

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

**SENATE BILL 1435
RATIFIED BILL**

AN ACT AMENDING THE LAWS PERTAINING TO THE PRACTICE OF FUNERAL SERVICE, MUTUAL BURIAL ASSOCIATIONS, PRENEED FUNERAL FUNDS, AND CREMATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-210.18A reads as rewritten:

"§ 90-210.18A. Board of Funeral Service created; qualifications; vacancies; removal.

(a) The General Assembly declares that the practice of funeral service affects the public health, safety, and welfare and is subject to regulation and control in the public interest. The public interest requires that only qualified persons be permitted to practice funeral service in North Carolina and that the profession merit the confidence of the public. This Article shall be liberally construed to accomplish these ends.

(b) The North Carolina Board of Funeral Service is created and shall regulate the practice of funeral service in this State. The Board shall have nine members as follows:

- (1) Four members appointed by the Governor from nominees recommended by the North Carolina Funeral Directors Association, Inc. These members shall be persons licensed under this Article.
- (2) Two members appointed by the Governor from nominees recommended by the Funeral Directors & Morticians Association of North Carolina, Inc. These members shall be persons licensed under this Article.
- (3) One member appointed by the Governor who is licensed under this Article and who is not affiliated with any funeral service trade association.
- (4) One member appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate. This member shall be a person who is not licensed under this Article or employed by a person who is licensed under this Article.
- (5) One member appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives. This member shall be a person who is not licensed under this Article or employed by a person who is licensed under this Article.

Members of the Board shall serve staggered three-year terms, ending on ~~June 30~~December 31 of the last year of the term or when a successor has been duly appointed, whichever is later. No member may serve more than two complete consecutive terms.

(c) Vacancies. – A vacancy shall be filled in the same manner as the original appointment, except that all unexpired terms of Board members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors have been duly appointed and qualified.

(d) Removal. – The Board may remove any of its members for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings

as a licensee shall be disqualified from participating in the official business of the Board until the charges have been resolved."

SECTION 2. G.S. 90-210.20 reads as rewritten:

"§ 90-210.20. Definitions.

(a) "Advertisement" means the publication, dissemination, circulation or placing before the public, or causing directly or indirectly to be made, published, disseminated or placed before the public, any announcement or statement in a newspaper, magazine, or other publication, or in the form of a book, notice, circular, pamphlet, letter, handbill, poster, bill, sign, placard, card, label or tag, or over any radio, television station, or electronic medium.

(b) "Board" means the North Carolina Board of Funeral Service.

(c) "Burial" includes interment in any form, cremation and the transportation of the dead human body as necessary therefor.

(c1) "Dead human bodies", as used in this Article includes fetuses beyond the second trimester and the ashes from cremated bodies.

(d) "Embalmer" means any person engaged in the practice of embalming.

(e) "Embalming" means the preservation and disinfection or attempted preservation and disinfection of dead human bodies by application of chemicals externally or internally or both and the practice of restorative art including the restoration or attempted restoration of the appearance of a dead human body. Embalming shall not include the washing or use of soap and water to cleanse or prepare a dead human body for disposition by the authorized agents, family, or friends of the deceased who do so privately without pay or as part of the ritual washing and preparation of dead human bodies prescribed by religious practices; provided, that no dead human body shall be handled in a manner inconsistent with G.S. 130A-395.

(e1) ~~"Funeral chapel"~~ "Chapel" means a chapel or other facility separate from the funeral establishment premises for the primary purpose of reposing of dead human bodies, visitation or funeral ceremony that is owned, operated, or maintained by a funeral establishment or other licensee under this Article, and that does not use the word "funeral" in its name, on a sign, in a directory, in advertising or in any other manner; in which or on the premises of which there is not displayed any caskets or other funeral merchandise; in which or on the premises of which there is not located any preparation room; and which no owner, operator, employee, or agent thereof represents the chapel to be a funeral establishment.

(f) "Funeral directing" means engaging in the practice of funeral service except embalming.

(g) "Funeral director" means any person engaged in the practice of funeral directing.

(h) "Funeral establishment" means every place or premises devoted to or used in the care, arrangement and preparation for the funeral and final disposition of dead human bodies and maintained for the convenience of the public in connection with dead human bodies or as the place for carrying on the ~~profession-practice~~ of funeral service.

(i) "Funeral service licensee" means a person who is duly licensed and engaged in the practice of funeral service.

(j) "Funeral service" means the aggregate of all funeral service licensees and their duties and responsibilities in connection with the funeral as an organized, purposeful, time-limited, flexible, group-centered response to death.

(k) "Practice of funeral service" means engaging in the care or disposition of dead human bodies or in the practice of disinfecting and preparing by embalming or otherwise dead human bodies for the funeral service, transportation, burial or cremation, or in the practice of funeral directing or embalming as presently known, whether under these titles or designations or otherwise. "Practice of funeral service" also means engaging in making arrangements for funeral service, selling funeral supplies to the public or making financial arrangements for the rendering of such services or the sale of such supplies.

(l) "Resident trainee" means a person who is engaged in preparing to become licensed for the practice of funeral directing, embalming or funeral service under the personal supervision and instruction of a person duly licensed for the practice of funeral directing, embalming or funeral service in the State of North Carolina under the provisions of this Chapter, and who is duly registered as a resident trainee with the Board."

SECTION 3. G.S. 90-210.23 reads as rewritten:

"§ 90-210.23. Powers and duties of the Board.

(a) The Board is authorized to adopt and promulgate such rules and regulations for transaction of its business and for the carrying out and enforcement of the provisions of this Article as may be necessary and as are consistent with the laws of this State and of the United States.

(b) The Board shall elect from its members a president, a vice-president and a secretary, no two offices to be held by the same person. The president and vice-president and secretary shall serve for one year and until their successors shall be elected and qualified. The Board shall have authority to engage adequate staff as deemed necessary to perform its duties.

(c) The members of the Board shall serve without compensation provided that such members shall be reimbursed for their necessary traveling expenses and the necessary expenses incident to their attendance upon the business of the Board, and in addition thereto they shall receive per diem and expense reimbursement as provided in G.S. 93B-5 for every day actually spent by such member upon the business of the Board. All expenses, salaries and per diem provided for in this Article shall be paid from funds received under the provisions of this Article and shall in no manner be an expense to the State.

(d) Every person licensed by the Board and every resident trainee shall furnish all information required by the Board reasonably relevant to the practice of the profession or business for which the person is a licensee or resident trainee. Every funeral service establishment and its records and every place of business where the practice of funeral service or embalming is carried on and its records shall be subject to inspection by the Board during normal hours of operation and periods shortly before or after normal hours of operation and shall furnish all information required by the Board reasonably relevant to the business therein conducted. Every licensee, resident trainee, embalming facility, and funeral service establishment shall provide the Board with a current post-office address which shall be placed on the appropriate register and all notices required by law or by any rule or regulation of the Board to be mailed to any licensee, resident trainee, embalming facility, or funeral service establishment shall be validly given when mailed to the address so provided.

(d1) The Board is empowered to hold hearings in accordance with the provisions of this Article and of Chapter 150B to subpoena witnesses and to administer oaths to or receive the affirmation of witnesses before the Board.

In any show cause hearing before the Board held under the authority of Chapter 150B of the General Statutes where the Board imposes discipline against a licensee, the Board may recover the costs, other than attorneys' fees, of holding the hearing against all respondents jointly, not to exceed two thousand five hundred dollars (\$2,500).

(e) The Board is empowered to regulate and inspect, according to law, funeral service establishments and embalming facilities, their operation, and the licenses under which they are operated, and to enforce as provided by law the rules, regulations, and requirements of the Division of Health Services and of the city, town, or county in which the funeral service establishment or embalming facility is maintained and operated. Any funeral establishment or embalming facility that, upon inspection, is found not to meet all of the requirements of this Article shall pay a reinspection fee to the Board for each additional inspection that is made to ascertain that the deficiency or other violation has been corrected. The Board is also empowered to enforce compliance

with the standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time.

(f) The Board may establish, supervise, regulate and control programs for the resident trainee. It may approve schools of mortuary science or funeral service, graduation from which is required by this Article as a qualification for the granting of any license, and may establish essential requirements and standards for such approval of mortuary science or funeral service schools.

(g) Schools for teaching mortuary science which are approved by the Board shall have extended to them the same privileges as to the use of bodies for dissecting while teaching as those granted in this State to medical colleges, but such bodies shall be obtained through the same agencies which provide bodies for medical colleges.

(h) The Board shall adopt a common seal.

(h1) The Board shall have the power to acquire, hold, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to approval of the Governor and the Council of State. Collateral pledged by the Board for an encumbrance is limited to the assets, income, and revenues of the Board.

(h2) The Board may employ legal counsel and clerical and technical assistance, and fix the compensation therefor, and incur such other expenses as may be deemed necessary in the performance of its duties and the enforcement of the provisions of this Article or as otherwise required by law and as may be necessary to carry out the powers herein conferred.

(i) The Board may perform such other acts and exercise such other powers and duties as may be provided elsewhere in this Article or otherwise by law and as may be necessary to carry out the powers herein conferred."

SECTION 4. G.S. 90-210.25 reads as rewritten:

"§ 90-210.25. Licensing.

(a) Qualifications, Examinations, Resident Traineeship and Licensure. –

(1) To be licensed for the practice of funeral directing under this Article, a person must:

- a. Be at least 18 years of age.
- b. Be of good moral character.
- c. Be a graduate of a Funeral Director Program at a mortuary science college approved by the Board or a school of mortuary science accredited by the American Board of Funeral Service Education. Have completed a minimum of 32 semester hours or 48 quarter hours of instruction, including the subjects set out in sub-part e.1. of this subdivision, as prescribed by a mortuary science college approved by the Board or a school of mortuary science accredited by the American Board of Funeral Service Education.
- d. Have completed 12 months of resident traineeship as a funeral director, pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under sub-subdivision c. of this subdivision.
- e. Have passed an oral or written funeral director examination on the following subjects:
 1. Psychology, sociology, pathology, funeral directing, business law, funeral law, funeral management, and accounting.
 2. Repealed by Session Laws 1997-399, s. 5.
 3. Laws of North Carolina and rules of the Board and other agencies dealing with the care, transportation and disposition of dead human bodies.

- (2) To be licensed for the practice of embalming under this Article, a person must:
- a. Be at least 18 years of age.
 - b. Be of good moral character.
 - c. Be a graduate of a mortuary science college approved by the Board.
 - d. Have completed 12 months of resident traineeship as an embalmer pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under sub-subdivision c. of this subdivision.
 - e. Have passed an oral or written embalmer examination on the following subjects:
 1. Embalming, restorative arts, chemistry, pathology, microbiology, and anatomy.
 2. Repealed by Session Laws 1997-399, s. 6.
 3. Laws of North Carolina and rules of the Board and other agencies dealing with the care, transportation and disposition of dead human bodies.
- (3) To be licensed for the practice of funeral service under this Article, a person must:
- a. Be at least 18 years of age.
 - b. Be of good moral character.
 - c. Be a graduate of and receive an associate degree from a mortuary science college approved by the Board or a school of mortuary science accredited by the American Board of Funeral Service Education. Have completed a minimum of 60 semester hours or 90 quarter hours of instruction, including the subjects set out in sub-part e.1. of this subdivision, as prescribed by a mortuary science college approved by the Board or a school of mortuary science accredited by the American Board of Funeral Service Education.
 - d. Have completed 12 months of resident traineeship as a funeral service licensee, pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under sub-subdivision c. of this subdivision.
 - e. Have passed an oral or written funeral service examination on the following subjects:
 1. Psychology, sociology, funeral directing, business law, funeral law, funeral management, and accounting.
 2. Embalming, restorative arts, chemistry, pathology, microbiology, and anatomy.
 3. Repealed by Session Laws 1997-399, s. 7.
 4. Laws of North Carolina and rules of the Board and other agencies dealing with the care, transportation and disposition of dead human bodies.
- (4) a. A person desiring to become a resident trainee shall apply to the Board on a form provided by the Board. The application shall state that the applicant is not less than 18 years of age, of good moral character, and is the graduate of a high school or the equivalent thereof, and shall indicate the licensee under whom the applicant expects to train. A person training to become an embalmer may serve under either a licensed embalmer or a funeral service licensee. A person training to become a funeral

director may serve under either a licensed funeral director or a funeral service licensee. A person training to become a funeral service licensee shall serve under a funeral service licensee. The application must be sustained by oath of the applicant and be accompanied by the appropriate fee. When the Board is satisfied as to the qualifications of an applicant it shall instruct the secretary to issue a certificate of resident traineeship.

- b. ~~When~~ Within 30 days of a resident trainee ~~leaves~~ leaving the proctorship of the licensee under whom the trainee has worked, the licensee shall file with the Board an affidavit showing the length of time served with the licensee by the trainee, and the affidavit shall be made a matter of record in the Board's office. The licensee shall deliver a copy of the affidavit to the trainee.
- c. A person who has not completed the traineeship and wishes to do so under a licensee other than the one whose name appears on the original certificate may reapply to the Board for approval.
- d. A certificate of resident traineeship shall be signed by the resident trainee and upon payment of the renewal fee shall be renewable one year after the date of original registration; but the certificate may not be renewed more than two times. The Board shall mail to each registered trainee at his last known address a notice that the renewal fee is due and that, if not paid within 30 days of the notice, the certificate will be canceled. A late fee, in addition to the renewal fee, shall be charged for a late renewal, but the renewal of the registration of any resident trainee who is engaged in the active military service of the United States at the time renewal is due may, at the discretion of the Board, be held in abeyance for the duration of that service without penalties. No credit shall be allowed for the 12-month period of resident traineeship that shall have been completed more than five years preceding the examination for a license.
- e. All registered resident trainees shall report to the Board at least once every month during traineeship upon forms provided by the Board listing the work which has been completed during the preceding month of resident traineeship. The data contained in the reports shall be certified as correct by the licensee under whom the trainee has served during the period and by the licensed person who is managing the funeral service establishment. Each report shall list the following:
 - 1. For funeral director trainees, the conduct of any funerals during the relevant time period,
 - 2. For embalming trainees, the embalming of any bodies during the relevant time period,
 - 3. For funeral service trainees, both of the activities named in 1 and 2 of this subsection, engaged in during the relevant time period.
- f. To meet the resident traineeship requirements of G.S. 90-210.25(a)(1), G.S. 90-210.25(a)(2) and G.S. 90-210.25(a)(3) the following must be shown by the affidavit(s) of the licensee(s) under whom the trainee worked:
 - 1. That the funeral director trainee has, under supervision, assisted in directing at least 25 funerals during the resident traineeship,

2. That the embalmer trainee has, under supervision, assisted in embalming at least 25 bodies during the resident traineeship,
 3. That the funeral service trainee has, under supervision, assisted in directing at least 25 funerals and, under supervision, assisted in embalming at least 25 bodies during the resident traineeship.
- g. The Board may suspend or revoke a certificate of resident traineeship for violation of any provision of this Article.
 - h. Each sponsor for a registered resident trainee must during the period of sponsorship be actively employed with a funeral establishment. The traineeship shall be a primary vocation of the trainee.
 - i. Only one resident trainee may register and serve at any one time under any one person licensed under this Article.
 - j., k. Repealed by Session Laws 1991, c. 528, s. 4.
 - l. The Board shall register no more than one resident trainee at a funeral establishment that served 100 or fewer families during the 12 months immediately preceding the date of the application, and shall register no more than one resident trainee for each additional 100 families served at the funeral establishment during the 12 months immediately preceding the date of the application.
- (5) The Board by regulation may recognize other examinations that the Board deems equivalent to its own.
- a. All licenses shall be signed by the president and secretary of the Board and the seal of the Board affixed thereto. All licenses shall be issued, renewed or duplicated for a period not exceeding one year upon payment of the renewal fee, and all licenses, renewals or duplicates thereof shall expire and terminate the thirty-first day of December following the date of their issue unless sooner revoked and canceled; provided, that the date of expiration may be changed by unanimous consent of the Board and upon 90 days' written notice of such change to all persons licensed for the practice of funeral directing, embalming and funeral service in this State.
 - b. The holder of any license issued by the Board who shall fail to renew the same on or before February 1 of the calendar year for which the license is to be renewed shall have forfeited and surrendered the license as of that date. No license forfeited or surrendered pursuant to the preceding sentence shall be reinstated by the Board unless it is shown to the Board that the applicant has, throughout the period of forfeiture, engaged full time in another state of the United States or the District of Columbia in the practice to which his North Carolina license applies and has completed for each such year continuing education substantially equivalent in the opinion of the Board to that required of North Carolina licensees; or has completed in North Carolina a total number of hours of accredited continuing education computed by multiplying five times the number of years of forfeiture; or has passed the North Carolina examination for the forfeited license. No additional resident traineeship shall be required. The applicant shall be required to pay all delinquent annual renewal fees and a reinstatement fee. The Board may waive the provisions of this section for an

applicant for a forfeiture which occurred during his service in the armed forces of the United States provided he applies within six months following severance therefrom.

- c. All licensees now or hereafter licensed in North Carolina shall take continuing education courses in subjects relating to the practice of the profession for which they are licensed, to the end that the benefits of learning and reviewing skills will be utilized and applied to assure proper service to the public.
- d. As a prerequisite to the annual renewal of a license, the licensee must complete, during the year immediately preceding renewal, at least five hours of continuing education courses, of which the Board may require licensees to take up to two hours specified by the Board. All continuing education courses must be approved by the Board prior to enrollment. A licensee who completes more than five hours in a year may carry over a maximum of five hours as a credit to the following year's requirement. A licensee who is issued an initial license on or after July 1 does not have to satisfy the continuing education requirement for that year.
- e. The Board shall not renew a license unless fulfillment of the continuing education requirement has been certified to it on a form provided by the Board, but the Board may waive this requirement for renewal in cases of certified illness or undue hardship or where the licensee lives outside of North Carolina and does not practice in North Carolina, and the Board shall waive the requirement for all licensees who were licensed on or before December 31, 2003, and have been licensed in North Carolina for a continuous period of 25 years or more, for all licensees who are licensed on or after January 1, 2004, who have been licensed for a continuous period of 25 years or more and have attained the age of 60 years, and for all licensees who are, at the time of renewal, members of the General Assembly.
- f. The Board shall cause to be established and offered to the licensees, each calendar year, at least eight hours of continuing education courses. The Board may charge licensees attending these courses a reasonable registration fee in order to meet the expenses thereof and may also meet those expenses from other funds received under the provisions of this Article.
- g. Any person who having been previously licensed by the Board as a funeral director or embalmer prior to July 1, 1975, shall not be required to satisfy the requirements herein for licensure as a funeral service licensee, but shall be entitled to have such license renewed upon making proper application therefor and upon payment of the renewal fee provided by the provisions of this Article. Persons previously licensed by the Board as a funeral director may engage in funeral directing, and persons previously licensed by the Board as an embalmer may engage in embalming. Any person having been previously licensed by the Board as both a funeral director and an embalmer may upon application therefor receive a license as a funeral service licensee.
- h. The Department of Justice may provide a criminal record check to the Board for a person who has applied for a new or renewal license, or certification through the Board. The Board shall provide to the Department of Justice, along with the request, the

fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subdivision privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subdivision.

(a1) Inactive Licenses. – Any person holding a license issued by the Board for funeral directing, for embalming, or for the practice of funeral service may apply for an inactive license in the same category as the active license held. The inactive license is renewable annually. Continuing education is not required for the renewal of an inactive license. ~~The only activity that a holder of an inactive license may not engage in is to vote pursuant to G.S. 90-210.18(e)(2).~~ any activity requiring an active license. The holder of an inactive license may apply for an active license in the same category, and the Board shall issue an active license if the applicant has completed ~~in North Carolina~~ a total number of hours of accredited continuing education equal to five times the number of years the applicant held the inactive license. No application fee is required for the reinstatement of an active license pursuant to this subsection. The holder of an inactive license who returns to active status shall surrender the inactive license to the Board.

(a2) In order to engage in the practice of funeral directing or funeral service, such a licensee must own, be employed by, or otherwise be an agent of a licensed funeral establishment; except that such a licensee may practice funeral directing or funeral service if:

- (1) Employed by a college of mortuary science; or
- (2) The licensee:
 - a. Maintains all of his or her business records at a location made known to the Board and available for inspection by the Board under the same terms and conditions as the business records of a licensed funeral establishment;
 - b. Complies with rules and regulations imposed on funeral establishments and the funeral profession that are designed to protect consumers, to include, but not be limited to, the Federal Trade Commission's laws and rules requiring General Price Lists and Statements of Goods and Services; and
 - c. Pays to the Board the funeral establishment license fee required by law and set by the Board.

Nothing in this subdivision shall preclude a licensee from arranging cremations and cremating human remains while employed by a crematory.

(b) Persons Licensed under the Laws of Other Jurisdictions. –

- (1) The Board shall grant licenses to funeral directors, embalmers and funeral service licensees, licensed in other states, territories, the District of Columbia, and foreign countries, when it is shown that the applicant holds a valid license as a funeral director, embalmer or funeral service licensee issued by the other jurisdiction, has

demonstrated knowledge of the laws and rules governing the profession in North Carolina and has submitted proof of his good moral character; and either that the applicant has continuously practiced the profession in the other jurisdiction for at least three years immediately preceding his application, or the Board has determined that the licensing requirements for the other jurisdiction are substantially similar to those of North Carolina.

- (2) The Board shall periodically review the mortuary science licensing requirements of other jurisdictions and shall determine which licensing requirements are substantially similar to the requirements of North Carolina.
 - (3) The Board may issue special permits, to be known as courtesy cards, permitting nonresident funeral directors, embalmers and funeral service licensees to remove bodies from and to arrange and direct funerals and embalm bodies in this State, but these privileges shall not include the right to establish a place of business in or engage generally in the business of funeral directing and embalming in this State. Except for special permits issued by the Board for teaching continuing education programs and for work in connection with disasters, no special permits may be issued to nonresident funeral directors, embalmers, and funeral service licensees from states that do not issue similar courtesy cards to persons licensed in North Carolina pursuant to this Article.
- (c) Registration, Filing and Transportation. –
- (1) The holder of any license granted by this State for those within the funeral service profession or renewal thereof provided for in this Article shall cause registration to be filed in the office of the board of health of the county or city in which he practices his profession, or if there be no board of health in such county or city, at the office of the clerk of the superior court of such county. All such licenses, certificates, duplicates and renewals thereof shall be displayed in a conspicuous place in the funeral establishment where the holder renders service.
 - (2) It shall be unlawful for any railway agent, express agency, baggage master, conductor or other person acting as such, to receive the dead body of any person for shipment or transportation by railway or other public conveyance, to a point outside of this State, unless the body is accompanied by a burial-transit permit.
 - (3) The "transportation or removal of a dead human body" shall mean the removal of a dead human body for a fee from the location of the place of death or discovery of death or the transportation of the body to or from a medical facility, funeral establishment or facility, crematory or related holding facility, place of final disposition, or place designated by the Medical Examiner for examination or autopsy of the dead human body.
 - (4) Any individual, not otherwise exempt from this subsection, shall apply for and receive a permit from the Board before engaging in the transportation or removal of a dead human body in this State. Unless otherwise exempt from this subsection, no corporation or other business entity shall engage in the transportation or removal of a dead human body unless it has in its employ at least one individual who holds a permit issued under this section. No individual permit holder shall engage in the transportation or removal of a dead human body for more than one person, firm, or corporation without first providing the

- Board with written notification of the name and physical address of each such employer.
- (5) The following persons shall be exempt from the permit requirements of this section but shall otherwise be subject to subdivision (9) of this subsection and any rules relating to the proper handling, care, removal, or transportation of a dead human body:
- a. Licensees under this Article and their employees.
 - b. Employees of common carriers.
 - c. Except as provided in sub-subdivision (6)c. of this section, employees of the State and its agencies and employees of local governments and their agencies.
 - d. Funeral directors licensed in another state and their employees.
- (6) The following persons shall be exempt from this section:
- a. Emergency medical technicians, rescue squad workers, volunteer and paid firemen, and law enforcement ~~officers-officers~~ while acting within the scope of their employment.
 - b. Employees of public or private hospitals, nursing homes, or long-term care facilities, while handling a dead human body within such facility or while acting within the scope of their employment.
 - c. State and county medical examiners and their investigators.
 - d. Any individual transporting cremated remains.
 - e. Any individual transporting or removing a dead human body of their immediate family or next of kin.
 - f. Any individual who has exhibited special care and concern for the decedent.
- (7) Individuals eligible to receive a permit under this section for the transportation or removal of a dead human body for a fee, shall:
- a. Be at least 18 years of age.
 - b. Possess and maintain a valid drivers license issued by this State and provide proof of all liability insurance required for the registration of any vehicle in which the person intends to engage in the business of the removal or transportation of a dead human body.
 - c. Affirmatively state under oath that the person has read and understands the statutes and rules relating to the removal and transportation of dead human bodies and any guidelines as may be adopted by the Board.
 - d. Provide three written character references on a form prescribed by the Board, one of which must be from a licensed funeral director.
 - e. Be of good moral character.
- (8) The permit issued under this section shall expire on December 31 of each year. The application fee for the individual permit shall not exceed one hundred twenty-five dollars (\$125.00). A fee, not to exceed one hundred dollars (\$100.00), in addition to the renewal fee not to exceed seventy-five dollars (\$75.00), shall be charged for any application for renewal received by the Board after February 1 of each year.
- (9) No person shall transport a dead human body in the open cargo area or passenger area of a vehicle or in any vehicle in which the body may be viewed by the public. Any person removing or transporting a dead human body shall either cover the body, place it upon a stretcher designed for the purpose of transporting humans or dead human bodies

in a vehicle, and secure such stretcher in the vehicle used for transportation, or shall enclose the body in a casket or container designed for common carrier transportation, and secure the casket or container in the vehicle used for transportation. No person shall fail to treat a dead human body with respect at all times. No person shall take a photograph or video recording of a dead human body without the consent of a member of the deceased's immediate family or next of kin or other authorizing agent.

- (10) The Board may adopt rules under this section including permit application procedures and the proper procedures for the removal, handling, and transportation of dead human bodies. The Board shall consult with the Office of the Chief Medical Examiner before initiating rule making under this section and before adopting any rules pursuant to this section. Nothing in this section prohibits the Office of the Chief Medical Examiner from adopting policies and procedures regarding the removal, transportation, or handling of a dead human body under the jurisdiction of that office that are more stringent than the laws in this section or any rules adopted under this section. Any violation of this section or rules adopted under this section may be punished by the Board by a suspension or revocation of the permit to transport or remove dead human bodies or by a term of probation. The Board may, in lieu of any disciplinary measure, accept a penalty not to exceed five thousand dollars (\$5,000) per violation.
 - (11) Each applicant for a permit shall provide the Board with the applicant's home address, name and address of any corporation or business entity employing such individual for the removal or transportation of dead human bodies, and the make, year, model, and license plate number of any vehicle in which a dead human body is transported. A permittee shall provide written notification to the Board of any change in the information required to be provided to the Board by this section or by the application for a permit within 30 days after such change takes place.
 - (12) If any person shall engage in or hold himself out as engaging in the business of transportation or removal of a dead human body without first having received a permit under this section, the person shall be guilty of a Class 2 misdemeanor.
 - (13) The Board shall have the authority to inspect any place or premises that the business of removing or transporting a dead human body is carried out and shall also have the right of inspection of any vehicle and equipment used by a permittee for the removal or transportation of a dead human body.
- (d) Establishment Permit. –
- (1) No person, firm or corporation shall conduct, maintain, manage or operate a funeral establishment unless a permit for that establishment has been issued by the Board and is conspicuously displayed in the establishment. Each funeral establishment at a specific location shall be deemed to be a separate entity and shall require a separate permit and compliance with the requirements of this Article.
 - (2) A permit shall be issued when:
 - a. It is shown that the funeral establishment has in charge a person, known as a manager, licensed for the practice of funeral directing or funeral service, who shall not be permitted to manage more than one funeral establishment. The manager shall be charged with overseeing the daily operation of the funeral establishment. If the manager leaves the employment of

the funeral establishment and is the only licensee employed who is eligible to serve as manager, the funeral establishment may operate without a manager for a period not to exceed 30 days so long as: (i) the funeral establishment retains one or more licensees to perform all services requiring a license under this Article; (ii) the licensees are not practicing under the exception authorized by G.S. 90-210.25(a2) and would otherwise be eligible to serve as manager; and (iii) the funeral establishment registers the name of the licensees with the Board.

- b. The Board receives a list of the names of all part-time and full-time licensees employed by the establishment.
 - c. It is shown that the funeral establishment satisfies the requirements of G.S. 90-210.27A.
 - d. The Board receives payment of the permit fee.
- (3) Applications for funeral establishment permits shall be made on forms provided by the Board and filed with the Board by the owner, a partner, a member of the limited liability company, or an officer of the corporation by January 1 of each year, and shall be accompanied by the application fee or renewal fee, as the case may be. All permits shall expire on December 31 of each year. If the renewal application and renewal fee are not received in the Board's office on or before February 1, a late renewal fee, in addition to the regular renewal fee, shall be charged.
- (4) The Board may place on probation, refuse to issue or renew, suspend ~~suspend~~, or revoke a permit when an owner, partner, manager, member, operator, or officer of the funeral establishment violates any provision of this Article or any regulations of the Board, or when any agent or employee of the funeral establishment, with the consent of any person, firm or corporation operating the funeral establishment, violates any of those provisions, rules or regulations. In any case in which the Board is entitled to place a funeral establishment permittee on a term of probation, the Board may also impose a penalty of not more than five thousand dollars (\$5,000) in conjunction with the probation. In any case in which the Board is entitled to suspend, revoke, or refuse to renew a permit, the Board may accept from the funeral establishment permittee an offer to pay a penalty of not more than five thousand dollars (\$5,000). The Board may either accept a penalty or revoke or refuse to renew a license, but not both. Any penalty under this subdivision may be in addition to any penalty assessed against one or more licensed individuals employed by the funeral establishment.
- (5) Funeral establishment permits are not transferable. A new application for a permit shall be made to the Board within 30 days of a change of ownership of a funeral establishment.
- (d1) Embalming Outside Establishment. – An embalmer who engages in embalming in a facility other than a funeral establishment or in the residence of the deceased person shall, no later than January 1 of each year, register the facility with the Board on forms provided by the Board.
- (e) Revocation; Suspension; Compromise; Disclosure. –
- (1) Whenever the Board finds that an applicant for a license or a person to whom a license has been issued by the Board is guilty of any of the following acts or omissions and the Board also finds that the person has thereby become unfit to practice, the Board may suspend or revoke

the license or refuse to issue or renew the license, in accordance with the procedures set out in Chapter 150B of the General Statutes:

- a. Conviction of a felony or a crime involving fraud or moral turpitude.
- a1. Denial, suspension, or revocation of an occupational or business license by another jurisdiction.
- b. Fraud or misrepresentation in obtaining or renewing a license or in the practice of funeral service.
- c. False or misleading advertising as the holder of a license.
- d. Solicitation of dead human bodies by the licensee, his agents, assistants, or employees; but this paragraph shall not be construed to prohibit general advertising by the licensee.
- e. Employment directly or indirectly of any resident trainee agent, assistant or other person, on a part-time or full-time basis, or on commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular licensee.
- f. The payment or offer of payment of a commission by the licensee, his agents, assistants or employees for the purpose of securing business except as authorized by Article 13D of this Chapter.
- g. Gross immorality, including being under the influence of alcohol or drugs while practicing funeral service.
- h. Aiding or abetting an unlicensed person to perform services under this Article, including the use of a picture or name in connection with advertisements or other written material published or caused to be published by the licensee.
- i. Failing to treat a dead human body with respect at all times.
- j. Violating or cooperating with others to violate any of the provisions of this Article, Article or Articles 13D, 13E, or 13F of Chapter 90 of the General Statutes, any rules and regulations of the Board, or the standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time.
- k. Violation of any State law or municipal or county ordinance or regulation affecting the handling, custody, care or transportation of dead human bodies.
- l. Refusing to surrender promptly the custody of a dead human body or cremated remains upon the express order of the person lawfully entitled to the custody thereof.
- m. Knowingly making any false statement on a certificate of death, death or violating or cooperating with others to violate any provision of Article 4 or 16 of Chapter 130A of the General Statutes or any rules or regulations promulgated under those Articles as amended from time to time.
- n. Indecent exposure or exhibition of a dead human body while in the custody or control of a licensee.

In any case in which the Board is entitled to suspend, revoke or refuse to renew a license, the Board may accept from the licensee an offer to pay a penalty of not more than five thousand dollars (\$5,000). The Board may either accept a penalty or revoke or refuse to renew a license, but not both.

- (2) Where the Board finds that a licensee is guilty of one or more of the acts or omissions listed in subdivision (e)(1) of this section but it is determined by the Board that the licensee has not thereby become unfit to practice, the Board may place the licensee on a term of probation in

accordance with the procedures set out in Chapter 150B of the General Statutes. In any case in which the Board is entitled to place a licensee on a term of probation, the Board may also impose a penalty of not more than five thousand dollars (\$5,000) in conjunction with the probation. The Board may also require satisfactory completion of remedial or educational training as a prerequisite to license reinstatement or for completing the term of probation.

No person licensed under this Article shall remove or cause to be embalmed a dead human body when he or she has information indicating crime or violence of any sort in connection with the cause of death, nor shall a dead human body be cremated, until permission of the State or county medical examiner has first been obtained. However, nothing in this Article shall be construed to alter the duties and authority now vested in the office of the coroner.

No funeral service establishment shall accept a dead human body from any public officer (excluding the State or county medical examiner or his agent), or employee or from the official of any institution, hospital or nursing home, or from a physician or any person having a professional relationship with a decedent, without having first made due inquiry as to the desires of the persons who have the legal authority to direct the disposition of the decedent's body. If any persons are found, their authority and directions shall govern the disposal of the remains of the decedent. Any funeral service establishment receiving the remains in violation of this subsection shall make no charge for any service in connection with the remains prior to delivery of the remains as stipulated by the persons having legal authority to direct the disposition of the body. This section shall not prevent any funeral service establishment from charging and being reimbursed for services rendered in connection with the removal of the remains of any deceased person in case of accidental or violent death, and rendering necessary professional services required until the persons having legal authority to direct the disposition of the body have been notified.

When and where a licensee presents a selection of funeral merchandise to the public to be used in connection with the service to be provided by the licensee or an establishment as licensed under this Article, a card or brochure shall be directly associated with each item of merchandise setting forth the price of the service using said merchandise and listing the services and other merchandise included in the price, if any. When there are separate prices for the merchandise and services, such cards or brochures shall indicate the price of the merchandise and of the items separately priced.

At the time funeral arrangements are made and prior to the time of rendering the service and providing the merchandise, a funeral director or funeral service licensee shall give or cause to be given to the person or persons making such arrangements a written statement duly signed by a licensee of said funeral establishment showing the price of the service as selected and what services are included therein, the price of each of the supplemental items of services or merchandise requested, and the amounts involved for each of the items for which the funeral establishment will advance moneys as an accommodation to the person making arrangements, insofar as any of the above items can be specified at that time. If fees charged by a finance company for expediting payment of life insurance proceeds to the establishment will be passed on to the person or persons responsible for payment of the funeral expenses, information regarding the fees, including the total dollar amount of the fee, shall be disclosed in writing. The statement shall have printed, typed or stamped on the face thereof: "This statement of disclosure is provided under the requirements of North Carolina G.S. 90-210.25(e)." The Board may prescribe other disclosures that a licensee shall give to consumers upon finding that the disclosure is necessary to protect public health, safety, and welfare.

(f) Unlawful Practices. – If any person shall practice or hold himself or herself out as practicing the profession or art of embalming, funeral directing or practice of funeral service or operating a funeral establishment without having complied with the

licensing provisions of this Article, ~~he~~ the person shall be guilty of a Class 2 misdemeanor.

(g) Whenever it shall appear to the Board that any person, firm or corporation has violated, threatens to violate or is violating any provisions of this Article, the Board may apply to the courts of the State for a restraining order and injunction to restrain these practices. If upon application the court finds that any provision of this Article is being violated, or a violation is threatened, the court shall issue an order restraining and enjoining the violations, and this relief may be granted regardless of whether criminal prosecution is instituted under the provisions of this subsection. The venue for actions brought under this subsection shall be the superior court of any county in which the acts are alleged to have been committed or in the county where the defendant in the action resides."

SECTION 5. G.S. 90-210.27A reads as rewritten:

"§ 90-210.27A. Funeral establishments.

(a) Every funeral establishment shall contain a preparation room which is strictly private, of suitable size for the embalming of dead bodies. Each preparation room shall:

- (1) Contain one standard type operating table.
- (2) Contain facilities for adequate drainage.
- (3) Contain a sanitary waste receptacle.
- (4) Contain an instrument sterilizer.
- (5) Have wall-to-wall floor covering of tile, concrete, or other material which can be easily cleaned.
- (6) Be kept in sanitary condition and subject to inspection by the Board or its agents at all times.
- (7) Have a placard or sign on the door indicating that the preparation room is private.
- (8) Have a proper ventilation or purification system to maintain a nonhazardous level of airborne contamination.

(b) No one is allowed in the preparation room while a dead human body is being prepared except licensees, resident trainees, public officials in the discharge of their duties, members of the medical profession, officials of the funeral home, next of kin, or other legally authorized persons.

(c) Every funeral establishment shall contain a reposing room for dead human bodies, of suitable size to accommodate a casket and visitors.

(d) Repealed by Session Laws 1997-399, s. 14.

(e) If a funeral establishment is solely owned by a natural person, that person must be licensed by the Board as a funeral director or a funeral service licensee. If it is owned by a partnership, at least one partner must be licensed by the Board as a funeral director or a funeral service licensee. If it is owned by a corporation, the president, vice-president, or the chairman of the board of directors must be licensed by the Board as a funeral director or a funeral service licensee. If it is owned by a limited liability company, at least one member must be licensed by the Board as a funeral director or a funeral service licensee. The licensee required by this subsection must be actively engaged in the operation of the funeral establishment.

(f) If a funeral establishment uses the name of a living person in the name under which it does business, that person must be licensed by the Board as a funeral director or a funeral service licensee.

(g) No funeral establishment ~~or other licensee under this Article~~ shall own, operate, or maintain a ~~funeral~~ chapel without first having registered the name, location, and ownership thereof with the Board; own or maintain more than two ~~funeral~~ chapels, or own or maintain a ~~funeral~~ chapel outside of a radius of 50 miles from the funeral establishment. A duly licensed person may use a ~~funeral~~ chapel for making arrangements for funeral ~~service, services,~~ selling funeral supplies-merchandise to the public, public by photograph, video, or computer based presentation, or making financial arrangements for the rendering of ~~such~~ the service or sale of supplies, provided that

~~such~~ the uses are secondary and incidental to and do not interfere with the reposing of dead human bodies, visitation, or funeral ceremony.

(h) All public health laws and rules apply to funeral establishments. In addition, all funeral establishments must comply with all of the standards established by the rules adopted by the Board.

(i) No funeral establishment shall use an unregistered or misleading name. Misleading names include, but are not limited to, names in the plural form when there is only one funeral establishment, the use of names of deceased individuals, unless the establishment is licensed using the name at the time the new application is made, the use of names of individuals not associated with the establishment, and the use of the word "crematory" or "crematorium" in the name of a funeral establishment that does not own a crematory. If an owner of a funeral establishment owns more than one funeral establishment, the owner may not use the word "crematory" or "crematorium" in the name of more than one of its funeral establishments; except that each funeral home having a crematory on the premises may contain the term "crematory" or "crematorium" in its name.

(j) A funeral establishment will not use any name other than the name by which it is properly registered with the Board."

SECTION 6. G.S. 90-210.28 reads as rewritten:

"§ 90-210.28. Fees.

The Board may set and collect fees, not to exceed the following amounts:

Establishment permit		
Application	\$250.00	<u>\$400.00</u>
Annual renewal	150.00	<u>250.00</u>
Late renewal	100.00	<u>150.00</u>
Establishment and embalming facility inspection-reinspection fee		100.00
Courtesy card		
Application	75.00	<u>100.00</u>
Annual renewal	50.00	<u>75.00</u>
Out-of-state licensee		
Application	200.00	<u>250.00</u>
Embalmer, funeral director, funeral service		
Application-North		
Carolina-Resident	150.00	<u>200.00</u>
-Non-Resident	200.00	<u>250.00</u>
Annual Renewal-embalmer or		
funeral director	40.00	<u>75.00</u>
Total fee, embalmer and funeral director		
when both are held by the same person	60.00	<u>100.00</u>
-funeral service	60.00	<u>100.00</u>
Inactive Status		50.00
Reinstatement fee		50.00
Resident trainee permit		
Application		50.00
Voluntary change in supervisor		50.00
Annual renewal		35.00
Late renewal		25.00
Duplicate license certificate		25.00
Chapel registration		
Application		150.00
Annual renewal		100.00
Late renewal		75.00

The Board shall provide, without charge, one copy of the current statutes and regulations relating to ~~Mortuary Science~~ Funeral Service to every person applying for and paying the appropriate fees for licensing pursuant to this Article. The Board may

charge all others requesting copies of the current statutes and regulations, and the licensees or applicants requesting additional copies, a fee equal to the costs of production and distribution of the requested documents."

SECTION 7. Article 13A of Chapter 90 of the General Statutes is amended by adding a new section to read:

"§ 90-210.29A-1. Examination scores not public record.

The examination scores of applicants for licensure shall not be subject to the provisions of Chapter 132 of the General Statutes. The Board shall release to any person requesting examination scores whether or not the applicant has obtained a passing score at the time of the request."

SECTION 7.1. G.S. 90-210.60 is amended by adding a new subdivision to read:

"§ 90-210.60. Definitions.

As used in this Article, unless the context requires otherwise:

...
(3a) "Legal representation" means the person authorized by G.S. 130A-420 who would be otherwise authorized to dispose of the remains of the preneed funeral contract beneficiary."

SECTION 8. G.S. 90-210.62 reads as rewritten:

"§ 90-210.62. Types of preneed funeral contracts; forms.

(a) A preneed licensee may offer standard preneed funeral contracts and inflation-proof preneed funeral contracts. A standard preneed funeral contract applies the trust funds or insurance proceeds to the purchase price of funeral services and merchandise at the time of death of the contract beneficiary without a guarantee protection against potential future price increases. An inflation-proof contract establishes a fixed price agreement between the preneed licensee and the purchaser for funeral services and merchandise without regard to potential future price increases. Upon written disclosure to the purchaser of a preneed funeral contract, inflation-proof contracts may permit the preneed licensee to retain all of the preneed funeral contract trust funds on deposit, and all insurance proceeds, even those in excess of the retail cost of goods and services provided, when the preneed licensee has fully performed the preneed funeral contract. Preneed funeral contracts may be revocable or irrevocable, at the option of the preneed funeral contract purchaser.

(b) ~~The Board shall approve all~~ may prescribe forms for preneed funeral contracts consistent with this Article. All contracts must be in writing, and no form shall be used without prior approval of the Board. writing on forms prescribed by the Board. Any use or attempted use of any oral preneed funeral contract or any written contract in a form not ~~approved~~ prescribed by the Board shall be deemed a violation of this Article."

SECTION 9. Article 13D of Chapter 90 of the General Statutes is amended by adding a new section to read:

"§ 90-210.63A. Amendment of preneed funeral contracts.

(a) Unless otherwise provided by this Article, preneed funeral contracts may be modified by mutual consent of the contracting preneed funeral establishment and the preneed contract purchaser, or after the death of the preneed contract purchaser, the preneed contract beneficiary or his or her legal representative.

(b) When the preneed contract purchaser and preneed contract beneficiary are the same, the preneed contract purchaser may designate one or more individuals to change the arrangements or performing funeral establishment, or may designate that the arrangements or performing funeral establishment may not be changed without an order from the clerk of superior court in the county where probate proceedings are instituted upon a finding that the change is in the best interest of the estate.

(c) If the preneed purchaser, or after his or her death, the preneed contract beneficiary or his or her legal representative, and the contracting preneed funeral establishment agree to modify any goods or services selected under an inflation-proof

contract, the preneed licensee shall not be required to guarantee the price of the modified goods and services at the time of death and all other funeral goods and service selected shall remain guaranteed. If the modifications increase the purchase price, the provisions of G.S. 90-210.64(b) shall apply as if the modified contract had been executed on the original date. If the modifications decrease the purchase price, the preneed licensee shall refund all monies according to the provisions of G.S. 90-210.64(d)."

SECTION 10. G.S. 90-210.64 reads as rewritten:

"§ 90-210.64. Death of preneed funeral contract beneficiary; disposition of funds.

(a) After the death of a preneed funeral contract beneficiary and full performance of the preneed funeral contract by the preneed licensee, the preneed licensee shall promptly complete a certificate of performance and present it to the financial institution that holds funds in trust under G.S. 90-210.61(a)(1) or to the insurance company that issued a preneed insurance policy pursuant to G.S. 90-210.61(a)(3). Upon receipt of the certificate of performance or similar claim form, the financial institution shall pay the trust funds to the contracting preneed licensee and the insurance company shall pay the insurance proceeds according to the terms of the policy. Within 10 days after receiving payment, the preneed licensee shall ~~mail~~ file a copy of the certificate of performance or other claim form to the Board.

(b) Unless otherwise specified in the preneed funeral contract, the preneed licensee shall have no obligation to deliver merchandise or perform any services for which payment in full has not yet been deposited with a financial institution or that will not be provided by the proceeds of a prearrangement insurance policy. Any such amounts received which do not constitute payment in full shall be refunded to the estate of the deceased preneed funeral contract beneficiary or credited against the cost of merchandise or services contracted for by a representative of the deceased. Any balance remaining after payment for the merchandise and services as set forth in the preneed funeral contract shall be paid to the estate of the preneed funeral contract beneficiary or the prearrangement insurance policy beneficiary named to receive any such balance. Provided, however, unless the parties agree to the contrary, there shall be no refund to the estate of the preneed funeral contract beneficiary of an inflation-proof preneed funeral ~~contract~~ contract except as required by G.S. 90-210.63A(c).

(c) In the event that any person other than the contracting preneed licensee performs any funeral service or provides any merchandise as a result of the death of the preneed funeral contract beneficiary, the financial institution shall pay the trust funds to the contracting preneed licensee and the insurance company shall pay the insurance proceeds according to the terms of the policy. The preneed licensee shall, subject to the provisions of G.S. 90-210.65(d), immediately pay the monies so received to the other provider.

(d) When the balance of a preneed funeral fund is one hundred dollars (\$100.00) or less and is payable to the estate of a deceased preneed funeral contract beneficiary and there has been no representative of the estate appointed, the balance due may be paid directly to a beneficiary or to the beneficiaries of the estate. If the balance of a preneed funeral fund exceeds one hundred dollars (\$100.00) or is not payable to the estate, the balance must be paid into the office of the clerk of superior court in the county where probate proceedings could be filed for the deceased preneed funeral contract beneficiary.

(e) Upon the fulfillment of a preneed contract, all of the following items shall be completed within 30 days:

- (1) The contracting preneed licensee must submit a certificate of performance or similar claim form to the financial institution holding the preneed trust funds and close the preneed account.
- (2) The proceeds of this trust account shall be distributed according to the terms of the preneed contract.

- (3) A completed copy of the certificate of performance or similar claim form evidencing the final disposition of any financial institution preneed trust account funds must be filed with the Board by the contracting licensee."

SECTION 11. G.S. 90-210.65(e) reads as rewritten:

"(e) This section shall not apply to irrevocable preneed funeral contracts. Irrevocable preneed funeral contracts may ~~not only~~ be revoked ~~nor or~~ any proceeds refunded ~~except by~~ the order of a court of competent ~~jurisdiction~~ jurisdiction, except as follows:

- (1) The Board may order an irrevocable contract revoked when the preneed contract beneficiary is no longer domiciled in this State and has submitted a written copy to the Board of a new preneed funeral contract executed under the laws of the state where the preneed contract beneficiary is domiciled. Upon receipt of the Board's order, the original contracting preneed licensee shall immediately follow the provisions of G.S. 90-210.63 to transfer the funds to the successor firm.
- (2) ~~Notwithstanding the previous sentence, irrevocable~~ Irrevocable preneed funeral contracts purchased pursuant to G.S. 90-210.61(a)(3) shall also be revocable when the underlying insurance policy lapses or is otherwise cancelled and the lapsed or cancelled policy no longer provides any funding for the preneed funeral contract."

SECTION 12. G.S. 90-210.67(b) reads as rewritten:

"(b) An application for a preneed funeral establishment license shall be accompanied by a nonrefundable application fee of not more than ~~one hundred fifty dollars (\$150.00)~~ four hundred dollars (\$400.00). The Board shall set the amounts of the application fees ~~and renewal fees by rule, but the fees shall not exceed one hundred fifty dollars (\$150.00)~~ and renewal fees, by rule. A funeral establishment receiving a new preneed establishment license after January 1, 2008, or whose preneed establishment license has lapsed or was terminated for any reason after January 1, 2008, shall obtain a surety bond in an amount not less than fifty thousand dollars (\$50,000) for five years, or upon demonstrating that it is solvent, no less than one year from the date the original license is issued. The Board may extend the bonding requirement in the event there is a claim paid from the bond.

If the license is granted, the application fee shall be applied to the annual license fee for the first year or part thereof. Upon receipt of the application and payment of the application fee, the Board shall issue a renewable preneed funeral establishment license unless it determines that the applicant has violated any provision of G.S. 90-210.69(c) or has made false statements or representations in the application, or is insolvent, or has conducted or is about to conduct, its business in a fraudulent manner, or is not duly authorized to transact business in this State. The license shall expire on December 31 and each preneed funeral establishment licensee shall pay annually to the Board on or before that date a license renewal fee of not more than ~~one hundred fifty dollars (\$150.00)~~ two hundred fifty dollars (\$250.00). On or before the first day of February immediately following expiration, a license may be renewed without paying a late fee. After that date, a license may be renewed by paying a late fee of not more than one hundred dollars (\$100.00) in addition to the annual renewal fee."

SECTION 13. G.S. 90-210.68(d) reads as rewritten:

"(d) Financial institutions that accept preneed funeral trust funds and insurance companies that issue prearrangement insurance policies shall, upon request by the Board or its inspectors or examiners, disclose any information regarding preneed funeral trust accounts held or prearrangement insurance policies issued by it for a preneed licensee.

Financial institutions that accept preneed funeral trust funds and insurance companies that assign policy proceeds or designate a preneed funeral establishment as

beneficiary shall also forward an account balance to the contracting preneed funeral establishment at the end of each calendar year."

SECTION 14. G.S. 90-210.68(e) reads as rewritten:

"(e) In the event that any preneed licensee is unable or unwilling or is for any reason relieved of its responsibility to perform as trustee or to perform any preneed funeral contract, ~~the Board, with the written consent of the purchaser of the preneed funeral contract, or after the purchaser's death or incapacity, the preneed funeral contract beneficiary~~ Board shall order the contract and any amounts retained pursuant to G.S. 90-210.61(a)(2) to be assigned to a substitute preneed licensee provided that ~~the substitute licensee agrees to accept such assignment.~~ neither the substitute preneed licensee or preneed contract purchaser, or after the death of the preneed contract purchaser, the preneed contract beneficiary or his or her legal representative, shall be obligated to perform the agreement without executing a new preneed funeral contract. Any lapse or transfer of a preneed contract pursuant to this section shall not be grounds to revoke an irrevocable preneed funeral contract."

SECTION 15. G.S. 90-210.69(c) reads as rewritten:

"(c) In accordance with the provisions of Chapter 150B of the General Statutes, if the Board finds that a licensee, an applicant for a license or an applicant for license renewal is guilty of one or more of the following, the Board may refuse to issue or renew a license or may suspend or revoke a license or place the holder thereof on probation upon conditions set by the Board, with revocation upon failure to comply with the conditions:

- (1) Offering to engage or engaging in activities for which a license is required under this Article but without having obtained such a license.
- (2) Aiding or abetting an unlicensed person, firm, partnership, association, corporation or other entity to offer to engage or engage in such activities.
- (3) A crime involving fraud or moral turpitude by conviction thereof.
- (4) Fraud or misrepresentation in obtaining or receiving a license or in preneed funeral planning.
- (5) False or misleading advertising.
- (6) Violating or cooperating with others to violate any provision of this Article, the rules and regulations of the Board, or the standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time.
- (7) Denial, suspension, or revocation of an occupational or business license by another jurisdiction.

In any case in which the Board is authorized to take any of the actions permitted under this subsection, the Board may instead accept an offer in compromise of the charges whereby the accused shall pay to the Board a penalty of not more than five thousand dollars (\$5,000). In any case in which the Board is entitled to place a licensee on a term of probation, the Board may also impose a penalty of not more than five thousand dollars (\$5,000) in conjunction with such probation."

SECTION 16. G.S. 90-210.102 reads as rewritten:

"§ 90-210.102. Hearing by Board of dispute over liability for funeral benefits; appeal.

In case of a disagreement between the representative of a deceased member of any burial association and such deceased member's burial association a hearing may be held by the Board of Funeral Service, on request of either party, to determine whether the association is liable for the benefits set forth in the policy issued to the said deceased member of said burial association. The Board of Funeral Service shall render a decision which shall have the same force and effect as judgments rendered by courts of competent jurisdiction in North Carolina. Either party may appeal from the decision of the Board of Funeral Service. Appeal shall be to the district court division of the General Court of Justice in the county in which the burial association is located. The

procedure for appeal shall be the same as the appeal procedure set forth in Article 19 of Chapter 7A of the General Statutes of North Carolina regulating appeals from the magistrate to the district court. ~~Upon appeal trial shall be de novo."~~

SECTION 17. G.S. 90-210.107 reads as rewritten:

"§ 90-210.107. Acquisition, merger, dissolution, and liquidation of mutual burial associations.

(a) Any insurance company which desires to purchase the assets of or to merge with a burial association as provided in G.S. 90-210.106 shall submit to the Board of Funeral Service and to the secretary of the association a written proposal containing the terms and conditions of the proposed purchase or merger. A proposal may be conditioned upon an increase in the assessments of an association in the manner set out in subsection (g) of this section. In such a case, the issues of purchase or merger and an increase in assessments may be considered at the same meeting of the association.

(b) Upon receipt of a written proposal:

(1) The Board shall issue an order directing the association to hold a meeting of the membership within 30 days following receipt of the order for the purpose of voting on the proposal.

(2) Within 10 days of receiving the order from the Board, the association shall give at least 10 days' written notice of the meeting to each of its members. The notice shall:

a. State the date, time, and place of the meeting.

b. State the purpose of the meeting.

c. Contain or have attached the proposal submitted by the insurance company.

d. Contain a statement limiting the time that each member will be permitted to speak to the proposal, if the association deems it advisable.

e. Contain a written proxy form and instructions concerning the proxy prescribed by the Board.

(c) A representative of the insurance company shall be permitted to attend the meeting held by the association for the purposes of explaining the proposal and answering any questions from the members. The officers of the association may present their views concerning the proposal. Any member of the association who wishes to speak to the proposal shall be permitted to do so subject to any time limitation stated in the notice of the meeting.

(d) The secretary of the association shall record the name of every member who is present at the meeting or has issued a written proxy pursuant to G.S. 55A-7-24 and shall determine whether there is a quorum. The presence of 15 members or ten percent (10%) of the membership, whichever is greater, shall constitute a quorum. Acceptance or rejection of the proposal shall be by majority vote of the members ~~present and~~ voting. Any member who is at least 18 years of age shall be permitted to vote. A parent or guardian of any member who is under 18 years of age may vote on behalf of his or her child or ward, but only one vote may be cast on behalf of that member.

(e) The secretary of the association shall certify the result of the vote and the presence of a quorum to the Board within five days following the meeting and shall include with the certification a copy of the notice of the meeting that was sent to the members of the association.

(f) The Board shall immediately review the certification, the notice, and any other records that may be necessary to determine the adequacy of notice, the presence of a quorum, and the validity of the vote. Upon determining that the meeting and vote were regular and held following proper notice and that a majority of a quorum of the members voted in favor of the proposal, the Board shall issue an order approving the purchase or merger and directing that the purchase or merger proceed in accordance with the proposal.

(g) Any burial association whose current assessments are not, or are unlikely to be within the next three years, adequate to reach or maintain a reserve of at least twenty-one dollars (\$21.00) per member or are inadequate to meet the requirements of a proposal from an insurance company to acquire the assets of or to merge with the association may increase its assessments by an amount necessary to reach and maintain the reserve or to meet the proposal. The increase shall be approved by a vote of the members of the association at a regular meeting of the association or at a special meeting called for the purpose of increasing assessments.

- (1) Any officer or director of the association may call a special meeting for the purpose of increasing assessments, and the secretary shall call a special meeting for such purpose upon the request of at least ten percent (10%) of the members or upon receipt of a proposal from an insurance company that is conditioned upon an increase in assessments.
- (2) Written notice setting out the date, time, place, and the purpose of the meeting shall be hand delivered or sent by first-class mail, postage prepaid, to the last known address of each member of the association at least 10 days in advance of the meeting.
- (3) No vote may be had on the question of an increase in assessments unless a quorum of the members of the association is present at the meeting. A quorum shall be conclusively presumed if 15 members or ten percent (10%) of the membership of the association, whichever is greater, is present at the meeting.
- (4) The proposal to increase the assessments shall be approved by an affirmative vote of a majority of the members present and voting.
- (5) The secretary of the association within five days following the meeting shall certify the result of the vote and the presence of a quorum to the Board in the manner and for the purposes set out in subsections (e) and (f) of this section.

(h) Upon a written request from an association that has held a valid meeting and voted for voluntary dissolution in accordance with G.S. 90-210.81, the Board shall issue an order of liquidation for that association.

(i) Upon receipt of a request for voluntary dissolution under subsection ~~(h)~~, (h) of this section or if the sponsoring funeral establishment has its permit revoked or ceases operation for any reason, the Board shall issue an order of liquidation. The Board's order may direct that the agreements for members' benefits be transferred to a financially sound mutual burial association, as well as all records, property, and unexpended balances of funds of the association to be liquidated, if the financially sound mutual burial association agrees in writing to accept the transfer. The Board's order shall direct the burial association to complete the liquidation and to file a final report with the Board no later than December 31 of the year of the liquidation. Upon receipt of the order of liquidation, the burial association shall:

- (1) Cease accepting new members.
- (2) Collect all debts owed to the association and pay all debts owed by the association from monies on hand, including the reserve.
- (3) Distribute pro rata any remaining monies on hand and in the reserve among those who were members of the association and whose transfer could not be accomplished on the date that the liquidation order was issued by the Board. Each member's distributive share shall be determined by dividing the amount of the member's benefit by the aggregate benefits of all members of the association and then multiplying the total amount of money available for distribution by the percentage so derived. Assessments owed by the members to the association at the time of distribution shall be taken into account and shall be offset against the members' distributive shares.

- (4) Issue a certificate to members in an amount that equals the difference between the distributive share issued in subdivision (3) of this subsection and the full amount of the member's association benefit. Any certificate issued shall supersede and supplant any other certificate already issued by the association. The certificate shall be on a form prescribed by the Board and shall be prepared and distributed by the association at its expense.
- (5) File a final report with the Board on or before December 31 in the year in which the order of liquidation was issued. This report shall show all receipts and disbursements, including the amount distributed to each member, since the last annual report of the association was filed with the Board.

(j) A certificate issued under subsection (i) of this section may be used as a credit toward the cost of funeral services, facilities, and merchandise at any funeral establishment that agrees on forms prescribed by the Board to accept such certificates. A funeral establishment that agrees to accept certificates shall do so until the agreement with the Board expires. The Board shall maintain and distribute to the public a list of funeral establishments that will accept certificates.

(k) Upon receipt of the final report of dissolution by the association, which is required by subsection (i) of this section, the Board shall immediately review the final report and shall notify the association whether the report is complete and has been accepted. Upon acceptance of the final report by the Board, all licenses issued to soliciting agents of the association pursuant to G.S. 90-210.84 are automatically cancelled."

SECTION 18. G.S. 90-210.121 reads as rewritten:

"§ 90-210.121. Definitions.

As used in this Article, unless the context requires otherwise:

- (1) "Authorizing agent" means a person legally entitled to authorize the cremation of human remains in accordance with G.S. 90-210.124.
- (2) "Board" means the North Carolina Board of Funeral Service.
- (3) "Body parts" means limbs or other portions of the anatomy that are removed from a person or human remains for medical purposes during treatment, surgery, biopsy, autopsy, or medical research; or human bodies or any portion thereof that have been donated to science for medical purposes.
- (4) "Casket" means a rigid container that is designed for the encasement of human remains and that is usually constructed of wood, metal, or other material and ornamented and lined with fabric, and which may or may not be combustible.
- (5) "Certificate of cremation" means a certificate provided by the crematory manager who performed the cremation containing, at a minimum, the following information:
 - a. Name of decedent;
 - b. Date of cremation;
 - c. Name and address of crematory; and
 - d. Signature of crematory manager or person acting as crematory manager.
- (6) "Cremated remains" means all human remains recovered after the completion of the cremation process, including pulverization which leaves only bone fragments reduced to unidentifiable dimensions.
- (7) "Cremation" means the technical process, using intense heat and flame, that reduces human remains to bone fragments. Cremation includes the processing and may include the pulverization of the bone fragments.

- (8) "Cremation chamber" means the enclosed space within which the cremation process takes place. Cremation chambers covered by this Article shall be used exclusively for the cremation of human remains.
- (9) "Cremation container" means the container in which the human remains are transported to the crematory or placed therein upon arrival for storage and placement in a cremation chamber for cremation. A cremation container shall comply with all of the following standards:
- a. Be composed of readily combustible materials suitable for cremation;
 - b. Be able to be closed in order to provide a complete covering for the human remains;
 - c. Be resistant to leakage or spillage;
 - d. Be rigid enough for handling with ease;
 - e. Be able to provide protection for the health, safety, and personal integrity of crematory personnel; and
 - f. Be easily identifiable. The covering of the cremation container shall contain the following information:
 1. The name of the decedent;
 2. The date of death;
 3. The sex of the decedent; and
 4. The age at death of the decedent.
- (10) "Cremation interment container" means a rigid outer container composed of concrete, steel, fiberglass, or some similar material in which an urn is placed prior to being interred in the ground and which is designed to withstand prolonged exposure to the elements and to support the earth above the urn.
- (11) "Crematory" or "crematorium" means the building or buildings or portion of a building on a single site that houses the cremation equipment, the holding and processing facilities, the business office, and other parts of the crematory business. A crematory must comply with all applicable public health and environmental laws and rules and must contain the equipment and meet all of the standards established by the rules adopted by the Board.
- (12) "Crematory licensee" means the individual or legal entity that is licensed by the Board to operate a crematory and perform cremations.
- (13) "Crematory manager" means the person who is responsible for the management and operation of the crematory. A crematory manager must either be licensed to practice funeral directing or funeral service and be qualified as a crematory technician or must obtain a crematory manager permit issued by the Board. In order to receive a crematory manager permit, a person must:
- a. Be at least 18 years of age.
 - b. Be of good moral character.
 - c. Be qualified as a crematory technician.

Notwithstanding any other provision of law, a crematory that is licensed by the Board prior to January 1, 2004, and as of that date is not managed by a crematory manager who is licensed to practice funeral directing or funeral service, or who has a crematory manager permit, may continue to be managed by a crematory manager who is not licensed to practice funeral directing or funeral service or who does not have a crematory manager permit so long as there is no sale, transfer, devise, bequest, gift, or any other disposal of a controlling interest in the crematory.

- (13a) "Cremation society" means any person, firm, corporation, or organization that is affiliated with a crematory licensed under this Article and provides cremation information to consumers.
- (14) "Crematory technician" means any employee of a crematory licensee who has a certificate confirming that the crematory technician has attended a training course approved by the Board. The Board shall recognize the cremation certificate program that is conducted by the Cremation Association of North America (CANA).
- (15) "Final disposition" means the cremation and the ultimate interment, entombment, inurnment, or scattering of the cremated remains or the return of the cremated remains by the crematory licensee to the authorizing agent or such agent's designee as provided in this Article. Upon the written direction of the authorizing agent, cremated remains may take various forms.
- (16) "Holding and processing facility" means an area or areas that are designated for the retention of human remains prior to, and the retention and processing of cremated remains after, cremation; that comply with all applicable public health and environmental laws; preserve the health and safety of the crematory technician and other personnel of the crematory; and that are secure from access by anyone other than authorized persons. A holding facility and processing facility must be located in a crematory.
- (17) "Human remains" means the body of a deceased person, including a separate human fetus, regardless of the length of gestation, or body parts.
- (17a) "Initial container" means a receptacle for cremated remains, for which the intended use and design is to hold cremated remains, usually composed of cardboard, plastic, or similar material that can be closed in a manner so as to prevent the leakage or spillage of the cremated remains or the entrance of foreign material and is a single container of sufficient size to hold the cremated remains.
- (18) "Niche" means a compartment or cubicle for the memorialization or final disposition of an urn or container containing cremated remains.
- (19) "Processing" means the removal of bone fragments from the cremation chamber for the reduction in size, labeling and packaging, and placing in an urn or ~~temporary initial~~ container.
- (20) "Pulverization" means the reduction of identifiable or unidentifiable bone fragments after the completion of the cremation to granulated particles by mechanical means.
- (21) "Scattering area" means an area permitted by North Carolina law including, but not limited to, an area designated by a cemetery and located on dedicated cemetery property where cremated remains that have been removed from their container can be mixed with or placed on top of the soil or ground cover.
- ~~(22) "Temporary container" means a receptacle for cremated remains, usually composed of cardboard, plastic, or similar material which can be closed in a manner so as to prevent the leakage or spillage of the cremated remains or the entrance of foreign material and which is a single container of sufficient size to hold the cremated remains until an urn is acquired or the cremated remains are scattered.~~
- (23) "Urn" means a receptacle designed to permanently encase the cremated remains."

SECTION 19. G.S. 90-210.122(c) reads as rewritten:

"(c) The initial terms of the members of the Crematory Authority shall be staggered by the appointing authorities so that the terms of three members (two of

which shall be appointees of the Governor) expire December 31, 1991, the terms of two members (both of which shall be appointees of the Governor) expire December 31, 1992, and the terms of the remaining two members (one of which shall be an appointee of the Governor) expire December 31, 1993.

As the terms of the members appointed by the Governor expire, their successors shall be elected from among a list of nominees in an election conducted by the Board in which all licensed crematory operators are eligible to vote. The Board ~~may shall~~ conduct the election for members of the Crematory Authority ~~simultaneously with the election for members of the Board or at any other time. The Board~~ and shall prescribe the procedures and establish the time and date for nominations and elections to the Crematory Authority. A nominee who receives a majority of the votes cast shall be declared elected. The Board shall appoint the successors to the two positions for which it makes initial appointments pursuant to this section.

The terms of the elected members of the Crematory Authority shall be three years. The terms of the members appointed by the Board, including the members initially appointed pursuant to this subsection, shall be coterminous with their terms on the Board. Any vacancy occurring in an elective seat shall be filled for the unexpired term by majority vote of the remaining members of the Crematory Authority. Any vacancy occurring in a seat appointed by the Governor shall be filled by the Governor. Any vacancy occurring in a seat appointed by the Board shall be filled by the Board."

SECTION 20. G.S. 90-210.123(g) is amended by adding a new subdivision to read:

"(g) Whenever the Board finds that an owner, partner, crematory manager, member, officer, or any crematory technician of a crematory licensee or any applicant to become a crematory licensee, or that any authorized employee, agent, or representative has violated any provision of this Article, or is guilty of any of the following acts, and when the Board also finds that the crematory operator or applicant has thereby become unfit to practice, the Board may suspend, revoke, or refuse to issue or renew the license, in accordance with Chapter 150B of the General Statutes:

...
(1a) Denial, suspension, or revocation of an occupational or business license by another jurisdiction.

"

...
SECTION 21. G.S. 90-210.123(i) reads as rewritten:

"(i) The Board may hold hearings in accordance with the provisions of this Article and Chapter 150B of the General Statutes. The Board shall conduct any such hearing. The Board shall constitute an "agency" under Article 3A of Chapter 150B of the General Statutes with respect to proceedings initiated pursuant to this Article. The Board is empowered to regulate and inspect crematories and crematory licensees and to enforce as provided by law the provisions of this Article and the rules adopted hereunder. Any crematory that, upon inspection, is found not to meet any of the requirements of this Article shall pay a reinspection fee to the Board for each additional inspection that is made to ascertain whether the deficiency or other violation has been corrected. The Board may obtain preliminary and final injunctions whenever a violation of this Article has occurred or threatens to occur.

In addition to the powers enumerated in Chapter 150B of the General Statutes, the Board shall have the power to administer oaths and issue subpoenas requiring the attendance of persons and the production of papers and records before the Board in any hearing, investigation, or proceeding conducted by it. Members of the Board's staff or the sheriff or other appropriate official of any county of this State shall serve all notices, subpoenas, and other papers given to them by the President of the Board for service in the same manner as process issued by any court of record. Any person who neglects or refuses to obey a subpoena issued by the Board shall be guilty of a Class 1 misdemeanor."

SECTION 22. G.S. 90-210.124(a) reads as rewritten:

"§ 90-210.124. Authorizing agent.

(a) The following person, in the priority list below, shall have the right to serve as an "authorizing agent":

- (1) ~~An individual at least 18 years of age may authorize the cremation and disposition of the individual's own dead body in a written will, pursuant to health care power of attorney to the extent provided in Article 3 of Chapter 32 of the General Statutes, pursuant to a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes, pursuant to a cremation authorization form executed pursuant to Article 13F of Chapter 90 of the General Statutes, or in a written statement signed by the individual and witnessed by two persons who are at least 18 years old.~~ An individual at least 18 years of age may authorize the type, place, and method of disposition of the individual's own dead body by methods in the following order:
 - a. Pursuant to a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes or pursuant to a cremation authorization form executed pursuant to Article 13C of Chapter 90 of the General Statutes.
 - b. Pursuant to a health care power of attorney to the extent provided in Article 3 of Chapter 32A of the General Statutes.
 - c. Pursuant to a written will.
 - d. Pursuant to a written statement other than a will signed by the individual and witnessed by two persons who are at least 18 years old.

When an individual has authorized his or her own cremation and disposition in accordance with this subsection, the individual or institution designated by that individual shall act as the authorizing agent for that individual.

- (2) If a decedent has left no written authorization for the cremation and disposition of the decedent's body as permitted under subdivision (1) of this subsection, the following competent persons in the order listed may authorize the type, method, place, cremation, and disposition of the decedent's body:
 - a. The surviving spouse.
 - b. A majority of the surviving children who are at least 18 years of age and can be located after reasonable efforts.
 - c. The surviving parents.
 - d. A majority of the surviving siblings who are at least 18 years of age and can be located after reasonable efforts.
 - e. A majority of the persons in the classes of the next degrees of kinship, in descending order, who, under State law, would inherit the decedent's estate if the decedent died intestate who are at least 18 years of age and can be located after reasonable efforts.
 - f. A person who has exhibited special care and concern for the decedent and is willing and able to make decisions about the cremation and disposition.
 - g. In the case of indigents or any other individuals whose final disposition is the responsibility of the State or any of its instrumentalities, a public administrator, medical examiner, coroner, State-appointed guardian, or any other public official charged with arranging the final disposition of the decedent may serve as the authorizing agent.
 - h. In the case of individuals who have donated their bodies to science or whose death occurred in a nursing home or private institution and in which the institution is charged with making

arrangements for the final disposition of the decedent, a representative of such institution may serve as the authorizing agent in the absence of any of the above.

- i. In the absence of any of the above, any person willing to assume responsibility as authorizing agent, as specified in this act.

This subsection does not grant to any person the right to cancel a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes or to cause or prohibit the substitution of a preneed licensee as authorized under G.S. 90-210.63 or permit modification of preneed contracts under G.S. 90-210.63A. If a person under this subsection is incompetent at the time of the decedent's death, the person shall be treated as if he or she predeceased the decedent. An attending physician may certify the incompetence of a person and the certification shall apply to the rights under this subsection only. Any person under this subsection may waive his or her rights under this subsection by any written statement notarized by a notary public or signed by two witnesses."

SECTION 23. G.S. 90-210.129 reads as rewritten:

"§ 90-210.129. Cremation procedures.

(a) In deaths certified by the attending physician, the body shall not be cremated before the crematory licensee receives a death certificate signed by the attending physician, which shall contain at a minimum the following information:

- (1) Decedent's name;
- (2) Date of death;
- (3) Date of birth;
- (4) Sex;
- (5) Place of death;
- (6) Facility name (if not institution, give street and number);
- (7) County of death;
- (8) City of death; and
- (9) Time of death (if known).

(b) When required by G.S. 130A-388 and the rules adopted pursuant to that section or by successor statute and the rules pursuant to it, a cremation authorization form signed by a medical examiner shall be received by the crematory prior to cremation.

(c) In deaths coming under full investigation by the Office of the Chief Medical Examiner, a burial-transit permit/cremation authorization form must be received by the crematory before cremation.

(d) No body shall knowingly be cremated with a pacemaker or defibrillator or other potentially hazardous implant or condition in place. The authorizing agent for the cremation of the human remains shall be responsible for taking all necessary steps to ensure that any pacemaker or defibrillator or other potentially hazardous implant or condition is removed or corrected prior to cremation. If an authorizing agent informs the funeral director and the crematory licensee on the cremation authorization form of the presence of a pacemaker or defibrillator or other potentially hazardous implant or condition in the human remains, then the funeral director shall be responsible for ensuring that all necessary steps have been taken to remove the pacemaker or defibrillator or other potentially hazardous implant or to correct the hazardous condition before delivering the human remains to the crematory.

(e) Human remains shall not be cremated within 24 hours after the time of death, unless such death was a result of an infectious, contagious, or communicable and dangerous disease as listed by the Commission of Health Services, pursuant to G.S. 130A-134, and unless such time requirement is waived in writing by the medical examiner, county health director, or attending physician where the death occurred.

(f) No unauthorized person shall be permitted in view of the cremation chamber or in the holding and processing facility while any human remains are being removed

from the cremation container, processed, or pulverized. Relatives of the deceased and their invitees, the authorizing agent and the agent's invitees, medical examiners, Inspectors of the North Carolina Board of Funeral Service, and law enforcement officers in the execution of their duties shall be authorized to have access to the crematory area, subject to the rules adopted by the crematory licensee governing the safety of such individuals.

(g) Human remains shall be cremated only while enclosed in a cremation container. Upon completion of the cremation, and insofar as is possible, all of the recoverable residue of the cremation process shall be removed from the cremation chamber. Insofar as is possible, all residue of the cremation process shall then be separated from any foreign residue or anything else other than bone fragments and then be processed by pulverization so as to reduce the cremated remains to unidentifiable particles. Any foreign residue and anything other than the particles of the cremated remains shall be removed from the cremated remains as far as possible and shall be disposed of by the crematory licensee. This section does not apply where law otherwise provides for commingling of human remains. The fact that there is incidental and unavoidable residue in the cremation chamber used in a prior cremation is not a violation of this subsection.

(h) The simultaneous cremation of the human remains of more than one person within the same cremation chamber is forbidden.

(i) Every crematory shall have a holding and processing facility, within the crematory, designated for the retention of human remains prior to cremation. The holding and processing facility must comply with any applicable public health laws and rules and must meet all of the standards established pursuant to rules adopted by the Board.

(j) Crematory licensees shall comply with standards established by the Board for the processing and pulverization of human remains by cremation.

(k) Nothing in this Article shall require a crematory licensee to perform a cremation that is impossible or impractical to perform.

(l) The cremated remains with proper identification shall be placed in a ~~temporary~~ initial container or the urn selected or provided by the authorizing agent. The ~~temporary~~ initial container or urn contents shall not be contaminated with any other object, unless specific authorization has been received from the authorizing agent or as provided in subsection (g) of this section.

(m) If the cremated remains are greater than the dimensions of a ~~temporary~~ initial container or urn, the excess cremated remains shall be returned to the authorizing agent or its representative in a separate container or urn.

(n) If the cremated remains are to be shipped, the ~~temporary~~ initial container or urn shall be packed securely in a suitable shipping container that complies with the requirements of the shipper. Cremated remains shall be shipped only by a method which has an internal tracing system available and which provides a receipt signed by the person accepting delivery, unless otherwise authorized in writing by the authorizing agent. Cremated remains shall be shipped to the proper address as stated on the cremation authorization form signed by the authorizing agent.

(o) Unless the provisions of G.S. 130A-114 apply, before cremation the crematory licensee shall receive a written statement, on a form prescribed by the Board and signed by the attending physician, acknowledging the circumstances, date, and time of the delivery of the fetal remains from the mother. If after reasonable efforts no physician can be identified with knowledge and information sufficient to complete the written statement required by this subsection, the crematory licensee shall obtain documentation of the circumstances, date, and time of delivery of the fetal remains prepared by a hospital, medical facility, law enforcement agency, or other entity. Notwithstanding any other provision of law, health care providers may release to a licensee, in accordance with the federal Standards for Privacy of Individually Identifiable Health Information under the Health Insurance Portability and

Accountability Act of 1996 (HIPAA), medical records that document the circumstances, date, and time of delivery of fetal remains. If the crematory licensee cannot identify documents sufficient to meet the requirements of this subsection, the licensee shall report to the local medical examiner pursuant to G.S. 130A-383(a).

(p) If the provisions of Article 4 of Chapter 130A of the General Statutes apply, the crematory licensee shall receive a fetal report of death as prescribed in G.S. 130A-114.

(q) Before the cremation of amputated body parts, the crematory licensee shall receive a written statement, on a form prescribed by the Board and signed by the attending physician, acknowledging the circumstances of the amputation. If after reasonable efforts no physician can be identified with knowledge and information sufficient to complete the written statement required by this subsection, the crematory licensee shall notify the local medical examiner pursuant to G.S. 130A-383(b). This section does not apply to the disposition of body parts cremated pursuant to Part 3 of Article 16 of Chapter 130A of the General Statutes."

SECTION 24. G.S. 90-210.130(b) reads as rewritten:

"(b) The authorizing agent is responsible for the disposition of the cremated remains. If, after a period of 30 days from the date of cremation, the authorizing agent or the agent's representative has not specified the final disposition or claimed the cremated remains, the crematory licensee or the person in possession of the cremated remains may release the cremated remains to another family member upon written notification to the authorizing agent delivered by certified mail or dispose of the cremated remains only in a manner permitted in this section. The authorizing agent shall be responsible for reimbursing the crematory licensee for all reasonable expenses incurred in disposing of the cremated remains pursuant to this section. A record of such disposition shall be made and kept by the person making the disposition. Upon disposing of cremated remains in accordance with this section, the crematory licensee or person in possession of the cremated remains shall be discharged from any legal obligation or liability concerning such cremated remains."

SECTION 25. Article 13F of Chapter 90 of the General Statutes is amended by adding the following new section to read:

"§ 90-210.135. Cremation societies.

(a) No person, firm, or corporation licensed as a crematory under the provisions of this Article may operate a cremation society without first registering the name of the cremation society with the Board."

SECTION 26. G.S. 130A-420 reads as rewritten:

"§ 130A-420. Authority to dispose of body or body parts.

(a) An individual at least 18 years of age may authorize the type, place, and method of disposition of the individual's own dead body in a written will, pursuant to a health care power of attorney to the extent provided in Article 3 of Chapter 32A of the General Statutes, pursuant to a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes, pursuant to a cremation authorization form executed pursuant to Article 13C of Chapter 90 of the General Statutes, or in a written statement signed by the individual and witnessed by two persons who are at least 18 years old by methods in the following order:

- (1) Pursuant to a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes or pursuant to a cremation authorization form executed pursuant to Article 13C of Chapter 90 of the General Statutes.
- (2) Pursuant to a written will.
- (3) Pursuant to a written statement other than a will signed by the individual and witnessed by two persons who are at least 18 years old.
- (4) Pursuant to a health care power of attorney to the extent provided in Article 3 of Chapter 32A of the General Statutes.

An individual may also delegate his or her right to dispose of his or her own dead human body to any person by any means authorized in subdivisions (1) through (3) of this subsection.

(b) If a decedent has left no written authorization for the disposal of the decedent's body as permitted under subsection (a) of this section, the following competent persons in the order listed may authorize the type, method, place, and disposition of the decedent's body:

- (1) The surviving spouse.
- (2) A majority of the surviving ~~children~~-children over 18 years of age, who can be located after reasonable efforts.
- (3) The surviving parents.
- (4) A majority of the surviving ~~siblings~~-siblings over 18 years of age, who can be located after reasonable efforts.
- (5) A majority of the persons in the classes of the next degrees of kinship, in descending order, who, under State law, would inherit the decedent's estate if the decedent died ~~intestate~~-intestate who are at least 18 years of age and can be located after reasonable efforts.
- (6) A person who has exhibited special care and concern for the decedent and is willing and able to make decisions about the disposition.
- (7) In the case of indigents or any other individuals whose final disposition is the responsibility of the State or any of its instrumentalities, a public administrator, medical examiner, coroner, State-appointed guardian, or any other public official charged with arranging the final disposition of the decedent.
- (8) In the case of individuals who have donated their bodies to science or whose death occurred in a nursing home or private institution and in which the institution is charged with making arrangements for the final disposition of the decedent, a representative of the institution.
- (9) In the absence of any of the persons described in subdivisions (1) through (8) of this subsection, any person willing to assume responsibility for the disposition of the body.

This subsection does not grant to any person the right to cancel a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General ~~Statutes~~ or Statutes, to prohibit the substitution of a preneed licensee as authorized under G.S. ~~90-210.63~~-90-210.63, or to permit modification of preneed contracts under G.S. 90-210.63A. If an individual is incompetent at the time of the decedent's death, the individual shall be treated as if he or she predeceased the decedent. An attending physician may certify the incompetence of an individual and the certification shall apply to the rights under this section only. Any individual under this section may waive his or her rights under this subsection by any written statement notarized by a notary public or signed by two witnesses.

(b1) A person who does not exercise his or her right to dispose of the decedent's body under subsection (b) of this section within five days of notification or 10 days from the date of death, whichever is earlier, shall be deemed to have waived his or her right to authorize disposition of the decedent's body or contest disposition in accordance with this section.

(c) An individual at least 18 years of age may, in a writing signed by the individual, authorize the disposition of one or more of the individual's body parts that has been or will be removed. If the individual does not authorize the disposition, a person listed in subsection (b) of this section may authorize the disposition as if the individual was deceased.

(d) This section does not apply to the disposition of dead human bodies as anatomical gifts under Part 3 of Article 16 of Chapter 130A of the General Statutes or the right to perform autopsies under Part 2 of Article 16 of Chapter 130A of the General Statutes."

SECTION 27. This act is effective when it becomes law.
In the General Assembly read three times and ratified this the 2nd day of August, 2007.

Marc Basnight
President Pro Tempore of the Senate

Joe Hackney
Speaker of the House of Representatives

Michael F. Easley
Governor

Approved _____ .m. this _____ day of _____, 2007