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FUNERAL SERVICES LICENSING ACT

AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kay L. McIff

Senate Sponsor: Jon J. Greiner

LONG TITLE

General Description:

This bill modifies provisions of the Funeral Services Licensing Act regarding licensure classifications, the composition of the Board of Funeral Service, qualifications for licensure, the supervision of funeral service interns, the determination of the disposition of a deceased person, preneed funeral arrangements, including required trust accounts, and unlawful and unprofessional conduct by funeral service establishments and their employees.

Highlighted Provisions:

This bill:

- ▶ modifies the definition of a funeral service establishment in the Funeral Services Licensing Act to include the furnishing of services, merchandise, and products purchased under a preneed funeral arrangement;
- ▶ modifies the composition of the Board of Funeral Service by increasing the number of funeral service directors serving on the board from three to four and eliminating the owner or officer of an endowment care cemetery member;
- ▶ eliminates the license classification of preneed funeral arrangement provider by combining it with the funeral service establishment license classification;
- ▶ modifies qualifications for licensure as a funeral service director, funeral service establishment, preneed funeral arrangement sales agent, and funeral service intern



- 28 and changes the current designation of "funeral service apprentice" to "funeral service intern";
- 29 ▶ provides for the conditional continuing licensure of a funeral service establishment
- 30 upon the death or termination from employment of an establishment's funeral
- 31 service director;
- 32 ▶ modifies the licensure by endorsement provisions;
- 33 ▶ modifies the unlawful and unprofessional conduct provisions of the act;
- 34 ▶ modifies provisions related to the right and duty to control the disposition of a
- 35 deceased person by surviving relatives or other individuals;
- 36 ▶ provides for forfeiture of the right of disposition under specified circumstances;
- 37 ▶ provides for the resolution of disputes on the right of disposition of a decedent by a
- 38 probate court upon petitioning by relatives of the decedent or a funeral director who
- 39 has custody of the decedent's remains;
- 40 ▶ provides a funeral service establishment and funeral service director with immunity
- 41 from civil and criminal liability and disciplinary action in carrying out the
- 42 disposition of a decedent's remains;
- 43 ▶ modifies provisions related to preneed funeral arrangement contracts and associated
- 44 trust agreements; and
- 45 ▶ makes certain technical changes.

46 **Monies Appropriated in this Bill:**

47 None

48 **Other Special Clauses:**

49 None

50 **Utah Code Sections Affected:**

51 AMENDS:

- 52 **26-4-16**, as last amended by Chapter 49, Laws of Utah 2003
- 53 **58-9-102**, as enacted by Chapter 49, Laws of Utah 2003
- 54 **58-9-201**, as enacted by Chapter 49, Laws of Utah 2003
- 55 **58-9-301**, as enacted by Chapter 49, Laws of Utah 2003
- 56 **58-9-302**, as enacted by Chapter 49, Laws of Utah 2003
- 57 **58-9-303**, as enacted by Chapter 49, Laws of Utah 2003
- 58 **58-9-305**, as enacted by Chapter 49, Laws of Utah 2003

- 59 **58-9-306**, as enacted by Chapter 49, Laws of Utah 2003
- 60 **58-9-307**, as enacted by Chapter 49, Laws of Utah 2003
- 61 **58-9-501**, as enacted by Chapter 49, Laws of Utah 2003
- 62 **58-9-502**, as enacted by Chapter 49, Laws of Utah 2003
- 63 **58-9-503**, as enacted by Chapter 49, Laws of Utah 2003
- 64 **58-9-602**, as enacted by Chapter 49, Laws of Utah 2003
- 65 **58-9-701**, as enacted by Chapter 49, Laws of Utah 2003
- 66 **58-9-703**, as enacted by Chapter 49, Laws of Utah 2003
- 67 **58-9-706**, as enacted by Chapter 49, Laws of Utah 2003
- 68 **58-9-707**, as enacted by Chapter 49, Laws of Utah 2003

69 ENACTS:

- 70 **58-9-605**, Utah Code Annotated 1953
- 71 **58-9-606**, Utah Code Annotated 1953

72 REPEALS AND REENACTS:

- 73 **58-9-603**, as enacted by Chapter 49, Laws of Utah 2003



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

76 Section 1. Section **26-4-16** is amended to read:

77 **26-4-16. Release of body for funeral preparations.**

78 (1) (a) Where a body is held for investigation or autopsy under [~~the provisions of~~] this
79 chapter or for [~~any~~] a medical investigation permitted by law, the body shall, if requested by the
80 person given priority under Section 58-9-602, be released for funeral preparations no later than
81 24 hours after the arrival at the office of the medical examiner or regional medical facility.

82 (b) An extension may be ordered only by a district court.

83 (2) The right and duty to control the disposition of a deceased person [~~shall be~~] is
84 governed by Sections 58-9-601 through [~~58-9-604~~] 58-9-606.

85 Section 2. Section **58-9-102** is amended to read:

86 **58-9-102. Definitions.**

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

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

- 90 (2) "Board" means the Board of Funeral Service created in Section 58-9-201.
- 91 (3) "Buyer" means ~~any~~ a person who purchases a preneed funeral arrangement.
- 92 (4) "Calcination" means a process in which a dead human body is reduced by intense
93 heat to a residue that is not as substantive as the residue that follows cremation.
- 94 (5) "Cremation" means the reduction of a dead human body by direct flame to residue
95 that includes bone fragments.
- 96 (6) "Direct disposition" means the disposition of a dead human body:
 - 97 (a) as quickly as law allows;
 - 98 (b) without preparation of the body by embalming; and
 - 99 (c) without ~~any~~ an attendant funeral service or graveside service.
- 100 (7) "Disposition" means the final disposal of a dead human body by:
 - 101 (a) earth interment;
 - 102 (b) above ground burial;
 - 103 (c) cremation;
 - 104 (d) calcination;
 - 105 (e) burial at sea;
 - 106 (f) delivery to a medical institution; or
 - 107 (g) other lawful means.
- 108 (8) "Embalming" means replacing body fluids in a dead human body with preserving
109 and disinfecting chemicals.
- 110 ~~[(9) "Funeral establishment" means a place established for any of the following~~
111 ~~purposes in connection with a dead human body:]~~
- 112 ~~[(a) custody;]~~
- 113 ~~[(b) shelter;]~~
- 114 ~~[(c) care;]~~
- 115 ~~[(d) preparation;]~~
- 116 ~~[(e) disposition; or]~~
- 117 ~~[(f) other services.]~~
- 118 ~~[(10)]~~ (9) (a) "Funeral merchandise" means any of the following into which a dead
119 human body is placed in connection with the transportation or disposition of the body:
 - 120 (i) ~~[vaults]~~ a vault;

- 121 (ii) ~~[caskets]~~ a casket; or
- 122 (iii) other personal property.
- 123 (b) "Funeral merchandise" does not include:
- 124 (i) a mausoleum ~~[crypts]~~ crypt;
- 125 (ii) ~~[interment receptacles]~~ an interment receptacle preset in a cemetery; or
- 126 (iii) a columbarium ~~[niches]~~ niche.
- 127 ~~[(H)]~~ (10) "Funeral service" means ~~[any]~~ a service, rite, or ceremony performed:
- 128 (a) with respect to the death of a human; and
- 129 (b) with the body of the deceased present.
- 130 ~~[(H)]~~ (11) "Funeral service director" means an individual licensed under this chapter
- 131 who may engage in all lawful professional activities regulated and defined under the practice of
- 132 funeral service.
- 133 (12) (a) "Funeral service establishment" means a place of business at a specific street
- 134 address or location licensed under this chapter that is devoted to:
- 135 (i) the embalming, care, custody, shelter, preparation for burial, and final disposition of
- 136 dead human bodies; and
- 137 (ii) the furnishing of services, merchandise, and products purchased from the
- 138 establishment as a preneed provider under a preneed funeral arrangement.
- 139 (b) "Funeral service establishment" includes:
- 140 (i) all portions of the business premises and all tools, instruments, and supplies used in
- 141 the preparation and embalming of dead human bodies for burial, cremation, and final
- 142 disposition as defined by division rule; and
- 143 (ii) a facility used by the business in which funeral services may be conducted.
- 144 ~~[(H)]~~ (13) "Funeral service ~~[apprentice]~~ intern" means an individual licensed under
- 145 this chapter who is permitted to:
- 146 (a) assist a funeral service director in the embalming or other preparation of a dead
- 147 human body for deposition;
- 148 (b) assist a funeral service director in the cremation, calcination, or pulverization of a
- 149 dead human body or its remains; and
- 150 (c) perform other funeral service activities under the supervision of a funeral service
- 151 director.

- 152 (14) "Graveside service" means a funeral service held at the location of disposition.
- 153 (15) "Memorial service" means ~~[any]~~ a service, rite, or ceremony performed:
- 154 (a) with respect to the death of a human; and
- 155 (b) without the body of the deceased present.
- 156 (16) "Practice of funeral service" means:
- 157 (a) supervising the receipt of custody and transportation of a dead human body to
- 158 prepare the body for:
- 159 (i) disposition; or
- 160 (ii) shipment to another location;
- 161 (b) entering into a contract with ~~[any]~~ a person to provide professional services
- 162 regulated under this chapter;
- 163 (c) embalming or otherwise preparing a dead human body for disposition;
- 164 (d) supervising the arrangement or conduct of ~~[any of the following]~~:
- 165 (i) a funeral service;
- 166 (ii) a graveside service; or
- 167 (iii) a memorial service;
- 168 (e) cremation, calcination, or pulverization of a dead human body or the body's
- 169 remains;
- 170 (f) supervising the arrangement of:
- 171 (i) a disposition; or
- 172 (ii) a direct disposition;
- 173 (g) facilitating:
- 174 (i) a disposition; or
- 175 (ii) a direct disposition;
- 176 (h) supervising ~~[sales]~~ the sale of funeral merchandise by a funeral establishment;
- 177 (i) managing or otherwise being responsible for the practice of funeral service in a
- 178 licensed funeral service establishment;
- 179 (j) supervising the sale of a preneed funeral arrangement; and
- 180 (k) contracting with or employing individuals to sell a preneed funeral arrangement.
- 181 (17) (a) "Preneed funeral arrangement" means ~~[any]~~ a written or oral agreement sold in
- 182 advance of the death of the beneficiary under which a person agrees with a buyer to provide at

183 the death of the beneficiary any of the following as are typically provided in connection with a
184 disposition:

- 185 (i) goods;
- 186 (ii) services, including:
- 187 (A) embalming services; and
- 188 (B) funeral directing services;
- 189 (iii) real property; or
- 190 (iv) personal property, including:
- 191 (A) ~~[caskets]~~ a casket;
- 192 (B) ~~[other]~~ another primary ~~[containers]~~ container;
- 193 (C) a cremation or transportation ~~[containers]~~ container;
- 194 (D) an outer burial ~~[containers]~~ container;
- 195 (E) ~~[vaults]~~ a vault;
- 196 (F) a grave ~~[liners]~~ liner;
- 197 (G) funeral clothing and accessories;
- 198 (H) ~~[monuments]~~ a monument;
- 199 (I) a grave ~~[markers]~~ marker; and
- 200 (J) a cremation ~~[urns]~~ urn.

201 (b) "Preneed funeral arrangement" does not include a policy or product of life
202 insurance providing a death benefit cash payment upon the death of the beneficiary which is
203 not limited to providing the products or services described in Subsection (17)(a).

204 ~~[(18) "Provider" means a licensed funeral establishment that furnishes or will furnish
205 the services or property purchased under a preneed funeral arrangement.]~~

206 ~~[(19)]~~ (18) "Pulverization" means a grinding process that reduces the residue of a
207 cremation or calcination into a powdery substance.

208 ~~[(20)]~~ (19) "Sales agent" means an individual licensed under this chapter as a preneed
209 funeral arrangement sales agent.

210 ~~[(21)]~~ (20) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-9-501.

211 ~~[(22)]~~ (21) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-9-502.

212 Section 3. Section **58-9-201** is amended to read:

213 **58-9-201. Board.**

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

215 (a) [~~three~~] four funeral service directors who own [~~or~~], have an ownership interest in,
216 or have management responsibilities for a funeral service establishment[~~, at least two of which~~
217 ~~are preneed funeral arrangement providers~~];

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

220 [~~(c) one owner or officer of an endowment care cemetery; and~~]

221 [~~(d)~~] (c) two members from the general public who have no association with the
222 funeral service profession.

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

224 (3) (a) The duties and responsibilities of the board shall be in accordance with Sections
225 58-1-202 and 58-1-203. [~~In addition, the~~]

226 (b) The board shall designate one of its members on a permanent or rotating basis to:

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

229 [~~(b)~~] (ii) 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 amended to read:

234 **58-9-301. Licensure required -- License classifications.**

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

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

239 (a) funeral service director;

240 (b) funeral service [~~apprentice~~] intern;

241 (c) funeral service establishment; or

242 [~~(d) preneed funeral arrangement provider; or~~]

243 [~~(e)~~] (d) preneed funeral arrangement sales agent.

244 Section 5. Section **58-9-302** is amended to read:

245 **58-9-302. Qualifications for licensure.**

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

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

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

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

250 (i) a first or second degree felony;

251 (ii) a misdemeanor involving moral turpitude; or

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

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

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

255 (d) have [~~completed~~] obtained a high school [~~education~~] diploma or its equivalent or a
256 higher education degree;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~~] intern under the supervision of a licensed funeral service director; and263 (g) [~~have successfully completed~~] obtain a passing score on examinations approved by
264 the division in collaboration with the board.265 (2) Each applicant for licensure as a funeral service [~~apprentice~~] intern 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 first or second degree 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~~] intern is considered by the division and the board to indicate that

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

274 (d) have [~~completed~~] obtained a high school [~~education~~] diploma or its equivalent or a
275 higher education degree; and

276 (e) ~~[have successfully completed]~~ obtain a passing score on an examination ~~[testing the~~
277 ~~applicant's knowledge of the law and rules made under this chapter]~~ approved by the division
278 in collaboration with the board.

279 (3) Each applicant for licensure as a funeral service establishment and each funeral
280 service establishment licensee shall:

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

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

283 (c) have in place ~~[and]~~:

284 (i) an embalming room for preparing dead human bodies for burial or final disposition,
285 which may serve one or more facilities operated by the applicant;

286 (ii) a refrigeration room that maintains a temperature of not more than 40 degrees
287 fahrenheit for preserving dead human bodies prior to burial or final disposition, which may
288 serve one or more facilities operated by the applicant; and

289 (iii) maintain at all times a licensed funeral service director who is responsible for the
290 day-to-day operation of the funeral service establishment ~~[as the sole proprietor, a managing~~
291 ~~general partner, or an officer of a corporation or other business entity; and (d) if it is the~~
292 ~~intention of]~~ and lives within 100 miles of the establishment;

293 (d) affiliate with a licensed preneed funeral arrangement sales agent or funeral service
294 director if the funeral service establishment [to sell] sells preneed funeral arrangements[-file
295 with the division an application for a license to sell preneed funeral arrangements.];

296 ~~[(4) Each applicant for licensure as a preneed funeral arrangement provider shall:]~~

297 ~~[(a) submit an application in a form provided by the division;]~~

298 ~~[(b) pay a fee as determined by the department under Section 63-38-3.2;]~~

299 ~~[(c) be licensed in the state as a funeral service establishment;]~~

300 ~~[(d) be free of activities or conduct which, when considered with the responsibilities of~~
301 ~~a licensee and the public interest, is a threat to the public health, safety, or welfare;]~~

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

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

307 ~~[(5)]~~ (4) Each applicant for licensure as a preneed funeral arrangement sales agent
 308 shall:

- 309 (a) submit an application in a form prescribed by the division;
 310 (b) pay a fee as determined by the department under Section 63-38-3.2;
 311 (c) be of good moral character in that the applicant has not been convicted of:
 312 (i) a first or second degree felony;
 313 (ii) a misdemeanor involving moral turpitude; or
 314 (iii) any other crime that when considered with the duties and responsibilities of a
 315 preneed funeral sales agent is considered by the division and the board to indicate that the best
 316 interests of the public are not served by granting the applicant a license;

317 ~~[(d) be a high school graduate or have obtained a certificate of equivalency approved
 318 by the division;]~~

319 (d) have obtained a high school diploma or its equivalent or a higher education degree;

320 (e) ~~[pass an]~~ have obtained a passing score on an examination approved by the division
 321 in collaboration with the board;

322 (f) ~~[provide evidence that the applicant will be associated]~~ affiliate with a licensed
 323 ~~[preneed] funeral [arrangement provider upon issuance of a license under terms acceptable to
 324 the division]~~ service establishment; and

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

328 Section 6. Section **58-9-303** is amended to read:

329 **58-9-303. Term of license -- Expiration -- Renewal.**

330 (1) (a) The division shall issue each license under this chapter in accordance with a
 331 two-year renewal cycle established by rule.

332 (b) The division may by rule extend or shorten a renewal cycle by as much as one year
 333 to stagger the renewal cycles it administers.

334 (2) Notwithstanding Subsection (1), a person who has once held a license as a funeral
 335 service ~~[apprentice]~~ intern and has not qualified for licensure as a funeral service director may
 336 be issued a subsequent funeral service ~~[apprentice]~~ intern license for only one additional
 337 two-year term upon the specific approval of the division in collaboration with the board.

338 (3) At the time of renewal, the funeral service director licensee shall show satisfactory
339 evidence of completion of continuing education as required under Section 58-9-304.

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

342 (5) (a) Except as otherwise provided in Subsections (5)(b) and (c), the division may
343 take action against the license of a funeral service establishment that does not have a licensed
344 funeral service director.

345 (b) If a licensed funeral service director dies and leaves the funeral service
346 establishment as part of the assets of the funeral service director's estate:

347 (i) the personal representative of the funeral service director's estate may operate the
348 funeral service establishment under the license, or renewals of the license, for not more than
349 one year from the date of the funeral service director's death without meeting the qualifications
350 of an applicant and without having a licensed funeral service director; but

351 (ii) Subsection (5)(b)(i) does not allow an unlicensed person to perform a function that
352 requires performance by a funeral service director licensed under this chapter.

353 (c) If the funeral service director of a licensed funeral service establishment terminates
354 employment with the establishment, the establishment has 90 days to hire a new licensed
355 funeral service director before action may be taken against the license under Subsection (5)(a).

356 Section 7. Section **58-9-305** is amended to read:

357 **58-9-305. Exemptions from licensure.**

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

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

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

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

366 (a) funeral merchandise;

367 (b) headstones; or

368 (c) other memorial merchandise;

- 369 (4) the performance of funeral, graveside, or memorial services by:
- 370 (a) a member of the clergy;
- 371 (b) a member of the decedent's family; or
- 372 (c) any other recognized individual;
- 373 (5) assisting a Utah licensed funeral service director regarding disasters or special
- 374 emergencies by individuals licensed in other states as funeral service directors or embalmers;
- 375 (6) activities of an unlicensed individual employed by a funeral service establishment
- 376 involving arrangement for a funeral service or the sale of funeral merchandise if the binding
- 377 contract is reviewed, approved, and signed in behalf of the funeral service establishment by a
- 378 licensed funeral service director; and
- 379 (7) nonprofessional tasks or activities which:
- 380 (a) do not require independent professional judgment [~~which~~]; and
- 381 (b) are required of persons employed by a funeral service establishment under the
- 382 supervision of a funeral service director.

383 Section 8. Section **58-9-306** is amended to read:

384 **58-9-306. License by endorsement.**

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

386 [~~holds a license to engage in the practice of funeral service from another state, jurisdiction, or~~

387 ~~territory of the United States, if~~]:

388 [~~(1) the person's license is:~~

389 [~~(a) active;~~

390 [~~(b) in good standing; and~~

391 [~~(c) free from disciplinary action; and~~

392 [~~(2) the person:~~

393 [~~(a) meets the requirements of Section 58-1-302;~~

394 (1) provides documentation that the funeral service director's current licensure is

395 active, in good standing, and free from any disciplinary action;

396 (2) submits an application on a form provided by the division;

397 (3) pays a fee determined by the department;

398 [~~(b)~~] (4) is of good moral character in that the person has not been convicted of:

399 [~~(i)~~] (a) a first or second degree felony;

400 [(ii)] (b) a misdemeanor involving moral turpitude; or
401 [(iii)] (c) any other crime that when considered with the duties and responsibilities of
402 the license for which the person is applying is considered by the division and the board to
403 indicate that the best interests of the public are not served by granting the applicant a license;
404 [(e)] (5) has completed five years of lawful and active practice as a licensed funeral
405 service director and embalmer within the ten years immediately preceding the application for
406 licensure by endorsement;
407 [(d)] (6) has passed a national examination determined by the division; and
408 [(e)] (7) has ~~[passed an examination on]~~ demonstrated competency of the laws and the
409 rules of the state as determined by the division.

410 Section 9. Section **58-9-307** is amended to read:

411 **58-9-307. Supervision of funeral service intern.**

412 (1) A person seeking licensure as a funeral service ~~[apprentice]~~ intern shall submit as a
413 part of the application for a license:

414 (a) the name of the licensed funeral service director who has agreed to supervise all
415 duties performed by the applicant as an intern; and

416 (b) the name of the licensed funeral service establishment at which the training and
417 supervision shall take place.

418 (2) A licensed funeral service director may supervise only one licensed funeral service
419 ~~[apprentice]~~ intern at one time.

420 (3) (a) Within 30 days after the day on which the supervisor-supervisee relationship
421 between a licensed funeral service director and a licensed funeral service ~~[apprentice]~~ intern
422 terminates, the funeral service director shall furnish to the division a report of the performance
423 of the funeral service ~~[apprentice]~~ intern.

424 (b) The report shall be in form and content as prescribed by the division.

425 (4) (a) A licensed funeral service ~~[apprentice may apply to]~~ intern shall notify the
426 division ~~[to request supervision by a different]~~ of any change in the intern's supervising funeral
427 service director. ~~[The application shall be made on a form prescribed by the division. A~~
428 ~~change of supervisor requires approval of the division.]~~

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

431 (5) The licensed funeral service director is responsible for supervision of all of the
 432 duties and functions performed by the funeral service [~~apprentice~~] intern throughout the entire
 433 internship period.

434 Section 10. Section **58-9-501** is amended to read:

435 **58-9-501. Unlawful conduct.**

436 "Unlawful conduct" includes:

437 (1) doing any of the following to prepare a dead human body for disposition unless
 438 licensed as a funeral service director or a funeral service [~~apprentice~~] intern:

439 (a) embalming;

440 (b) calcinating;

441 (c) pulverizing;

442 (d) cremating; or

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

444 (2) using the title "funeral service director," "funeral service [~~apprentice~~] intern,"

445 "preneed funeral service sales agent," or "funeral service establishment" unless licensed under
 446 this chapter;

447 (3) engaging in, providing, or agreeing to provide funeral arrangements to be provided
 448 under a preneed funeral arrangement without first obtaining a license as a [~~preneed~~] funeral
 449 [~~arrangement provider~~] service establishment under this chapter;

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

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

454 (b) a funeral service director; and

455 [~~(5) selling or representing for sale any preneed funeral arrangement contract or~~
 456 ~~agreement;~~]

457 [~~(a) which has not been approved as to form and content by the division; and]~~

458 [~~(b) a current copy of which is not on file with the division; and]~~

459 [~~(6)~~] (5) failing to comply with Section 58-9-702.

460 Section 11. Section **58-9-502** is amended to read:

461 **58-9-502. Unprofessional conduct.**

- 462 (1) "Unprofessional conduct" includes:
- 463 (a) the failure of a funeral service director to accurately document, report, and
- 464 supervise the activities of a funeral service [~~apprentice~~] intern;
- 465 (b) knowingly soliciting the sale of any funeral service or funeral merchandise for a
- 466 person whose death occurred or was imminent prior to the solicitation; [~~and~~]
- 467 (c) paying or offering to pay a commission or anything of value to secure deceased
- 468 human remains for a funeral service or disposition to:
- 469 (i) medical personnel;
- 470 (ii) a nursing home;
- 471 (iii) a nursing home employee;
- 472 (iv) a hospice;
- 473 (v) a hospice employee;
- 474 (vi) clergy;
- 475 (vii) a government official; or
- 476 (viii) any other third party[~~;~~]; and
- 477 (d) failure to provide the following current information to the division:
- 478 (i) a licensee's business address;
- 479 (ii) a licensee's primary residence;
- 480 (iii) a funeral service establishment's funeral service director; or
- 481 (iv) a supervising funeral service director's funeral service intern's name.
- 482 (2) "Unprofessional conduct" does not include:
- 483 (a) general advertising directed to the public at large; or
- 484 (b) responding to a notification of death from:
- 485 (i) medical personnel;
- 486 (ii) a nursing home;
- 487 (iii) a nursing home employee;
- 488 (iv) a hospice;
- 489 (v) a hospice employee;
- 490 (vi) clergy;
- 491 (vii) a government official; or
- 492 (viii) any authorized representative of the family of the deceased person.

493 Section 12. Section **58-9-503** is amended to read:

494 **58-9-503. Penalty for unlawful conduct.**

495 (1) ~~[Any]~~ A person who violates the unlawful conduct provisions defined in
496 Subsections 58-9-501(1) through ~~[(5)]~~ (4) is guilty of a class A misdemeanor.

497 (2) ~~[Any]~~ A person who violates the unlawful conduct provision defined in Subsection
498 58-9-501~~[(6)]~~(5) may be prosecuted under Title 76, Chapter 6, Part 4, Theft.

499 Section 13. Section **58-9-602** is amended to read:

500 **58-9-602. Determination of control of disposition.**

501 The right and duty to control the disposition of a deceased person, including the
502 location, manner and conditions of the disposition, and arrangements for funeral goods and
503 services to be provided vest in the following degrees of relationship in the order named,
504 provided the person is at least 18 and is mentally competent:

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

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

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

509 (c) directions that the person designated in this Subsection (1) is authorized to carry out
510 the disposition of the decedent's remains;

511 ~~[(e)]~~ (d) the signature of the decedent;

512 ~~[(d)]~~ (e) the signatures of at least two unrelated individuals who are not the person
513 designated under this Subsection (1), each of whom signed within a reasonable time after
514 witnessing the signing of the form by the decedent; and

515 ~~[(e)]~~ (f) the date or dates the written instrument was prepared and signed;

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

517 (3) (a) the sole surviving child ~~[or the majority of the surviving children]~~ of the
518 decedent ~~[over the age of 18]~~, or if there is more than one child of the decedent, the majority of
519 the surviving children;

520 ~~[(4) the unanimous consent of the surviving parent, parents, or lawful custodian of the~~
521 ~~decedent;]~~

522 ~~[(5) the person or persons in the next degree of succession under Title 75, Chapter 2,~~
523 ~~Intestate Succession and Wills;]~~

524 (b) less than one-half of the surviving children are vested with the rights of this section
525 if they have used reasonable efforts to notify all other surviving children of their instructions
526 and are not aware of any opposition to those instructions on the part of more than one-half of
527 all surviving children;

528 (4) the surviving parent or parents of the decedent, and if one of the surviving parents
529 is absent, the remaining parent is vested with the rights and duties of this section after
530 reasonable efforts have been unsuccessful in locating the absent surviving parent;

531 (5) (a) the surviving brother or sister of the decedent, or if there is more than one
532 sibling of the decedent, the majority of the surviving siblings;

533 (b) less than the majority of surviving siblings are vested with the rights and duties of
534 this section if they have used reasonable efforts to notify all other surviving siblings of their
535 instructions and are not aware of any opposition to those instructions on the part of more than
536 one-half of all surviving siblings;

537 (6) the person in the classes of the next degree of kinship, in descending order, under
538 the laws of descent and distribution to inherit the estate of the decedent, and if there is more
539 than one person of the same degree, any person of that degree may exercise the right of
540 disposition;

541 ~~[(6)]~~ (7) any public official charged with arranging the disposition of deceased persons;
542 and

543 ~~[(7) a person or persons whom the funeral service director reasonably believes is~~
544 ~~entitled to control the disposition; and]~~

545 (8) in the absence of any person under Subsections (1) through (7), any other person
546 willing to assume the ~~[right and duty to control the disposition]~~ responsibilities to act and
547 arrange the final disposition of the decedent's remains, including the personal representative of
548 the decedent's estate or the funeral service director with custody of the body, after attesting in
549 writing that a good faith effort has been made to no avail to contact the individuals referred to
550 in Subsections (1) through (7).

551 Section 14. Section **58-9-603** is repealed and reenacted to read:

552 **58-9-603. Loss of right of disposition.**

553 (1) As used in this section, "estranged" means a physical and emotional separation
554 from the decedent at the time of death which has existed for a period of time that clearly

555 demonstrates an absence of affection, trust, and regard for the decedent.

556 (2) A person who has a right of disposition under this chapter forfeits that right and the
557 right is passed on to the next qualifying person as listed in Section 58-9-602 under the
558 following circumstances:

559 (a) the person is charged with first or second degree murder or voluntary manslaughter
560 in connection with the decedent's death, and the charges are known by the funeral service
561 director, except that if the charges against the person are dropped or if the person is acquitted
562 of the charges, the right of disposition is returned to the person;

563 (b) the person does not exercise the person's right of disposition within three days of
564 notification of the decedent's death or within five days of the decedent's death, whichever is
565 earlier; or

566 (c) if a probate court under Section 58-9-605 determines that the person entitled to the
567 right of disposition and the decedent were estranged at the time of death.

568 Section 15. Section **58-9-605** is enacted to read:

569 **58-9-605. Disputes.**

570 (1) Notwithstanding Sections 58-9-601 through 58-9-604, the probate court for the
571 county in which the decedent resided may:

572 (a) award the right of disposition to the person determined by the court to be the most
573 fit and appropriate to carry out the right of disposition; and

574 (b) make decisions regarding the decedent's remains if those sharing the right of
575 disposition cannot agree.

576 (2) The following provisions apply to the probate court's determinations under this
577 section:

578 (a) if the persons holding the right of disposition are two or more persons with the
579 same relationship to the decedent, and they cannot, by majority vote, make a decision regarding
580 the disposition of the decedent's remains, any of those persons or a funeral service director with
581 custody of the remains may petition the probate court to make the decision;

582 (b) in making a determination the probate court shall consider:

583 (i) the reasonableness and practicality of the proposed funeral arrangements and
584 disposition;

585 (ii) the degree of the personal relationship between the decedent and each of the

586 persons claiming the right of disposition;

587 (iii) the desires of the person or persons who are ready, able, and willing to pay the cost
588 of the funeral arrangements and disposition;

589 (iv) the convenience and needs of other families and friends wishing to pay their
590 respects;

591 (v) the desires of the decedent; and

592 (vi) the degree to which the funeral arrangements would allow maximum participation
593 by all who wish to pay their respects.

594 (3) (a) In a dispute regarding the right of disposition, until the funeral service director
595 receives a court order or other written agreement signed by the parties to the dispute that
596 decides the final disposition of the remains, the funeral service director is not liable for refusing
597 to:

598 (i) accept the decedent's remains;

599 (ii) inter or otherwise dispose of the decedent's remains; or

600 (iii) complete the arrangements for the final disposition of the decedent's remains.

601 (b) If, during a dispute, a funeral service director retains a decedent's remains for final
602 disposition, the director may:

603 (i) embalm or refrigerate and shelter the body, or both, to preserve it while awaiting the
604 final decision of the probate court; and

605 (ii) add the costs incurred under Subsection (3)(b)(i) to the final disposition costs.

606 (4) The legal fees and court costs incurred by a funeral service director for petitioning
607 the probate court under Subsection (2)(a) may be added to the final disposition costs.

608 (5) (a) This section does not require or impose a duty upon a funeral service director to
609 bring an action under Subsection (2)(a).

610 (b) A funeral service director may not be held criminally or civilly liable for failing to
611 bring an action under Subsection (2)(a).

612 (6) Except to the degree that it may be considered by the probate court under
613 Subsection (2)(b)(iii), the fact that a person has paid for or agreed to pay for all or part of the
614 decedent's funeral arrangements and final disposition does not give that person a higher priority
615 to the right of disposition that the person would otherwise have.

616 (7) The personal representative of the decedent's estate does not, by virtue of being the

617 personal representative, have a greater claim to the right of disposition than the personal
618 representative would otherwise have.

619 Section 16. Section **58-9-606** is enacted to read:

620 **58-9-606. Right to rely -- Immunity.**

621 (1) A person signing a funeral service agreement, cremation authorization form, or
622 other authorization for a decedent's disposition warrants the truthfulness of the facts set forth in
623 the document, including the identity of the decedent and the person's authority to order the
624 disposition.

625 (2) A funeral service establishment has the right to rely on a contract or authorization
626 executed under Subsection (1) and may carry out the instructions of the person whom its
627 funeral service director reasonably believes holds the right of disposition.

628 (3) A funeral service director incurs no civil or criminal liability for failure to contact
629 or independently investigate the existence of any next-of-kin or relative of the decedent.

630 (4) If there are at least two persons in the nearest class of the next-of-kin who are equal
631 in priority and a funeral service director has no knowledge of an objection by other members of
632 the class, the funeral service director may rely on and act according to the instructions of the
633 first person in the class to make funeral and disposition arrangements.

634 (5) A funeral service establishment or funeral service director who relies in good faith
635 on the instructions of a person claiming the right of disposition under this part is immune from
636 civil and criminal liability and disciplinary action in carrying out the disposition of a decedent's
637 remains in accordance with that person's instructions.

638 Section 17. Section **58-9-701** is amended to read:

639 **58-9-701. Preneed contract requirements.**

640 (1) (a) Every preneed funeral arrangement sold in Utah shall be evidenced by a written
641 contract.

642 (b) The [provider] funeral service establishment shall [~~file the form of the contract with~~
643 ~~the division. Approval of the contract by the division is required before:~~] maintain a copy of
644 the contract until five years after all of its obligations under the contract have been executed.

645 [~~(a) any representation may be made by a provider or sales agent to a potential buyer;~~
646 ~~or]~~

647 [~~(b) any sale.~~]

648 (2) Each preneed contract form ~~[approved by the division]~~ shall:
649 (a) be written in clear and understandable language printed in an easy-to-read type size
650 and style;
651 (b) bear the preprinted name, address, telephone number, and license number of the
652 ~~[provider]~~ funeral service establishment obligated to provide the services under the contract
653 terms;
654 (c) be sequentially numbered by contract form;
655 (d) clearly identify that the contract is a guaranteed product contract;
656 (e) provide that a trust is established in accordance with the provisions of Section
657 58-9-702;
658 (f) if the contract is funded by an insurance policy or product, provide that the
659 insurance policy or product is filed with the Insurance Department and meets the requirements
660 of Title 31A, Insurance Code; and
661 (g) conform to other standards created by rule under Title 63, Chapter 46a, Utah
662 Administrative Rulemaking Act, to protect the interests of buyers and potential buyers.
663 ~~[(3) No modification of the form, terms, or conditions of the preneed contract may be~~
664 ~~made without the prior written approval of the division. The division may not unreasonably~~
665 ~~withhold approval.]~~
666 ~~[(4)]~~ (3) A preneed contract shall provide for payment by the buyer in a form which
667 may be liquidated by the ~~[provider]~~ funeral service establishment within 30 days after the day
668 the ~~[provider]~~ funeral service establishment or sales agent receives the payment.
669 ~~[(5)]~~ (4) A preneed contract may not be revocable by the ~~[provider]~~ funeral service
670 establishment except:
671 (a) in the event of nonpayment; and
672 (b) under terms and conditions clearly set forth in the contract.
673 ~~[(6)]~~ (5) (a) A preneed contract may not be revocable by the buyer or beneficiary
674 except:
675 (i) in the event of:
676 (A) a substantial contract breach by the ~~[provider]~~ funeral service establishment; or
677 (B) substantial evidence that the ~~[provider]~~ funeral service establishment is or will be
678 unable to provide the personal property or services to the beneficiary as provided under the

679 contract; or

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

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

683 ~~[(7)]~~ (6) (a) A preneed contract shall provide the buyer the option to require the
684 ~~[provider]~~ funeral service establishment to furnish a written disclosure to a person who does
685 not live at the same residence as the buyer.

686 (b) The buyer may choose:

687 ~~[(a)]~~ (i) a full disclosure containing a copy of the entire preneed contract;

688 ~~[(b)]~~ (ii) a partial disclosure informing the recipient of:

689 ~~[(i)]~~ (A) the existence of a preneed contract; and

690 ~~[(ii)]~~ (B) the name, address, telephone number, and license number of the ~~[provider]~~
691 funeral service establishment obligated to provide the services under the preneed contract; or

692 ~~[(c)]~~ (iii) not to require the ~~[provider]~~ funeral service establishment to furnish a written
693 disclosure to another person.

694 Section 18. Section **58-9-703** is amended to read:

695 **58-9-703. Trust agreement.**

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

698 (a) the requirements of this chapter;

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

700 (c) the provisions of Title 75, Chapter 7, ~~[Trust Administration]~~ Utah Uniform Trust
701 Code; and

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

703 (2) Each trust agreement shall require that the ~~[provider report to the division:]~~ funeral
704 service establishment maintain a copy of the trust agreement until five years after all of its
705 obligations under the trust agreement have been executed or transferred.

706 ~~[(a) funds deposited into the trust in the name of the beneficiary;]~~

707 ~~[(b) the contract number; and]~~

708 ~~[(c) that the trustee shall establish a separate account within the trust for each~~
709 ~~beneficiary and contract number.]~~

710 (3) Each trust agreement shall require that the trustee:
 711 (a) separately account for each contract; and
 712 (b) separately record payments with respect to each contract made into the corpus of
 713 the trust.

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

- 716 (a) the death of the beneficiary;
- 717 (b) revocation of the contract by the [provider] funeral service establishment upon
 718 nonpayment by the buyer; or
- 719 (c) revocation of the contract by the beneficiary or buyer.

720 Section 19. Section **58-9-706** is amended to read:

721 **58-9-706. Trust funds and insurance reports.**

722 (1) (a) Each [provider] funeral service establishment shall [~~file an annual report with~~
 723 ~~the division on or before April 15 of each year in a form provided by the division]~~ maintain an
 724 annual report of preneed trust funds and insurance.

725 (b) The report shall [state] contain:

726 [~~(a)~~] (i) the name of the trustees with which the [provider] funeral service
 727 establishment has trust funds on deposit; and

728 [~~(b)~~] (ii) the amount remaining on deposit in the trust fund on:

729 [(i)] (A) December 31 of the preceding year; or

730 [(ii)] (B) another annual reporting period as the division may establish.

731 [(2) (a) A provider is not required to renew its license if the provider:]

732 [(i) has outstanding contracts; and]

733 [(ii) has discontinued the sale of contracts.]

734 [(b) A provider that does not renew its license pursuant to this Subsection (2) shall
 735 continue to make annual reports to the division until all outstanding contracts have been:]

736 [(i) fully performed; or]

737 [(ii) transferred to a licensed provider.]

738 (2) Each funeral service establishment may be audited by the division at any time.

739 Section 20. Section **58-9-707** is amended to read:

740 **58-9-707. Records and reports of trustee -- Contents.**

- 741 (1) The trustee shall keep [~~a~~] an orderly record of all agreements.
- 742 (2) The record shall contain:
- 743 [~~1~~] (a) the name and address of the person making [~~payments~~] a payment;
- 744 [~~2~~] (b) the date and the amount of each payment made;
- 745 [~~3~~] (c) the date and amount of each withdrawal and to whom paid; and
- 746 [~~4~~] (d) the name of the bank or trust company depository.

Legislative Review Note
as of 1-10-07 3:21 PM

Office of Legislative Research and General Counsel

H.B. 130 - Funeral Services Licensing Act Amendments

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments. Businesses and individuals may have to update their equipment and facilities to meet the new requirements. Some funeral directors may be required to establish residency within the service area.

1/24/2007, 11:03:51 AM, Lead Analyst: Eckersley, S.

Office of the Legislative Fiscal Analyst