

- 28 **58-9-306**, Utah Code Annotated 1953
- 29 **58-9-307**, Utah Code Annotated 1953
- 30 **58-9-401**, Utah Code Annotated 1953
- 31 **58-9-501**, Utah Code Annotated 1953
- 32 **58-9-502**, Utah Code Annotated 1953
- 33 **58-9-503**, Utah Code Annotated 1953
- 34 **58-9-504**, Utah Code Annotated 1953
- 35 **58-9-505**, Utah Code Annotated 1953
- 36 **58-9-506**, Utah Code Annotated 1953
- 37 **58-9-601**, Utah Code Annotated 1953
- 38 **58-9-602**, Utah Code Annotated 1953
- 39 **58-9-603**, Utah Code Annotated 1953
- 40 **58-9-604**, Utah Code Annotated 1953
- 41 **58-9-605**, Utah Code Annotated 1953
- 42 **58-9-606**, Utah Code Annotated 1953
- 43 **58-9-701**, Utah Code Annotated 1953
- 44 **58-9-702**, Utah Code Annotated 1953
- 45 **58-9-703**, Utah Code Annotated 1953
- 46 **58-9-704**, Utah Code Annotated 1953
- 47 **58-9-705**, Utah Code Annotated 1953
- 48 **58-9-706**, Utah Code Annotated 1953
- 49 **58-9-707**, Utah Code Annotated 1953
- 50 **58-9-708**, Utah Code Annotated 1953

51 **REPEALS:**

- 52 **58-9-1**, as repealed and reenacted by Chapter 250, Laws of Utah 1991
- 53 **58-9-2**, as last amended by Chapter 297, Laws of Utah 1993
- 54 **58-9-3**, as last amended by Chapter 297, Laws of Utah 1993
- 55 **58-9-4**, as repealed and reenacted by Chapter 297, Laws of Utah 1993
- 56 **58-9-5**, as repealed and reenacted by Chapter 297, Laws of Utah 1993
- 57 **58-9-6**, as last amended by Chapter 313, Laws of Utah 1994
- 58 **58-9-7**, as repealed and reenacted by Chapter 297, Laws of Utah 1993

- 59 **58-9-8**, as repealed and reenacted by Chapter 250, Laws of Utah 1991
- 60 **58-9-9**, as repealed and reenacted by Chapter 250, Laws of Utah 1991
- 61 **58-9-10**, as repealed and reenacted by Chapter 250, Laws of Utah 1991
- 62 **58-9-11**, as repealed and reenacted by Chapter 250, Laws of Utah 1991
- 63 **58-9-12**, as repealed and reenacted by Chapter 250, Laws of Utah 1991
- 64 **58-9-13**, as repealed and reenacted by Chapter 297, Laws of Utah 1993
- 65 **58-9-15**, as repealed and reenacted by Chapter 250, Laws of Utah 1991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- 71 **58-58-6**, as repealed and reenacted by Chapter 297, Laws of Utah 1993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

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

82 Section 1. Section **58-9-101** is enacted to read:

83 **CHAPTER 9. FUNERAL SERVICES ACT**

84 **Part 1. General Provisions**

85 **58-9-101. Title.**

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

87 Section 2. Section **58-9-102** is enacted to read:

88 **58-9-102. Definitions.**

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

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

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

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

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

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

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

99 (a) as quickly as law allows;

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

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

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

103 (a) earth interment;

104 (b) above ground burial;

105 (c) cremation;

106 (d) calcination;

107 (e) burial at sea;

108 (f) delivery to a medical institution; or

109 (g) other lawful means.

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

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

114 (a) custody;

115 (b) shelter;

116 (c) care;

117 (d) preparation;

118 (e) disposition; or

119 (f) other services.

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

- 121 body is placed in connection with the transportation or disposition of the body:
- 122 (i) vaults;
- 123 (ii) caskets; or
- 124 (iii) other personal property.
- 125 (b) "Funeral merchandise" does not include:
- 126 (i) mausoleum crypts;
- 127 (ii) interment receptacles preset in a cemetery; or
- 128 (iii) columbarium niches.
- 129 (11) "Funeral service" means any service, rite, or ceremony performed:
- 130 (a) with respect to the death of a human; and
- 131 (b) with the body of the deceased present.
- 132 (12) "Funeral service apprentice" means an individual licensed under this chapter who
- 133 is permitted to:
- 134 (a) assist a funeral service director in the embalming or other preparation of a dead
- 135 human body for deposition;
- 136 (b) assist a funeral service director in the cremation, calcification, or pulverization of a
- 137 dead human body or its remains; and
- 138 (c) perform other funeral service activities under supervision of a funeral service
- 139 director.
- 140 (13) "Funeral service director" means an individual licensed under this chapter who
- 141 may engage in all lawful professional activities regulated and defined under the practice of
- 142 funeral service.
- 143 (14) "Graveside service" means a funeral service held at the location of disposition.
- 144 (15) "Memorial service" means any service, rite, or ceremony performed:
- 145 (a) with respect to the death of a human; and
- 146 (b) without the body of the deceased present.
- 147 (16) "Practice of funeral service" means:
- 148 (a) supervising the receipt of custody and transportation of a dead human body to
- 149 prepare the body for:
- 150 (i) disposition; or
- 151 (ii) shipment to another location;

152 (b) entering into a contract with any person to provide professional services regulated
153 under this chapter;

154 (c) embalming or otherwise preparing a dead human body for disposition;

155 (d) supervising the arrangement or conduct of any of the following:

156 (i) a funeral service;

157 (ii) a graveside service; or

158 (iii) a memorial service;

159 (e) cremation, calcification, or pulverization of a dead human body or the body's
160 remains;

161 (f) supervising the arrangement of:

162 (i) a disposition; or

163 (ii) a direct disposition;

164 (g) facilitating:

165 (i) a disposition; or

166 (ii) a direct disposition;

167 (h) supervising sales of funeral merchandise by a funeral establishment;

168 (i) managing or otherwise being responsible for the practice of funeral service in a
169 licensed funeral establishment;

170 (j) supervising the sale of a preneed funeral arrangement; and

171 (k) contracting with or employing individuals to sell a preneed funeral arrangement.

172 (17) (a) "Preneed funeral arrangement" means any written or oral agreement sold in
173 advance of the death of the beneficiary under which a person agrees with a buyer to provide at
174 the death of the beneficiary any of the following as are typically provided in connection with a
175 disposition:

176 (i) merchandise;

177 (ii) goods;

178 (iii) services, including:

179 (A) embalming services; and

180 (B) funeral directing services;

181 (iv) real property; or

182 (v) personal property, including:

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

216 (b) one funeral service director who does not have an ownership interest in a funeral
217 service establishment;

218 (c) one preneed funeral arrangement sales agent, who does not have an ownership
219 interest in a funeral service establishment;

220 (d) one owner or officer of an endowment care cemetery; and

221 (e) one member from the general public who has no association with the funeral
222 service profession.

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

224 (3) The duties and responsibilities of the board shall be in accordance with Sections
225 58-1-202 and 58-1-203. In addition, the board shall designate one of its members on a
226 permanent or rotating basis to:

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

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

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

233 Section 4. Section **58-9-301** is enacted to read:

234 **Part 3. Licensing**

235 **58-9-301. Licensure required -- License classifications.**

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

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

240 (a) funeral service director;

241 (b) funeral service apprentice;

242 (c) funeral service establishment;

243 (d) preneed funeral arrangement provider; or

244 (e) preneed funeral arrangement sales agent.

245 Section 5. Section **58-9-302** is enacted to read:

246 **58-9-302. Qualifications for licensure.**

247 (1) Each applicant for licensure as a funeral service director shall:

248 (a) submit an application in a form prescribed by the division;

249 (b) pay a fee as determined by the department under Section 63-38-3.2;

250 (c) be of good moral character in that the applicant has not been convicted of:

251 (i) a felony;

252 (ii) a misdemeanor involving moral turpitude; or

253 (iii) any other crime that when considered with the duties and responsibilities of a

254 funeral service director is considered by the division and the board to indicate that the best

255 interests of the public are not served by granting the applicant a license;

256 (d) have completed a high school education or its equivalent;

257 (e) have obtained an associate degree, or its equivalent, in mortuary science from a

258 school of funeral service accredited by the American Board of Funeral Service Education or

259 other accrediting body recognized by the U.S. Department of Education;

260 (f) have completed not less than 2,000 hours and 50 embalmings, over a period of not

261 less than one year, of satisfactory performance in training as a licensed funeral service

262 apprentice under the supervision of a licensed funeral service director; and

263 (g) have successfully completed examinations approved by the division in

264 collaboration with the board.

265 (2) Each applicant for licensure as a funeral service apprentice shall:

266 (a) submit an application in a form prescribed by the division;

267 (b) pay a fee as determined by the department under Section 63-38-3.2;

268 (c) be of good moral character in that the applicant has not been convicted of:

269 (i) a felony;

270 (ii) a misdemeanor involving moral turpitude; or

271 (iii) any other crime that when considered with the duties and responsibilities of a

272 funeral service apprentice is considered by the division and the board to indicate that the best

273 interests of the public are not served by granting the applicant a license;

274 (d) have completed a high school education or its equivalent; and

275 (e) have successfully completed an examination testing the applicant's knowledge of

276 the law and rules made under this chapter.

277 (3) Each applicant for licensure as a funeral service establishment shall:

278 (a) submit an application in a form prescribed by the division;

279 (b) pay a fee as determined by the department under Section 63-38-3.2;

280 (c) have in place and maintain at all times a licensed funeral service director

281 responsible for the operation of the funeral service establishment as the sole proprietor, a

282 managing general partner, or an officer of a corporation; and

283 (d) if it is the intention of the funeral establishment to sell preneed funeral

284 arrangements, file with the division an application for a license to sell preneed funeral

285 arrangements.

286 (4) Each applicant for licensure as a preneed funeral arrangement provider shall:

287 (a) submit an application in a form provided by the division;

288 (b) pay a fee as determined by the department under Section 63-38-3.2;

289 (c) be licensed in the state as a funeral service establishment;

290 (d) be free of activities or conduct which, when considered with the responsibilities of

291 a licensee and the public interest, is a threat to the public health, safety, or welfare;

292 (e) file with the completed application a copy of each form of contract or agreement the
293 applicant will use in the sale of preneed funeral arrangements; and

294 (f) provide evidence of appropriate licensure with the Insurance Department if the
295 applicant intends to engage in the sale of any preneed funeral arrangements funded in whole or
296 in part by an insurance policy or product to be sold by the provider or the provider's sales agent.

297 (5) Each applicant for licensure as a preneed funeral arrangement sales agent shall:

298 (a) submit an application in a form prescribed by the division;

299 (b) pay a fee as determined by the department under Section 63-38-3.2;

300 (c) be of good moral character in that the applicant has not been convicted of:

301 (i) a felony;

302 (ii) a misdemeanor involving moral turpitude; or

303 (iii) any other crime that when considered with the duties and responsibilities of a

304 preneed funeral sales agent is considered by the division and the board to indicate that the best
305 interests of the public are not served by granting the applicant a license;

306 (d) be a high school graduate or have obtained a certificate of equivalency approved by

307 the division:

308 (e) pass an examination approved by the division in collaboration with the board;

309 (f) provide evidence that the applicant will be associated with a licensed preneed

310 funeral arrangement provider upon issuance of a license under terms acceptable to the division;

311 and

312 (g) provide evidence of appropriate licensure with the Insurance Department if the

313 applicant intends to engage in the sale of any preneed funeral arrangements funded in whole or

314 in part by an insurance policy or product.

315 Section 6. Section **58-9-303** is enacted to read:

316 **58-9-303. Term of license -- Expiration -- Renewal.**

317 (1) The division shall issue each license under this chapter in accordance with a

318 two-year renewal cycle established by rule. The division may by rule extend or shorten a

319 renewal cycle by as much as one year to stagger the renewal cycles it administers.

320 (2) Notwithstanding Subsection (1), a person who has once held a license as a funeral

321 service apprentice and has not qualified for licensure as a funeral service director may be issued

322 a subsequent funeral service apprentice license for only one additional two-year term upon the

323 specific approval of the division in collaboration with the board.

324 (3) At the time of renewal, the licensee shall show satisfactory evidence of completion

325 of continuing education as required under Section 58-9-304.

326 (4) Each license automatically expires on the expiration date shown on the license

327 unless the licensee renews it in accordance with Section 58-1-308.

328 Section 7. Section **58-9-304** is enacted to read:

329 **58-9-304. Continuing education.**

330 (1) As a condition precedent for license renewal, each funeral service director shall,

331 during each two-year licensure cycle or other cycle defined by rule, complete 20 hours of

332 qualified continuing professional education in accordance with standards defined by rule.

333 (2) If a renewal cycle is extended or shortened under Section 58-9-303, the continuing

334 education hours required for license renewal under this section shall be increased or decreased

335 proportionally.

336 Section 8. Section **58-9-305** is enacted to read:

337 **58-9-305. Exemptions from licensure.**

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

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

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

344 (3) the sale of any of the following that is delivered to the purchaser or the purchaser's
345 designee within 90 days after the day of the sale:

346 (a) funeral merchandise;

347 (b) headstones; or

348 (c) other memorial merchandise;

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

350 (a) a member of the clergy; or

351 (b) other recognized individuals;

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

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

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

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

362 **58-9-306. License by endorsement.**

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

366 (1) the person's license is:

367 (a) active;

368 (b) in good standing; and

- 369 (c) free from disciplinary action; and
370 (2) the person:
371 (a) meets the requirements of Section 58-1-302;
372 (b) is of good moral character in that the person has not been convicted of:
373 (i) a felony;
374 (ii) a misdemeanor involving moral turpitude; or
375 (iii) any other crime that when considered with the duties and responsibilities of the
376 license for which the person is applying is considered by the division and the board to indicate
377 that the best interests of the public are not served by granting the applicant a license;
378 (c) has completed five years of lawful and active practice as a licensed funeral service
379 director and embalmer within the ten years immediately preceding the application for licensure
380 by endorsement;
381 (d) has passed a national examination determined by the division; and
382 (e) has passed an examination on the rules of the state determined by the division.
383 Section 10. Section **58-9-307** is enacted to read:
384 **58-9-307. Supervision of funeral service apprentice.**
385 (1) A person seeking licensure as a funeral service apprentice shall submit as a part of
386 the application for a license:
387 (a) the name of the licensed funeral service director who has agreed to supervise the
388 applicant; and
389 (b) the name of the licensed funeral establishment at which the training and supervision
390 shall take place.
391 (2) A licensed funeral service director may supervise only one licensed funeral service
392 apprentice at one time.
393 (3) Within 30 days after the day on which the supervisor-supervisee relationship
394 between a licensed funeral service director and a licensed funeral service apprentice terminates,
395 the funeral service director shall furnish to the division a report of the performance of the
396 funeral service apprentice. The report shall be in form and content as prescribed by the
397 division.
398 (4) A licensed funeral service apprentice may apply to the division to request
399 supervision by a different funeral service director. The application shall be made on a form

400 prescribed by the division. A change of supervisor requires approval of the division. The
401 supervising funeral service director shall submit to the division, in accordance with Subsection
402 (3), a report of the funeral service apprentice's performance.

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

405 Section 11. Section **58-9-401** is enacted to read:

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

407 **58-9-401. Grounds for denial of license -- Disciplinary proceedings.**

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

412 Section 12. Section **58-9-501** is enacted to read:

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

414 **58-9-501. Unlawful Conduct.**

415 "Unlawful conduct" includes:

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

418 (a) embalming;

419 (b) calcinating;

420 (c) pulverizing;

421 (d) cremating; or

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

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

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

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

431 (a) a preneed funeral arrangement sales agent; or
432 (b) a funeral service director;
433 (5) selling or representing for sale any preneed funeral arrangement contract or
434 agreement:

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

438 Section 13. Section **58-9-502** is enacted to read:

439 **58-9-502. Unprofessional conduct.**

440 (1) "Unprofessional conduct" includes:

441 (a) the failure of a funeral service director to accurately document, report, and
442 supervise the activities of a funeral service apprentice;
443 (b) knowingly soliciting the sale of any funeral service or funeral merchandise for a
444 person whose death occurred or was imminent prior to the solicitation; and
445 (c) paying or offering to pay a commission or anything of value to secure deceased
446 human remains for a funeral service or disposition to:

- 447 (i) medical personnel;
- 448 (ii) a nursing home;
- 449 (iii) a nursing home employee;
- 450 (iv) a hospice;
- 451 (v) a hospice employee;
- 452 (vi) clergy;
- 453 (vii) a government official; or
- 454 (viii) any other third party.

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

- 456 (a) general advertising directed to the public at large; or
- 457 (b) responding to a notification of death from:
 - 458 (i) medical personnel;
 - 459 (ii) a nursing home;
 - 460 (iii) a nursing home employee;
 - 461 (iv) a hospice;

- 462 (v) a hospice employee;
- 463 (vi) clergy;
- 464 (vii) a government official; or
- 465 (viii) any authorized representative of the family of the deceased person.

466 Section 14. Section **58-9-503** is enacted to read:

467 **58-9-503. Penalty for unlawful conduct.**

468 (1) Any person who violates the unlawful conduct provisions defined in Subsections
469 58-9-501(1) through (5) is guilty of a class A misdemeanor.

470 (2) Any person who violates the unlawful conduct provision defined in Subsection
471 58-9-501(6) is guilty of a second degree felony.

472 Section 15. Section **58-9-504** is enacted to read:

473 **58-9-504. Authority to promulgate rules.**

474 In addition to the authority granted under Section 58-1-106, in accordance with Title
475 63, Chapter 46a, Utah Administrative Rulemaking Act, the division in collaboration with the
476 board shall establish by rule:

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

478 (a) physical facilities;

479 (b) equipment;

480 (c) instruments; and

481 (d) supplies;

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

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

485 (4) standards for preneed funeral arrangement trusts.

486 Section 16. Section **58-9-505** is enacted to read:

487 **58-9-505. Disclosure requirements.**

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

490 Section 17. Section **58-9-506** is enacted to read:

491 **58-9-506. Inspection -- Right to access.**

492 A licensed funeral service establishment is subject to inspection during normal business

493 hours to determine compliance with the laws of Utah by:

494 (1) any authorized representative of the division; or

495 (2) any authorized representative of a local or state health department.

496 Section 18. Section **58-9-601** is enacted to read:

497 **Part 6. Control of Disposition**

498 **58-9-601. Advance directions.**

499 (1) A person may provide written directions to direct the preparation, type, and place of
500 the person's disposition, including:

501 (a) designating a funeral service establishment;

502 (b) providing directions for burial arrangements; or

503 (c) providing directions for cremation arrangements.

504 (2) The person authorized to control the disposition of the decedent shall carry out the
505 directions of the decedent to the extent that:

506 (a) the directions are reasonable;

507 (b) the directions are lawful;

508 (c) the decedent has provided resources to carry out the directions; and

509 (d) the person with the right and duty to control the disposition under Section 58-9-602
510 does not provide additional or different directions.

511 (3) Directions for disposition contained in a will shall be carried out regardless of:

512 (a) the validity of other aspects of the will; or

513 (b) the fact that the will may not be offered or admitted to probate until a later date.

514 (4) A person may change or cancel written directions prepared under this section at any
515 time prior to the person's death by providing written notice to all applicable parties.

516 (5) The person with the right and duty to control the disposition under Section
517 58-9-602 may provide directions that are different from the written directions prepared under
518 this section.

519 (6) If the person with the right and duty to control the disposition under Section
520 58-9-602 does not provide additional or different instructions under Subsection (5), a funeral
521 service director may complete the disposition of the deceased person according to the written
522 directions prepared under this section.

523 Section 19. Section **58-9-602** is enacted to read:

524 **58-9-602. Determination of control of disposition.**

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

528 (1) a person designated in a dated written instrument signed by the decedent, excluding
529 a power of attorney that terminates at death under Sections 75-5-501 and 75-5-502;

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

531 (3) the surviving child or children of the decedent over the age of 18;

532 (4) the surviving parent or parents of the decedent;

533 (5) the person or persons in the next degree of succession under Title 75, Chapter 2,

534 Intestate Succession and Wills;

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

536 (7) in the absence of any person under Subsections (1) through (6), any person willing
537 to assume the right and duty to control the disposition.

538 Section 20. Section **58-9-603** is enacted to read:

539 **58-9-603. Estranged persons.**

540 (1) As used in this section, "estranged" means having a relationship characterized by
541 mutual enmity, hostility, or indifference.

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

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

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

547 Section 21. Section **58-9-604** is enacted to read:

548 **58-9-604. Refusal of control of disposition.**

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

551 (1) to another person with the same degree of relationship to the decedent as the person
552 that declines to act on the right and duty to control the disposition; or

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

555 Section 22. Section **58-9-605** is enacted to read:

556 **58-9-605. Control by funeral service director.**

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

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

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

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

566 Section 23. Section **58-9-606** is enacted to read:

567 **58-9-606. Immunity.**

568 A funeral service director is not criminally or civilly liable for:

569 (1) acting in accordance with this chapter; or

570 (2) carrying out the otherwise lawful instructions of:

571 (a) the decedent; or

572 (b) a person or persons whom the funeral service director reasonably believes is
573 entitled to control the disposition.

574 Section 24. Section **58-9-701** is enacted to read:

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

576 **58-9-701. Preneed contract requirements.**

577 (1) Every preneed funeral arrangement sold in Utah shall be evidenced by a written
578 contract. The provider shall file the form of the contract with the division. Approval of the
579 contract by the division is required before:

580 (a) any representation may be made by a provider or sales agent to a potential buyer; or

581 (b) any sale.

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

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

585 (b) bear the preprinted name, address, telephone number, and license number of the

586 provider obligated to provide the services under the contract terms;

587 (c) be sequentially numbered by contract form;

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

589 (e) provide that a trust is established in accordance with the provisions of Section

590 58-9-702;

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

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

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

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

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

603 (a) in the event of nonpayment; and

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

605 (6) (a) A preneed contract may not be revocable by the purchaser or beneficiary except
606 in the event of:

607 (i) a substantial contract breach by the provider; or

608 (ii) substantial evidence that the provider is or will be unable to provide the personal
609 property or services to the beneficiary as provided under the contract.

610 (b) The contract shall contain a clear statement of the manner in which payments made
611 on the contract shall be refunded to the purchaser or beneficiary upon revocation by the
612 beneficiary.

613 Section 25. Section **58-9-702** is enacted to read:

614 **58-9-702. Payments to be held in trust -- Trustee qualifications.**

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

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

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

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

624 Section 26. Section **58-9-703** is enacted to read:

625 **58-9-703. Trust agreement.**

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

628 (a) the requirements of this chapter;

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

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

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

632 (2) Each trust agreement shall require that the provider report:

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

634 (b) the contract number; and

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

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

638 (a) separately account for each contract; and

639 (b) separately record payments with respect to each contract made into the corpus of
640 the trust.

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

643 (a) the death of the beneficiary;

644 (b) revocation of the contract by the provider upon nonpayment by the purchaser; or

645 (c) revocation of the contract by the beneficiary or purchaser.

646 Section 27. Section **58-9-704** is enacted to read:

647 **58-9-704. Interest earned on trust funds.**

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

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

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

654 (a) the sale of the plan;

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

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

658 (i) that have been sold; and

659 (ii) under which the provider is obligated;

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

662 (a) personal property; and

663 (b) services at need; and

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

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

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

668 (ii) all amounts payable to the purchaser, beneficiary, or any other person have been
669 paid in full.

670 Section 28. Section **58-9-705** is enacted to read:

671 **58-9-705. Distribution of funds.**

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

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

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

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

695 Section 29. Section **58-9-706** is enacted to read:

696 **58-9-706. Annual reports concerning trust funds.**

- 697 (1) Each provider shall file an annual report with the division on or before April 15 of
698 each year in a form provided by the division. The report shall state:
699 (a) the name of the trustees with which the provider has trust funds on deposit; and
700 (b) the amount remaining on deposit in the trust fund on:
701 (i) December 31 of the preceding year; or
702 (ii) another annual reporting period as the division may establish.
703 (2) (a) A provider is not required to renew its license if the provider:
704 (i) has outstanding contracts; and
705 (ii) has discontinued the sale of contracts.
706 (b) A provider that does not renew its license pursuant to this Subsection (2) shall
707 continue to make annual reports to the division until all outstanding contracts have been:
708 (i) fully performed; or
709 (ii) transferred to a licensed provider.

710 Section 30. Section **58-9-707** is enacted to read:

711 **58-9-707. Records and reports of trustee -- Contents.**

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

713 (1) the name and address of the payor;

714 (2) the date and the amount of each payment made;

715 (3) the date and amount of each withdrawal and to whom paid; and

716 (4) the name of the bank or trust company depository.

717 Section 31. Section **58-9-708** is enacted to read:

718 **58-9-708. Audits.**

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

720 (i) audit records of the provider; and

721 (ii) inspect records of the provider.

722 (b) The provider or trustee shall make available to the division for examination,

723 inspection, or auditing all records pertaining to the accounts relating to:

724 (i) any contract sold under this chapter; and

725 (ii) any trust established under this chapter.

726 (2) (a) The director may employ experts from outside the division if special need exists
727 to perform examinations, inspections, and audits under this section.

728 (b) The provider shall be responsible for payment to the division of all reasonable and
729 necessary costs related to the employment of experts under this section.

730 Section 32. **Repealer.**

731 This act repeals:

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

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

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

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

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

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

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

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

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

- 741 Section 58-9-10, Supervision of funeral service apprentice.
- 742 Section 58-9-11, Requirements for a funeral establishment.
- 743 Section 58-9-12, Disclosure requirements.
- 744 Section 58-9-13, Grounds for denial of license -- Disciplinary proceedings.
- 745 Section 58-9-15, Inspection -- Right to access.
- 746 Section 58-58-1, Short title.
- 747 Section 58-58-2, Definitions.
- 748 Section 58-58-3, Board -- Membership -- Duties.
- 749 Section 58-58-4, License classifications -- Exemptions.
- 750 Section 58-58-5, Qualifications for licensure.
- 751 Section 58-58-6, Term of license -- Expiration -- Renewal.
- 752 Section 58-58-7, Grounds for denial of license -- Disciplinary proceedings.
- 753 Section 58-58-8, Preneed contract requirements.
- 754 Section 58-58-9, Payments to be held in trust -- Trustee qualifications.
- 755 Section 58-58-10, Trust agreement.
- 756 Section 58-58-11, Interest earned on trust funds.
- 757 Section 58-58-12, Distribution of funds.
- 758 Section 58-58-13, Annual reports concerning trust funds.
- 759 Section 58-58-14, Records and reports of trustee -- Contents.
- 760 Section 58-58-15, Audits.

Legislative Review Note
as of 11-14-02 10:41 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0091

Funeral Services Amendments

07-Jan-03

4:23 PM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst