

MAINE STATE LEGISLATURE

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CHAPTER 21

FUNERAL DIRECTORS AND EMBALMERS

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SUBCHAPTER I

GENERAL PROVISIONS

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§ 1401. Prearranged funerals or burial plans

After September 12, 1959, all moneys paid during a person's lifetime to any individual, firm, association, partnership or corporation, by such person or by someone in his behalf under an agreement that services be performed or personal property be delivered in connection with the disposition of such person's body after his death shall be deposited by the payee within 30 days after receipt thereof in a separate account in a bank, trust company or savings institution in this State in the name of the payee as mortuary trustee for the person for whose benefit the payment was made and shall be held in such account together with interest if any thereon. Nothing in this section shall be construed to prevent transfer of such funds to another such bank, trust company or savings institution by merger or consolidation or by operation of law.

Such funds may be withdrawn, if otherwise lawful, by the payee on written instructions of the person who originally paid the money or his legal representative or on the death of the person for whose benefit such funds were paid, in which latter event they shall be used in accordance with the agreement.

Such bank, trust company or savings institution shall be discharged from liability for payment of the funds in any such account upon presentation of a written consent to withdrawal signed by the party who paid the funds or his legal representative and by the payee, or upon presentation of proof of death of such person for whose benefit such funds were paid. This section shall not apply to the sale of cemetery lots, crypts, niches, cemetery burial privileges, cemetery space or perpetual care.

Any person who violates this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$50 and not more than \$500, or by imprisonment for not more than 3 months.

1959, c. 151.

§ 1402. Solicitation of prearranged funerals and funeral business prohibited

No funeral home, funeral establishment or person holding a license under this chapter shall as, or through, an agent or principal solicit a prearranged funeral service or plan for any person or persons. "Prearranged funeral service or plan" shall mean any funeral service or plan which is arranged, planned or determined prior to the demise of a person or persons for whom the funeral service is to be performed. Funeral homes, funeral establishments and licensees under this chapter may enter into contracts or agreements for prearranged funeral services or plans provided that they do not in any manner either as, or through, principals or agents solicit such contract or agreement.

No funeral home, funeral establishment or person licensed under this chapter shall pay or cause to be paid, directly or indirectly, any money or other thing of value to a person not responsible for payment for the funeral as a commission or gratuity for the securing of business for such funeral home, establishment or licensee.

Any person who violates this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$50 and not more than \$500, or by imprisonment for not more than 3 months.

1963, c. 109.

§ 1403. Employment of funeral directors by cemeteries prohibited

No funeral home, funeral establishment or person holding a license under this chapter shall be employed as a funeral home,

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funeral establishment, or as an embalmer or funeral director by a cemetery, cemetery association or cemetery corporation, nor shall such person be so employed by a funeral home, funeral establishment or mortuary establishment which owns or controls or is owned or controlled by a cemetery, cemetery association or cemetery corporation. Control shall not be considered to exist because the owners, officers or employees of a funeral home, funeral establishment or mortuary establishment serve without pay or for a fee not exceeding \$500 per year per person as officers or as the minority of the directors or trustees of a cemetery association or cemetery corporation in which they have no financial investment. This section shall not prevent employment of persons licensed under this chapter by cemeteries, cemetery associations or cemetery corporations in other capacities than that of funeral director or embalmer. This section shall not apply to disinterments or transfers of disinterred bodies.

Any person who violates this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$50 and not more than \$500, or by imprisonment for not more than 3 months.

1963, c. 245.

§ 1404. Violent or sudden death; no embalming until cause determined

No person shall inject into any cavity or artery of the body of any person who has died from violence, by the action of chemical, thermal or electrical agents, or following abortion, or suddenly when not disabled by recognizable disease, any fluid or substance, until a legal certificate as to the cause of death from the medical examiner has been obtained, or until legal investigation has determined the cause of death, or written permission to embalm such body has been given by the medical examiner. If a criminal cause of death is alleged or suspected, no fluid or other substance shall be injected into a body until the cause of death is legally established or until an autopsy has been performed.

R.S.1954, c. 25, § 204; 1955, c. 326, § 4.

§ 1405. Cremation

Any person, firm or corporation within the State, with the approval of the Department of Health and Welfare may establish and maintain suitable buildings and appliances for the cremation of bodies of the dead and, subject to the regulations of the

department, may cremate such bodies and dispose of the ashes of the same.

The body of a deceased person shall not be cremated within 48 hours after his decease unless he died of a contagious or infectious disease and in no event shall the body of a deceased person be cremated until the person, firm or corporation in charge of the cremation has received a certificate from a duly appointed medical examiner that he has made personal inquiry into the cause and manner of death and is satisfied that no further examination or judicial inquiry concerning the same is necessary. Such certificate shall be retained by the person, firm or corporation in charge of the cremation for a period of 3 years. For said certificate the medical examiner shall receive a fee of \$5 payable by the person requesting same.

No dead human body shall be removed, transported or shipped to any crematory unless encased in a casket or other suitable container.

R.S.1954, c. 25, § 387; 1957, c. 298, § 4.

SUBCHAPTER II

BOARD OF EXAMINERS

Sec.

- 1451. Membership; rules; compensation; expenses; reciprocity.
- 1452. Records and reports.
- 1453. Application of moneys collected.
- 1454. Lists for transportation companies.
- 1455. Investigations; refusal of license or renewal.

§ 1451. Membership; rules; compensation; expenses; reciprocity

The Board of Examiners of Funeral Directors and Embalmers, as heretofore established and in this chapter called the "board," shall consist of 5 members, one of whom shall be the Director of Health, who shall be secretary of said board, and the other members shall be licensed funeral directors and embalmers, who shall be appointed by the Governor, with the advice and consent of the Council, and they shall hold office for the term of 4 years. In case of a vacancy due to death, resignation or other cause, the vacancy shall be filled by an appointment for the unexpired term, as is provided for original appointments.

The board may adopt rules and regulations consistent with law governing the care, preparation, transportation, cremation,

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burial or disposition of dead human bodies, and governing embalming and funeral directing, including licensing and registration of apprentices and mortuary assistants. No such rule or regulation shall require that an embalmer be permanently employed by a funeral director. Such rules and regulations shall not become effective until approved by the Department of Health and Welfare.

The members of the board shall each receive \$15 a day and expenses while engaged in the business of said board. The secretary shall receive actual expenses while engaged in the business of the board.

The secretary of the board shall be the treasurer thereof and shall receive all fees, charges and assessments payable to the board, and account for and pay over the same according to law.

The secretary of said board shall keep a record of all proceedings, issue all notices, certificates of registration and licenses, attest all such papers and orders as said board shall direct, cause inspections to be made at least once every 3 years of all establishments or places of business of any person carrying on the business of funeral director or embalmer in the State and perform such other duties as shall be designated by the board. Such inspection shall be for the purpose of determining that such establishments and places are maintained in a clean and sanitary manner and that suitable equipment for their proper conduct is maintained therein and that the laws and the regulations of the board and of the Department of Health and Welfare relating to the conduct of such establishments are observed. The board may employ one or more inspectors to carry out the duties of inspection imposed by this section, and such inspection may be made by members of the board upon authorization by the board.

The board may enter into reciprocal agreements with corresponding boards of other states for the purpose of allowing licensed funeral directors or embalmers to perform their licensed functions in this or other states under such terms and conditions as the boards may prescribe.

R.S.1954, c. 25, § 196; 1961, c. 28; 1963, c. 218, § 1.

§ 1452. Records and reports

The board shall keep a record containing the names and residences of all persons licensed and a record of all moneys received and disbursed by said board, and said records, or duplicates thereof, shall always be open to inspection in the office of the Director

of Health during regular office hours. The board shall report to the department, on or before the first day of May in each year, a full and complete account of all of its official acts during the year, together with a statement of its receipts and disbursements and such comment as may be deemed proper.

R.S.1954, c. 25, § 199.

§ 1453. Application of moneys collected

The money received under this chapter shall constitute a permanent fund for carrying on the work of the board and the compensation of its members, and for such expenses as may be necessarily incurred from time to time by said board on account of investigations which said board may be required to make by reason of this chapter; and for such educational purposes as said board may deem for the best interests and advantage to the funeral directors and embalmers of this State. None of the expenses designated shall reduce the fund under the sum of \$1,000.

R.S.1954, c. 25, § 201.

§ 1454. Lists for transportation companies

In the month of January of each year, the secretary of the board shall supply each licensed embalmer and funeral director, and the various transportation companies within the State, with a list of all registered funeral directors and all funeral directors and embalmers holding licenses, then in force, giving the names of such persons, their business addresses and the numbers of their licenses.

R.S.1954, c. 25, § 202.

§ 1455. Investigations; refusal of license or renewal

Whenever the board shall have reason to believe that any person to whom a license has been issued has become unfitted to practice funeral directing, embalming and disinfecting, as the case may be, or has violated any of the provisions of this chapter, or any rule or regulation prescribed, or whenever written complaint, charging the holder of a funeral director's or an embalmer's license with the violation of any provision of this chapter is filed with the board, it shall be the duty of said board to conduct an investigation, and if from such investigation it shall appear to the board that there is reasonable ground for belief that the accused may have been guilty of the violation or violations charged,

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the board shall file a statement or complaint with the Administrative Hearing Commissioner designated in Title 5, chapters 301 to 307.

Any person who has been refused a license or a renewal of his license may file a statement or complaint with said Administrative Hearing Commissioner.

The board may refuse to issue or to renew any license, when it believes the applicant for or the holder of such license to be guilty of any of the following acts or omissions:

1. Involving moral turpitude. Conviction of a crime involving moral turpitude.

2. Felony. Conviction of a felony.

3. Unprofessional conduct. Unprofessional conduct which is defined to include:

A. Misrepresentation or fraud in obtaining a license or in the conduct of the business or the profession of a funeral director or embalmer;

B. False or misleading advertising as a funeral director or embalmer; advertising or using the name of an unlicensed person in connection with that of any funeral establishment;

C. Solicitation of dead human bodies by the licensee, his agents, assistants or employees, whether such solicitation occurs after death or while death is impending. This shall not be deemed to prohibit general advertising;

D. Employment by the licensee of persons known as "Cappers," "steerers" or "solicitors," or other such persons to obtain funeral directing or embalming;

E. Employment directly or indirectly of an apprentice, agent, assistant, embalmer, employee or other person, on part or full time, 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 funeral director or embalmer;

F. The direct or indirect payment or offer of payment of a commission by the licensee, his agents, assistants or employees for the purpose of securing business;

G. Gross immorality;

H. Aiding or abetting an unlicensed person to practice funeral directing or embalming;

I. Solicitation or acceptance by a licensee of any commission or bonus or rebate in consideration of recommending or causing a dead human body to be disposed of in any crematory, mausoleum or cemetery;

J. Refusing to promptly surrender the custody of a dead human body, upon the express order of the person lawfully entitled to the custody thereof;

K. Negligent, careless or willful noncompliance with the laws relating to filing death certificates and obtaining burial permits;

L. Gross incompetency, negligence or misconduct in carrying on the business or profession of embalming or funeral directing;

M. Abuse or disrespect in the handling of a dead human body, violation of any law or ordinance affecting the handling, custody, care or transportation of dead human bodies.

In addition, whoever violates any provision of this chapter, or any rule or regulation prescribed by said board for the preparation, embalming, transportation or burial of any dead human body may be punished by a fine of not more than \$100 or by imprisonment for not more than 60 days, or by both, and the county attorney of the county in which such violation occurs shall prosecute all such persons. The District Court shall have original and concurrent jurisdiction with the Superior Court in all prosecutions under this chapter.

R.S.1954, c. 25, § 205; 1961, c. 317, § 37; c. 394, § 9; c. 417, § 53; 1963, c. 402, § 35; c. 412, § 23.

SUBCHAPTER III

LICENSES

Sec.

1501. License required; qualifications.

1502. Examinations; revocation of licenses.

1503. Blanks and forms of procedure; lists of licensees and examinations.

1504. Fees; expiration and renewal of licenses.

1505. Notice to holders of expiring licenses.

§ 1501. License required; qualifications

Any person wishing to become an embalmer of dead human bodies for burial shall be at least 21 years of age, with not less

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than a high school education or its equivalent, be a citizen of the United States, shall have practiced embalming, caring for and preparing for burial, dead human bodies, for at least 2 years, and shall have embalmed a minimum of 25 human bodies under the direction and supervision of a licensed embalmer and shall have taken and completed at least a 12 months' course of study of some school or college of embalming, the requirements and standards of which school or college shall have the approval of the Board of Examiners of Funeral Directors and Embalmers. Such person shall present to said board a certificate or diploma certifying that he has taken and successfully passed the required examination of said school or college of embalming, and shall have an intelligent comprehension of such rudiments of anatomy, pathology, bacteriology, hygiene, and of the characteristics of, and the dangers from, contagious and infectious diseases, and of the actions and uses of disinfectant agencies as the Bureau of Health may prescribe as necessary for the protection of the living, and shall pass an examination before the board before he is permitted to practice said profession within the State. This chapter shall apply only to persons who hold themselves out to embalm dead human bodies for burial or to prepare the same for transportation or cremation. Embalmer's assistants, partners or members of firms who have not received a license shall not engage in the practice of embalming dead human bodies for burial, transportation or cremation, except under the personal supervision of a licensed embalmer.

Any person wishing to become a funeral director and to engage in the business or profession of funeral directing, and of preparing, other than by embalming, or disposing of dead human bodies by any means whatever in this State shall be at least 21 years of age, a citizen of the United States, be of good moral character, with not less than a high school education or its equivalent, shall have practiced funeral directing for at least 2 years under the direction and supervision of a licensed funeral director, and graduated from a 12 months' course of study in a school or college of mortuary science, the requirements and standards of which school or college shall have the approval of the board, and shall have an intelligent comprehension of the dangers from contagious and infectious diseases and of the actions and uses of disinfectant agencies as the Bureau of Health may prescribe as necessary for the protection of the living, and shall pass an examination before the board.

R.S.1954, c. 25, § 195; 1955, c. 213, § 1.

§ 1502. Examinations; revocation of licenses

Examinations for licenses shall be given by the board at least twice a year at such times and places as it may determine. Applicants for embalmers' licenses shall pass an examination upon their knowledge of embalming, sanitation, preservation of the dead, disinfection of a deceased person and the apartments, bedding, clothing or anything likely to be affected in the case of death from infectious or contagious diseases, in accordance with the rules and regulations of the Department of Health and Welfare. They shall be conversant with the law and rules governing the transportation of dead human bodies, and such other subjects as the board may, from time to time, see fit to name, and if found qualified, a certificate of a licensed embalmer shall be issued to the applicant under which he shall have legal authority to perform all acts relating to preparing, embalming, shipping or burying dead human bodies, and to do work coming within the province of said vocation.

Applicants for funeral directors' licenses shall pass an examination upon their knowledge of sanitation, bacteriology, disinfection of the apartments, bedding, clothing or anything likely to be affected in the case of death from infectious or contagious diseases in accordance with the rules and regulations of the department. They shall be conversant with the law and rules governing the transportation of dead human bodies, and such other subjects as the board may, from time to time, see fit to name, and if found qualified, a certificate of a licensed funeral director shall be issued to the applicant under which he shall have legal authority to engage in the business or profession of funeral directing and of preparing, other than by embalming, or disposing of dead human bodies by any means whatever, and to do any work coming within the province of said vocation.

Applicants for the combination license of funeral director and embalmer may be given a single examination.

All funeral establishments must be operated by a person or persons holding a funeral director's license and said license shall be conspicuously displayed at or in such establishments.

All branch establishments must be operated by a person or persons holding a funeral director's license and the license must be displayed in all such branch establishments.

A funeral establishment must contain a preparation room equipped with tile, cement or composition floor, necessary drainage or proper disposal of waste satisfactory to the local health

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officer, and ventilation, and containing necessary instruments and supplies for the preparation and embalming of dead human bodies for burial, transportation or other disposition.

The board may adopt such rules, regulations and classifications as may be reasonable, sufficient and proper to define what shall be deemed the proper drainage and ventilation and what instruments are necessary and suitable in a funeral establishment.

The board may adopt rules and regulations governing its own procedure. It may adopt rules and regulations consistent with the law governing the time, place, method and grading of examinations. Written examinations shall be retained for a period of 5 years but need not be retained for a longer period.

R.S.1954, c. 25, § 197; 1955, c. 213, §§ 2, 3; 1961, c. 394, § 8.

§ 1503. Blanks and forms of procedure; lists of licensees and examinations

The Department of Health and Welfare may adopt such blanks and forms of procedure as it may deem necessary to carry out this chapter and shall keep on file a list of all registered and licensed embalmers and funeral directors and a record of examinations, together with the examination papers, all of which shall be open to public inspection.

R.S.1954, c. 25, § 198.

§ 1504. Fees; expiration and renewal of licenses

The fee for examinations under section 1502 shall be \$10, and all licenses and certificates of registration which have been or may be issued to funeral directors and embalmers by the board shall expire on the 31st day of December, annually. Any person holding an embalmer's license or certificate of registration or funeral director's license issued under this or any other law, may have the same renewed by making and filing with the secretary of said board an application therefor within 30 days preceding the expiration of his or her license or certificate of registration, upon blanks prescribed by said board, and upon the payment of a renewal fee of \$4 for an embalmer's license, \$4 for a funeral director's license, \$6 for a combination embalmer's and funeral director's license, \$2 for an apprentice's license and \$2 for a mortuary assistant's license. Any person neglecting or failing to have his or her license or certificate of registration renewed may have the same renewed by making application therefor within 30 days after the date of such expiration and upon

the payment of the regular renewal fee plus a revival fee of \$2. Any person who held an embalmer's license or certificate of registration or funeral director's license issued in accordance with the laws of this State, but who failed to have such license renewed and who, solely because of such failure to renew said license, is not now entitled to engage in the business of embalming dead bodies, shall be allowed to take an examination for a license to engage in said business, and upon successfully passing such examination and paying the required fees shall be granted a license as an embalmer, and the said board is authorized and directed to give such examination and grant such license to any applicant complying with the above provisions.

R.S.1954, c. 25, § 200; 1955, c. 213, § 4; 1957, c. 23; 1963, c. 218, § 2.

§ 1505. Notice to holders of expiring licenses

The secretary of the board shall, at least 40 days prior to the expiration of any license, mail to the holder of any license about to expire a notice advising him or her to that effect, and enclosing a blank application for renewal thereof. The secretary of said board shall mail a notice to each holder of a license that has not been renewed, advising him or her of the expiration of his or her license and of the penalty for embalming, caring for or preparing for burial, transportation or cremation of dead human bodies without holding a license, and the conditions and terms upon which his or her license may be revived and renewed. All notices required to be mailed by this section shall be directed to the last known post-office address of the person to whom the notice is addressed.

R.S.1954, c. 25, § 203.