional conduct.**

468 (1) "Unprofessional conduct" includes:

469 (a) the failure of a funeral service director to accurately document, report, and  
470 supervise the activities of a funeral service apprentice;

471 (b) knowingly soliciting the sale of any funeral service or funeral merchandise for a  
472 person whose death occurred or was imminent prior to the solicitation; and

473 (c) paying or offering to pay a commission or anything of value to secure deceased  
474 human remains for a funeral service or disposition to:

475 (i) medical personnel;

476 (ii) a nursing home;

477 (iii) a nursing home employee;

478 (iv) a hospice;

479 (v) a hospice employee;

480 (vi) clergy;

481 (vii) a government official; or

482 (viii) any other third party.

483 (2) "Unprofessional conduct" does not include:

484 (a) general advertising directed to the public at large; or

485 (b) responding to a notification of death from:

486 (i) medical personnel;

487 (ii) a nursing home;

488 (iii) a nursing home employee;

489 (iv) a hospice;

490 (v) a hospice employee;



- 491 (vi) clergy;
- 492 (vii) a government official; or
- 493 (viii) any authorized representative of the family of the deceased person.

494 Section 16. Section **58-9-503** is enacted to read:

495 **58-9-503. Penalty for unlawful conduct.**

496 (1) Any person who violates the unlawful conduct provisions defined in Subsections  
497 58-9-501(1) through (5) is guilty of a class A misdemeanor.

498 (2) Any person who violates the unlawful conduct provision defined in Subsection  
499 58-9-501(6) may be prosecuted under Title 76, Chapter 6, Part 4, Theft.

500 Section 17. Section **58-9-504** is enacted to read:

501 **58-9-504. Authority to promulgate rules.**

502 In addition to the authority granted under Section 58-1-106, in accordance with Title  
503 63, Chapter 46a, Utah Administrative Rulemaking Act, the division in collaboration with the  
504 board shall establish by rule:

505 (1) the minimum requirements for a licensed funeral establishment for the following:

506 (a) physical facilities;

507 (b) equipment;

508 (c) instruments; and

509 (d) supplies;

510 (2) license cycles under Section 58-9-303;

511 (3) standards to protect the interests of buyers and potential buyers of preneed funeral  
512 arrangements under Section 58-9-701; and

513 (4) standards for preneed funeral arrangement trusts.

514 Section 18. Section **58-9-505** is enacted to read:

515 **58-9-505. Disclosure requirements.**

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

518 Section 19. Section **58-9-506** is enacted to read:

519 **58-9-506. Inspection -- Right to access.**

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

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

524 Section 20. Section **58-9-601** is enacted to read:

525 **Part 6. Control of Disposition**

526 **58-9-601. Advance directions.**

527 (1) A person may provide written directions meeting the requirements of Subsection  
 528 (2) to direct the preparation, type, and place of the person's disposition, including:

- 529 (a) designating a funeral service establishment;  
 530 (b) providing directions for burial arrangements; or  
 531 (c) providing directions for cremation arrangements.

532 (2) The written directions described in Subsection (1) shall contain:

- 533 (a) the name and address of the decedent;  
 534 (b) written directions regarding the decedent's disposition;  
 535 (c) the signature of the decedent;  
 536 (d) the signatures of at least two unrelated individuals, each of whom signed within a  
 537 reasonable time after witnessing the signing of the form by the decedent; and  
 538 (e) the date or dates the written directions were prepared and signed.

539 (3) A funeral service director shall carry out the written directions of the decedent  
 540 prepared under this section to the extent that:

541 ~~h [(a) the directions are reasonable;~~

542 ~~——(b)] (a) h~~ the directions are lawful; and

543 ~~h [(c)] (b) h~~ the decedent has provided resources to carry out the directions.

544 (4) Directions for disposition contained in a will shall be carried out pursuant to  
 545 Subsection (3) regardless of:

- 546 (a) the validity of other aspects of the will; or  
 547 (b) the fact that the will may not be offered or admitted to probate until a later date.

548 (5) A person may change or cancel written directions prepared under this section at any  
 549 time prior to the person's death by providing written notice to all applicable persons, including:

550 ~~§ [(a) the individuals who signed the written directions under Subsection (2)(d);]~~

551 ~~[(b)] (a) §~~ if the written directions designate a funeral service establishment or funeral  
 551a service

552 director, the funeral service establishment or funeral service director designated in the written

553 directions; and

554 § ~~(c)~~ (b) § if the written directions are contained in a will, the personal representative as  
555 defined in Section 75-1-201.

556 Section 21. Section **58-9-602** is enacted to read:

557 **58-9-602. Determination of control of disposition.**

558 The right and duty to control the disposition of a deceased person, including the  
559 location and conditions of the disposition, vest in the following degrees of relationship in the  
560 order named:

561 (1) a person designated in a written instrument, excluding a power of attorney that  
562 terminates at death under Sections 75-5-501 and 75-5-502, if the written instrument contains:

563 (a) the name and address of the decedent;

564 (b) the name and address of the person designated under this Subsection (1);

565 (c) the signature of the decedent;

566 (d) the signatures of at least two unrelated individuals who are not the person  
567 designated under this Subsection (1), each of whom signed within a reasonable time after  
568 witnessing the signing of the form by the decedent; and

569 (e) the date or dates the written instrument was prepared and signed;

570 (2) the surviving, legally recognized spouse of the decedent;

571 (3) the surviving child or the majority of the surviving children of the decedent over  
572 the age of 18;

573 (4) the unanimous consent of the surviving parent, parents, or lawful custodian of the  
574 decedent;

575 (5) the person or persons in the next degree of succession under Title 75, Chapter 2,  
576 Intestate Succession and Wills;

577 (6) any public official charged with arranging the disposition of deceased persons;

578 (7) a person or persons whom the funeral service director reasonably believes is  
579 entitled to control the disposition; and

580 (8) in the absence of any person under Subsections (1) through (7), any person willing  
581 to assume the right and duty to control the disposition.

582 **§ [Section 22. Section 58-9-603 is enacted to read:**

583 **———58-9-603. Estranged persons:] §**

584 § ~~(1) As used in this section, "estranged" means having a relationship characterized by~~  
 585 ~~mutual enmity, hostility, or indifference.~~

586 ~~———— (2) The right and duty to control the disposition falls to the person in the subsequent~~  
 587 ~~degree of relationship under Section 58-9-602 if:~~

588 ~~———— (a) there is only one person in one degree of relationship to the decedent; and~~

589 ~~———— (b) a court having jurisdiction determines that the person described in Subsection (2)(a)~~  
 590 ~~and the decedent were estranged at the time of the decedent's death.~~

591 ~~———— Section 23. Section 58-9-604 is enacted to read:~~

592 ~~———— 58-9-604. Refusal of control of disposition.] Section 22. Section 58-9-603 is enacted to read:~~

592a ~~58-9-603. Refusal of control of disposition. §~~

593 ~~If a person declines to act on the right and duty to control the disposition as established~~  
 594 ~~in this part, the right and duty to control the disposition shall pass:~~

595 ~~(1) to another person with the same degree of relationship to the decedent under~~  
 596 ~~Section 58-9-602 as the person that declines to act on the right and duty to control the~~  
 597 ~~disposition; or~~

598 ~~(2) if no person satisfies Subsection (1), to the person or persons in the next degree of~~  
 599 ~~relationship under Section 58-9-602.~~

600 § ~~[Section 24. Section 58-9-605 is enacted to read:~~

601 ~~———— 58-9-605. Control by funeral service director.] Section 23. Section 58-9-604 is enacted to read:~~

601a ~~58-9-604. Control by funeral service director. §~~

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

604 ~~(1) (a) the funeral service director has actual knowledge that none of the persons~~  
 605 ~~described in Section 58-9-602 exist; or~~

606 ~~(b) after reasonable efforts the funeral service director is not able to contact any of the~~  
 607 ~~persons described in Section 58-9-602; and~~

608 ~~(2) the appropriate public official charged with arranging the disposition of deceased~~  
 609 ~~persons fails to assume responsibility for disposition of the decedent within 36 hours after~~  
 610 ~~receiving written notice from the funeral service director.~~

611 Section § ~~[25] 24 § . Section 58-9-701 is enacted to read:~~

612 **Part 7. Preneed Funeral Arrangement Requirements**

613 **58-9-701. Preneed contract requirements.**

614 (1) Every preneed funeral arrangement sold in Utah shall be evidenced by a written

615 contract. The provider shall file the form of the contract with the division. Approval of the  
616 contract by the division is required before:

617 (a) any representation may be made by a provider or sales agent to a potential buyer; or  
618 (b) any sale.

619 (2) Each preneed contract form approved by the division shall:

620 (a) be written in clear and understandable language printed in an easy-to-read type size  
621 and style;

622 (b) bear the preprinted name, address, telephone number, and license number of the  
623 provider obligated to provide the services under the contract terms;

624 (c) be sequentially numbered by contract form;

625 (d) clearly identify that the contract is a guaranteed product contract;

626 (e) provide that a trust is established in accordance with the provisions of Section  
627 58-9-702;

628 (f) if the contract is funded by an insurance policy or product, provide that the  
629 insurance policy or product is filed with the Insurance Department and meets the requirements  
630 of Title 31A, Insurance Code; and

631 (g) conform to other standards created by rule under Title 63, Chapter 46a, Utah  
632 Administrative Rulemaking Act, to protect the interests of buyers and potential buyers.

633 (3) No modification of the form, terms, or conditions of the preneed contract may be  
634 made without the prior written approval of the division. The division may not unreasonably  
635 withhold approval.

636 (4) A preneed contract shall provide for payment by the buyer in a form which may be  
637 liquidated by the provider within 30 days after the day the provider or sales agent receives the  
638 payment.

639 (5) A preneed contract may not be revocable by the provider except:

640 (a) in the event of nonpayment; and

641 (b) under terms and conditions clearly set forth in the contract.

642 (6) (a) A preneed contract may not be revocable by the buyer or beneficiary except:

643 (i) in the event of:

644 (A) a substantial contract breach by the provider; or

645 (B) substantial evidence that the provider is or will be unable to provide the personal

646 property or services to the beneficiary as provided under the contract; or

647 (ii) under terms and conditions clearly set forth in the contract.

648 (b) The contract shall contain a clear statement of the manner in which payments made  
649 on the contract shall be refunded to the buyer or beneficiary upon revocation by the beneficiary.

650 Section 26. Section **58-9-702** is enacted to read:

651 **58-9-702. Payments to be held in trust -- Trustee qualifications.**

652 (1) All money representing payments for the purchase of a preneed funeral  
653 arrangement shall be deposited by the provider or sales agent receiving the payment:

654 (a) within ten business days after the day on which the provider or sales agent receives  
655 the payment in the form of cash or cash equivalent; or

656 (b) within 35 calendar days after the day on which the provider or sales agent receives  
657 the payment in the form of a negotiable instrument.

658 (2) All money received under Subsection (1) shall be placed in a trust account naming  
659 as trustee a Utah financial institution authorized to engage in the trust business under Title 7,  
660 Chapter 5, Trust Business.

661 Section 27. Section **58-9-703** is enacted to read:

662 **58-9-703. Trust agreement.**

663 (1) Each trust established by a provider shall be administered in accordance with a trust  
664 agreement conforming with:

665 (a) the requirements of this chapter;

666 (b) rules adopted with respect to this chapter;

667 (c) the provisions of Title 75, Chapter 7, Trust Administration; and

668 (d) all other state and federal laws applicable to trusts and trust agreements.

669 (2) Each trust agreement shall require that the provider report to the division:

670 (a) funds deposited into the trust in the name of the beneficiary;

671 (b) the contract number; and

672 (c) that the trustee shall establish a separate account within the trust for each  
673 beneficiary and contract number.

674 (3) Each trust agreement shall require that the trustee:

675 (a) separately account for each contract; and

676 (b) separately record payments with respect to each contract made into the corpus of

677 the trust.

678 (4) Each trust agreement shall provide for distributions from the trust in accordance  
679 with the provisions of this chapter upon:

680 (a) the death of the beneficiary;

681 (b) revocation of the contract by the provider upon nonpayment by the buyer; or

682 (c) revocation of the contract by the beneficiary or buyer.

683 Section 28. Section **58-9-704** is enacted to read:

684 **58-9-704. Interest earned on trust funds.**

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

687 (1) to pay the reasonable trustee expenses of administering the trust within a maximum  
688 amount established by rule;

689 (2) to pay within a maximum amount established by rule under Section 58-9-504 the  
690 reasonable provider expenses associated with:

691 (a) the sale of the plan;

692 (b) administering the collection, remittance, and accounting of the amount of payments  
693 made into the corpus of the trust; and

694 (c) reporting required with respect to those contracts:

695 (i) that have been sold; and

696 (ii) under which the provider is obligated;

697 (3) to pay the costs of providing any of the following for which the provider is  
698 obligated under a specific outstanding preneed funeral arrangement contract:

699 (a) personal property; and

700 (b) services at need; and

701 (4) to pay the provider available funds left in the individual trust account after:

702 (a) all costs of providing personal property and services for which the provider is  
703 obligated under the contract underlying the trust; or

704 (b) (i) the contract is canceled as provided under this chapter; and

705 (ii) all amounts payable to the buyer, beneficiary, or any other person have been paid in  
706 full.

707 Section 29. Section **58-9-705** is enacted to read:

708 **58-9-705. Distribution of funds.**

709 (1) Interest earned on trust funds shall be available to the provider according to the  
710 priority set forth in Section 58-9-704.

711 (2) The amount of payments made into the corpus of the trust and any other amount  
712 which has been paid into the corpus of the trust shall be paid to the provider in the amount  
713 credited to a specific account upon the event of one of the following:

714 (a) the death of the beneficiary which shall be demonstrated to the trustee by the  
715 provider by furnishing to the trustee:

716 (i) a request for payment from the trust; and

717 (ii) a certified copy of the death certificate of the beneficiary; or

718 (b) revocation of the preneed funeral arrangement contract by either the provider or the  
719 buyer according to the terms and conditions of the contract, which shall be demonstrated to the  
720 trustee by the provider by furnishing to the trustee satisfactory evidence that:

721 (i) the contract has been revoked; and

722 (ii) the provider has paid all funds due to the buyer or beneficiary.

723 (3) After the provider completes all of the provider's obligations under the preneed  
724 funeral arrangement, the provider shall return all remaining funds under the preneed funeral  
725 arrangement to the estate of the beneficiary.

726 (4) Upon an order of any court having jurisdiction, all amounts that have been paid into  
727 the corpus of the trust shall be paid to the buyer or beneficiary in the event of:

728 (a) a judgment to the benefit of a buyer or beneficiary upon a finding that:

729 (i) the provider is in substantial breach of the contract; or

730 (ii) there is substantial evidence that the provider is or will be unable to provide the  
731 personal property or services to the beneficiary under the contract;

732 (b) a judgment of bankruptcy against the provider; or

733 (c) any finding by the court that determines the funds should be rightfully returned to  
734 the buyer or beneficiary.

735 Section 30. Section **58-9-706** is enacted to read:

736 **58-9-706. Annual reports concerning trust funds.**

737 (1) Each provider shall file an annual report with the division on or before April 15 of  
738 each year in a form provided by the division. The report shall state:



- 739 (a) the name of the trustees with which the provider has trust funds on deposit; and
- 740 (b) the amount remaining on deposit in the trust fund on:
- 741 (i) December 31 of the preceding year; or
- 742 (ii) another annual reporting period as the division may establish.
- 743 (2) (a) A provider is not required to renew its license if the provider:
- 744 (i) has outstanding contracts; and
- 745 (ii) has discontinued the sale of contracts.
- 746 (b) A provider that does not renew its license pursuant to this Subsection (2) shall
- 747 continue to make annual reports to the division until all outstanding contracts have been:
- 748 (i) fully performed; or
- 749 (ii) transferred to a licensed provider.

750 Section 31. Section **58-9-707** is enacted to read:

751 **58-9-707. Records and reports of trustee -- Contents.**

752 The trustee shall keep a record of all agreements. The record shall contain:

- 753 (1) the name and address of the person making payments;
- 754 (2) the date and the amount of each payment made;
- 755 (3) the date and amount of each withdrawal and to whom paid; and
- 756 (4) the name of the bank or trust company depository.

757 Section 32. Section **58-9-708** is enacted to read:

758 **58-9-708. Audits.**

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

- 770 Section 33. Section **63-55-258** is amended to read:  
771 **63-55-258. Repeal dates, Title 58.**  
772 (1) Title 58, Chapter 3a, Architects Licensing Act, is repealed July 1, 2003.  
773 (2) Title 58, Chapter 5a, Podiatric Physician Licensing Act, is repealed July 1, 2007.  
774 (3) Title 58, Chapter 9, Funeral Services Licensing Act, is repealed July 1, 2008.  
775 (4) Title 58, Chapter 13, Health Care Providers Immunity from Liability Act, is  
776 repealed July 1, 2006.  
777 (5) Title 58, Chapter 15, Health Facility Administrator Act, is repealed July 1, 2005.  
778 (6) Title 58, Chapter 16a, Utah Optometry Practice Act, is repealed July 1, 2009.  
779 (7) Title 58, Chapter 17a, Pharmacy Practice Act, is repealed July 1, 2006.  
780 (8) Title 58, Chapter 20a, Environmental Health Scientist Act, is repealed July 1, 2003.  
781 (9) Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors  
782 Licensing Act, is repealed July 1, 2005.  
783 (10) Title 58, Chapter 24a, Physical Therapist Practice Act, is repealed July 1, 2003.  
784 (11) Title 58, Chapter 26a, Certified Public Accountant Licensing Act, is repealed July  
785 1, 2007.  
786 (12) Title 58, Chapter 28, Veterinary Practice Act, is repealed July 1, 2004.  
787 (13) Title 58, Chapter 31b, Nurse Practice Act, is repealed July 1, 2005.  
788 (14) Title 58, Chapter 37, Utah Controlled Substances Act, is repealed July 1, 2007.  
789 (15) Title 58, Chapter 37a, Utah Drug Paraphernalia Act, is repealed July 1, 2007.  
790 (16) Title 58, Chapter 37b, Imitation Controlled Substances Act, is repealed July 1,  
791 2007.  
792 (17) Title 58, Chapter 40, Recreational Therapy Practice Act, is repealed July 1, 2005.  
793 (18) Title 58, Chapter 41, Speech-language Pathology and Audiology Licensing Act, is  
794 repealed July 1, 2009.  
795 (19) Title 58, Chapter 42a, Occupational Therapy Practice Act, is repealed July 1,  
796 2005.  
797 (20) Title 58, Chapter 44a, Nurse Midwife Practice Act, is repealed July 1, 2010.  
798 (21) Title 58, Chapter 46a, Hearing Instrument Specialist Licensing Act, is repealed  
799 July 1, 2003.  
800 (22) Title 58, Chapter 47b, Massage Therapy Practice Act, is repealed July 1, 2004.

- 801 (23) Title 58, Chapter 49, Dietitian Certification Act, is repealed July 1, 2005.
- 802 (24) Title 58, Chapter 53, Landscape Architects Licensing Act, is repealed July 1,
- 803 2008.
- 804 [~~(25)~~ Title 58, Chapter 58, Preneed Funeral Arrangement Act, is repealed July 1,
- 805 ~~2011.~~]
- 806 [~~(26)~~ (25) Title 58, Chapter 59, Professional Employer Organization Licensing Act, is
- 807 repealed July 1, 2007.
- 808 [~~(27)~~ (26) Title 58, Chapter 66, Utah Professional Boxing Regulation Act, is repealed
- 809 July 1, 2005.
- 810 [~~(28)~~ (27) Title 58, Chapter 67, Utah Medical Practice Act, is repealed July 1, 2006.
- 811 [~~(29)~~ (28) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, is repealed
- 812 July 1, 2006.
- 813 [~~(30)~~ (29) Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act, is repealed
- 814 July 1, 2006.
- 815 [~~(31)~~ (30) Title 58, Chapter 71, Naturopathic Physician Practice Act, is repealed July
- 816 1, 2006.
- 817 [~~(32)~~ (31) Title 58, Chapter 72, Acupuncture Licensing Act, is repealed July 1, 2007.
- 818 [~~(33)~~ (32) Title 58, Chapter 73, Chiropractic Physician Practice Act, is repealed July
- 819 1, 2006.

820 Section 34. Section **75-1-107** is amended to read:

821 **75-1-107. Evidence of death or status.**

822 (1) In addition to the rules of evidence in courts of general jurisdiction, the following  
823 rules relating to a determination of death and status apply:

824 [(1)] (a) Death occurs when an individual is determined to be dead as provided in Title  
825 26, Chapter 34, Uniform Determination of Death Act.

826 [(2)] (b) A certified or authenticated copy of a death certificate purporting to be issued  
827 by an official or agency of the place where the death purportedly occurred is prima facie  
828 evidence of the fact, place, date, and time of death and the identity of the decedent.

829 [(3)] (c) A certified or authenticated copy of any record or report of a governmental  
830 agency, domestic or foreign, that an individual is missing, detained, dead, or alive is prima  
831 facie evidence of the status and of the dates, circumstances, and places disclosed by the record

832 or report.

833 ~~[(4)]~~ (d) In the absence of prima facie evidence of death under Subsection ~~[(2) or (3)]~~  
834 (1)(b) or (c), the fact of death may be established by clear and convincing evidence, including  
835 circumstantial evidence.

836 ~~[(5)]~~ (e) An individual whose death is not established under Subsection (1)~~[(2), (3),~~  
837 (a), (b), (c) or ~~[(4)]~~ (d) who is absent for a continuous period of five years, during which the  
838 individual has not been heard from, and whose absence is not satisfactorily explained after  
839 diligent search or inquiry, is presumed to be dead. The individual's death is presumed to have  
840 occurred at the end of the period unless there is sufficient evidence for determining that death  
841 occurred earlier.

842 ~~[(6)]~~ (f) In the absence of evidence disputing the time of death stated on a document  
843 described in Subsection ~~[(2) or (3)]~~ (1)(b) or (c), a document described in Subsection ~~[(2) or~~  
844 ~~(3)]~~ (1)(b) or (c) that states a time of death 120 hours or more after the time of death of another  
845 individual, however the time of death of the other individual is determined, establishes by clear  
846 and convincing evidence that the individual survived the other individual by 120 hours.

847 (2) The right and duty to control the disposition of a deceased person shall be governed  
848 by Sections 58-9-601 through 58-9-605.

849 Section 35. Section **75-1-201** is amended to read:

850 **75-1-201. General definitions.**

851 Subject to additional definitions contained in the subsequent chapters that are  
852 applicable to specific chapters, parts, or sections, and unless the context otherwise requires, in  
853 this code:

854 (1) "Agent" includes an attorney-in-fact under a durable or nondurable power of  
855 attorney, an individual authorized to make decisions concerning another's health care, and an  
856 individual authorized to make decisions for another under a natural death act.

857 (2) "Application" means a written request to the registrar for an order of informal  
858 probate or appointment under Title 75, Chapter 3, Part 3, Informal Probate and Appointment  
859 Proceedings.

860 (3) "Beneficiary," as it relates to trust beneficiaries, includes a person who has any  
861 present or future interest, vested or contingent, and also includes the owner of an interest by  
862 assignment or other transfer; as it relates to a charitable trust, includes any person entitled to

863 enforce the trust; as it relates to a "beneficiary of a beneficiary designation," refers to a  
864 beneficiary of an insurance or annuity policy, of an account with POD designation, of a security  
865 registered in beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar  
866 benefit plan, or other nonprobate transfer at death; and, as it relates to a "beneficiary designated  
867 in a governing instrument," includes a grantee of a deed, a devisee, a trust beneficiary, a  
868 beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a power of  
869 appointment, and a person in whose favor a power of attorney or a power held in any  
870 individual, fiduciary, or representative capacity is exercised.

871 (4) "Beneficiary designation" refers to a governing instrument naming a beneficiary of  
872 an insurance or annuity policy, of an account with POD designation, of a security registered in  
873 beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or  
874 other nonprobate transfer at death.

875 (5) "Child" includes any individual entitled to take as a child under this code by  
876 intestate succession from the parent whose relationship is involved and excludes any person  
877 who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

878 (6) "Claims," in respect to estates of decedents and protected persons, includes  
879 liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise,  
880 and liabilities of the estate which arise at or after the death of the decedent or after the  
881 appointment of a conservator, including funeral expenses and expenses of administration.  
882 "Claims" does not include estate or inheritance taxes, or demands or disputes regarding title of  
883 a decedent or protected person to specific assets alleged to be included in the estate.

884 (7) "Conservator" means a person who is appointed by a court to manage the estate of a  
885 protected person.

886 (8) "Court" means any of the courts of record in this state having jurisdiction in matters  
887 relating to the affairs of decedents.

888 (9) "Descendant" of an individual means all of his descendants of all generations, with  
889 the relationship of parent and child at each generation being determined by the definition of  
890 child and parent contained in this title.

891 (10) "Devise," when used as a noun, means a testamentary disposition of real or  
892 personal property and, when used as a verb, means to dispose of real or personal property by  
893 will.

894 (11) "Devisee" means any person designated in a will to receive a devise. For the  
895 purposes of Title 75, Chapter 3, Probate of Wills and Administration, in the case of a devise to  
896 an existing trust or trustee, or to a trustee in trust described by will, the trust or trustee is the  
897 devisee, and the beneficiaries are not devisees.

898 (12) "Disability" means cause for a protective order as described by Section 75-5-401.

899 (13) "Distributee" means any person who has received property of a decedent from his  
900 personal representative other than as a creditor or purchaser. A testamentary trustee is a  
901 distributee only to the extent of distributed assets or increment thereto remaining in his hands.  
902 A beneficiary of a testamentary trust to whom the trustee has distributed property received from  
903 a personal representative is a distributee of the personal representative. For purposes of this  
904 provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to  
905 the extent of the devised assets.

906 (14) "Estate" includes the property of the decedent, trust, or other person whose affairs  
907 are subject to this title as originally constituted and as it exists from time to time during  
908 administration.

909 (15) "Exempt property" means that property of a decedent's estate which is described in  
910 Section 75-2-403.

911 (16) "Fiduciary" includes a personal representative, guardian, conservator, and trustee.

912 (17) "Foreign personal representative" means a personal representative of another  
913 jurisdiction.

914 (18) "Formal proceedings" means proceedings conducted before a judge with notice to  
915 interested persons.

916 (19) "Governing instrument" means a deed, will, trust, insurance or annuity policy,  
917 account with POD designation, security registered in beneficiary form (TOD), pension,  
918 profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of  
919 appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of  
920 any similar type.

921 (20) "Guardian" means a person who has qualified as a guardian of a minor or  
922 incapacitated person pursuant to testamentary or court appointment, but excludes one who is  
923 merely a guardian ad litem.

924 (21) "Heirs," except as controlled by Section 75-2-711, means persons, including the

925 surviving spouse and state, who are entitled under the statutes of intestate succession to the  
926 property of a decedent.

927 (22) "Incapacitated person" means any person who is impaired by reason of mental  
928 illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic  
929 intoxication, or other cause, except minority, to the extent of lacking sufficient understanding  
930 or capacity to make or communicate responsible decisions.

931 (23) "Informal proceedings" mean those conducted without notice to interested persons  
932 by an officer of the court acting as a registrar for probate of a will or appointment of a personal  
933 representative.

934 (24) "Interested person" includes heirs, devisees, children, spouses, creditors,  
935 beneficiaries, and any others having a property right in or claim against a trust estate or the  
936 estate of a decedent, ward, or protected person. It also includes persons having priority for  
937 appointment as personal representative and other fiduciaries representing interested persons.  
938 The meaning as it relates to particular persons may vary from time to time and shall be  
939 determined according to the particular purposes of, and matter involved in, any proceeding.

940 (25) "Issue" of a person means descendant as defined in Subsection (9).

941 (26) "Joint tenants with the right of survivorship" and "community property with the  
942 right of survivorship" includes coowners of property held under circumstances that entitle one  
943 or more to the whole of the property on the death of the other or others, but excludes forms of  
944 coownership registration in which the underlying ownership of each party is in proportion to  
945 that party's contribution.

946 (27) "Lease" includes an oil, gas, or other mineral lease.

947 (28) "Letters" includes letters testamentary, letters of guardianship, letters of  
948 administration, and letters of conservatorship.

949 (29) "Minor" means a person who is under 18 years of age.

950 (30) "Mortgage" means any conveyance, agreement, or arrangement in which property  
951 is used as security.

952 (31) "Nonresident decedent" means a decedent who was domiciled in another  
953 jurisdiction at the time of his death.

954 (32) "Organization" includes a corporation, limited liability company, business trust,  
955 estate, trust, partnership, joint venture, association, government or governmental subdivision or

956 agency, or any other legal or commercial entity.

957 (33) "Parent" includes any person entitled to take, or who would be entitled to take if  
958 the child died without a will, as a parent under this code by intestate succession from the child  
959 whose relationship is in question and excludes any person who is only a stepparent, foster  
960 parent, or grandparent.

961 (34) "Payor" means a trustee, insurer, business entity, employer, government,  
962 governmental agency or subdivision, or any other person authorized or obligated by law or a  
963 governing instrument to make payments.

964 (35) "Person" means an individual or an organization.

965 (36) (a) "Personal representative" includes executor, administrator, successor personal  
966 representative, special administrator, and persons who perform substantially the same function  
967 under the law governing their status.

968 (b) "General personal representative" excludes special administrator.

969 (37) "Petition" means a written request to the court for an order after notice.

970 (38) "Proceeding" includes action at law and suit in equity.

971 (39) "Property" includes both real and personal property or any interest therein and  
972 means anything that may be the subject of ownership.

973 (40) "Protected person" means a person for whom a conservator has been appointed. A  
974 "minor protected person" means a minor for whom a conservator has been appointed because  
975 of minority.

976 (41) "Protective proceeding" means a proceeding described in Section 75-5-401.

977 (42) "Registrar" refers to the official of the court designated to perform the functions of  
978 registrar as provided in Section 75-1-307.

979 (43) "Security" includes any note, stock, treasury stock, bond, debenture, evidence of  
980 indebtedness, certificate of interest, or participation in an oil, gas, or mining title or lease or in  
981 payments out of production under such a title or lease, collateral trust certificate, transferable  
982 share, voting trust certificate, and, in general, any interest or instrument commonly known as a  
983 security, or any certificate of interest or participation, any temporary or interim certificate,  
984 receipt, or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of  
985 the foregoing.

986 (44) "Settlement," in reference to a decedent's estate, includes the full process of



987 administration, distribution, and closing.

988 (45) "Special administrator" means a personal representative as described in Sections  
989 75-3-614 through 75-3-618.

990 (46) "State" means a state of the United States, the District of Columbia, the  
991 Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction  
992 of the United States.

993 (47) "Successor personal representative" means a personal representative, other than a  
994 special administrator, who is appointed to succeed a previously appointed personal  
995 representative.

996 (48) "Successors" means persons, other than creditors, who are entitled to property of a  
997 decedent under the decedent's will or this title.

998 (49) "Supervised administration" refers to the proceedings described in Title 75,  
999 Chapter 3, Part 5, Supervised Administration.

1000 (50) "Survive," except for purposes of Part 3 of Article VI, Uniform TOD Security  
1001 Registration Act, means that an individual has neither predeceased an event, including the  
1002 death of another individual, nor is considered to have predeceased an event under Section  
1003 75-2-104 or 75-2-702. The term includes its derivatives, such as "survives," "survived,"  
1004 "survivor," and "surviving."

1005 (51) "Testacy proceeding" means a proceeding to establish a will or determine  
1006 intestacy.

1007 (52) "Testator" includes an individual of either sex.

1008 (53) "Trust" includes any express trust, private or charitable, with additions thereto,  
1009 wherever and however created. The term also includes a trust created or determined by  
1010 judgment or decree under which the trust is to be administered in the manner of an express  
1011 trust. The term excludes other constructive trusts, and it excludes resulting trusts,  
1012 conservatorships, personal representatives, trust accounts as defined in Title 75, Chapter 6,  
1013 Nonprobate Transfers, custodial arrangements pursuant to any Uniform Transfers To Minors  
1014 Act, business trusts providing for certificates to be issued to beneficiaries, common trust funds,  
1015 voting trusts, preneed funeral plans under Title 58, Chapter [58] 9, [Preneed] Funeral  
1016 [Arrangement] Services Licensing Act, security arrangements, liquidation trusts, and trusts for  
1017 the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or

1018 employee benefits of any kind, and any arrangement under which a person is nominee or  
1019 escrowee for another.

1020 (54) "Trustee" includes an original, additional, or successor trustee, whether or not  
1021 appointed or confirmed by the court.

1022 (55) "Ward" means a person for whom a guardian has been appointed. A "minor ward"  
1023 is a minor for whom a guardian has been appointed solely because of minority.

1024 (56) "Will" includes codicil and any testamentary instrument which merely appoints an  
1025 executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits  
1026 the right of an individual or class to succeed to property of the decedent passing by intestate  
1027 succession.

1028 **Section 36. Repealer.**

1029 This act repeals:

1030 **Section 58-9-1, Short title.**

1031 **Section 58-9-2, Definitions.**

1032 **Section 58-9-3, Board.**

1033 **Section 58-9-4, License classifications.**

1034 **Section 58-9-5, Exemptions from licensure.**

1035 **Section 58-9-6, Qualifications for licensure.**

1036 **Section 58-9-7, Term of license -- Expiration -- Renewal.**

1037 **Section 58-9-8, Continuing education.**

1038 **Section 58-9-9, Limitation of term of funeral service apprentice license.**

1039 **Section 58-9-10, Supervision of funeral service apprentice.**

1040 **Section 58-9-11, Requirements for a funeral establishment.**

1041 **Section 58-9-12, Disclosure requirements.**

1042 **Section 58-9-13, Grounds for denial of license -- Disciplinary proceedings.**

1043 **Section 58-9-15, Inspection -- Right to access.**

1044 **Section 58-58-1, Short title.**

1045 **Section 58-58-2, Definitions.**

1046 **Section 58-58-3, Board -- Membership -- Duties.**

1047 **Section 58-58-4, License classifications -- Exemptions.**

1048 **Section 58-58-5, Qualifications for licensure.**

1049 Section 58-58-6, Term of license -- Expiration -- Renewal.

1050 Section 58-58-7, Grounds for denial of license -- Disciplinary proceedings.

1051 Section 58-58-8, Preneed contract requirements.

1052 Section 58-58-9, Payments to be held in trust -- Trustee qualifications.

1053 Section 58-58-10, Trust agreement.

1054 Section 58-58-11, Interest earned on trust funds.

1055 Section 58-58-12, Distribution of funds.

1056 Section 58-58-13, Annual reports concerning trust funds.

1057 Section 58-58-14, Records and reports of trustee -- Contents.

1058 Section 58-58-15, Audits.

1058a § Section 36. Coordination clause.

1058b IF THIS BILL AND S.B. 10, PRENEED FUNERAL ARRANGEMENT AMENDMENTS, BOTH PASS,

1058c IT IS THE INTENT OF THE LEGISLATURE THAT THE OFFICE OF LEGISLATIVE RESEARCH AND

1058d GENERAL COUNSEL, IN PREPARING THE UTAH CODE DATABASE FOR PUBLICATION, MERGE THE

1058e LANGUAGE FROM S.B. 10, SUBSECTION 58-58-8(7) INTO THIS BILL AS SUBSECTION 58-9-701(7). §

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**Fiscal Note**

**Funeral Services Amendments**

*03-Feb-03*

**Bill Number SB0091s2**

*10:38 AM*

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**State Impact**

No fiscal impact.

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**Individual and Business Impact**

No fiscal impact.

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**Office of the Legislative Fiscal Analyst**