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**FUNERAL SERVICES LICENSING ACT**

**AMENDMENTS**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Stephen H. Urquhart**

Senate Sponsor: Jon J. Greiner

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**LONG TITLE**

**General Description:**

This bill modifies provisions of the Funeral Services Licensing Act related to the cremation and disposition of cremated human remains and the distribution of preneed funeral arrangement funds.

**Highlighted Provisions:**

This bill:

- ▶ provides definitions pertaining to the cremation and disposition of cremated human remains;
- ▶ provides an authorization process for a funeral service establishment to cremate human remains, including the required content of a cremation authorization form;
- ▶ provides a criminal penalty for individuals who remove valuables from human remains without authorized permission;
- ▶ provides for record keeping by a funeral service establishment of the contacts between the establishment and persons who deliver and receive the human remains of persons cremated at the establishment's crematory;
- ▶ provides guidelines regarding the use and acceptance of cremation containers;
- ▶ provides for cremation procedures to be followed by a funeral service establishment, including the required receipt or proof of a death certificate, the removal of a pacemaker or other battery powered implant from the human remains



28 prior to cremation, verification of the identification of the human remains, and return of the  
29 cremated remains to an authorizing agent or the agent's designee;

30 ▶ provides for the final disposition of cremated remains and limitation of liability on  
31 the part of a funeral service establishment; and

32 ▶ modifies requirements regarding the distribution of preneed funeral arrangement  
33 funds by a funeral service establishment.

34 **Monies Appropriated in this Bill:**

35 None

36 **Other Special Clauses:**

37 None

38 **Utah Code Sections Affected:**

39 AMENDS:

40 **58-9-102**, as last amended by Laws of Utah 2007, Chapter 144

41 **58-9-705**, as enacted by Laws of Utah 2003, Chapter 49

42 ENACTS:

43 **58-9-607**, Utah Code Annotated 1953

44 **58-9-608**, Utah Code Annotated 1953

45 **58-9-609**, Utah Code Annotated 1953

46 **58-9-610**, Utah Code Annotated 1953

47 **58-9-611**, Utah Code Annotated 1953

48 **58-9-612**, Utah Code Annotated 1953



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

51 Section 1. Section **58-9-102** is amended to read:

52 **58-9-102. Definitions.**

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

54 (1) "Authorizing agent" means a person legally entitled to authorize the cremation of  
55 human remains.

56 [(+)] (2) "Beneficiary" means the individual who, at the time of the beneficiary's death,  
57 is to receive the benefit of the property and services purchased under a preneed funeral  
58 arrangement.

59 ~~[(2)]~~ (3) "Board" means the Board of Funeral Service created in Section 58-9-201.

60 (4) "Body part" means:

61 (a) a limb or other portion of the anatomy that is removed from a person or human  
62 remains for medical purposes during treatment, surgery, biopsy, autopsy, or medical research;

63 or

64 (b) a human body or any portion of a body that has been donated to science for medical  
65 research purposes.

66 ~~[(3)]~~ (5) "Buyer" means a person who purchases a preneed funeral arrangement.

67 ~~[(4)]~~ (6) "Calcination" means a process in which a dead human body is reduced by  
68 intense heat to a residue that is not as substantive as the residue that follows cremation.

69 (7) "Cremated remains" means all the remains of a cremated body recovered after the  
70 completion of the cremation process, including pulverization which leaves only bone fragments  
71 reduced to unidentifiable dimensions and may possibly include the residue of foreign matter  
72 including casket material, bridgework, or eyeglasses that were cremated with the human  
73 remains.

74 ~~[(5)]~~ (8) "Cremation" means the ~~[reduction of a dead human body by direct flame to~~  
75 ~~residue that includes bone fragments.]~~ technical process, using direct flame and heat, that  
76 reduces human remains to bone fragments through heat and evaporation and includes the  
77 processing and usually the pulverization of the bone fragments.

78 (9) "Cremation chamber" means the enclosed space within which the cremation  
79 process takes place and which is used exclusively for the cremation of human remains.

80 (10) "Cremation container" means the container:

81 (a) in which the human remains are transported to the crematory and placed in the  
82 cremation chamber for cremation; and

83 (b) that meets substantially all of the following standards:

84 (i) composed of readily combustible materials suitable for cremation;

85 (ii) able to be closed in order to provide a complete covering for the human remains;

86 (iii) resistant to leakage or spillage;

87 (iv) rigid enough for handling with ease; and

88 (v) able to provide protection for the health, safety, and personal integrity of crematory  
89 personnel.

90            (11) "Crematory" means the building or portion of a building that houses the cremation  
91 chamber and the holding facility.

92            [~~(6)~~] (12) "Direct disposition" means the disposition of a dead human body:

- 93            (a) as quickly as law allows;
- 94            (b) without preparation of the body by embalming; and
- 95            (c) without an attendant funeral service or graveside service.

96            [~~(7)~~] (13) "Disposition" means the final disposal of a dead human body by:

- 97            (a) earth interment;
- 98            (b) above ground burial;
- 99            (c) cremation;
- 100           (d) calcination;
- 101           (e) burial at sea;
- 102           (f) delivery to a medical institution; or
- 103           (g) other lawful means.

104           [~~(8)~~] (14) "Embalming" means replacing body fluids in a dead human body with  
105 preserving and disinfecting chemicals.

106           [~~(9)~~] (15) (a) "Funeral merchandise" means any of the following into which a dead  
107 human body is placed in connection with the transportation or disposition of the body:

- 108           (i) a vault;
- 109           (ii) a casket; or
- 110           (iii) other personal property.
- 111           (b) "Funeral merchandise" does not include:

- 112           (i) a mausoleum crypt;
- 113           (ii) an interment receptacle preset in a cemetery; or
- 114           (iii) a columbarium niche.

115           [~~(10)~~] (16) "Funeral service" means a service, rite, or ceremony performed:

- 116           (a) with respect to the death of a human; and
- 117           (b) with the body of the deceased present.

118           [~~(11)~~] (17) "Funeral service director" means an individual licensed under this chapter  
119 who may engage in all lawful professional activities regulated and defined under the practice of  
120 funeral service.

121            [~~(12)~~] (18) (a) "Funeral service establishment" means a place of business at a specific  
122 street address or location licensed under this chapter that is devoted to:

123            (i) the embalming, care, custody, shelter, preparation for burial, and final disposition of  
124 dead human bodies; and

125            (ii) the furnishing of services, merchandise, and products purchased from the  
126 establishment as a preneed provider under a preneed funeral arrangement.

127            (b) "Funeral service establishment" includes:

128            (i) all portions of the business premises and all tools, instruments, and supplies used in  
129 the preparation and embalming of dead human bodies for burial, cremation, and final  
130 disposition as defined by division rule; and

131            (ii) a facility used by the business in which funeral services may be conducted.

132            [~~(13)~~] (19) "Funeral service intern" means an individual licensed under this chapter  
133 who is permitted to:

134            (a) assist a funeral service director in the embalming or other preparation of a dead  
135 human body for disposition;

136            (b) assist a funeral service director in the cremation, calcination, or pulverization of a  
137 dead human body or its remains; and

138            (c) perform other funeral service activities under the supervision of a funeral service  
139 director.

140            [~~(14)~~] (20) "Graveside service" means a funeral service held at the location of  
141 disposition.

142            [~~(15)~~] (21) "Memorial service" means a service, rite, or ceremony performed:

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

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

145            [~~(16)~~] (22) "Practice of funeral service" means:

146            (a) supervising the receipt of custody and transportation of a dead human body to  
147 prepare the body for:

148            (i) disposition; or

149            (ii) shipment to another location;

150            (b) entering into a contract with a person to provide professional services regulated  
151 under this chapter;

- 152 (c) embalming or otherwise preparing a dead human body for disposition;
- 153 (d) supervising the arrangement or conduct of:
  - 154 (i) a funeral service;
  - 155 (ii) a graveside service; or
  - 156 (iii) a memorial service;
- 157 (e) cremation, calcination, or pulverization of a dead human body or the body's
- 158 remains;
- 159 (f) supervising the arrangement of:
  - 160 (i) a disposition; or
  - 161 (ii) a direct disposition;
  - 162 (g) facilitating:
    - 163 (i) a disposition; or
    - 164 (ii) a direct disposition;
  - 165 (h) supervising the sale of funeral merchandise by a funeral establishment;
  - 166 (i) managing or otherwise being responsible for the practice of funeral service in a
  - 167 licensed funeral service establishment;
  - 168 (j) supervising the sale of a preneed funeral arrangement; and
  - 169 (k) contracting with or employing individuals to sell a preneed funeral arrangement.
- 170 [(17)] (23) (a) "Preneed funeral arrangement" means a written or oral agreement sold in
- 171 advance of the death of the beneficiary under which a person agrees with a buyer to provide at
- 172 the death of the beneficiary any of the following as are typically provided in connection with a
- 173 disposition:
  - 174 (i) goods;
  - 175 (ii) services, including:
    - 176 (A) embalming services; and
    - 177 (B) funeral directing services;
  - 178 (iii) real property; or
  - 179 (iv) personal property, including:
    - 180 (A) a casket;
    - 181 (B) another primary container;
    - 182 (C) a cremation or transportation container;

- 183 (D) an outer burial container;  
 184 (E) a vault;  
 185 (F) a grave liner;  
 186 (G) funeral clothing and accessories;  
 187 (H) a monument;  
 188 (I) a grave marker; and  
 189 (J) a cremation urn.

190 (b) "Preneed funeral arrangement" does not include a policy or product of life  
 191 insurance providing a death benefit cash payment upon the death of the beneficiary which is  
 192 not limited to providing the products or services described in Subsection [(17)] (23)(a).

193 (24) "Processing" means the reduction of identifiable bone fragments after the  
 194 completion of the cremation process to unidentifiable bone fragments by manual means.

195 ~~[(18)] (25) "Pulverization" means [a grinding process that reduces the residue of a~~  
 196 ~~cremation or calcination into a powdery substance]~~ the reduction of identifiable bone fragments  
 197 after the completion of the cremation and processing to granulated particles by manual or  
 198 mechanical means.

199 ~~[(19)] (26) "Sales agent" means an individual licensed under this chapter as a preneed~~  
 200 ~~funeral arrangement sales agent.~~

201 (27) "Temporary container" means a receptacle for cremated remains usually made of  
 202 cardboard, plastic, or similar material designed to hold the cremated remains until an urn or  
 203 other permanent container is acquired.

204 ~~[(20)] (28) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-9-501.~~

205 ~~[(21)] (29) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-9-502.~~

206 (30) "Urn" means a receptacle designed to permanently encase the cremated remains.

207 Section 2. Section **58-9-607** is enacted to read:

208 **58-9-607. Authorization to cremate.**

209 (1) Except as otherwise provided in this section, a funeral service establishment may  
 210 not cremate human remains until it has received:

211 (a) a cremation authorization form signed by an authorizing agent;

212 (b) a completed and executed burial transit permit or similar document, as provided by  
 213 state law, indicating that human remains are to be cremated; and

214 (c) any other documentation required by the state, county, or municipality.  
215 (2) (a) The cremation authorization form shall contain, at a minimum, the following  
216 information:  
217 (i) the identity of the human remains and the time and date of death, including a signed  
218 declaration of visual identification of the deceased or refusal to visually identify the deceased;  
219 (ii) the name of the funeral director and funeral service establishment that obtained the  
220 cremation authorization;  
221 (iii) notification as to whether the death occurred from a disease declared by the  
222 department of health to be infectious, contagious, communicable, or dangerous to the public  
223 health;  
224 (iv) the name of the authorizing agent and the relationship between the authorizing  
225 agent and the decedent;  
226 (v) a representation that the authorizing agent has the right to authorize the cremation  
227 of the decedent and that the authorizing agent is not aware of any living person with a superior  
228 or equal priority right to that of the authorizing agent, except that if there is another living  
229 person with a superior or equal priority right, the form shall contain a representation that the  
230 authorizing agent has:  
231 (A) made reasonable efforts to contact that person;  
232 (B) been unable to do so; and  
233 (C) no reason to believe that the person would object to the cremation of the decedent;  
234 (vi) authorization for the funeral service establishment to cremate the human remains;  
235 (vii) a representation that the human remains do not contain a pacemaker or other  
236 material or implant that may be potentially hazardous or cause damage to the cremation  
237 chamber or the person performing the cremation;  
238 (viii) the name of the person authorized to receive the cremated remains from the  
239 funeral service establishment;  
240 (ix) the manner in which the final disposition of the cremated remains is to take place,  
241 if known;  
242 (x) a listing of each item of value to be delivered to the funeral service establishment  
243 along with the human remains, and instructions as to how each item should be handled;  
244 (xi) the signature of the authorizing agent, attesting to the accuracy of all



245 representations contained on the authorization form;

246 (xii) if the cremation authorization form is being executed on a preneed basis, the form  
 247 shall contain the disclosure required for preneed programs under this chapter; and

248 (xiii) except for a preneed cremation authorization, the signature of the funeral director  
 249 of the funeral service establishment that obtained the cremation authorization.

250 (b) (i) The individual referred to in Subsection (2)(a)(xiii) shall execute the funeral  
 251 authorization form as a witness and is not responsible for any of the representations made by  
 252 the authorizing agent.

253 (ii) The funeral director or the funeral service establishment shall warrant to the  
 254 crematory that the human remains delivered to the funeral service establishment have been  
 255 positively identified as the decedent listed on the cremation authorization form by the  
 256 authorizing agent or a designated representative of the authorizing agent.

257 (iii) The authorizing agent or the agent's designee may make the identification referred  
 258 to Subsection (2)(b)(ii) in person or by photograph.

259 (3) (a) A funeral service establishment may not accept unidentified human remains for  
 260 cremation.

261 (b) If a funeral service establishment takes custody of a cremation container subsequent  
 262 to the human remains being placed within the container, it can rely on the identification made  
 263 before the remains were placed in the container.

264 (c) The funeral service establishment shall place appropriate identification on the  
 265 exterior of the cremation container based on the prior identification.

266 (4) (a) A person who removes or possesses dental gold or silver, jewelry, or mementos  
 267 from human remains ~~§~~ :

267a **(i) with purpose to deprive another over control of the property is guilty of an offense**  
 267b **and subject to the punishments provided in Section 76-6-412;**

267c **(ii) with purpose to exercise unauthorized control and with intent to temporarily**  
 267d **deprive another of control over the property is guilty of an offense and subject to the**  
 267e **punishments provided in Section 76-6-404.5; and**

267f **(iii) under circumstances not amounting to Subsection (4)(a)(i) or (ii) and ~~§~~ without**  
 267g **specific written permission of the individual who has the right to**  
 268 **control those remains is guilty of a class B misdemeanor.**

269 (b) The fact that residue or any unavoidable dental gold or dental silver or other  
 270 precious metals remain in a cremation chamber or other equipment or a container used in a  
 271 prior cremation is not a violation of Subsection (4)(a).

272 Section 3. Section **58-9-608** is enacted to read:

273 **58-9-608. Record keeping.**

274 (1) (a) A funeral service establishment shall furnish to the person who delivers human  
 275 remains to the establishment for cremation a receipt signed by a representative of the

276 establishment and the person making the delivery, showing:

277 (i) the date and time of the delivery;

278 (ii) the type of casket or alternative container delivered;

279 (iii) the name of the person from whom the human remains were received;

280 (iv) the name of the funeral establishment or other entity with whom the person making  
281 the delivery is affiliated;

282 (v) the name of the person who received the human remains on behalf of the funeral  
283 service establishment; and

284 (vi) the name of the decedent.

285 (b) The funeral service establishment shall keep a copy of the receipt in its permanent  
286 records for a period of seven years.

287 (2) (a) Upon release of cremated remains, a funeral service establishment shall furnish  
288 to the person who receives the cremated remains a receipt signed by a representative of the  
289 funeral service establishment and the person who receives the remains, showing:

290 (i) the date and time of the release;

291 (ii) the name of the person to whom the cremated remains were released; and

292 (iii) if applicable:

293 (A) the name of the funeral establishment, cemetery, or other entity with whom the  
294 person receiving the cremated remains is affiliated;

295 (B) the name of the person who released the cremated remains on behalf of the funeral  
296 service establishment; and

297 (C) the name of the decedent.

298 (b) (i) The receipt shall contain a representation from the person receiving the cremated  
299 remains confirming that the remains will not be used for any improper purpose.

300 (ii) Upon release of the cremated remains, the person to whom the remains were  
301 released may transport them in any manner in the state, without a permit, and dispose of them  
302 in accordance with this chapter.

303 (c) The funeral service establishment shall retain a copy of the receipt in its permanent  
304 records for a period of seven years.

305 (3) (a) The funeral service establishment shall maintain at its place of business a  
306 permanent record of each cremation that took place at its crematory.

- 307 (b) The permanent record shall contain:
- 308 (i) the name of the decedent;
- 309 (ii) the date of cremation;
- 310 (iii) the final disposition of the cremated remains; and
- 311 (iv) any other document required by this chapter.

312 Section 4. Section **58-9-609** is enacted to read:

313 **58-9-609. Cremation containers.**

314 (1) (a) Except as provided in Subsection (2), a funeral service establishment may not  
315 make or enforce a rule requiring that human remains be:

- 316 (i) placed in a casket before cremation; or
- 317 (ii) cremated in a casket.

318 (b) A funeral service establishment may not refuse to accept human remains for  
319 cremation because they are not in a casket.

320 (2) (a) Human remains must be delivered to a crematory in a casket or cremation  
321 container.

322 (b) Human remains may not be removed from a casket or cremation container once  
323 delivered to the crematory, and the casket or cremation container shall be cremated with the  
324 human remains, unless:

- 325 (i) the funeral service establishment has been provided with written instructions to the  
326 contrary by the authorizing agent; or
- 327 (ii) the funeral service establishment does not accept metal caskets for cremation.

328 Section 5. Section **58-9-610** is enacted to read:

329 **58-9-610. Cremation procedures.**

330 (1) A funeral service establishment may not cremate human remains until a death  
331 certificate is completed and filed with the office of vital statistics and the county health  
332 department as indicated on the regular medical certificate of death or the coroner's certificate.

333 (2) (a) A funeral service establishment may not cremate human remains with a  
334 pacemaker or other battery powered potentially hazardous implant in place.

335 (b) (i) An authorizing agent for the cremation of human remains is responsible for  
336 informing the funeral service establishment in writing on the cremation authorization form  
337 about the presence of a pacemaker or other battery powered potentially hazardous implant in

338 the human remains to be cremated.

339 (ii) (A) The authorizing agent is ultimately responsible to ensure that a pacemaker or  
340 other implant is removed prior to cremation.

341 (B) If the authorizing agent informs the funeral service establishment of the presence of  
342 a pacemaker or other battery powered implant under Subsection (2)(b)(i) and the funeral  
343 service establishment fails to have it removed prior to cremation, then the funeral service  
344 establishment and the authorizing agent are jointly liable for all resulting damages.

345 (3) Only authorized persons are permitted in the crematory while human remains are in  
346 the crematory area awaiting cremation, being cremated, or being removed from the cremation  
347 chamber.

348 (4) (a) Simultaneous cremation of the human remains of more than one person within  
349 the same cremation chamber or processor is not allowed, unless the funeral service  
350 establishment has received specific written authorization to do so from the authorizing agent of  
351 each person to be cremated.

352 (b) The written authorization exempts the funeral license establishment from liability  
353 for co-mingling of the cremated remains during the cremation process.

354 (5) A funeral service establishment shall:

355 (a) verify the identification of human remains as indicated on a cremation container  
356 immediately before placing them in the cremation chamber and attach a metal identification tag  
357 to the container; and

358 (b) remove the identification tag from the cremation container and place the  
359 identification tag near the cremation chamber control where it shall remain until the cremation  
360 process is complete.

361 (6) Upon completion of a cremation, the funeral service establishment shall:

362 (a) in so far as is possible, remove all of the recoverable residue of the cremation  
363 process from the cremation chamber;

364 (b) separate all other residue from the cremation process from remaining bone  
365 fragments, in so far as possible, and process the bone fragments so as to reduce them to  
366 unidentifiable particles; and

367 (c) remove anything other than the unidentifiable bone particles from the cremated  
368 residuals, as far as is possible, and dispose of that material.

369 (7) (a) A funeral service establishment shall pack cremated remains, including the  
370 identification tag referred to in Subsection (5)(a), in a temporary container or urn ordered by  
371 the authorizing agent.

372 (b) The container or urn shall be packed in clean packing materials and not be  
373 contaminated with any other object unless otherwise directed by the authorizing agent.

374 (c) If the cremated remains cannot fit within the designated temporary container or urn,  
375 the funeral service establishment shall:

376 (i) return the excess to the authorizing agent or the agent's representative in a separate  
377 container; and

378 (ii) mark both containers or urns on the outside with the name of the deceased person  
379 and an indication that the cremated remains of the named decedent are in both containers or  
380 urns.

381 (8) (a) If the cremated remains are to be shipped, then the funeral services  
382 establishment shall pack the designated temporary container or urn in a suitable, sturdy  
383 container.

384 (b) The funeral service establishment shall have the remains shipped only by a method  
385 that:

386 (i) has an available internal tracing system; and

387 (ii) provides a receipt signed by the person accepting delivery.

388 Section 6. Section **58-9-611** is enacted to read:

389 **58-9-611. Disposition of cremated remains.**

390 (1) (a) An authorizing agent shall provide the person with whom cremation  
391 arrangements are made with a signed statement specifying the final disposition of the cremated  
392 remains, if known.

393 (b) The funeral services establishment shall retain a copy of the statement.

394 (2) (a) The authorizing agent is responsible for the disposition of the cremated remains.

395 (b) If the authorizing agent or the agent's representative has not specified the ultimate  
396 disposition of or claimed the cremated remains within 60 days from the date of the cremation,  
397 the funeral service establishment may dispose of the remains in any manner permitted by law,  
398 except scattering.

399 (c) The authorizing agent shall reimburse the funeral services establishment for all

400 reasonable costs incurred in disposing of the cremated remains under Subsection (2)(b).

401 (d) The person or entity disposing of cremated remains under this section:

402 (i) shall make and keep a record of the disposition of the remains; and

403 (ii) is discharged from any legal obligation or liability concerning the remains once the  
404 disposition has been made.

405 (e) Subsection (2)(d)(ii) applies to cremated remains in the possession of a funeral  
406 services establishment or other responsible party as of May 5, 2008, or any time after that date.

407 (3) (a) An authorizing agent may direct a funeral service establishment to dispose of or  
408 arrange for the disposition of cremated remains:

409 (i) in a crypt, niche, grave, or scattering garden located in a dedicated cemetery;

410 (ii) by scattering them over inhabited public land, the sea, or other public waterways  
411 subject to health and environmental laws and regulations; or

412 (iii) in any manner on the private property of a consenting owner.

413 (b) If cremated remains are to be disposed of on private property, other than dedicated  
414 cemetery property, the authorizing agent shall provide the funeral service establishment with  
415 the written consent of the property owner prior to disposal of the remains.

416 (c) In order to scatter cremated remains under Subsection (3)(a)(ii) or (iii), the remains  
417 must be reduced to a particle size of one-eighth inch or less and removed from their closed  
418 container.

419 (4) A funeral service establishment may not release cremated remains for scattering  
420 under this section to the authorizing agent or the agent's designated representative until the  
421 funeral service establishment is given a receipt that shows the proper filing has been made with  
422 the local registrar of births and deaths.

423 Section 7. Section **58-9-612** is enacted to read:

424 **58-9-612. Limitation of liability.**

425 (1) An authorizing agent who signs a cremation authorization form warrants the  
426 truthfulness of the facts set forth on the form, including:

427 (a) the identity of the deceased whose remains are to be cremated; and

428 (b) the authorizing agent's authority to order the cremation.

429 (2) A funeral service establishment may rely upon the representations made by an  
430 authorizing agent under Subsection (1).

431 (3) The authorizing agent is personally and individually liable for all damage resulting  
432 from a misstatement or misrepresentation made under Subsection (1).

433 (4) (a) A funeral service establishment may arrange for the cremation of and cremate  
434 human remains upon receipt of a cremation authorization form signed by an authorizing agent.

435 (b) A funeral service establishment that arranges a cremation, cremates human  
436 remains, or releases or disposes of cremated human remains pursuant to a cremation  
437 authorization form is not liable for an action it takes pursuant to that authorization.

438 (5) A funeral service establishment is not responsible or liable for any valuables  
439 delivered to the establishment with human remains to be cremated.

440 (6) A funeral service establishment may refuse to arrange for a cremation, to accept  
441 human remains for cremation, or to perform a cremation:

442 (a) if the establishment is aware of a dispute concerning the cremation of the human  
443 remains and it has not received a court order or other suitable confirmation that the dispute has  
444 been resolved;

445 (b) if the establishment has a reasonable basis for questioning any of the  
446 representations made by an authorizing agent; or

447 (c) for any other lawful reason.

448 (7) (a) If a funeral service establishment is aware of a dispute concerning the release or  
449 disposition of cremated remains in its possession, the establishment may refuse to release the  
450 remains until:

451 (i) the dispute has been resolved; or

452 (ii) it has received a court order authorizing the release or disposition of the remains.

453 (b) A funeral service establishment is not liable for its refusal to release or dispose of  
454 cremated remains in accordance with this Subsection (7).

455 Section 8. Section **58-9-705** is amended to read:

456 **58-9-705. Distribution of funds.**

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

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

462 (a) the death of the beneficiary which shall be demonstrated to the trustee by the  
463 provider by furnishing to the trustee:  
464 (i) a request for payment from the trust; and  
465 (ii) a certified copy of the death certificate of the beneficiary; or  
466 (b) revocation of the preneed funeral arrangement contract by either the provider or the  
467 buyer according to the terms and conditions of the contract, which shall be demonstrated to the  
468 trustee by the provider by furnishing to the trustee satisfactory evidence that:  
469 (i) the contract has been revoked; and  
470 (ii) the provider has paid all funds due to the buyer or beneficiary.  
471 ~~[(3) After the provider completes all of the provider's obligations under the preneed~~  
472 ~~funeral arrangement, the provider shall return all remaining funds under the preneed funeral~~  
473 ~~arrangement to the estate of the beneficiary.]~~  
474 ~~[(4)]~~ (3) Upon an order of ~~[any]~~ a court having jurisdiction, all amounts that have been  
475 paid into the corpus of the trust shall be paid to the buyer or beneficiary in the event of:  
476 (a) a judgment to the benefit of a buyer or beneficiary upon a finding that:  
477 (i) the provider is in substantial breach of the contract; or  
478 (ii) there is substantial evidence that the provider is or will be unable to provide the  
479 personal property or services to the beneficiary under the contract;  
480 (b) a judgment of bankruptcy against the provider; or  
481 (c) ~~[any]~~ a finding by the court that determines the funds should be rightfully returned  
482 to the buyer or beneficiary.

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**Legislative Review Note**  
**as of 2-11-08 4:08 PM**

**Office of Legislative Research and General Counsel**